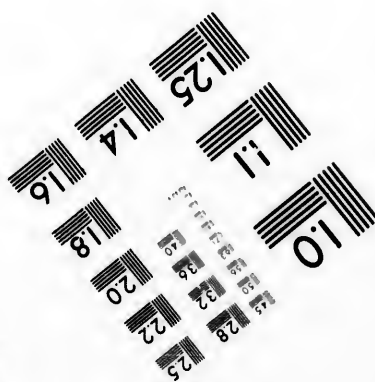
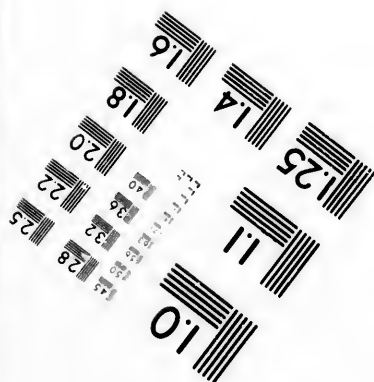
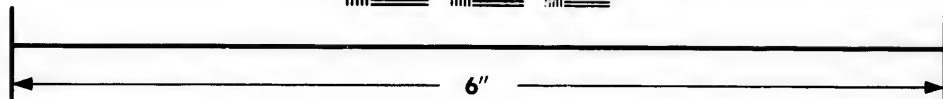
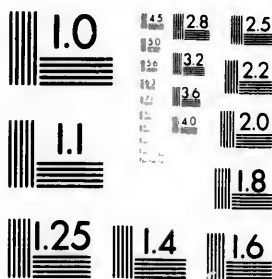


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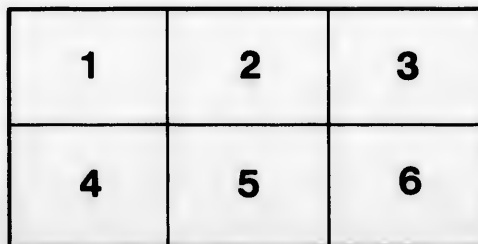
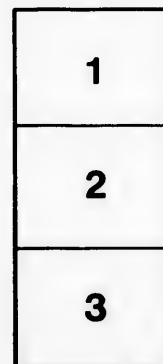
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THE LINE FENCES ACT

ANNOTATED

BY

JAMES MORRISON GLENN, Q. C., LL. B.

Of Osgoode Hall, Barrister-at-Law.

ST. THOMAS:

THE MUNICIPAL WORLD, PUBLISHERS,

1900.

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The Line Fences Act

AND

EXTRACTS FROM THE MUNICIPAL ACT AND THE ACT RESPECTING
POUNDS, RELATING TO THE DUTIES OF FENCEVIEWERS,
WITH NOTES OF THE MOST IMPORTANT DECIDED
CASES.

BY

JAMES MORRISON GLENN, Q. C., LL. B.
OF OSGOODE HALL, BARRISTER-AT-LAW.

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An Act Respecting Line Fences.

(R. S. O., 1897, CHAP. 284.)

SHORT TITLE, s. 1.	APPEAL TO COUNTY JUDGE, s. 11.
INTERPRETATION, s. 2.	FEEs OF FENCEVIEWERS, s. 12.
DUTY OF ADJOINING OWNERS, s. 3.	JUDGES EXPENSES OF INSPECTION,
PROCEEDINGS IN CASE OF DISPUTE,	s. 13.
ss. 4-6.	ENFORCING AGREEMENTS, s. 14.
AWARD BY FENCE VIEWERS :	REMOVAL OF LINE FENCES, s. 15.
Contents of Award, s. 7.	TREES FALLING ON LINE FENCES,
Filing, s. 8.	s. 16.
Enforcing, s. 9.	FORMS, s. 17.
Registration, s. 10.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1.—This Act may be cited as "*The Line Fences Act.*" R. Short Title. S. O., 1887, c. 219, s. 1.

2.—(1) In this Act the expression "occupied lands" shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation.

Interpreta-
tion:
"Occupied
lands."

(2) Where, within the meaning of section 4 of this Act, there is any dispute between owners or occupants of lands situate in different municipalities, the following words or expressions in this Act shall have the meaning hereinafter expressed, namely :

(a) "Fenceviewers" shall mean two fenceviewers of the municipality in which is situate the land of the owner or occupant notified under clause i of section 4 of this Act, and one fenceviewer of the municipality in which is situate the land of the person giving the notice : except that in case of a disagreement having occurred

"Fence
viewers."

within the meaning of clause 4 of said section 4, the said phrase "Fenceviewers" shall mean fenceviewers from either or both municipalities.

