

the lane or from the defendants' Lakeview avenue lots. On the south, the fence included several other lots, some of them being in the possession of the defendants, and the others being in possession of and cultivated by a Mr. Wright. On the west the fence was several feet on the street. From a point on Fairview avenue about 100 feet south of the south-westerly angle of lot No. 13, I find that the wire fence angled off in a north-easterly direction to a point probably somewhat north of the boundary line, between lots 13 and 14, and approximately between 20 or 30 feet from the street, and then ran in an easterly direction towards Lakeview avenue for a part of the way, as appears by the evidence, 2 or 3 feet north of the boundary line, thus enclosing some part of lot 13, but not the whole part as now enclosed by the present board fence. The wire fence which, as I have already stated, was of a temporary and irregular character, would, perhaps, along with the cultivation which took place of the land which it enclosed, have been sufficient for the purposes of the statute, had it been maintained in its original position for 10 years, but, unfortunately for the defendants' contention, I am obliged to find on the evidence that the location of the wire fence, and therefore the extent of cultivation, cannot now be accurately ascertained, and that the board fence is not on the original line of the wire fence, but further north. The defendant Abraham H. Clemmer says that the present fence is in the same position on its north line as the former fence. I have no difficulty in finding that he is mistaken as to this. I do not think the new board fence followed the line of the wire fence on any side of the enclosure. On the south there was no wire fence where the present board fence stands; on the west the board fence is 10 or 12 feet inside the telephone pole which marked the west line of the wire fence; and on the north the board fence was built so as to be a continuation of the northerly boundary fence of the Lakeview avenue lots. I have no hesitation in accepting the evidence of the witnesses Richard Cole and Fred. Johnston, that they saw portions of the wire fence still standing south of the board fence when the board fence was in course of erection and afterwards, and also the evidence of these witnesses and of Fred. Edgar and Arthur Edgar (all of these persons being near neighbours of the defendants and so far as it appears entirely disinterested) that the board fence was built further north than the old wire fence had been.