

The counterclaim for trespass was dismissed on the ground that the animals were at large lawfully (under the provincial statute), and that the defendants had not fenced their track. Here is where the constitutionality of sec. 294 (1) should have been considered, for if it is *intra vires* legislation, Anderson's cattle were not at large lawfully upon the highway at the point from which they escaped to the railway, and the whole argument drawn from *Tillett v. Ward*, 10 Q.B.D. 17, fell to the ground. That case was cited in support of the principle that if cattle are lawfully using a highway, their owner is not liable for their escape to adjoining lands. That is not the essence of that case. There the cattle were in charge of competent persons, and their escape was accidental. It is lawful to put your cattle on your own pasture, but you are liable if they escape therefrom to your neighbour's land, through your carelessness. Driving cattle along a road is necessary, and escape may be unavoidable; if it has been, you are not liable. But *Tillett v. Ward* did not mean that if the cattle there had been in the care of children, for instance, the owner would not have been liable. The Saskatchewan statute says that cattle may be permitted to be at large, but does not say that if they be, their owner is not liable for damages they commit on the property of other persons. On the contrary, it says that nothing in the Act shall affect the rights of other persons than the owner for damages for trespass on property. At common law, Anderson would have been liable in trespass for the entry of his animals on the railway. How then in face of the very words of sec. 2 of the provincial statute can it be said that he was not liable because the statute legalized the running at large by the cattle, and the railway was bound to protect its property by fencing its tracks?

All through this series of cattle cases the effect of local surroundings is seen in the interpretations placed by the Judges upon the statutes. To allow cattle at large, and to hold railways liable, is in the very air of the west.

The proper way to do that, if advisable, is by a new Dominion statute, not by fantastic interpretations of perfectly plain existing provisions.

ALFRED B. MORINE.

War Notes.

His Majesty The King has issued and called upon all his subjects to observe the sixth day of January, 1918, as a special day of prayer in connection with the war. His proclamation is as follows:

"The world-wide struggle for the triumph of right and liberty is entering upon its last and most difficult phase. The enemy is striving by desperate assault and submarine intrigue to perpetuate the wrong already committed, and to stem the tide of a free civilization. We have yet to complete the great task to which more than three years ago we dedicated ourselves.