

COOMBS V. M. C. RY. CO.—RE C. P. RY. AND TP. OF PICKERING—NOTES OF CANADIAN CASES.

on to the track. Defendants' section-man coming along found the cows there, and seeing where they had got in tried to drive them out where they had got in, the fence being at that point about 2 ft. 8 inches high. The other cow jumped the fence successfully, but plaintiff's cow got one of her hind legs caught between the fence and the top rail which had been knocked down by the cows in getting on to the track, broke her leg and had to be killed.

T. R. Slaght, for plaintiff.

Kingsmill, Cattanaach and Symons, for defendants.

LIVINGSTONE, Co. J.—I think plaintiff must fail.

In the first place, if the damages sued for are such as are contemplated by the statute, I do not think he is an occupant within the meaning of the Railway Act, 46 Vict. ch. 24, sec. 9 (see the remarks of *WILSON, C.J.*, and *ARMOUR, J.*, in *Conway v. C. P. Ry. Co.*, 7 Ont. Rep. 673), and so cannot recover. Although the case is not expressly in point and is now in appeal before the Supreme Court, still the reasoning is applicable. I think the occupancy must be of some distinct part of a lot either in severalty or jointly with some one else, and that a mere right to put a cow into a certain field for the purpose of pasturing it does not constitute an occupancy within the statute.

In the second place, I do not think the action will lie under the statute, because the damage was not done by the defendant's trains or engines.

In the third place, admitting that there is no statutory liability, I do not think there is any common law liability, inasmuch as I do not think that the section-man was guilty of such negligence as to entail any legal liability upon the defendant, as I do not think he acted unreasonably in the premises.

ASSESSMENT CASE.

COUNTY OF ONTARIO.

RE THE CANADIAN PACIFIC RAILWAY AND THE TOWNSHIP OF PICKERING.

Assessment of land used—Road-bed for railway—Station grounds—Gravel pits.

[*Whitby*, June 16.—*Dartnell, J.J.*]

The Canadian Pacific Railway passed through the Township of Pickering, occupying as road-beds and one station-ground about 146 acres of land. They also had acquired about 14 acres which they used as gravel pits.

MacMurchy, for the company.

J. E. Farewell, for the township.

DARTNELL, J.J.—The 146 acres should be assessed according to the average value of the holdings through which the railway passes, irrespective of the fact that many of the farms are of less size than 200 acres—the whole township lot.

The station building should only be assessed for any excess in value over and above the average value of farm buildings upon the farms in the neighbourhood, approximate in size to the quantity of land used by the railway.

The gravel pits should be assessed according to their value to the company as such, and not as farming lands.

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

IN BANCO.

CHRISTIE V. BURNETT.

Memorandum in writing—Statute of Frauds—Parol evidence.

Held, that the letters of the defendant set out in the case constituted a sufficient note or memorandum in writing within section 17 of the Statute of Frauds, and that parol evidence was admissible to show what the words "work" and "rig" used therein referred to.

Cressor, Q.C., for motion.

Masson, Q.C., contra.

SHERIDAN V. PIDGEON.

Negligence—Surgeon—Addition to verdict.

In action against a surgeon for negligence the jury, in finding for plaintiff, added this to verdict: "We are of opinion that defendant made a mistake in not calling in skilful assistance, but not wilfully or through inattention."

Held, a mere expression of opinion, and that it did not nullify or affect the verdict.

Nesbitt, for motion.

Masson, Q.C., and *Stone*, contra.