

upon alleging plausible grounds and upon proper terms as to costs, to amend and re-serve the summons, making it returnable at such a date as would allow the ten clear days' notice required by the section.

Re Peck and Township of Ameliasburgh, 12 P.R. 664, followed.

A. Dubuc, for applicant. *Blackwood*, for City of St. Boniface.

Macdonald, J.]

[Feb. 6.

ROGERS v. GRAND TRUNK PACIFIC RY. CO.

Negligence—Railway company—Animals straying on to railway track—Railway Act, R.S.C. 1906, c. 37, s. 294, s.-s. 4.

The plaintiff's claim was for the killing of four horses by a train of the defendants. The horses had been in an enclosure surrounded by a wire fence four feet high and about half a mile from the railway. There was an opening in the fence between a building and a tree which the plaintiff said he had closed with boards to the height of 50 inches on the night before the horses were killed. In the morning he discovered that the boards closing the gap had been broken down and that the horses were gone. He and his family made immediate and diligent search for them, but it appeared that, after wandering about, they had got on to the railway track at a road crossing where there were no cattleguards as required by the Railway Act, and were run into by a train near that point.

Held, that this evidence had not been displaced by that of the witnesses for the defence, and, upon it, the defendants had not satisfied the onus of proving that the horses had "got at large through the negligence or wilful act of the owner" cast upon them by sub-section 4 of section 294 of the Railway Act, R.S.C. 1906, c. 37, and were, therefore, liable under that sub-section to the plaintiff for the damages caused to him.

Trueman, for plaintiff. *Auld*, for defendant.

Perdue, J.A.]

[Feb. 7.

RE PROVENCHER ELECTION.

Election petition—Dominion election—Security for costs—Affidavit verifying petition—Payment of expense of publishing notice of the petition—Status of petitioner—Proof of list of voters—Provincial lists.

Held, 1. Only one sum of \$1,000 need be deposited by the