action of the owner neither negligent nor wilful. The plaintiff was given damages under sec. 294(4), which could not have been done if the animals were not "at large."

But a perusal of *McLeod* v. *C.N.R. Co.* (*supra*), will shew that the remark of Boyd, C., has been torn from its setting, and does not, in fact, warrant the deductions Elwood, J., has drawn from it. In that case the animals had got upon the railway from an enclosed field, through a gap in the railway fence, and all that Boyd, C., meant was this, "animals on the (enclosed) lands of the owner are not at large, and therefore sec. 294 does not apply." The defendant company was found liable because it had not kept in good repair the fence it was bound to keep up between the enclosed land and the railway track. In other words, *McLeod* v. *C.N.R. Co.* was decided on the meaning of the words "at large," the *Greenlaw* case on the meaning of the words "negligence or wilful act or omission."

To say of unenclosed land that the owner whose cattle got from it to the railway could recover for injury to them if they got there "through a defect in the railway fence" is to leave out of sight the fact that unless the land is both enclosed and settled or improved (sec. 254(4)), the company is not bound to fence, and consequently is not liable under sec. 427(2).

"At large," in the Railway Act, manifestly means "not enclosed or under physical restraint," for sec. 294(1) speaks of animals at large upon a highway in charge of a competent person, shewing that the mere fact of a caretaker being with them, while a defence, does not alter the fact that they are at large. Sub-sec. 4 speaks of animals at large, whether upon the highway or not, and as the words "at large" should be given the same meaning in all parts of the section, they can only mean in sub-sec. 4, as in sub-sec. 2, "Animals not enclosed or under physical restraint." Sec. 254 provides that the railway company shall fence where the track runs through fenced land which is settled or improved, and sec. 427 renders the company liable in damages resulting from failure to so fence. For injury to animals not at large, sec. 294 provides no remedy; that is to say, for animals under physical restraint, or upon enclosed land, which not being either improved or settled, the company was not bound to fence, and mere inclosure is not improvement within the meaning of sec. 254. For damages to such animals, an action for negligence on common law grounds would probably lie; for animals at large, sec. 294 is a code, and sub-sec. 4 makes the company liable without proof of negligence on its part, for animals killed on its property, but allows it to be a good defence that the animals got at large through the negligence or wilful act of the owner. Thus the Railway Act is seen to have three principles as to animals: (1) If not at large, liability is dependent upon negligence; (2) If at large upon a highway, without competent oversight, the company is not liable; if with such oversight, liability as in the former case is a question of negligence; (3) If at large anywhere, and injured upon railway property, the company is liable unless it can prove that the animals got at large by the negligence or wilful act of the owner. At large or not at large is a question of fact, and negligence or wilful act or omission are also questions of fact. If the law is not satisfactory, parliament, not the Courts, should do the necessary legislation.