statutory duty to fence: sec. 254: and the unfortunate farmer along the line must not allow his animals out in the farm but must keep them in stable or closed field. This would no doubt be a happy result for the law-breaking railway company: but before such an extraordinary effect be given to the section, it must be clear that such is its necessary meaning.

I do not think that the section applies at all to the present case. It is sec. 295 which refers to the duties of adjoining owners *quod* their own land, and sec. 254 to their rights. "At large," in sec. 294, refers to animals elsewhere than upon the land of their owner. This I think is apparent from a reading of the statute and authority is not wanting. In the very full and exhaustive judgment in *McLeod* v. *Canadian Northern Rw. Co.* (1908), 9 Can. R. Cas. 39, 12 O. W. R. 1279, on p. 1283 of the report in O. W. R., it is said: "The negligence of the owner referred to in the 4th clause of sec. 294, is really applicable to cases where the animal is 'at large and not at home.'"

Page 1285, "Cattle on the lands of the owner are not 'at large,' but 'at home.'"

A few weeks before this decision the case of *Higgins* v. *Canadian Pacific Rw. Co.* (1908), 9 Can. R. Cas., at p. 34, 18 O. L. R. 12, was decided in the King's Bench Divisional Court. And while there was no express decision that "at large" meant "not at home," this was taken for granted throughout.

The cases previous to these are cited by the Chancellor in the *McLeod Case*, and it is unnecessary to refer further to them. The learned district Court Judge has found against negligence on the part of the plaintiff, and rightly so on the facts—even if negligence by the plaintiff could avail in an action based upon neglect by the railway company of a statutory duty; as to which see *Davies* v. *Canadian Pacific Rw. Co.*, 12 A. R. 724.

The appeal should be allowed. The trial Judge did not find the value, as he might have done, and no doubt would have done had the evidence been conflicting. The only evidence of value is that of the plaintiff, and his witness Isaac Karila. Both placed the value at $300.

Judgment should, in my view, be entered for the plaintiff for $300, with costs here and below; but as my learned brethren think the amount should be $275, I do not dissent.

Appeal allowed.