

BOYD, C.]

[April 5.

MCSLOY v. SMITH.

Impounding—Cattle straying from one enclosure into another—Running at large—Act respecting Pounds—Poundkeeper—R.S.O., c. 195.

The effect of ss. 2, 3, 6, 20, and 21 of the Act respecting Pounds, R.S.O., c. 195, is to give a right to impound cattle trespassing and doing damage, but with a condition that if it be found that the fence broken is not a lawful fence, then no damages can be obtained by the impounding, whatever may be done in an action of trespass.

Cattle feeding in the owner's enclosure, or shut up in his stables, cannot be held to be running at large within the meaning of the usage and the law when they may happen to escape from such stable or enclosure into the neighbouring grounds.

DuVernet and Kelly for the plaintiff.

Ball, Q.C., for the defendant.

MEREDITH, C.J., }
Non-Jury Sitings. }

[April 9.

JANES v. O'KEEFE.

Landlord and tenant—Covenant to pay taxes—Construction—Right of building over lane—Interest in land.

A lessee of property in Toronto covenanted to pay all taxes "to be charged upon the said demised premises, or upon the lessor on account thereof." The premises consisted of a building property on Yonge street which had in the rear a lane over which the lease provided that the lessee might at any time erect a building or extension, provided the same was always nine feet above the ground. The lease contained a covenant for renewal, with a proviso that if the lessors elected not to renew it they were to pay a fair valuation for the buildings which should at that time be erected "on the lands and premises hereby demised, and over the said lane."

Held, that on the proper construction of the above lease the words "demised premises" in the covenant as to paying taxes must be referred only to the building lot itself, and not to the interest in the lane which passed by the lease.

Seemle, where a tenant agrees to pay taxes on the land demised to him the omission of the assessor to enter his name on the assessment roll, or that of the landlord to resort to the Court of Revision to have the omission rectified, would not be any answer to the claim of the latter that the tenant should indemnify him against payment of the taxes.

Held, also, that the interest of the defendants in the lane under the above lease was clearly an interest in the land.

Johnston, Q.C., and *Davidson* for the plaintiff.

Moss, Q.C., and *Lockhart Gordon* for the defendants.