

this township, and a considerable portion of the line has not yet been fenced in, as required by the Railway Act. Plaintiff's cattle were at large near his own home, but not unlawfully, as, by a by-law of the municipality, "all milch cows and other cattle," other than certain ones especially excepted, are allowed to roam at large. On 6th August, 1902, certain of these cattle, including one bull, wandered down a path or road leading to the track, travelled a short distance west upon a road parallel with the railway, and, finally, from part of lot 2 in the 4th concession of Nairn, went upon the track and were killed. I find, on the evidence, that the road which these cattle took and kept until they entered upon the railway property was not, nor was any part of it, a highway within sec. 271 of the Railway Act; and sec. 194, sub-sec. 3, of the Railway Act, as amended by 53 Vict. ch. 28, sec. 2, applies, and defendants are liable. The neglect of defendants to fence their track was the cause of plaintiff's loss. The value of the animals killed was \$327. The by-law prohibited the allowing of a bull to run at large, and the value of the bull was \$45, leaving \$282.

On 2nd September, 1902, certain other cattle owned by plaintiff strayed and went farther west, entering upon the track at a crossing from a highway. These cattle, being at the crossing without any person in charge of them, were so in violation of sec. 271 of the Railway Act, and plaintiff could not recover for them. *Nixon v. G. T. R. Co.*, 24 O. R. 124, and *James v. G. T. R. Co.*, 31 S. C. R. 436, followed. I find the value of the cattle killed was \$143 and the damages for injury to others was \$35.

Judgment for plaintiff for \$282 with costs.

MACMAHON, J.

JUNE 1st, 1903.

TRIAL.

MARSH v. CITY OF HAMILTON.

*Way—Non-repair—Injury to Person Crossing Street Railway Track
—Negligence of Street Railway Company—Contributory Negligence—Liability of Municipal Corporation—Liability of Company.*

Action against the city corporation and the Hamilton Street Railway Company to recover damages for injuries by a motor car to plaintiff Harold E. Marsh, a boy of eleven, when attempting to cross Locke street in the city of Hamilton. The boy lost his left foot.

J. W. St. John, for plaintiff.

J. W. Nesbitt, K.C., for defendant city corporation.

P. D. Crerar, K.C., for defendant company.