

action was brought to recover the value of a cow, the property of the plaintiff, which was killed on the defendants' railway track. The plaintiff alleged that the death of the cow was caused by the negligence of the defendants in neglecting to repair a fence, through a breach in which the animal strayed on to the track.

D. L. McCarthy, for the appellants.

T. E. Godson, Bracebridge, for plaintiff.

The judgment of the Court (MEREDITH, C.J., STREET, J.) was delivered by

MEREDITH, C.J.—The facts being undisputed, the real question is whether, on these facts, the liability of defendants for the loss has been made out; and, upon a review of the facts, it appears that there was evidence sufficient to warrant the verdict for plaintiff, unless the effect of Grand Trunk R. W. Co. v. James, 31 S. C. R. 420, is to determine that upon the true construction of sec. 194 of the Dominion Railway Act, as amended by 53 Vict. ch. 28, sec. 2, the defendants are not liable because plaintiff's cow was killed not upon the switch on to which she escaped from the adjoining land of plaintiff, but upon the main line, on to which she did not escape directly from that land, but which she reached by crossing intervening lands. That case did not decide that where the statutory duty as to fencing is not performed, and in consequence of the breach of duty cattle of the landowner escape directly from his land on to the line of the railway, the railway company are liable only when the cattle are killed on the part of the line on to which they have escaped directly, and not where they are killed on another part of the line, to which they have strayed, after passing over intervening lands; and there is nothing in the Railway Act which renders it necessary to so decide. The breach of duty by the defendants was the proximate cause of killing the cow. The costs were in the discretion of the Judge, and he had not exercised it on a wrong principle or on a misapprehension of the facts.

Appeal dismissed with costs.

MARCH 5TH, 1903.

DIVISIONAL COURT.

ANDERSON v. CHANDLER.

*Contract—Performance of Work—Discharge of Contractor—Certificate of Architect—Absence of Fraud.*

Appeal by plaintiff and cross-appeal by defendants Walter and Annie Chandler from judgment of BOYD, C., in favour