

LATCHFORD, J.

NOVEMBER 16TH, 1914.

BEHAN v. CANADIAN PACIFIC R.W. CO.

Railway—Animals Killed on Track—Negligence — Neglect to Fence—Proximate Cause—Railway Act, R.S.C. 1906 ch. 37, secs. 254, 255, 295, 427—Amending Act, 9 & 10 Edw. VII. ch. 50, secs. 5, 9.

Appeal by the defendants from the finding of the Judge of the County Court of the United Counties of Northumberland and Durham in favour of the plaintiff for the recovery of \$600 damages and costs upon a reference to him as a special referee for trial of the action, which was brought for damages for the killing of the plaintiff's horses upon the track of the defendants.

The appeal was heard in the Weekly Court at Toronto.

W. S. Herrington, K.C., for the defendants.

J. B. McColl, for the plaintiff.

LATCHFORD, J.:—There is evidence amply sufficient to sustain the findings of fact made by the learned County Court Judge.

Section 254 of the Railway Act imposes the obligation of erecting and maintaining fences and gates "sufficient to prevent cattle and other animals from getting on the railway lands." The word "lands" was added by 9 & 10 Edw. VII. ch. 50, sec. 5.

The defendants, by leaving a large opening in their fence across the plaintiff's lands, violated the obligation imposed by the statute. They did not so construct their fence as to prevent his horses from getting on their lands along which they strayed to an open gate between such lands and the contiguous lands of the Grand Trunk Railway Company, where they were killed.

By sec. 427, a company omitting to do anything required by the Act to be done is liable to a person injured by such omission for the full amount of damages sustained.

The defendants say that it was not their omission which injured the plaintiff, but the omission of some person who failed to close the gate in the Grand Trunk fence at the Massie farm crossing, and that the damages are too remote to be traceable to the defendants' failure to perform the duty cast upon them by the Railway Act. Massie, for whose use, they say, the crossing