

sec. 6, this section 197 was repealed, and a new section substituted, which reads as follows: "At every public road crossing at a rail level of the railway, the fence on both sides of the track shall be turned in to the cattle guards, so as to allow of the safe passage of trains." Then by the Railway Act, 1888, sec. 259, it was further provided that "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 properly fenced." This also was repealed by 55 & 56 Vict. ch. 27, and a new section substituted, the only change thus made consisting in the substitution of the words "unless the track is fenced in the manner prescribed by this Act," for the words in the former section, "unless the track is properly fenced."

Under the law as it stood before the amendment of 55 & 56 Vict. ch. 27, protection was secured by directing, in plain words, that the track should be "properly fenced;" otherwise the speed of the train was not to exceed six miles an hour in such places. "Properly fenced" had the same meaning, I take it, as efficiently fenced to accomplish the purpose intended, and must, therefore, have included and been intended to include the crossings themselves, the only points at which collisions were reasonably to be expected to occur, and not merely the side fences along the railway, which end at the crossings. The language of the new section is not by any means as clear and as easily understood as that contained in the old; but the purpose and avowed intention is apparently the same, namely, to allow the safe passage of the train at these crossings; and safe passage, of course, must include safe for the crossing public as well as for the passing train. No one in crossing the track would be likely to attempt to cross the cattle guards which are so placed as to be completely out of line of ordinary travel, so that the new direction to turn the fences in to the cattle guards is obviously not intended to keep back or protect people crossing the railway track, although fences so turned in would prevent cattle and horses from straying upon the track at these crossings, and that may have been the object of the change. But, whatever was its object, it appears to me impossible to read it as defendants' counsel contends, as giving to railways a right to cross highways in thickly populated centres at any speed they may choose, provided they have turned in the fences to the cattle guards, leaving the highway as it crosses the track wholly open and unprotected. This contention, if successful, would render senseless sec. 259. The object of that section plainly is one of protection at the crossings; such protection can only