

pasture there; and, therefore, was guilty of no negligence. The company having thus failed to establish any defence to the *prima facie* cause of action conferred upon the plaintiff by the statute, he is entitled to maintain this action; and this appeal should be allowed.

The plaintiff in his statement of claim stated the value of the horse to be \$275. At the trial he said that he would not have sold it for less than \$300. This is not saying that it was worth \$300. Another witness for the plaintiff spoke of the horse as worth about \$300. In the face of this rather indefinite evidence, I think the amount of the judgment should be limited to that claimed in the statement of claim, viz., \$275; and judgment should be entered for that amount, and costs below and here.

SUTHERLAND, J.:—I agree.

LEITCH, J.:—I agree.

RIDDELL, J., agreed in the result, for reasons stated by him in writing. He referred, upon the question of reversing the finding of fact, to *Lodge Holes Colliery Co. v. Mayor, etc., of Wednesbury*, [1908] A.C. 323, 326; *Beal v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 502, 506; and, after setting out the facts of this case, said:—

I think that we are entitled to hold, and should hold, that the plaintiff has proved that his horse was injured by the defendants' train.

The defendants, however, contend before us that the claim of the plaintiff cannot succeed by reason of the provisions of sec. 294(4) of the Railway Act. If effect were to be given to this contention, the result would be startling. It is argued that the act of the plaintiff in putting his horse out of the stable, although on his own land, was a putting at large by his wilful act, within the meaning of sec. 294 (4) of R.S.C. 1906 ch. 37. The result would be that all a railway company need do would be to neglect their statutory duty to fence (sec. 254), and the unfortunate farmer along the line must not allow his animals out in the farm, but must keep them in stable or closed field. This would, no doubt, be a happy result for the law-breaking railway company; but, before such an extraordinary effect be given to the section, it must be clear that such is its necessary meaning.

I do not think that the section applies at all to the present case. It is sec. 295 which refers to the duties of adjoining owners quoad their own land, and sec. 254 to their rights. "At