

RAILWAY.

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RAILWAY.—*Fences.*—*Cattle killed by train.*—A railway company is under no obligation to erect fences along their line where the land adjoining is unoccupied. Cattle straying upon the line across such unoccupied land are trespassing and if injured there by accident without negligence the railway company is not responsible. In such case the *onus* as to negligence is upon the party asserting it. Plaintiff's cattle having been in his yard at nine o'clock one evening, were discovered about ten o'clock the next morning lying wounded alongside the defendants' line of railway—one had a hind foot "mashed up," and one had "a big gash in her leg." *He'd*, That it could be fairly inferred that the injury was caused by an engine or cars running upon the defendants' railway, and under the control of the defendants' servants. In such a case the presence of certain employees of the railway at the killing and cutting up of the cattle or even their participation in these acts would not establish any liability of the company.—*McMillan v. The Manitoba & Northwestern Railway Company.* . . . 220

RAILWAY. PLEADING. *See* Pleading, Departure.

REPLEVIN.—*Action on bond.*—*Pleading.*—To an action upon a replevin bond for not proceeding with effect, a plea, that the replevin action is still pending, is sufficient. And a replication to such a plea, disclosing delay is bad, unless the delay itself has terminated the action. The condition in a replevin bond to prosecute with effect, is separate and distinct from the condition to prosecute without delay.—*McIntosh v. Nickel* . . . 51

SALE OF GOODS.—*Property passing.*—Defendant ordered certain goods through plaintiff's traveller. Plaintiffs on 12th December wrote defendant that they would consign only, and not sell. This letter was never received, but defendant did receive a telegram as follows:—"Can only fill order forty of hardware, forty and ten flatware, you paying express, answer if satisfactory." Defendant replied, "All right, send goods at once." On the 16th, the goods were shipped. On the same day plaintiffs wrote defendant that the goods were consigned only and not sold, but this letter was not mailed until the 18th, and was not received until after the goods had been received and accepted. The invoice was headed "consigned to" the defendant. *Held*, (Taylor, J., dissenting). That there was a completed sale to the defendant and that the property in the goods had vested in him. *Acme Silver Co. v. Perrett.* . . . 501

— *Work and labor.*—*Estoppel.*—Plaintiff agreed with defendant as follows: "I will put you up building with frame for tent 75 x 24, according to plan, for the sum of \$500: starting at once and completing as soon as possible." After completion the plaintiff tore down the building and carried it away without the defendant's knowledge. In an action for the contract price the jury was told that it was the plaintiff's duty to notify the defendant of the completion,