

done by trespassing animals to cases in which the land is enclosed by a fence of the nature, kind and height required by the by-law should be held to be restricted to cases in which the animals go upon the land from some adjoining land where they have a right to be, and such by-law is no protection to the owner of animals trespassing from a highway, if the council has not passed a by-law, under sub-s. (b) of s. 643, for allowing and regulating the running at large of animals in the municipality. Am. & Eng. Enc., vol. 12, p. 1044, and Enc. of Law & P., vol. 2, p. 401, followed.

*F. M. Burbidge*, for plaintiff. *Hudson*, for defendant.

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Full Court.]

DALZIEL v. ZASTRE.

[Feb. 21.

*Animals running at large—Fences—Damages—Municipal Act, R.S.M. 1902, c. 116, ss. 643(b) and 644(d).*

Action for damages caused to plaintiff by defendant's cattle trespassing on his lands which were not fenced. Defendant relied on a by-law of the municipality, presumably passed under the powers conferred by sub-s. (b) of s. 643 and sub-s. (d) of s. 644 of the Municipal Act, R.S.M. 1902, c. 116, and declaring that "it shall be lawful for any person to permit his horses or cattle . . . to run at large in any season of the year . . . and no one shall be at liberty to claim damages against the owner of such horses or cattle running at large or doing damage unless he shall have surrounded his lands and premises with a lawful fence as defined by by-law of this municipality."

At the trial there was no by-law proved which showed what should constitute a lawful fence in the municipality, except one which related only to barbed wire fences.

*Held*, that the defence failed and the plaintiff was entitled to recover.

*Phillips*, for plaintiff. *Deloraine*, for defendant.

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Full Court.]

HAMILTON v. MACDONALD.

[Feb. 21.

*Vendor and purchaser—Pleading—Specific performance—Refund of money paid on purchase of land—Prayer for further and other relief.*

The plaintiff's statement of claim set forth a case for specific performance of an agreement of sale of land to the plaintiff's