

was furnished, was bound by sec. 255 to keep the gate closed. Had it been closed, the accident would not have happened, notwithstanding the negligence of the defendants in regard to their fence.

It is also urged that under sec. 295 of the Act, as amended by 9 & 10 Edw. VII. ch. 50, sec. 9, the defendants are relieved from liability, inasmuch as that section provides that no person who suffers damage by reason of the company failing to comply with sec. 254 shall have any cause of action against such company for such damage if it was caused by reason of any person (a) for whose use any farm crossing is furnished failing to keep the gates on each side of the railway closed when not in use.

I agree with the learned referee that the immunity conferred by sec. 295 is restricted to the company supplying the gate—in this case the gate at the Massie crossing, supplied, not by the defendants, but by the Grand Trunk Railway Company. It was, in my opinion, as much the duty of the defendants as of Massie to keep closed the gate between their property and that of the Grand Trunk Railway Company.

The defendants' primary negligence was in not properly fencing their land where it crossed the plaintiff's farm, and the damages sustained by the plaintiff resulted, as a natural consequence, from such negligence. That the accident would not have happened had the gates at the Massie crossing been closed is undoubtedly true. But, even if the defendants were not responsible for the gate being open, the effective cause of the accident—the incident which led to the killing of the horses—was the breach by the defendants of the duty cast upon them by the statute: Halsbury's Laws of England, vol. 21, pp. 378, 379, and the cases there cited, especially *Halestrap v. Gregory*, [1895] 1 Q. B. 561.

The appeal fails and is dismissed with costs.