

servants to give the statutory signals, but none to justify the second alleged act of negligence—there was no evidence upon which the jury could find that the engineer could have stopped the train after seeing the cows. This is immaterial, however, as there is quite sufficient in the first finding of negligence to support a verdict for the plaintiff, if he is otherwise entitled to such verdict. Under the practice I have nothing to do with the weight of evidence.

The damages are such as are justified by the evidence, at least under my charge, permitting as I did the jury to give such damages as they thought fair for loss of profits which would take place before the plaintiff could replace his cows—the cows that were killed were milch cows, the milk from which the plaintiff was selling.

The whole question I have now to determine is, whether I should have granted a nonsuit, and whether, notwithstanding the finding of the jury in answer to the last question, the defendants are not entitled to a nonsuit, or, more correctly speaking, to a verdict.

The argument for the defendants is based upon R. S. C. 1906 ch. 37, sec. 294 and sec. 294 (3): “No horses, sheep, swine or other cattle shall be permitted to be at large upon any highway, within half a mile of the intersection of such highway with any railway at rail level, unless they are in charge of some competent person or persons, to prevent their loitering or stopping on such highway at such intersection, or straying upon the railway. . . . 3. If the horses, sheep, swine or other cattle of any person which are at large contrary to the provisions of this section, are killed or injured by any train, at such point of intersection, he shall not have any right of action against any company in respect of the same being killed or injured.”

The express words of the statute, as well as the history of the legislation and decisions, make it abundantly clear that the bare fact of the cattle being at large without being in charge of some competent person, as required by the statute, would deprive the owner of all right to recover, even though the accident was caused by the negligence of the railway; the legislation was introduced for the safety of the public, and not simply to advantage the railway company.

It is argued that the decisions are such that I must hold as a matter of law that the lad here was not a “competent” person within the Act; and Mr. Foster, in the very careful and comprehensive argument put in, cites a number of