

[Sup. Ct.]

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NOTES OF CANADIAN CASES.

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and that such crossings should be kept and maintained by the company for all time for the use of C., his heirs and assigns. C. wished the agreement to be reduced to writing, and particularly requested the agent to reduce to writing and sign that part of it relative to the farm crossings, but he was assured that the law would compel the company to build and maintain such crossings without an agreement in writing. C. having received advice to the same effect from a lawyer whom he consulted in the matter, the land was sold to the company without a written agreement and the purchase money paid.

The farm crossings agreed upon were furnished and maintained for a number of years until the company determined to fill up the portion of their road on which were the under crossings used by C., who thereupon brought a suit against the company for damages for the injury sustained by such proceeding, and for an injunction.

Held (RITCHIE, C.J., and FOURNIER, J., dissenting), that the evidence showed that the plaintiff relied upon the law to secure for him the crossings to which he considered himself entitled, and not upon any contract with the company, and he could not therefore compel the company to provide an under crossing through the solid embankment formed by the filling up of the road, the cost of which would be altogether disproportionate to his own estimation of its value and of the value of the farm.

Held, also, that the company were bound to provide such farm crossings as might be necessary for the beneficial enjoyment by C. of his farm, the nature, location and number of said crossings to be determined on a reference to the Master of the Court below. *Brown v. The Toronto and Nipissing Ry. Co.*, 26 U. C. C. P. 206, overruled.

Semble, the substitution of the word "at" in sec. 13 of cap. 66 of the Consolidated Statutes of Canada for the word "and" in sec. 13 of cap. 51 of 14 & 15 Vict. is the mere correction of an error, and was made to render more apparent the meaning of the latter section, the construction of which it does not alter nor affect.

Appeal allowed with costs.

Cattanach, for appellants.

McCarthy, Q.C., and *Robb*, for respondent.

CANADA SOUTHERN RY. CO. (Defendants),
Appellants, v. ERWIN (Plaintiff), Re-
spondent.

*Farm crossing—Agreement for cattle pass—Con-
struction of—Liability of railway company to
maintain—Substitution of solid embankment for
trestle bridge.*

In negotiating for the sale of lands taken by the Canada Southern Railway Company for the purposes of their railway, the agent of the company signed a written agreement with the owner, which contained a clause to the effect that such owner should have "liberty to remove for his own use all buildings on the said right of way, and that in the event of their being constructed on the same lot a trestle bridge of sufficient height to allow the passage of cattle, the company will so construct their fence to each side thereof, as not to impede the passage thereunder."

Held (reversing the judgment of the court below, RITCHIE, C.J., dissenting), that under this agreement the only obligation on the company was to maintain a cattle pass so long as the trestle bridge was in existence, and did not prevent them from discontinuing the use of such bridge and substituting a solid embankment therefor, without providing a pass under such embankment.

Appeal allowed with costs.

Cattanach, for appellants.

McCarthy, Q.C., and *Robb*, for respondent.

WINDSOR HOTEL COMPANY v. CROSS.

*Promise to pay a cessionnaire without reserve—
Garant—Compensation, plea of—Interest, agree-
ment as to.*

On the 28th June, 1877, the appellants entered into an agreement before Hunter, N. P., by which, without any reserve they acknowledged to owe and promised to pay certain sums of money (amongst others) to one Mrs. L., transferee of one of the vendors of the property upon which the appellants company's hotel is now built, and who had sold with warranty. Subsequently Mrs. L., on the 15th June, 1880, by notarial deed, transferred to the respondent the balance payable to her, and the transfer was duly signified to the company. In 1883, the respondent sued the ap-