

STOWE v. THE GRAND TRUNK PACIFIC  
RAILWAY CO.

1918  
\*Oct. 11.  
\*Oct. 21.

ON APPEAL FROM THE APPELLATE DIVISION OF THE  
SUPREME COURT OF ALBERTA.

*Railways—Animals killed by train—Negligence of owner—Evidence—  
Hearsay—Admissibility.*

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division (1), reversing the judgment of Scott J. at the trial and dismissing the appellant's (plaintiff's) action.

The appellant, living in the same house with his parents and brothers, was the owner of several horses which were accustomed to run and were looked after in conjunction with the animals of his father and brothers within the boundaries of his own and his father's and brothers' land, there being openings between the sections. Four animals of the appellant got upon the right of way of the respondent company and were killed by a passenger train. The appellant knew nothing of the accident except from what was told him by his brother. In his evidence, the appellant stated that his brother told him that he had "left the gate open." The trial judge held that this statement was merely hearsay and not admissible; and it being the only account of the accident, the court held the respondent liable. The Appellate Division held that this testimony should be regarded as an admission or declaration by the appellant himself and therefore entirely proper evidence; and it reversed the judgment of the trial judge and dismissed the action.

On the appeal by the plaintiff to the Supreme Court of Canada, the court, after hearing counsel for

\*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur J.

(1) [1918] 1 W.W.R. 546.

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both parties, reserved judgment, and, at a subsequent date, dismissed the appeal with costs, Idington J. dissenting.

*Appeal dismissed with costs.*

*C. H. Grant* for the appellant.

*D. L. McCarthy K.C.* and *N. D. Maclean* for the respondent.

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