

for all damages which may be done by their trains or engines, to cattle, horses, or other animals on the railway.

Sir CHARLES TUPPER. I regret that my hon. friend is going to press this motion. I quite understand the disadvantage at which I am placed in resisting a motion of this kind. The population through which a railway runs is very much more numerous than the company who are carrying that railway on; but I do not think that is any reason why an act of great injustice, and one which I believe to be fraught with serious consequences, should be perpetrated. Now, I would like the hon. gentleman to explain to this House, if he can, how it was the law was formerly as he proposes to make it, and that after long years of experience Parliament deliberately changed it and made it as it is to-day. I think the very fact that that was done gives the most abundant evidence that the law was found to work injuriously and unfairly. The hon. gentleman said that I spoke of the farmers. I did not use the term farmers, but I said parties who were the owners of cattle; and I have no hesitation in saying, that there is no country in the world in which, in my judgment, the great mass of the agricultural and farming population possesses a higher tone of morality than in Canada. I do not believe it would be possible to find any country in the world where the agricultural population are animated by sentiments of higher principle or purer morality than in Canada; but there are exceptions to every rule, and there are among all classes of people persons to be found here and there who are not actuated by those principles. There are unprincipled persons in all sections of the country, more or less—I believe a fewer number in Canada than in most other countries—and I do not propose to give these unprincipled persons, though few and far between, an inducement to do a wrong which, I believe, the alteration proposed in the clause would give. It was for that reason that I did not feel warranted in accepting it. I believe our agricultural population are a highly intelligent population, and they perfectly understand where railway facilities have been furnished to them, all that is necessary, in order to accomplish everything they require, is to write a note to the railway company, and from that moment the railway company is liable. Now, Sir, I say with the objections I have presented, and with the facility with which men may surround them with the protection that is urged by the hon. gentleman, there is no necessity for changing the law back again to what it was before the Parliament of Canada deliberately changed it and adopted what is now on the Statute-book. I can understand how the provision got there in the first instance. What does the hon. gentleman tell us? He has had a lawsuit, or somebody he is interested in has had a lawsuit, and therefore he wants a change in the law, just as we find the members of the legal profession in this House, of whom we are so proud, coming here with Bills every Session, with some extraordinary propositions to change the law, because they have had a lawsuit and have lost it, or have a lawsuit pending, and want to strengthen their case. I do not insinuate that my hon. friend from North Simcoe (Mr. McCarthy) has absolutely at this moment a client who is interested in changing this law; but I have known such things in this House as legal gentlemen endeavoring to change the law in the interest of a client. But I say that the Parliament of Canada having tried this provision for long years, and having rejected it, is the best reason why we should retain the law as it is; and not because the hon. member for North Renfrew has been cast in a lawsuit, and very properly so, because it is quite obvious that both of these Judges were strictly right in the judgment they gave. A railway may be losing money; the parties who have put money into it may not have got one dollar of dividend; and yet it is compelled, the instant it gets notice, to go to the further expense of putting up these

fences, without any interest perhaps in them. What more should be required I cannot see. I have no hesitation in saying that I speak from personal experience and observation in this matter. I do not want to see any greater inducements or facilities offered by making a slaughter-house of the railways of the country for old and decrepid animals.

Mr. McCARTHY. I am delighted that my hon. friend the Minister of Railways has withdrawn the imputation upon the farmers of this country which I think his first observations were calculated to convey. The hon. gentleman draws a distinction between farmers and owners of cattle. He admits that the former are high-toned, high-principled men, who would not permit their cattle to go on a railway and be destroyed, so that they might make a claim against the railway company; but the man who owns cattle but is not a farmer, is a man who, the hon. Minister of Railways thinks, might possibly do so. The only argument the hon. Minister of Railways, as I understand, has used against the proposed provision, is, that we have not the law on the Statute-book to-day that existed in Old Canada. Now, I venture to say that if any person looks at the land of Old Canada and at this law, he will find that this change has not been made with any great deliberation. What do we find? We find that one clause has been taken, which was clause 19, of the old Act, which was only intended as a temporary provision during the construction of the road, and which provided, in effect, that unless a man made the demand to have a fence put up along his land after the initiation of construction on the road, he had no chance to make it at all; so that the care that Parliament has had for the people of this country has been chiefly with regard to the railway companies. If we had the history of that Act, I think it would be found to be the same as that of many other Consolidation Bills. I do not want to insinuate—although, perhaps, I would be justified after the attack the hon. gentleman has made on my profession—that one or two sections have been left out of this Bill for the purpose of getting it through the House in the interest of the railway companies. I will not say so, but it looks very like it. We have first the clauses omitted which are important, and then those clauses inserted which are wholly unimportant and certainly offer no protection to the owners of lands in the country through which the railway companies are permitted, against their will and without their consent, to carry their roads. My hon. friend says it is a great hardship. Why is it a hardship? The farmers of this country and the property owners are not sufficiently on their guard to give this notice. In ninety-nine cases out of a hundred in which land has been cut by a railway and fences put up, no notice is given. When companies do as they do, put up fences, and when by accident a fence is taken down, the farmer or owner of property is completely off his guard, and has no opportunity of giving a notice, and in all these cases has no resort. Surely that is not proper. Surely Parliament is not going to be so much in the hands of railway companies, that the companies can take land from a farmer without his consent by the law of expropriation, go through it and leave it open on both sides and not be obliged to fence it. The amendment is a reasonable one, but I would ask my hon. friend to make it more complete by putting in the thirteenth section of the old Act, adding to that the fourteenth clause and following that up by the appropriate clauses. The thirteenth section thus reads:

"Fences shall be erected and maintained on each side of the railway of the height and strength of an ordinary division fence, with openings, or gates, or bars therein at farm crossings of the road for the use of the proprietors of lands adjoining the railway; and also cattle-guards at all railway crossings, suitable and sufficient to prevent cattle and animals getting on the railway."

The law says: if the fence is not erected by the person or corporation bound to erect it, on them must fall the damages. The fourteenth clause has merely a declarative meaning.