

WATERS AND WATERCOURSES

Drainage Ditches and Watercourses Act, 1883, sec. 13. Award

Duty of township engineer—Damage to land—Proximate cause.]

After the time fixed by an award under the Ditches and Watercourses Act, 1883, for the completion of certain drainage work by neighbouring land-owners, the plaintiff, who was one of the parties interested in the award, in writing required the defendant, as township engineer, to inspect the work with the object of having it completed according to the award, but as the plaintiff alleged the defendant neglected to inspect the work or cause it to be completed according to the award, and thereby the provisions of the award were not carried out, and the plaintiff in consequence suffered damage by reason of water remaining on his land, &c.

Held, that the provision of sec. 13 of the above Act as to the inspection by the engineer is imperative, and an action would lie for breach of his duty; but even if the evidence had shewn such a breach, the damages claimed were not the proximate, necessary, or natural result thereof. The other provisions of sec. 13 are merely permissive, and no action would lie for their non-performance; nor, were it otherwise, could it be held that the damages claimed were the proximate result of such non-performance.

Those who by the terms of the award ought to have done the work, were the persons proximately responsible for the damages. *O'Byrne v. Campbell*, 839.

WAYS.

Conditional grant of—Duty to maintain fences and gates on—

Rights of grantor.] Plaintiff's pre-

decessor in title had granted to defendant's predecessor in title a right of way over land afterwards conveyed to plaintiff, such right of way being conditioned upon the grantee thereof "fencing and keeping in repair" the roadway over which the easement was granted. Shortly afterwards the grantees fenced the sides of the roadway, and put gates at each end of it, which, after remaining many years, rotted away.

Held, that on the proper construction of the instrument the right of way was dependent upon defendant's maintaining fences not merely at the sides of the way in question, but also at ends of it, where they might have gates as part of the fences.

Held, also, that even if this was not the proper construction of the instrument, plaintiff, as owner of the soil, was entitled, himself, to fence the ends of the way, putting gates therein of such width and construction as would reasonably admit of the right of way being conveniently used.

Glendean v. Blatchford, 285.

2. Easement appurtenant to land conveyed—Prescriptive right to—Revocable license—Agreement, construction of by Court.]

Some years prior to 1847, J. D., plaintiff's father, became the owner of lot 18 in 5th concession of York, and built the house in which he lived up to the time of his death, on the north-west half, and near the sixth concession line. In 1847, J. D. purchased lot 19 adjoining lot 18 on the north, the occupiers of the eastern portion of which prior thereto, and J. D.'s tenants since, used a trail or road running from the northerly part of the east half of 18, where the plaintiff's house stood, across the west-half of 19, to the boundary between 18 and 19,