

Legislatures and the general Parliament have a common interest; they have a pure and single desire to do everything they can to assist these railways and to advance their prosperity. As the House knows, we have been implored again and again, by the press, by the people, and by members of Parliament from all sections of the country, to take such measures as would enable us to deal with this serious question of railway management. The hon. leader of the late Government, as the hon. gentleman knows, pointed out forcibly in this House the necessity of our dealing with some serious accidents that occurred in the vicinity of Kingston, on the Kingston and Pembroke Railway, I think; and it was found that we were quite powerless to deal with them, in the absence of such legislation as I am proposing to-day. I will not detain the House, as the hon. gentleman says he has no desire to obstruct the second reading of the Bill; but in Committee we shall be able to discuss the various clauses.

Mr. WHITE (Renfrew). I have no intention of offering any objection to the second reading of this Bill; but I desire to call the attention of the House and of the hon. Minister of Railways to an amendment which I proposed in a Bill I introduced some time ago, and which, to my mind, is of considerable importance. That Bill passed its second reading in this House, and was referred to the Committee on Railways and Canals. In that Committee it was suggested that it would be better for the hon. Minister of Railways to take up the question and deal with it, if he thought proper; but I find that the amendment I refer to has not been incorporated in the Bill the hon. Minister of Railways has introduced. That amendment provided that a railway company should be liable for accidents occurring on its track, caused by its trains and engines, in places where fences had not been erected along its line of railway—accidents to horses and cattle belonging to neighboring proprietors, whether or not notice had been given to the company to erect the fences. It will be remembered that prior to 1868, under the Consolidated Statutes of the old Province of Canada, the duty of erecting fences, without any limitations, was cast on the railway companies. 22 Vict., chap. 26, provides that

"Fences shall be erected and maintained on each side of the railway."

There is no provision as to the adjoining proprietors giving notice; and the fifteenth section provides that

"Until such fences and cattle-guards are duly made, the company shall be liable for all damages which may be done by their trains or engines to cattle, horses or other animals."

The revised Consolidated Act contains these provisions; but in 1868 the Parliament of Canada changed the clause and made it read as it does in the Act of 1879, as follows:—

"Within six months after any lands have been taken for the use of the railway, the company shall, if thereunto required by the proprietors of the adjoining lands, at their own costs and charges, erect and maintain on each side of the railway, fences, &c.: and the second sub-section of that section is exactly the same as section 15 of chapter 66 of the Consolidated Statutes of Canada."

It is not for me to say what motive actuated Parliament in 1868 to make this change, but I may say that up to a recent period it was generally supposed that the duty of erecting fences was still imposed on railways where the land was occupied, and it was not till a very recent decision was given in my own county that the question of this liability was disputed. The circumstances which drew my attention to this defect, as I believe it to be, in the Railway Act, were these: Some time during last summer two animals belonging to a man named McCarthy, in my county, were killed on the line of the Canadian Pacific Railway. At the point where those animals strayed no fences had been erected. Very few farmers throughout this country are aware of the necessity of giving notice to railway companies to erect fences, and in the majority of instances such notice is not given. There are difficulties in the way of giving notices of that kind. Ordinary farmers do not

know in what manner they should be given, and unless they are prepared to pay some legal gentleman to attend to the giving of the notice no notice is given in nine cases out of ten. In the case to which I refer an action was brought in the Division Court of Renfrew, and was brought before Mr. Justice Sinclair, who held that as McCarthy had not given notice the company were not obliged to erect fences. This contention was set up by the company in their defence, and the Judge sustained it and non-suited the plaintiff. Application was made for a new trial before Mr. Justice Deacon, and he sustained the decision of Mr. Justice Sinclair upon the ground that the second sub-section of the sixteenth section of the Consolidated Railway Act of 1879 must be read in conjunction with the main section. The conclusion of his judgment, which occupies some seven pages, is this:

"After a careful and patient examination of all the authorities I have been able to find, I have come to the conclusion that the decision of the learned Judge is right and must be upheld; consequently, that the application be set aside and a new trial must be refused with costs."

If the judgment, which has not been called in question, is correct, it would be seen that under the law as it stands now, unless notice is given by the proprietors of the land taken by the railway companies, to the railway companies to erect fences, they are not liable for any damage that may be done by their trains and engines. That is a state of affairs which should not be allowed to continue, and I propose to remedy it by the Bill I have introduced, providing that:

"Until such fences and cattle-guards are duly made, the company shall be liable for any damages which may be done by their trains or engines, to cattle, horses or other animals on the railway."

Another question which arises is this: Under the law the companies are obliged to erect fences if, within six months after the land is taken by them, notice is given them to erect fences. The question then arises whether, if notice is given after the six months, the companies are obliged to erect fences. The learned Judge, to whose decision I referred, held that the liability is a continuing one. But it is to my mind a question of doubt as to whether it is a continuing liability or not; and I venture to suggest to the hon. Minister of Railways that this is an amendment which would be of benefit to a large class of people and would not impose on railway companies other duty than that which the law contemplates should be imposed on them.

Mr. McCARTHY. I think the amendment proposed by my hon. friend should be made. The objection, as I understand, against it, is, that it would impose on railway companies an unnecessary expense. I think a little consideration will show that is not really the case. The fences are only required, of course, where the land is settled. Where it is not cleared and occupied, it is not necessary to erect fences, because there are no cattle to fence in. It is a perfectly well-settled principle of law, that unless the cattle escape from the land of the owner, the company are not responsible. But is the farmer whose land has been cut in two by a railway, to be under the necessity of going through the form of asking the company to fence off that land before he can have his land fenced, or for compensation in the event of a fence not being properly maintained? Very frequently it happens that the company put up a fence, and the very fact of their doing so does away apparently with the necessity of giving them the notice. They fail to maintain it, and when an accident happens they set up this defence: True, we have a fence there and have maintained it; but, if you would look back, you will see you never required us to put up one, and you have no claim. In the county which I have the honor to represent, and through which the Northern Railway Company runs, for many years the company were under their original charter, granted in the old Province of Canada, not liable to erect fences unless they received