

*defendant's engine—Track unfenced — Art. 1054, C. C.*

**HELD:**—1. 51 Vic. cap. 29, sec. 194 (*Can.*) does not so change the provisions of sec. 13, cap. 109, *R. S. C.*, as to make a Railway Company liable where an animal has strayed on to the land of an adjoining proprietor, and thence upon the track where it is killed, notwithstanding the fact that the line of the railway is unfenced.

2. Contractors are not employees or servants within the meaning of Art 1054, C. C.

The plaintiff owns a farm near the village of Magog. The old line of the Waterloo & Magog Railway (acquired by defendants) ran a short distance from this farm, the property of one Drew lying between it and the railway. There was a line fence between plaintiff and Drew. The railway was not fenced. The fence between plaintiff and Drew was taken down by the contractor who was building the new line of railway (the location of which was being changed at the point in question.) The new line ran through plaintiff's property. The contractor was drawing stone through the opening in the fence. The plaintiff's cow escaped from his land through this opening on the Drew's land, and thence upon the railway track where she was killed.

Brooks, J. The facts of this case are clearly established. The cow strayed from plaintiff's land upon that of Drew. From Drew's land she went on the track which was unfenced, and was there killed. Under the law as it existed previous to the change made by 51 Vic., cap. 29, sec. 194, the jurisprudence of this Province has been to dismiss actions brought under such circumstances. I have so held in this Court. The only question is whether such a change has been made in the law as to make defendants liable. I think not. The plaintiff allowed his cow to stray from the pasture where she belonged, and whilst straying she went on the track, as she was proved to have done on several previous occasions when she was seen by the section man in defendants' employment. Was she "wrongfully" on the track? She certainly was not rightfully there, inasmuch as she was a trespasser on Drew's land, and it was while trespassing and straying that she found her way on to the track. I hold that no such

change in the law has been made as will enable a man to recover for the loss of an animal which he has allowed to stray, notwithstanding that the Railway Company have not complied with the law as to fences.

The plaintiff also claims by his declaration that the Company is liable because the opening was made by the contractors whom he styles in his declaration "employees." Contractors are not employees within the meaning Art. 1054 C. C., and Railway Companies are not responsible for the faults of the contractor or his men.

Action dismissed with costs.

*Lawrence & Morris*, for Plaintiff.

*Hall, White & Cate*, for Defendants.

#### PATENT CASE.

Before THE DEPUTY COMMISSIONER OF PATENTS.

OTTAWA, Feb. 26, 1889.

THE ROYAL ELECTRIC COMPANY OF CANADA, Petitioners; AND EDISON ELECTRIC LIGHT COMPANY, Respondents.

*Patent—Exclusive jurisdiction of Minister of Agriculture—Failure to manufacture in Canada.*

**HELD:**—1. *The Minister of Agriculture, or his deputy, has exclusive jurisdiction as to the question of the validity of a patent under Section 37 of the Patent Act, and cannot divest himself of it by relegating it to any other tribunal whatever. (Telephone Manufacturing Co. v. Bell Telephone Co. 9 Leg. News, 27.)*

2. *The allegation of inability to manufacture in Canada is not a good defence to an action to annul a patent for not manufacturing in Canada; and where it appeared that all the essential elements and component parts of the invention continued to be imported by the patentee, in a manufactured state, for the purpose of putting them together in Canada, the patent was annulled.*

THE DEPUTY COMMISSIONER (R. POPE):—This is a petition to the Minister of Agriculture, bearing date 1st May, 1888, to have declared null and void, the Patent No. 10654, granted to Thomas Alva Edison, on the 17th November, 1879, "for new and useful improvements on Electric Lamps, and in the method of manufacturing the same, the