

"4. When any cattle or other animals at large upon a highway or otherwise get upon the property of the company and are killed or injured by a train, the owner of any such animal so killed or injured shall be entitled to recover the amount of such loss or injury against the company in any action in any court of competent jurisdiction, unless the company, in the opinion of the court or jury trying the case, establishes that such animal got at large through the negligence or wilful act or omission of the owner or his agent, or the custodian of such animal or his agent; but the fact that such animal was not in charge of such competent person or persons shall not for the purposes of this sub-section deprive the owner of his right to recover." Sub. for 53 Vict. c. 28, s. 2. The first paragraph is the same as s. 271 (1) of the Act of 1888, with the addition of the word "competent" before "person" and of the final words "or straying upon the railway." Paragraphs 2 and 3 are identical with s. 271 (2) and (3).

Paragraph 4 is substituted for s. 2 of 53 Vict. c. 28, which made the company liable for damage to any animal in consequence of omission to erect or maintain fences and cattleguards, and repealed and replaced sub-s. 3 of s. 194 of the Act of 1888.

It will probably puzzle our lawyers and judges to reconcile the provisions of paragraphs 3 and 4 of this section 237. Paragraph 3 takes away all right of action from the owner of an animal killed at the point of intersection of two railways if it is at large contrary to the provisions of the section. Paragraph 4 gives a right of action in case of an animal at large getting on the railway at any point and being killed unless it was at large through the negligence or wilful act of the owner. By paragraph 3 the fact that the animal was not in charge of a competent person deprives the owner of his right to recover damages. Under paragraph 4 he is not deprived of his right to recover by want of competent oversight. It does not appear that very great care was taken in the preparation of this section, and especially in drafting paragraph 4, which is substituted for an entirely different provision. It was apparently intended to provide for the case of an animal being killed elsewhere than at the point of intersection of two railways, but unless it can be said that such point of intersection is not the property of the railway company whose train caused the injury it does not express that idea.