

corroborated as required by R.S.O. 1897, c. 73, s. 10, the executors were entitled to judgment. Appeal allowed with costs.

F. E. Hodgins, K.C., for appellants. *Aylesworth*, K.C., for respondent.

Man.] MANITOBA & N.W. LAND CORP. v. DAVIDSON. [Nov. 30, 1903.

Principal and agent—Breach of duty—Secret profit.

D. represented to the manager of a land corporation that he could obtain a purchaser for a block of its land and was given the right to do so up to a fixed date. He negotiated with a purchaser who was anxious to buy but wanted time to arrange for funds. D. gave him time, for which the purchaser agreed to pay \$500. The sale was carried out and D. sued for his commission, not having then received the \$500.

Held, reversing the judgment appealed from (14 Man. L.R. 233) that the consent of D. to accept the \$500 was a breach of his duty as agent for the corporation which disentitled him from recovering the commission. Appeal allowed with costs.

Aylesworth, K.C., for appellants. *G. A. Elliott*, for respondent.

Ont.] G.T.R. Co. v. McKAY. [Dec. 1, 1903.

Railway—Speed of train—Crowded districts—Fencing—Negligence—50 & 51 Vict., c. 29, ss. 197, 259 (D)—55 & 56 Vict., c. 27, ss. 6, 8 (D).

By s. 259 of Railway Act, 1888, as amended by 55 & 56 Vict., c. 27, s. 8, "no locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than six miles an hour unless the track is fenced in the manner prescribed by this Act." Besides the usual railway fences the only fencing required is that provided for by 55 & 56 Vict., c. 27, s. 6, which is substituted for s. 197 of The Railway Act, 1888, namely, "At every public road crossing at rail level of the railway the fence on both sides of the crossing and on both sides of the track shall be turned into the cattle guards, so as to allow of the safe passage of trains." The plaintiff, McKay, was injured and his wife was killed by a train passing through a thickly peopled portion of the town of Forest at a speed of at least twenty miles an hour and on the trial the jury found that such speed was excessive for that place and constituted negligence on the part of the company.

Held, reversing the judgment of the Court of Appeal (5 O.L.R. 313), GIBFORD, J. dissenting, that the company, having complied with the statutory provisions as to fencing, were not liable. Appeal allowed with costs.

Riddell, K.C., and *Rose*, for appellants. *Hellmuth*, K.C., and *Hanna*, for respondent.