
REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Anglin, J., Trial.]

[Jan. 8.

TORONTO, HAMILTON & BUFFALO RY. CO. v. SIMPSON BRICK CO.

Statute—Railway—"Farm crossing"—Heading and side-note—Use of crossing for business of brick yard—Agreement to provide and maintain crossing—Reservation—Easement—Interference with operation of railway—Severance of ownership—Cesser of right.

Sec. 191 of the Dominion Railway Act of 1888 is not restricted in its application to crossings for farm purposes merely, notwithstanding the heading and side-note "farm crossings," which may be taken as descriptive of the character of the construction of the crossing, and not restrictive of the purposes for which it may be used or of the uses to which the lands crossed by the railway may be put, and notwithstanding the words of the section itself, "convenient and proper for the crossing of the railway by farmers' implements, carts and other vehicles," which may be similarly interpreted.

The defendants, as lessees of S., occupied and operated a brick yard, in a city, on the north side of the plaintiffs' railway, and in connection with their business used a private lane over the property of M., lying to the south of the railway. This lane led to a street, and was the only means of access from the brick yard to a public highway. To reach this lane the defendants used a crossing over the railway, and their right to do so was called in question by this action. When the railway was built, the land leased by the defendants and that owned by M. were the property of the Messrs. B., who in December, 1894, conveyed to the plaintiffs a right of way through their property, and obtained simultaneously with their conveyance an agreement by which the plaintiffs covenanted to provide and maintain "a farm crossing" at the point now in question, which was