

instance, take a town or city : there are by-laws there that cattle shall not be allowed to run at large. Railway companies do not fence their track in such places and it would be impossible to fence them. If cattle are running at large the owner takes his chances, and they are liable to be impounded. That is practically the law all over the Dominion, that where a municipal by-law provides that cattle shall not be allowed to run at large, if they are allowed to run at large and are killed on the railway the railway company is not held liable. The company would be liable for cattle killed at a crossing. There are particular sections of the Railway Act which require that cattle shall be in charge of a custodian at such points. If you strike out the words "by law," then in all cases the companies would become liable. The case suggested by my hon. friend is one that is met by this clause, and the reason of it is this, that in the Act the clause which it amends provides :

"Until such cattle guards are duly made and completed, and if after they are so made and completed they are not duly maintained, the company shall be liable for all damages done by its trains and engines to cattle, horses and other animals, not wrongfully on the railway, and having got there in consequence of the omission to make, complete and maintain such fences and cattle guards as aforesaid."

It was held by many of the judges that the effect of the words "not wrongfully on the railway" was to exempt the company from the consequence of killing animals where the animals got on the track by trespassing on a neighbor's property. The effect of the amendment is to make the provision very much wider—to hold the company liable for animals killed under circumstances which the general Railway Act of 1888 did not cover, inasmuch as in many places in the country cattle are allowed to run at large, and one neighbor allows the cattle of an adjoining neighbor to go on his pasture, and from there may escape on to the track together. Under the law as it is proposed to make it, the owner, not alone of that property from which the cattle got on to the track, but the owners of any animals that go on through that particular piece of land, would be able to hold the company liable, the word "wrongfully" being omitted in this section, and the clause being made to apply generally.

HON. MR. KAULBACH—If the views of the hon. gentleman from Ottawa are

correct with regard to the case which the hon. gentleman from Halifax has stated, I would be in favor of letting the Bill go as it is ; but I do not exactly see that it is so. I think the case that my hon. friend has stated, where the division fence between two parties is allowed to go down and cattle are allowed to roam over both properties, it would be very hard if the law, as it now is, provides one owner should be paid for his cattle if they are killed on the railway track and the other owner should not be paid. There are many such cases in Nova Scotia, and if my hon. friend has stated the decisions in such cases correctly, his amendment is necessary. In Nova Scotia, in many neighborhoods, cattle run in common or unfenced lands, and it is necessary that railway companies should fence their track, and adopt every possible means to prevent accident. It is in the public interest, apart from the interest of the people owning the cattle in the country, that railways should be careful to protect their track from all trespass which might endanger life and property.

HON. MR. MCKAY—I have some knowledge of these difficulties that we have had to meet heretofore. In my own county, of which I was the representative in the House of Commons, I have met with this difficulty continuously. We have a range of country along the line of railway where, by mutual consent, the cattle of the neighbors roam at will. The manager of the Intercolonial Railway is a law unto himself, and when cases of this kind occur, where cattle have gone from these commons on to the railway, and were killed, the railways managers have positively refused to pay for any that did not come on the track from the property of the owner. I confess that I have no desire that the law should be made so open that cattle ranging at large on the highway and getting on the railway should be paid for by the company if killed, but I think where cattle are running in common on a field, with the consent of the owner of the field, the responsibility of the railway should be the same, whether they were on the owner's land or not. We cannot enter a suit against the Intercolonial Railway, as it is owned by the Government, and people have to take what the manager of the road offers to pay for a beast that is killed on their track.