

to them according to their construction of the agreement. The mileage and the sums consequently payable were fixed by the Master in accordance with the principles laid down in the judgment.

Held, that the defendants were bound at their peril to ascertain the sums properly payable and to pay or tender these sums to the plaintiffs; that not having done so the plaintiffs were entitled to interest upon these sums from the times at which they should have been paid; not, under s. 114 of the Judicature Act, R.S.O. 1897, c. 51, as being sums certain payable by virtue of a written instrument at certain times capable of ascertainment by arithmetical computation, but upon the ground that the case was one in which it would have been usual for a jury to allow interest and therefore within section 113 of that Act.

Bicknell, K.C., for defendants. *Fullerton*, K.C. and *Chisholm*, for plaintiffs.

Divisional Court] IN RE SYDENHAM SCHOOL SECTIONS. [Feb. 12.
Public schools—Alteration of school sections—Appeal from township council—Powers of arbitrators—By-law: altering school sections—Description of lots.

An appeal by the petitioners from the judgment of STREET, J., reported 6 O.L.R. 417, was argued before a Divisional Court (MEREDITH, C.J.C.P., MACMAHON and TEETZEL, JJ., on Feb. 12, 1904, and at the conclusion of the argument for the appellants was dismissed, the Court agreeing with the reasons given in the judgment appealed from.

Tucker, for appellants. *Rowell*, K.C. for respondents.

Boyd, C., Ferguson, J., Meredith, J.] [Feb. 12.
 FENSON v. C.P.R. Co.

Railways—Cattle on track—Fences—Running at large—Crown lands—53 Vict., c. 28, s. 2 (D).

The Act respecting Railways, 53 Vict., c. 28, s. 2, (D). enacts that, in consequence of the omission or neglect of a railway company to erect, complete and maintain a fence, "any animal gets upon the railway from an adjoining place where under the circumstances it might properly be, then the company shall be liable to the owner of every such animal for all damages in respect of it caused by any of the company's trains or engines."

The plaintiff's cattle running at large in a municipality under one of the by-laws of which they were permitted so to do got upon Crown lands, and from the Crown lands on to the railway and were killed on the track by one of the defendant's trains.