

of the occupant of the land in respect of which such fences, gates, or guards have not been made or maintained, as the case may be, in conformity herewith."

These last two clauses were by 46 Vic. ch. 24, sec. 9, substituted for the following clauses in the Consolidated Railway Act of 1879:

"Within six months after any lands have been taken for the use of the railway, the company shall, if thereunto required by the proprietors of the adjoining lands, at their own costs and charges, erect and maintain on each side of the railway fences," &c.: sec. 16, sub-sec. 1.

"Until such fences and cattle guards are duly made, the company shall be liable for all damages which may be done by their trains or engines to cattle, horses, or other animals on the railway," sub-sec. 2.

"The term "proprietor," as used in the Act, is included within the term "owner," and the word "owner," as defined in the Act, would seem to include only those corporations and persons mentioned in sec. 9, sub-sec. 3, and would thus include proprietors and tenants; and by the Consolidated Railway Act of 1879, sec. 16, it was only as against such owners of adjoining lands that the railway company were bound to fence.

What difference, then, do the clauses substituted for section 16 in the Consolidated Railway Act by the Act 46 Vic. ch. 24, sec. 9, make in the law as it stood before the passing of the latter Act? Are the railway company bound to fence as against any one but an "owner" as defined by the Act? He is no longer required to be the owner of adjoining lands; it is sufficient if he be the owner of any part of a section or lot upon which the railway has been constructed, or a part of which has been taken possession of by the company for the purpose of constructing a railway thereon; but I think he must be an "owner" within the meaning of the Act, which term, as I have above said, includes proprietors and tenants; and I think the word occupied in the substituted clause means occupied by the owner, that is, the proprietor or tenant thereof; for where there is a tenant, both he and his landlord are owners within the meaning of the Act; and I think the term "occupant" in the substituted clause

means owner, that is, proprietor or tenant, and I think the use of the terms proprietor and tenant so occupying in the substituted clause, in the connection and manner in which they are used, shows this to be the true construction of the clause.

The clause will then read as follows: "Within three months from the passing of this Act, in the case of a railway already constructed on any section or lot of land, any part of which is occupied by the proprietor or tenant thereof, or within three months after such construction hereafter, or, before such construction, within six months after any part of such section or lot of land has been taken possession of by the company, for the purpose of constructing a railway thereon, and in the last case, after the company has been so required in writing by such proprietor or tenant thereof, fences shall be erected and maintained over such section or lot of land, on each side of the railway, &c.; but this clause shall not be interpreted to the profit of any proprietor or tenant in any case wherein the proprietor of any such section or lot shall have accepted compensation from the company for dispensing with the erection of such gates or bars."

"If, after the expiry of such delay, such fences, gates, and cattle guards are not duly made, and until they are so made, and afterwards if they are not duly maintained, the company shall be liable for all damages which shall be done on the railway by their trains or engines, to the cattle, horses or other animals of such proprietor or tenant of the land in respect of which such fences, gates or guards have not been made or maintained, as the case may be, in conformity herewith."

This construction brings all parts of the clause into harmony, and is, I am satisfied, having regard to the various provisions of the Act which I have above quoted, the true construction to be put upon the clause.

The provisions of the Act respecting line fences, R. S. O. c. 198, entirely support this construction, and the question under discussion has to be considered to some extent with reference to these provisions.

It is not reasonable to suppose that the Legislature intended that the railway company should be bound to fence against any