

The Drainage Referee in trying an action may proceed partly on view, but in so doing must follow strictly the directions of the Act, and not make the view without appointment or notice to the parties. If he do so proceed, however, his finding, though based partly on the view, may be upheld, if the evidence supports it.

A complainant is entitled to recover for any injury to the use and enjoyment of his land or for its depreciation in value, if caused by failure to keep a drain in repair, but not for depreciation in value based upon the alleged insufficiency in size of the drain as originally made, and, the Court holding, on the construction of the Referee's judgment, that this element had been allowed to enter into the computation of the damages, reduced them from \$250 to \$50.

Judgment of the Drainage Referee varied.

Mabee, Q.C., for appellants. *Matthew Wilson*, Q.C., for respondent.

From Meredith, C.J.]

[Jan. 19.

VALLEE v. GRAND TRUNK RAILWAY COMPANY.

Railways—Highway crossing—Neglect to give statutory warning—Contributory negligence.

Persons lawfully using a highway are entitled to assume that the statutory warning will be given by a train crossing the highway, and are not guilty of contributory negligence because while driving a restive horse they approach, in the absence of warning, so close to the crossing as to be unable to control the horse when the train crosses, and are injured, even though they probably, by looking or listening, would have learned of the approach of the train in time to stop far enough away to be in safety.

Judgment of MEREDITH, C.J., affirmed.

Wallace Nesbitt, Q.C., for appellants. *C. W. Colter*, for respondent.

From Street, J.]

[Jan. 19.

PETERBOROUGH v. GRAND TRUNK R. W. CO.

Railways—Diversion of stream—Substituted bridge—Liability to repair.

An appeal by the plaintiffs from the judgment of STREET, J., reported 32 O.R. 154, was argued before ARMOUR, C.J.O., OSLER, MACLENNAN, and MOSS, J.J.A., on the 17th of January, 1901, and at the conclusion of the argument was dismissed with costs, the Court agreeing with the reasons for judgment in the Court below.

Edwards, Q.C., for appellants. *Wallace Nesbitt*, Q.C., for respondents.