

over the plaintiff's lands ; the plaintiff, who lived on the land and his witnesses swore that the flow was increased ; some of the witnesses for the corporation swore that it was impossible while others swore that it was not likely.

Held, dismissing the appeal, that where the trial judge accepts positive in preference to the negative testimony the full court will not interfere unless he is clearly wrong.

Morrison, K.C., and *Whiteside*, for appellants. *E. P. Davis*, K.C., and *R. L. Reid*, for respondent.

Full Court.]

[April 18.

PLATH *v.* GRAND FORKS & KETTLE RIVER R. W. Co.

Railways—Barbed wire fence—Injury to horse therefrom.

The company maintained along its line of railway through a farming country a barbed wire boundary fence without any pole, board or other capping connecting the posts: plaintiff's horse, picketed in his field adjoining, became frightened from some cause unexplained and ran into the fence and received injuries on account of which it had to be killed.

Held, that the fence was not inherently dangerous and therefore the company was not liable.

The test is whether the fence is dangerous to ordinary stock under ordinary conditions and not whether it is dangerous to a bolting horse.

Judgment of LEAMY, Co. J., reversed, IRVING, J. dissenting.

J. A. Macdonald, for appellant. *W. H. P. Clement*, for respondent.

COUNTY COURT.

Bole, C.J.]

SHEAVES *v.* GILLEY.

[April 12.

Maritime Law—Contributory negligence.

Action for damages caused by the defendants' tug steamer "Flyer" having run into and partially destroyed plaintiff's fishing net. On the night in question, plaintiff, about 9.30 o'clock, was fishing off the southern bank of the Fraser River, when he first saw the steamer, which was then a considerable distance west of his boat, coming up river to New Westminster. She was on her proper course, keeping the starboard shore aboard, both because of sailing regulations and owing to the fact that deep water lies along the southern bank. Plaintiff thereupon commenced to pull in his