

judgments of this court given when Sir John Robinson presided over it.

The result of those decisions I take to be, that horses which are driven near or across the railway loose, without halter, bridle, or other similar fastening, and therefore under no actual present check or holdfast, and are not so close to their driver as to be under his immediate manual control and restraint, are not "in charge" within the spirit and meaning of sec. 147 of "*The Railway Act*" of this Province.

Hence where the evidence for the plaintiff clearly and decisively shews that a horse for the killing of which by their locomotive, &c., in action is brought against a railway company, was not so in charge, the judge presiding at the trial ought, as a matter of law, to rule that the company have incurred no liability whatever.

Courts and juries should never lose sight of what has been so properly averted to by my learned brother as the object of the provisions in this respect of the Railway Act. It was not merely to protect these companies, but to prevent the recurrence of those frightful catastrophes, so dangerous and destructive to passengers on railway trains, which have been caused by horses and cattle getting upon the railway track. By throwing the responsibility upon the owners of permitting their horses, sheep, swine or other cattle, to be at large upon any highway within half a mile of the intersection of such highway with any railway or grade, unless such cattle are in charge of some person, and depriving them of any remedy against the railway company in case of their cattle, &c., being killed, the legislature make it their interest to diminish one of the risks to which the public are exposed in making use of the railway.

Appeal allowed.

THE CORPORATION OF THE CITY OF TORONTO V. THE GREAT WESTERN RAILWAY COMPANY.

Railway—Assessment.

The Court of Revision confirmed the assessment of a lot of land occupied by a Railway Company at \$1200 annual value, and assessed the station built upon it at \$1500, and the County Court judge being appealed to, confirmed the value of the station, "subject to the question" whether it could be assessed in addition to the land, "and left for the determination of a higher court," whether after the valuation of the land had been fixed in accordance with Sec. 30 of the Assessment Act the building could be added. *Held*, that this was in effect a confirmation of the assessment, the reservation being inoperative, and that the court had no power to review the decision.

[Q. B., T. T., 30 Vic., 1866.]

Special Case. The assessors for the City of Toronto assessed certain land and premises belonging to the Great Western Railway Company, who appealed to the Court of Revision, who assessed the land itself at an annual value of \$1200, and also assessed the large frame Railway Station erected upon the same lot of land at an annual value of \$1500.

It was stated in the case that the land in question, bounded by Scott street on the east, Esplanade street on the south, Yonge street on the west, and a lane on the north, was a lot on the whole of which the company had erected a building, which, together with the land, was used entirely for railway purposes: that through the building were laid several railway tracks, and on each side thereof, all being upon the premises in question, were placed buildings used for freight-

shed, clerk's office, waiting room for passengers, baggage room, &c., &c., the building on each side of the track being connected by a roof, and all forming a railway station, being the terminus of the Great Western Railway in Toronto, and no part being used except for railway purposes.

From this assessment the Great Western Railway Company appealed to the judge of the County Court, who confirmed the assessment of the land at an annual value of \$1200, and decided that "subject to the question whether such property could be assessed in addition to the value of the land as previously assessed, by a building thereon used for railway purposes, he confirmed the value of the large railway station at the sum," &c., (as the Court of Revision had done) "and left for the determination of a higher court whether, after the valuation of the land had been fixed in accordance with the 30th section of the Assessment Act, there was or was not power to add thereto the value of the buildings of the nature in this case described."

The city brought an action for the two amounts which had been imposed as rates upon these separate annual values, and this, by consent of the parties, and by a judge's order, was made a special case for adjudication by this court without pleadings, the question submitted being "whether the company can be assessed for the value of the buildings used and occupied for railway purposes under the provisions of the Assessment Act, when the land occupied by the railway upon which such buildings rest has been already assessed at the average value of land in the locality as land used for railway purposes."

C. Robinson, Q. C., for the plaintiffs, cited *Great Western R. W. Co. v. Rouse*, 15 U. C. Q. B. 168; *Municipality of London v. G. W. R. W. Co.*, 17 U. C. Q. B. 264; *Consol. Stat. U. C. c. 56*, sec. 30.

Irving, Q. C., for the defendants cited *In re Great Western R. W. Co.*, 2 U. C. L. J. 193; *Regina v. Glamorganshire Canal Co.*, 3 E. & E. 186; *Cotter v. Midland R. W. Co.*, 2 Phillips 469.

DRAPER, C. J., delivered the judgment of the court.

This action seems very like an attempt to make this court a tribunal to review the determination of the judge of the County Court under the Assessment Act, the 64th and 68th sections of which appear to us to intend that his decision shall be final.

Supposing that the learned judge of the County Court had simply confirmed the decision of the Court of Revision, we do not imagine it would be questioned that neither in this nor in any other form could his judgment be reviewed. But in place of a simple confirmation the case states that the learned judge has confirmed it, subject to the question left for the determination of a higher court whether he is right in confirming it or no. We think this is in law a confirmation, and the reservation is inoperative, for the first was his duty, if that was the conclusion he arrived at, and the latter was not contemplated or authorized by the statute. We assume he intended to confirm because he has said he has confirmed, though he has desired to subject his opinion to review or even reversal. But either he has confirmed or he has not discharged the duty cast upon him by the legislature, for he