

TRAVELLING BY RAIL—NOTES OF RECENT DECISIONS.

that the contract having been made with the defendants they were the proper parties to be sued. A new trial was, however, granted because the judge had directed the jury that it was negligence in the defendants if the fences were insufficient; the Court considering that there was no statutory obligation on the company, towards their passengers, to keep up the fences.

"If mischief arises from the act of a stranger in leaving a log of wood across the railway, or doing any other act which might endanger a railway train passing along the line of another company, an action cannot be maintained against the railway company, because in that case there would not be any direct or indirect breach of duty, or breach of contract, on their part; they would not be liable on their own line, or on any other company's line for that:" so the judgment in *Thomas v. Rhimney, &c.*, *ante*, is limited to mischief arising to a passenger in a railway train from some negligence or other of that one of the companies which is the owner of the line over which the party complaining of the injury is travelling. See also, *Latch v. Rimner R. W. Co.*, 27 L. J. (Ex.) 155.

Mytton v. Midland R. Co., 4 H. & N. 615, decided that when a passenger had taken a ticket from a company to be carried through over another company's line, the contract is an entire contract with the company giving the ticket, and no action for negligence will lie against the other company. The same principle has been adopted by the American Courts. *Weeds v. Saratoga R. W.*, 19 Wends. 534, and see also *Muschamp v. Lancaster, &c.*, at p. 430. In *Great Western R. W. v. Blake*, *ante*, Crompton, J., doubted whether the injured passenger had any remedy against the company from which he did not get his ticket, as there was no privity between them: but he considered that the one company would have a remedy against the other.

And now having given some idea of the cloud of cases and authorities, dicta and decisions, wherewith the path of the railroad traveller is hedged in, this train of ideas—which perhaps has already run over too many lines—must be brought to a stand-still. It was the intention to notice some points decided anent travelling dogs, bulls and horses, but at present the reader must be content to draw his own deductions as to the law affecting these quadrupeds from what has been said with regard to bipedal donkeys, calves and puppies.

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COURT OF ERROR AND APPEAL.

ROYAL CANADIAN BANK V. STEVENSON.

Appeal struck out as not having been set down within time allowed—Right of respondent to costs.

Where the Court refused to hear an appeal, and ordered it to be struck out because it had not been set down for argument within the time allowed by 34 Vic. ch. 11, sec. 40. *Held*, that the respondent, who had appeared to answer the appeal, was entitled to his costs, for the appellant should have applied earlier for an extension of the time, and that the Court had jurisdiction to grant costs, though the appeal had not been heard.

Seem, that the respondent should have stated the lapse of time as one of his reasons against the appeal.

COMMON LAW CHAMBERS.

FRALICK V. DORMYN.

Ejectment—Better particulars of title—Application before appearance.

[Mr. DALTON, 8th April, 1873.]

Held, that an order for better particulars of title in ejectment may be made before appearance is entered.