Reports and Notes of Cases.

Province of Saskatchewan.

SUPREME COURT.

ANDERSON V. CANADIAN NORTHERN R. Co.

Elwood, J.]   [33 D.L.R. 418.

Railways — Injury to animals at large — Owner's negligence—
Wilful act or omission.

It is a wilful act within the meaning of sec. 294(1) of the
Railway Act, 1906, to turn animals at large upon a highway
within half a mile of an intersection at rail level despite a provin-
cial Act permitting animals to run at large, and if the animals so
at large get from the highway to railway property and are killed
or injured there, the railway company is not liable.

[*Koch* v. *G.T.P. Branch Lines* (Sask. 1917), 32 D.L.R. 393
(annotated) considered; see also annotation following.]

G. E. Taylor, K.C., for plaintiffs. *J. N. Fish*, K.C., for de-
fendant.

ANNOTATION ON ABOVE CASE IN D.L.R.

ANIMALS STRAYING ON RAILWAY.

In the above case the animals were turned out by the owner, to graze
with other stock, where they would, upon unenclosed land; they got upon a
highway, and thence upon the railway, at an intersection at rail level, where
the cattle guards had been removed.

A provincial Act says that "it shall be lawful to allow animals to run at
large." The only question of law really raised by these facts is this, is the
intentional act of the owner in turning his cattle at large a "wilful" act, within
the meaning of sec. 294(4) of the Railway Act, R.S.C. 1906, in view of the
fact that it is legalized by the provincial Act, so far as such an Act can legalize
it? Elwood, J., said: "The mere fact that there is a (provincial) statute
permitting them to be at large cannot affect the owner's position and responsi-
bility with respect to the railway company. It (the owner's act) is none the
less intentional (that is, wilful) that it is permitted.

Elwood, J., seemed to see some significance in the word "permitted"
where it occurs in sec. 294(1) "No horse, etc., shall be permitted to be at large."
In face of that word he thought a provincial Act could not grant permission,