

Brooks and Mr. Justice Ouimet in this province. The only conflicting decision, apart from the one now under consideration, is that rendered by this court in the case of *Pontiac and Pacific Junction Ry. Co., & Brady*, from the effect of which, as a precedent, we are relieved by the subsequent legislation on the subject. It is a physical and often a financial impossibility for railway companies to complete their fences and cattle guards at a given moment along several hundred miles of track, often through unsettled sections of country. They understand clearly that by delay they incur the risk imposed upon them by the statute, as interpreted by the common law, and they have a right to assume that that risk is limited to accidents to cattle, etc., which have a right to be in adjacent enclosures and connecting highways, and in my opinion the freedom from liability toward trespassing cattle is not varied by the primary negligence or lack of negligence of their owners in allowing such cattle to escape from their enclosures. Once astray upon the highway or in a neighbour's enclosure they are trespassers in the eye of the law, toward the public and equally so toward the railway companies.

"Some judges who have been ready to adopt this principle, in so far as adjoining fields and fences are concerned, have been inclined to make a distinction as to cattle-guards. I can understand some reasons why such a distinction might be made, but the statute has not made it. Throughout all the changes in the Railway Act, the rule for the maintenance of fences and cattle-guards is identical, and I can see no legal justification, therefore, for making a distinction in the interpretation of the liability for not constructing them, or the contributory negligence of those who suffer from their absence."

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Since our last issue the bar of Montreal has lost two of its members. Mr. E. T. Day, of the firm of Day & Day, was a gentleman little known in the active work of the courts. Never very robust, he naturally preferred the quieter duties of the solicitor branch of the profession. Among his friends and associates he was much esteemed for his amiable qualities and honorable disposition, and his venerable father who, at an age approaching ninety years, survives him, will have the sincere sympathy of his *confrères* in his bereavement. The other death we have to record is that of Mr. A. W. Smith, the youngest member of the firm of Maclaren, Leet, Smith & Smith, whose illness was extremely brief. Mr. Smith was a young lawyer whose attainments and standing gave excellent promise.