

Sup. Ct.]

NOTES OF CANADIAN CASES.

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PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

SUPREME COURT OF CANADA.

Ontario.]

PLUMB V. STEINHOFF.

Title to land—Old grant—Starting point to define metes and bounds—How ascertained.

In an action of ejectment the question to be decided was whether the *locus* was situate within the plaintiff's lot No. 5, in concession 18, or within defendant's lot adjoining, No. 24, in concession 17.

The grant through which the plaintiff's title was originally derived gave the southern boundary of lot 5 as a starting point, the course being thence eighty-four chains more or less to the river. The original surveys were lost, and this starting point could not be ascertained.

Held (affirming the judgment of the court below), STRONG and TASCHEREAU, JJ., dissenting, that such southern boundary could not be ascertained by measuring back exactly eighty-four chains from the river.

Moss, Q.C., and Scott, Q.C., for the appellants.

Atkinson, Q.C., for the respondents.

Ontario.]

ST. CATHARINES MILLING CO V. THE
QUEEN.*Indian lands—Reserves—Surrender—Title of Crown.*

Held (affirming the judgment of the Court of Appeal, 13 Ont. App. R. 148), STRONG and GWYNNE, JJ., dissenting, that the land surrendered by the Indians to the Dominion Government in 1873, by what is known as the N.-W. Angle treaty, were not, previous to such surrender, lands reserved for the Indians within the meaning of sec. 91, item 24 of the B. N. A. Act,

but were public lands under sec. 92, item 5, and passed to the Province of Ontario absolutely on such surrender. Only lands specially set apart for the use of the Indians are reserved under sec. 91, item 24.

McCarthy, Q.C., for the appellants.

Cassels, Q.C., and Mills, for the respondents.

Ontario.]

GRAND TRUNK RAILWAY V. BECKETT.

Railway Co.—Negligence—Death caused by—Running through town—Contributory negligence—Insurance on life of deceased—Reduction of damages for.

In an action against the G. T. R. Co. for causing the death of the plaintiff's husband by negligence of their servants, it was proved that the accident occurred while the train was passing through the town of Strathroy; that it was going at a rate of over thirty miles an hour, and that no bell was rung or whistle sounded, until a few seconds before the accident.

Held (affirming the judgment of the Court of Appeal, 13 Ont. App. R. 174), that the company was liable in damages.

For the defence it was shown that the deceased was driving slowly across the track with his head down and that he did not attempt to look out for the train until shouted to by some persons who saw it approaching, when he whipped up his horses and endeavoured to drive across the track and was killed. As against this there was evidence that there was a curve in the road which would prevent the train being seen, and also that the buildings at the station would interrupt the view. The jury found that there was no contributory negligence.

Held, per RITCHIE, C.J. and FOURNIER and HENRY, JJ., that the finding of the jury should not be disturbed. STRONG, TASCHEREAU and GWYNNE, JJ., *contra*.

The life of the deceased was insured, and on the trial the learned judge deducted the amount of the insurance from the damages assessed. The Divisional Court overruled this, and directed the verdict to stand for the full amount found by the jury. This was affirmed by the Court of Appeal.