in 1898. The action was undefended, although defendant was duly served in British Columbia. He left Ontario in 1899, for Winnipeg, and afterwards came to British Columbia, where he has since resided. Plaintiff sued in British Columbia on this judgment. At the trial, evidence was given of a payment made after the British Columbia action had been commenced, and it was sought to make this payment operate as a revival of the statute barred debt.

Held, by the Full Court, following *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* (1894) A.C., 670, that defendant had acquired a British Columbia domicile, and was not subject to the Ontario Courts.

Held, also, following *Bateman* v. *Pinder* (1842), 11 L.J Q.B., 281, that the payment made could not operate to defeat a plea of the Statute of Limitations, and that it was a mere conditional offer of compromise which was declined.

A. D. Taylor, for appellant. *Macdonell*, for respondent.

Full Court.] [Jan. 22.

CORTESE *v.* THE CANADIAN PACIFIC RAILWAY COMPANY.

Railways—Railway Act, R.S.C. c. 37, s. 254, sub-s. 4—"Locality," meaning of—Obligation to fence.

Plaintiff's animals were killed on the defendants' track, the right of way of which passed in front of his land. There was no fence erected on this portion of land, either by the railway company or plaintiff. The north end of the plaintiff's ranch was within 800 yards of the municipal limits of Fernie. There were about two acres of the ranch with a frontage of 450 feet on the right of way, and about 200 feet off was an enclosure used as a goat pen, about 20 x 30 feet. There was also a potato patch of about three-quarters of an acre, and a moveable fence separating this patch from a grassy portion. This, together with a piece of fencing along a waggon road, but not reaching the right of way by some 225 feet, was the only fencing on the ranch. There was evidence of scattered places in the vicinity some being fenced and others not, but with unfenced and unoccupied land intervening.

Held, reversing the decision of WILSON, Co. J., (CLEMENT, J., dissenting), that as the land in question per se could not be classed as a settled or inclosed locality, there was no obligation