

into the matter on an application for habeas corpus. Parliament not having made the examination by the immigration officer final, and as the statute contains no expression that a writ of habeas corpus shall not issue to examine into the causes of detention of a person detained under the statute, the power to do so remains with the Court.

Davis, K.C., for appellants. *Macdonell*, for respondents.

Full Court.]

[Jan. 21.]

COEN v. NEW WESTMINSTER SOUTHERN RY. CO.

Railway—Animal killed on track—"Not wrongfully on the railway"—Adjoining owners—Obligation to fence—Railway Act (Dom.) c. 29, 1888,—B.C. Stats. 1887, c. 36, 1889, c. 36.

Plaintiff's mare and colt strayed from his yard on to the public road, and reached the track of defendant company, presumably at a place called Morton's Crossing. The mare was overtaken by a train and killed as she was running towards the crossing. This was a farm crossing, which, under the statute, should have a gate on each side. There was no gate or fence on the west side of the crossing by which the animal was presumed to have reached the track from the public road, but there was a cattle guard (over which the animals crossed) put there by agreement with Morton. Plaintiff was not an adjoining owner.

Held, on appeal, MARTIN, J., dissenting, that Morton's Crossing being a farm, and not a public crossing, the statute required that it be either fenced off or provided with gates on both sides; and that the placing of the cattle guard did not relieve the company from its obligation to provide a fence or gate on the west side of the crossing.

Bowser, K.C., and *W. Myers Gray*, for appellant, plaintiff.
Reid, for respondent, defendant.

Full Court.]

[Jan. 21.]

ELK LUMBER CO. v. CROW'S NEST PASS COAL CO.

Vendor and purchaser—Authority to contract—Option—Specific performance.

An officer of the defendant coal company, known as Land Commissioner, gave to defendant M. in June, 1900, the following