

Home Bank of Canada," above the signatures. These notes had been discounted by the defendants for Davenport after Pickup's letter of 20th August, and it was held that the alteration in their indorsement was such as to put the defendants on their inquiry as to Davenport's right to discount them for himself.

RICHARDS, J.A., dissented.

*Daly*, K.C., and *Crichton*, for plaintiff. *Hudson*, for defendants.

Full Court.]

[April 12.]

PEDLAR v. CANADIAN NORTHERN RY. CO.

*Railway—Negligence—Failure to blow whistle and ring bell on approaching crossing—Railway Act, 1903, c. 58, s. 224—Onus of proof as to existence of by-law of municipality—New trial—Evidence by affidavit.*

Action for damages for the killing of plaintiff's horses at a highway crossing by an engine of the defendants.

The learned trial judge did not think it necessary to decide, upon the conflicting evidence, whether the whistle had been blown as required by s. 224 of the Railway Act, 1903, but he found that the bell had not been rung and that the defendants had, therefore, been guilty of negligence. He was, however, inclined to believe that the plaintiff's driver had been guilty of contributory negligence in not looking out for the engine. The action was dismissed on the ground that the plaintiff had not proved that there was no by-law of the city prohibiting the blowing of whistles and ringing of bells because, under that section, if such a by-law was in force, the whistle should not be blown nor the bell rung.

*Held*, that, upon the plaintiff filing an affidavit proving the non-existence of such a by-law, there should be a new trial, as the evidence strongly indicated negligence and there was no positive finding of contributory negligence.

*Quære*, whether the onus was on the plaintiff to prove the non-existence of such a by-law.

*Semble*. The trial judge might properly have allowed such proof to have been made by affidavit.

*Fullerton* and *Foley*, for plaintiff. *Clarke*, K.C., for defendants.