being and depasturing in the said close of the plaintiff a little before the time when, &c., erred and strayed out of the last-mentioned close into the close of the defendant through the defects in the said hedges and fences between the said closes, and on that occasion were in the said close in which, &c., until the defendant of his own wrong, and before the plaintiff had notice of the premises and could remove the said cattle, committed the trespass in the declaration mentioned.

The case was tried before Bramwell, B. at the Lewes Assizes. The facts of the trespass and seizure were admitted, and the only question was, as to whether or not the defendant was liable to repair a certain hedge which separated his field from that of the plaintiff, and through the want of repair of which hedge the plaintiff's cattle strayed into the field of the defendant. In support of the plaintiff's case the plaintiff was called, but he had only lived on the farm a few months, and could give no material evidence upon the point; but a Mr. Greenfield who was a former occupier, and also the steward of the landlord, were called, and they proved that the occupier of the defendant's farm had from time to time for fifty years done what repairs were necessary, and Mr. Greenfield upon being asked why he had done so? replied because he thought that every man was bound to keep his hedges in repair. Both the witnesses however failed to show any legal obligation upon the occupier to do the repairs. Upon this, the learned judge directed a nonsuit with leave to move to set it aside. A rule having been accordingly obtained.

Parry, Serjt., and *Joyce*, showed cause.—There was no evidence adduced on the part of the plaintiff to show any obligation on the part of the defendant to keep up or repair the hedge separating the two fields. The law is very clear, and was fully considered in *Boyle* v. *Tamlyn*, 6 B. & C. 329. The marginal note there is, "Where the owner of two adjoining closes (A. and B.), separated by a fence and gate which had always been repaired by the occupier of B., sold A. to the plaintiff, and two years afterwards sold B. to the defendant: Held, that the latter was not bound to repair the gate unless he or his vendor had made some specific bargain with the plaintiff to that effect, and that the doing of occasional repairs was not evidence of such bargain." In his judgment in that case Bayley, J., says: "There can be no doubt that the general rule of the law is that a man is only bound to take care that his cattle do not wander from his own land and trespass upon the land of others. He is under no legal obligation, therefore, to keep up fences between adjoining closes of which he is owner; and even where adjoining lands, which have once belonged to different persons, one of whom was bound to repair the fences between the two, afterwards became the property of the same person, the pre-existing obligation to repair the fences is destroyed by the unity of ownership. And where the person who has so become the owner of the entirety afterwards parts with one of the two closes, the obligation to repair the fences will not revive unless express words be introduced into the deed of conveyance for that purpose." In the present case there was no evidence whatever to show a legal liability on the part of the defendant to repair the hedge, and the fact that he and his predecessors were in the habit of doing so was no evidence of an obligation. It was the duty, therefore, of the plaintiff to see that his cattle did not escape from his own land on to that of another.

Hawkins, Q. C., and *Grantham*, in support of the rule. It was entirely a question for the jury. The defendant and his predecessors having always repaired the hedge, it was a fair inference to draw that they were under some legal obligation to do so. Mr. Greenfield who occupied before the defendant, stated that he believed he was liable to repair the fence. Where it is necessary for the safe keeping of cattle that there should be a fence, it might properly be assumed from the conduct of the parties that there is a legal liability to repair; if otherwise, it would be necessary that each occupier of adjoining fields should have a separate hedge. They cited *Singleton* v. *Williamson*, 31 L. J. 17, Ex.

KELLY, C. B.—I am of opinion that the nonsuit was right, and that the judge was not justified in leaving any of the facts in the case as evidence of a liability to repair. A liability to repair a fence can only be created by Act of Parliament, or some agreement or covenant which will constitute a binding contract between the parties. Undoubtedly, there may be evidence of such an agreement or covenant by the acts of the parties, as where a person is called upon to repair, and he has repaired accordingly; in such a case, although the evidence would be by no means conclusive, it would still be evidence for the consideration of the jury. But there is no such fact here. The evidence is simply this, that the defendant had kept his land fenced. That, however, was no evidence of a liability to repair. If a man chooses to surround his land with a fence, he may pull the fence down again at any time. He may erect a fence to prevent his cattle from