

within the meaning of clause 4 of said section 4, the said phrase "Fenceviewers" shall mean fenceviewers from either or both municipalities.

"In which the
lands are
situate."
"In which
the land lies

(b) The expression "in which the lands are situate" and the expression "in which the land lies," shall mean in which are situate the lands of the owner or occupant so notified under said clause 1 of section 4. R. S. O., 1887, c. 219, s. 2.

Duties of
owners of ad-
joining lands
as to fences.

3. Owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, (a) or if there is no fence they shall so make, keep up and repair the same proportion which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands shall, upon their being occupied, (b) be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned, R. S. O., 1887, c. 219, s. 3.

(a) In an action for damages for trespass and encroachment, brought by the owner of one lot against the owner of the adjoining lot, the dispute between the parties turned mainly upon the position of a boundary fence. It was held by Mr. Justice Ferguson, affirming the decision of Mr. Chief Justice Armour, that a boundary fence under R. S. O., chap. 219 (now R. S. O., chap. 284), should be so placed that, when completed the vertical centre of the board wall, will coincide with the limit between the lands of the parties, each owner being bound to support it by appliances placed on his own land. In the same case Mr. Chancellor Boyd held that if the boundary line be between the posts on one side of the fence, and the scantling and boards on the other, so that there is practical equality in the amount of space occupied by the continuous boards, and if that method is sanctioned by local usage, neither owner has legal ground for complaint. *Cook v. Tate*, 260 R. 403.

(b) The Synod of the Church of England own a certain lot B, which is an unoccupied wood lot. A Mr. S. owns lot A (on one side of lot B) and a Mr. C. lot C (on the other side of lot B). Both Mr. S. and Mr. C. have built their share of the line fences between their respective lots and lot B. The cattle of Mr. S. go across lot B and enter the lands of Mr. C. to the annoyance and injury of the latter. The Synod cannot be compelled to build its share of the line fences until lot B becomes occupied.

A and B own adjoining lots. A's lot is part swamp covered with small timber, and useless, unoccupied, and unenclosed. A cannot be compelled to build any portion of the fence between the swampy part of his land and B's. This section makes it the duty of owners of occupied adjoining lands to maintain fences, and sub-sec. 1 of sec. 2 provides that the expression "occupied land" shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is in actual use and occupation. The swamp being, as above stated, unenclosed, there is no liability to fence it.