

notice, and many just claims were defeated on that ground. Subsequently they became liable, because they brought themselves under the provisions of the Consolidated Railway Act of Canada, and I was surprised to learn that this law had been changed in reference to this question. Most of my profession were under the impression that the law had been continued as it was in Old Canada, and the company were obliged to erect fences without notice being given. The amendment proposed, therefore, ought to be introduced. I have also given notice of an amendment which I may as well now explain, though I propose to move it in Committee, I desire to substitute sub-section 6 of section 17, which is in these words :

“ All and any of the tolls may be in any by-law reduced and again raised as often as desired necessary in the interest of the undertaking; but the same tolls shall be payable at the same time and under the same circumstances upon all goods and by all persons, so that no undue advantage, privilege or monopoly may be afforded to any person, or class of persons, by any by-laws relating to the tolls.”

Now, I venture to say, the last words of this sub-section make all that precedes it unmeaning, and I would draw the hon. Minister's attention to it. The supposition is that it was intended to introduce into the railway system of this country what is known in England as the equality clause; and why not keep that clause which has proved fair and reasonable, and about which there can be no doubt? I have copied the clause from the English Act in the notice I have given, and I will read it when the proper time comes. At present it is sufficient to draw the attention of the House to the apparent absurdity of the clause I have read, and which is now law, and to ask why it is that a reasonable proposition such as the equality clause should not be placed on the Statute-book, so that all can understand it? I am obliged to my hon. friend for making part of his Bill the other clause in the eleventh section. With that clause and the one I propose to add, I think we might have a complete and fair railway law. We will then have a law, and all we will want is a court to administer it, and I think the hon. Minister will find that having granted sub-section 2 of section 11, the reasonable conclusion is that he must have a court by which that law can be carried out.

Sr CHARLES TUPPER. I will discuss the question my hon. friend has made more pertinently when we get into Committee. I may say with reference to the question of my hon. friend from North Renfrew (Mr. White), that I was not in the Railway Committee when he withdrew his Bill under the impression that it would be embodied. It is fair for me to say that when the hon. gentleman communicated to me his intention to withdraw his Bill with a view to its being embodied in the General Act, I stated to him in the most distinct terms that I could not consent to accept the proposal which was contained in his Bill. The hon. gentleman seems to be looking at this question quite regardless of the railway interest. Now, Sir, it is well known that nothing contributes so much to the improvement of the country, nothing confers such inestimable benefits upon the people as the construction of these roads; yet they are very often constructed after a great deal of sacrifice and of struggle on the part of those who find the capital and promote the enterprise. The proposal which the hon. gentleman makes is going to load every struggling company who are risking their money, and who very often never see it again; it is going to throw on those companies responsibilities, and difficulties, and expenses that I say they ought not to bear. The law as it stands now provides everything that any reasonable man, in my judgment, ought to ask for, and that is, that when parties construct lines of railway through a wilderness section of the country where there is no use of having a fence and where a fence would be positively mischievous, are relieved from the necessity of having a fence. In a wilderness fences become dry and sparks from the engine set them

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on fire, and you have whole sections of country, fine timbered lands through which the road is running, destroyed in consequence of having a dry fence to act as tinder from the sparks of the engine. Now, the law is perfectly plain, and it is in the interest of the land owners, and of the persons through whose property the railway runs. The law provides, not that you shall be compelled to construct fences where there is no necessity, where they can simply be mischievous and dangerous, but the law provides that the moment the owner of the land, through which the railway runs, calls upon the company to put up a fence, from that time until these fences have cattle guards, this company is responsible for any animal that is killed and for all damage caused by the want of a fence. Now, what more can he require? What more can he ask than that the company should be compelled at their own cost to put up a railway fence the moment the proprietor says he wants a fence. He is not obliged to show any reason, he is not obliged to show there is any necessity for a fence. He may ask for it when there is no occasion for a fence, he may ask for it for a distance of twenty miles where there is no settlement, yet the law at present compels the company instantly to put up that fence, or to fail at their own peril of being responsible for all the damage and every accident that can occur. Moreover, I have no hesitation in saying that damages to life and property are involved in the proposition of the hon. gentleman. There are cases of parties who drive their cattle on to the road for the purpose of having them slaughtered and getting a good price for them. I am perfectly aware that it is provided that the animals must go on to the road from the property of the owner, but the property of the owner may be a wilderness, and all the man has to do is to send his cattle into the wilderness and let them be attracted by the grass along the line of railway on to the road, as he knows they will be, in order that they may be destroyed, and that he may send in his bill to the company, or to the Government, if it be a Government road; and very often he gets double value. That is my experience. I say he has not a right to put them on his own land unless there is a fence, or unless he has called upon the parties to put a fence there. The company then has some protection. They have got a notice the fence is required, and they are then responsible. But if there is no notice given, as the hon. gentleman now proposes, a man could purposely allow his cattle to stray on to the road and collect heavy damages if they were killed. But it is not merely the cost of the cattle we have to consider, but you probably wreck the train when it runs over an ox, and perhaps half a dozen people are killed. I believe the proposition of the hon. gentleman is a great injustice and hardship to parties who, in these partially settled districts of country where there is no necessity for a fence, are constructing railways; and it would not only be a hardship to the companies, but a fertile source of danger to the operations of the road. On these grounds I do not hesitate to say that I cannot accept the hon. gentleman's proposition, with the knowledge I have and the experience I have had in relation to this matter; indeed, the law as it now stands gives the owner of the land all the advantage. He is obliged to show no reason; he sits down and writes a letter to the company saying: “I want my land through which the road runs fenced,” and from that moment he has all the protection the hon. gentleman proposes to give him. From that time the company are warned, they are obliged to fence the ground to be in a position to protect themselves. The present law places all the power in the hands of the owner that he requires for his protection, and I think it would be extremely unjust to press it farther and to say that for miles and miles, where there is no necessity for a fence, parties, without any notice, should be in a position to send their cattle into the forest in order that they may