"In which the lands are situate."
"In which the land lies

(b) The expression "in which the lands are situate" and the expression "in which the land lies," shall mean in which are situate the lands of the owner or occupant so notified under said clause 1 of section 4. R. S. O., 1887, c. 219, s. 2.

Duties of owners of adjoining lands as to fences.

3. Owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, (a) or if there is no fence they shall so make, keep up and repair the same proportion which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands shall, upon their being occupied, (b) be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned, R. S. O., 1887, c. 219, s. 3.

(a) In an action for damages for trespass and encroachment, brought by the owner of one lot against the owner of the adjoining lot, the dispute between the parties turned mainly upon the position of a boundary fence. It was held by Mr. Justice Ferguson, affirming the decision of Mr. Chief Justice Armour, that a boundary fence under R. S. O., chap. 219 (now R. S. O., chap. 284), should be so placed that, when completed the vertical centre of the board wall, will coincide with the limit between the lands of the parties, each owner being bound to support it by appliances placed on his own land. In the same case Mr. Chancellor Boyd held that if the boundary line be between the posts on one side of the fence, and the scantling and boards on the other, so that there is practical equality in the amount of space occupied by the continuous boards, and if that method is sanctioned by local usage, neither owner has legal ground for complaint. *Cook v. Tate*, 260 R. 403.

(b) The Synod of the Church of England own a certain lot B, which is an unoccupied wood lot. A Mr. S. owns lot A (on one side of lot B) and a Mr. C. lot C (on the other side of lot B). Both Mr. S. and Mr. C. have built their share of the line fences between their respective lots and lot B. The cattle of Mr. S. go across lot B and enter the lands of Mr. C. to the annoyance and injury of the latter. The Synod cannot be compelled to build its share of the line fences until lot B becomes occupied.

A and B own adjoining lots. A's lot is part swamp covered with small timber, and useless, unoccupied, and unenclosed. A cannot be compelled to build any portion of the fence between the swampy part of his land and B's. This section makes it the duty of owners of occupied adjoining lands to maintain fences, and sub-sec. 1 of sec. 2 provides that the expression "occupied land" shall not include so much of a lot, parcel or farm as is unenclosed, although a part of such lot, parcel or farm is in actual use and occupation. The swamp being, as above stated, unenclosed, there is no liability to fence it.

4. In case of dispute between owners respecting such proposition, the following proceedings shall be adopted :

Disputes between owners, how to be settled

1. Either owner may notify (Form 1) the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three fenceviewers of the locality to arbitrate in the premises.

Notice to owner or occupant of adjoining land.

2. The owners so notifying shall also notify (Form 2) the fenceviewers, not less than one week before their services are required.

And to fenceviewers

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown up person residing thereat : or in case of the lands being untenanted, by leaving the notice with any agent of such owner.

What to contain.

4. The owners notified may, within the week, object to any or all of the fenceviewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the fenceviewers who are to arbitrate. R. S. O., 1887, c. 219, s. 4.

When Judge to appoint fenceviewers.

5. An occupant, not the owner of land notified in the manner above-mentioned, shall immediately notify the owner ; and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. R. S. O., 1887, c. 219, s. 5.

Duty and liability of occupants as to notifying owners

6. The fenceviewers shall examine the premises, and if required by either party they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation for the purpose as in Courts of law. (c) R. S. O., 1887, c. 219, s. 6.

Duties and powers of fence-viewer.

7.—(1) The fenceviewers shall make an award (Form 3) in writing signed by any two of them, respecting the matters so in dispute : which award shall specify the locality, quantity, description and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or in what proportion the same shall be paid.

Award of fence-viewers.

Contents

(2) In making the award, the fenceviewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally, the suitability of the fence ordered, to the wants of each party.

Character of fence.

Location of
fence.

(3) Where, from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the fenceviewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it seems to be most convenient; but such location shall not in any way affect the title to the land.

Employment
of surveyor.

(4) If necessary, the fenceviewers may employ an Ontario land surveyor, and have the locality described by metes and bounds. R. S. O., 1887, c. 219, s. 7.

Deposit of
award.

8.—The award shall be deposited in the office of the clerk of the council of the municipality in which the lands are situate, and shall be an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents; and notice of its being made shall be given to all parties interested. R. S. O., 1887, c. 219, s. 8.

Award may be
evidence.

Notification of
award

Award, how
enforced

9.—(1) The award may be enforced as follows: The person desiring to enforce it shall serve upon the owner or occupant of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of the notice, the person so desiring to enforce it may do the work which the award directs, and may immediately take proceedings to recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality: but the Judge of the Division Court may, on application of either party, extend the time for making the fence to such time as he may think just. R. S. O., 1887, c. 219, s. 9. 59 v. c. 65, s. 1.

