

HON. MR. POWER—The hon. gentleman from Ottawa is somewhat mistaken in the use of the words "by law" in Ontario. They have a law which legalizes cattle running at large. We have not that statute in Nova Scotia. Then the objection taken by the hon. gentleman from Ottawa is not good in another respect, for if he looks at another part of the clause he will find that it provides: "If in consequence of such omission or neglect any animal gets upon the railway from an adjoining place where, under the circumstances, it might properly be, &c.," and if it is in a town where it would be contrary to the by-law to have the animal in that place, then the party could not recover.

HON. MR. MILLER—Would not that include the case stated by the hon. gentleman from Colchester?

HON. MR. POWER—No; because it is contrary to the law of Nova Scotia that the animal should be on the land of anyone but the owner.

HON. MR. ABBOTT—Is it contrary to the statute that the cattle should be on other land than that of the owner with the consent of the owner of the property?

HON. MR. POWER—I do not know that it is. I would remind the House that in the case of the New Brunswick school law the ultimate decision turned on the fact that the separate schools which existed before Confederation were not authorized by law, but existed on sufferance, and because the British North America Act contained these two words "by law" the New Brunswick School Act question was decided in a different sense from what it would have been decided if those two words had not been placed in the Act.

HON. MR. ABBOTT—I do not think my hon. friend's quotation of that precedent ought to do him much good. I do not see any analogy at all between the two cases. The clause, as the hon. gentleman from Ottawa observes, meets exactly the case which the hon. gentleman puts. My hon. friend puts the case where cattle are roaming by consent of the proprietors of the property, in common, upon their respective properties, and therefore no one can deny that these cattle are properly there. If they are properly there, then the company is liable if they stray on the

track and are killed. The latter part of the clause provides: "and no animal allowed by law to run at large shall be held to be improperly on a place adjoining the railway merely for the reason that the owner or occupant of such place has not permitted it to be there." So that the latter portion of the clause emphasizes the former portion, that when an animal is on a place where the law allows him to be his owner is not deprived of his remedy because the owner has not expressly permitted him to be there. In Ontario there may be such a statute as my hon. friend speaks of, but it is a very common practice in Ontario for animals to be allowed by municipal regulation to run at large over pastures, or wild land, or semi-cultivated property, and that is the case that in reality corresponds with my hon. friend's case, and it is more to meet that case than any other that this law was introduced. At present, as it stands, animals referred to by my hon. friend are protected by this law, and if they are roaming by the mutual consent of the proprietors on the property they are properly there, even if that consent be implied only, and not expressed.

HON. MR. MILLER—Or in the enjoyment of the rights of common.

HON. MR. ABBOTT—Yes. What does my hon. friend's amendment do? If animals stray about the country, wandering about the roads, going where they ought not to be, then they are there illegally, and the railway is in no way bound to fence them out from their track; but my hon. friend's amendment would make the railway responsible for it if they endangered life and property. Such a law does not exist anywhere. In other countries the owner of an animal to have a remedy against the company if it is injured can only have it if the animal comes upon the railway track from the owner's property, or from some place where it has expressly a right to be—as, for instance, a leased place, or where it is out at pasture. We are extending it much further than that—much further than any other law I know of extends it; and I may say that that clause has been pressed very strongly upon the Government, and by the Government upon the railway companies, because it was considered and decided upon most carefully by the representatives of the various districts where injuries of