defendants maintained that the animals got at large through the negligence or wilful act or omission of the owner or custodian of the animals.

According to the local municipal by-laws, the plaintiff's cattle were not improperly on the highway, from which they got upon the railway.

Sub-section 4 of sec. 294 places on the defendants the onus of establishing that the animals got at large through the negligence, wilful act, or omission of the plaintiff, and requires the defendants to establish this in every case in which they seek to avoid liability for the killing of cattle at large on the railway track (not at a crossing); but it does not follow that in every such case in which the plea is established the defendants must be relieved of liability for the damages.

The plaintiff was justified in assuming that the cattle-guards and fences of the railway were in proper repair when he allowed his cattle out to graze. It was not his duty to fence against the railway nor against the highway. To allow the cattle out on his own premises to graze, at the end of May, was a necessary and natural and reasonable thing to do; it was what was usual, daily; the cattle were quiet and inoffensive; he did not at the time foresee any danger to his cattle; and the act of the plaintiff was not one for which he should be blamed, nor was the act even remotely the cause of the cattle getting on the property of the railway company where they were killed.

Reference to Higgins v. Canadian Pacific R.W. Co. (1908), 18 O.L.R. 12, 15; Palo v. Canadian Northern R.W. Co. (1913), 29 O.L.R. 413; McLeod v. Canadian Northern R.W. Co. (1908), 18 O.L.R. 616.

Judgment for the plaintiff for $200 and costs.