

*NEGLIGENCE OF RAILWAY COMPANIES IN CANADA.*

The obligations of Railway Companies in carrying on their business in Canada and the duties which they owe to the public are to a considerable extent and perhaps altogether prescribed and defined by statute and now embodied in The Railway Act of 1903 passed by the Parliament of Canada at its last session. That Act, it is true, only professes to deal with railways under the control of the Dominion Parliament, but inasmuch as nearly all railways in Canada are subject to such control, and as, moreover, the Provincial Acts governing purely local roads contain provisions similar to those in the Federal statutes, the latter only need be referred to.

How far a Railway Company in this country is still governed by the principles embodied in the common law maxim, *sic utere tuo ut alienum non lædas*, and is also, as employing a dangerous agent, under the common law obligation of using more than ordinary care and caution in operating its line of railway, is not by any means clear. The decisions of our own Court of final resort in cases in which this question is involved are at variance with those decided by Provincial Courts and also with each other, and the Judicial Committee of the Privy Council has never been called upon to consider it.

As early as 1858 this matter came before an Ontario Court in *Campbell v. G.W.S. Co.*, 16 U.C.R. 498, and it was necessary to determine whether or not the defendant company, which had complied with all that the statute required for protection of cattle at farm crossings, were called upon to take further precautions to that end. Sir John Beverley Robinson, C.J., said in giving judgment: "The statute 14 & 15 Vict., c. 51, s. 13, sub-s. 1, affords a strong argument that the legislature, when they passed the Act, did not understand nor intend that the railway companies to which the provisions of that statute were to apply, were to be relieved from the necessity of making use of ordinary care to avoid injury to the animals of others which they might find upon their railway under circumstances implying that they were there by the fault of their owner. . . . It will be for the legislature to consider whether it would, on the whole, be better to place farm crossings on the same footing in this respect as public highways