

maintain such fences and cattle-guards as aforesaid.

Now that began to take away responsibility. They had then only to pay for the animals that were not wrongfully on the railway, and all this time there has been a section in this Act preventing animals from being lawfully upon the highway within half a mile of the railway crossing; so that when, in 1888, they got that section into the Act, that the animals should only be paid for by the railway if they were not wrongfully on the railway, then they were not responsible, and they are not responsible to-day in any case that can be suggested. They are responsible if the animal is not wrongfully on the railway. If the animal is not in control of a human being, as it has been decided by the courts, it would be wrongfully there, in view of the section of the Act which I last mentioned, the section that makes it unlawful for the animals to be within half a mile of a railway crossing; for then they are not rightfully upon the railway.

Now, what are cattle-guards for? Is there a case that can be suggested by any gentleman in this House where a cattle-guard is required for animals who are in charge of a human being? If an animal is in charge of a human being, one sees at once there can be no responsibility, because the human being would then be guilty of contributory negligence in allowing the animal to get upon the track. So we have since 1888 a statute which is absolutely nonsensical, a statute which ought to be repealed, if it is not amended, because it does not enact anything practicable. That legislation as it stands to-day is absolutely impracticable, it does not legislate for the redress of any grievance that can possibly exist. It does say they shall be responsible if they kill animals that are rightfully upon the railway, but at the same time they cannot get there in a case where responsibility would exist. That Act was further amended in 1890. It was amended so as to read:

If the company omits to erect and complete as aforesaid any fence or cattle-guard, or if, after it is completed, the company neglects to maintain the same as aforesaid, and if, in consequence of such omission or neglect, any animal gets upon the railway from an adjoining place where, under the circumstances, it might properly be, then the company shall be liable to the owner of every such animal for all damages, &c.

Then it goes on to enact that any animal allowed by law to run at large should be paid for. Now, I am coming to the case of an animal that is not allowed by law to run at large because that is the animal that requires to be protected. An animal escapes without the knowledge of the owner, goes down to the railway crossing, and passes on from the highway to the point of danger on the railway property. If the animal is killed there the owner

cannot get paid for it. That is a condition of affairs that should be remedied and one which I have been endeavouring to have remedied for the last two years. I may say that the only argument that has been used against this legislation, so far as I know, is that there is a principle involved and that we should encourage the farmer to prevent his cattle from running at large. People who live in glass houses should not throw stones. The railway companies are deliberately violating an Act of parliament; they are deliberately refraining from carrying out the object of this legislation, they are not doing what it is contended they should do, they are not maintaining cattle-guards at highway crossings. That of course is no reason why the farmer should deliberately violate the minor law but it comes about in this way: The farmer's animal escapes without him knowing it. We must assume that he does not wish to break the minor law and that he is anxious to keep his animals at home. However, an animal gets upon the highway. Has he not a right to expect that it will remain upon the highway? That is where he should be responsible for everything that happens to it. If it gets upon the highway through his carelessness or otherwise, it should be expected to remain upon the highway. But now, if it gets to the point on the highway where the railway crosses and is killed at the point of intersection the farmer should suffer the loss of the animal. It is fair enough that he should stand the expense of an accident happening at the point of intersection. Animals accidentally get upon the highway in different ways without the knowledge of the farmer. For instance, a neighbour visiting a farmer and then going away, may leave the gate unfastened, and though no act of negligence has been committed by the farmer, his animal may get upon the highway and go to the railway crossing. The farmer should lose the animal if it is killed while it remains upon the highway. The responsibility is fairly divided by the Bill which I have introduced, because the farmer sustains the loss himself if the animal is killed while it is on the highway; that is, if it is killed at the point of intersection between the places where the cattle-guards ought to be. If there are cattle-guards provided the animal will pass along; if it is not killed at the point of intersection it will not be killed anywhere else, because, if this amendment is adopted and railway companies are obliged to provide cattle-guards, the animal will be prevented from getting on the railway property. Every owner of property in Canada has to fence his own property. The railway company has to fence its own property at common law, and if the railways and those opposing this legislation contend that we are violating a principle which we ought not to encourage the farmers to violate by allowing their animals to run at

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