Collection of
debt, and
costs as taxes.

(2) Instead of requiring execution to be issued upon such judgment the party entitled to enforce the judgment may obtain a certificate from the clerk of the division court of the amount due for debt and costs in respect of such judgment, and shall be entitled, upon lodging the same with the clerk of the municipality to have the amount so certified placed upon the collector's roll, and the same may be collected in the same manner as taxes are collected and shall, until so collected or otherwise paid, be a charge upon the lands liable for the payment thereof, and in such case execution shall not thereafter issue on such judgment. 59 V. c. 65, s. 1.

Award to be a
charge on
lands, if
registered.

10.—(1) The award shall constitute a lien and charge upon the lands respecting which it is made, when it is registered in the registry office of the registry division in which the lands are.

How regis-
tered.

(2) Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of *The Registry Act*. R. S. O., 1887, c. 219, s. 10.

Rev. Stat. c.
136.

11. Any person dissatisfied with the award made, may appeal therefrom to the Judge of the County Court of the county in which the lands are situate, and the proceedings on the appeal shall be as follows :

Appeals

1. The appellant shall serve upon the fenceviewers, and all parties interested, a notice in writing of his intention to appeal, within one week from the time he has been notified of the award : which notice may be served as other notices mentioned in this Act.

Notice of appeal.

2. The appellant shall also deliver a copy of the notice to the clerk of the Division Court of the division in which the land lies, and the clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said clerk as will be a sufficient indemnity against costs of the appeal.

To clerk.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the clerk, who shall notify the fenceviewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

Notice of hearing

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein and he may examine parties and witnesses on oath, and, if he so pleases, may inspect the premises : and may order payment of costs by either party, and fix the amount of such costs.

Powers of the Judge.

5. His decision shall be final : and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

Decision of Judge to be final.

6. The practice and proceedings on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the Division Court. R. S. O., 1887, c. 219, s. 12.

Procedure.

12.—(1) The fenceviewers shall be entitled to receive \$2 each for every day's work under this Act : Ontario land surveyors and witnesses shall be entitled to the same compensation as if they were subpoenaed in any Division Court. R. S. O., 1887, c. 219, s. 11.

Fees to fenceviewers, surveyors and witnesses.

(2) The municipality shall at the expiration of the time for appeal, or after appeal, as the case may be, pay to the fenceviewers their fees, and shall, unless the same be forthwith repaid by the person awarded or adjudged to pay the same, place the amount upon

the collector's roll as a charge against the person awarded or adjudged to pay the same, and the same shall thereafter be placed upon the collector's roll and may be collected in the same manner as ordinary municipal taxes. (d) 52 V. c. 48, s. 1: 58 V. c. 53, s. 1.

County
Judge's Ex-
penses.

13.—(1) In case the Judge inspects the premises he shall be entitled to be paid the actual expenses incurred by him, and he shall, in the order setting aside, altering or affirming the award, fix the amount of such expenses and the person by whom the same shall be paid. 53 V. c. 67, s. 1, 2.

Municipality
to pay ex-
penses and
collect
amount.

(2) The Judge shall be paid by the municipality the amount so fixed by him and the same shall be collected by the municipality in the same manner as is provided in respect to the fenceviewer's fees by section 12 of this Act. 53 V. c. 67, s. 3.

Registration of
agreements.

14.—Any agreement in writing (Form 4) between owners respecting such line fences, may be filed or registered and enforced as if it was an award of fenceviewers. R. S. O., 1887, c. 219, s. 13.

Owner of
division fence
which in part
encloses an-
other person's
land not to
remove same
except upon
notice, etc.

15.—(1) The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence—

- (a) Without giving at least six months previous notice of his intention to the owner or occupier of such adjacent enclosure :
- (b) Nor unless such last mentioned owner or occupier after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum determined as provided in section 7 of this Act :
- (c) Nor if such owner or occupier will pay to the owner of such fence or of any part thereof, such sum as the fenceviewers may award, to be paid therefor under section 7 of this Act.

Provisions of
this Act to
apply to cases
under this
section.

(2) The provisions of this Act relating to the mode of determining disputes between the owner of occupied adjoining lands, the manner of enforcing awards and appeals therefrom, and the schedules of forms attached hereto, and all other provision of this Act, so far as applicable, shall apply to proceedings under this section. R. S. O., 1887, c. 219, s. 14.

Provision,
when a tree is
thrown down

16.—(1) If any tree is thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the

property adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree.

across a line.
fence.

(2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree, from the party liable to pay it under this Act.

