

by express provision or necessary implication, decided that the section of the Railway Act of 1888 as to fencing the track, superseded the common law. In this the learned judge who gave the judgment fell into error, as the section referred to is admittedly aimed at keeping in the cattle of neighbouring land-owners, an obligation not imposed by the common law. The Judicial Committee did not deal with this question, but decided the case solely on the validity or otherwise of a Provincial Act as to railway fencing, and these remarks appear at the close of their Lordships' judgment: "The only further observation their Lordships have to make is that these propositions are sufficient to dispose of this case and that, so far as the judgment in the court below is concerned, they do not propose to adopt in all respects, or to agree with some of, the remarks made as to the state of the common law, and as to how the common law would have existed without this legislation. Although it is unnecessary to consider that point their Lordships are not to be taken as adopting the reasons given by the judges in the court below upon the common law."

Taken in connection with what was said in the other cases these observations do not appear to be in accord with the decision in *G.T.R. Co. v. KcKay*.

C. H. MASTERS.

Ottawa.