

authorities which, he contends, put this beyond dispute. I have not been able to agree with this contention.

The first of the statutes was that of 1857, 20 Vict. ch. 12, sec. 16: "No horses, sheep, or swine or other cattle, shall be permitted to be at large upon any highway within a half mile of the intersection of any highway with any railway on grade, unless the same respectively shall be in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection with any railway . . . and no person any of whose cattle so at large shall be killed by any train at such point of intersection, shall have any cause of action against any railway company in respect of the same being so killed." . . .

[Reference to cases decided under that statute: *Simpson v. Great Western R. W. Co.*, 17 U. C. R. 57; *Ferris v. Grand Trunk R. W. Co.*, 16 U. C. R. 474; *Thompson v. Grand Trunk R. W. Co.*, 18 U. C. R. 92.]

This case (the Thompson case) is no authority for the proposition that a boy of 14 or of 10 years of age is not quite competent to take charge of cows. And the second of the grounds upon which the judgment is put, namely, that the plaintiff was guilty of contributory negligence in sending his horses in charge of a boy, without bridle or means of control, after dark, has likewise no application to the present case. It is usual to have horses haltered, but not cows. . . .

[Reference to *Cooley v. Grand Trunk R. W. Co.*, 18 U. C. R. 96.]

In this case also the facts shewed that the horses were not under control.

Then came the consolidation in 1859, the C. S. C. ch. 66; secs. 147 and 149 of which contained the provisions which I have set out, almost totidem verbis. . . .

[Reference to cases decided under that statute: *McGee v. Great Western R. W. Co.*, 23 U. C. R. 298; *Markham v. Great Western R. W. Co.*, 25 U. C. R. 572.]

The new Dominion Act of 1888, 51 Vict. ch. 29, sec. 271, contains in sub-secs. (1) and (3) the same provisions. Under that statute *Thompson v. Grand Trunk R. W. Co.*, 22 A. R. 453, was decided. (The case of *Duncan v. Canadian Pacific R. W. Co.*, 21 O. R. 355, does not seem to be in point.) The Thompson case is much relied on by the defendants here. Mr. Justice Osler, in giving the judgment of the Court of Appeal in that case, a County Court case, said: "I cannot