

Paragraphs 4, 5, and 6 set up privilege and the grounds on which that claim is based.

The concluding sentence of the 4th paragraph—"From the date of his appointment until the said dates, plaintiff impounded no animals other than those of the said William Reid"—does not go far enough if intended to support the plea of justification . . . but it may be used in support of the plea of privilege. If the alleged fact is not true, then plaintiff has notice that it will be asserted at the trial, and he cannot complain of being forewarned, so that he can either dispute the statement or shew that no other cattle were at large, and let defendant disprove this if he can: see *Milling v. Loring*, 6 Q. B. D. 190.

Motion dismissed with costs to defendant in the cause.

BOYD, C.

DECEMBER 5TH, 1904.

TRIAL.

GRAND TRUNK R. W. CO. v. CITY OF TORONTO.

*Railway—Liability of Municipal Corporation to Contribute to Maintenance of Gates at Crossings—Dominion Railway—Constitutional Law.*

Action to recover proportion of cost of maintenance of gates, etc., at railway crossings in the city of Toronto. Three questions of law were raised: (1) Whether secs. 187 and 188 of the Railway Act of 1888 were ultra vires. (2) Whether the defendants were parties interested if the Act were not ultra vires. (3) Whether there was jurisdiction on the part of the Railway Committee of the Privy Council to direct the apportionment of cost as to the different crossings, because of defendants making application for different relief.

H. S. Osler, K.C., and D. L. McCarthy, for plaintiffs.

J. S. Fullerton, K.C., and W. Johnston, for defendants.

G. F. Shepley, K.C., for the Attorney-General for Canada.

No one appeared for the Attorney-General for Ontario.

BOYD, C., held that the questions were all expressly or by fair implication involved in the decision of the majority of the Court of Appeal in *Re Canadian Pacific R. W. Co. and County of York*, 25 A. R. 65, recognized in *Re Grand Trunk R. W. Co.*, 8 Ex. C. R. 349.

Judgment for payment of what is due by defendants with costs.