When injured
party may
remove tree.

(3) For the purpose of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing.

Entry to re-
move tree not
to be a tres-
pass, etc.

(4) All disputes arising between parties relative to this section, and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by three fenceviewers of the municipality, the decision of any two of whom shall be binding upon the parties. R. S. O., 1887, c. 219, s. 15.

Fence-viewers
to decide dis-
putes.

17.—The forms in the schedule hereto shall guide the parties, being varied according to circumstances. R. S. O., 1887, c. 219, s. 16.

Forms.

SCHEDULE OF FORMS.

FORM 1.

(Section 4.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. _____, Mr. _____, and Mr. _____, three fenceviewers of this locality, will attend on the _____ day of _____, 19____, at the hour of _____, to view and arbitrate upon the line-fence in dispute between our properties, being Lots (or parts of Lots) _____ and _____ in the _____ Concession of the Township of _____, in the County of _____.

Dated this _____ day of _____, 19____.

A. B.

Owner of

To C. D.
Owner of

R. S. O., 1887, c. 219, *Sched.* Form 1.

FORM 2.

(Section 4.)

NOTICE TO FENCEVIEWERS

Take notice, that I require you to attend at _____ on the _____ day of _____, A. D. 19____, at _____ o'clock, _____ m. to view and arbitrate on the line-fence between my property and that of Mr. _____, being lots (or parts of lots) Nos. _____ and _____ in the _____ Concession of the Township of _____, in the County of _____.

Dated this _____ day of _____, 19____.

A. B.,

Owner of

R. S. O., 1887, c. 219, *Sched.* Form 2.

FORM 3.

(Section 7.)

AWARD.

We, the fenceviewers of (*name of the locality*), having been nominated to view and arbitrate upon the line-fence between _____ of (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe properties*), and having examined the premises and duly acted according to *The Line Fences Act*, do award as follows: That part of the said line which commences at _____ and ends at _____ (*describe the points*) shall be fenced, and the fence maintained by the said _____, and that part thereof which commences at _____ and ends at _____ (*describe the points*) shall be fenced, and the fence maintained by the said _____. The fence shall be of the following description (*state the kind of fence, height, material, etc.,*) and shall cost at least _____ per rod. The work shall be commenced within _____ days, and completed within _____ days from this date, and the costs shall be paid by (*state by whom paid; if by both, in what proportion.*)

Dated this _____ day of _____ 19 _____.

(*Signatures of fenceviewers.*)

R. S. O., 1887, c. 219, *Sched.* Form 3.

FORM 4.

(Section 14.)

AGREEMENT.

We, _____ and _____, owners respectively of lots (or parts of lots) _____ and _____ in the _____ concession of the Township of _____ in the County of _____, do agree that the line-fence which divides our said properties shall be made and maintained by us as follows: (*follow the same form as award.*)

Dated this _____ day of _____ 19 _____.

(*Signatures of parties.*)

R. S. O., 1887, c. 219, *Sched.* Form 4.

The Municipal Act.

(R. S. O., 1897, c. 223.)

By-laws for

545. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say :

ENCLOSURE OF VACANT LOTS.

By the councils of cities, towns, and villages :

Vacant Lots

1. For causing vacant lots to be properly enclosed. 55 V. c. 42, s. 496 (4.)

FENCES.

By the councils of townships, cities, towns, and villages :

Fences

2 For settling the height and description of lawful fences, and for regulating and settling the height, description and manner of maintaining, keeping up and laying down fences along highways or any part or parts thereof, and for making compensation for the increased expenses, if any, to persons required so to maintain, keep up or lay down such last mentioned fences or any part thereof. 55 V. c. 42, s. 489 (17).

DIVISION FENCES.

Division fences and cost thereof.

3. For regulating the height, extent and description of lawful division fences ; and for determining how the cost thereof shall be apportioned ; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this act ; but until such by-laws are made, The Line Fences Act shall continue applicable to the municipality. 55 V. c. 42, s. 489 (18).

Provisions until by-laws made, Rev. Stat. cc. 284, 285.

BARBED WIRE FENCES.

Barbed wire fences.

4. For providing proper and sufficient protection against injury to persons or animals by fences constructed wholly or in part of barbed wire or any other material : and in towns and cities for wholly prohibiting the construction or erection along streets and public places, of fences made wholly or in part of barbed wire or any other barbed material. 55 V. c. 42, s. 489 (19).

SNOW FENCES.

5. For requiring the owners or occupiers of lands bordering upon any public highway, to take down, alter, or remove any fence or fences subject to the provisions of the Act respecting Snow Fences. 55 V. c. 42, s. 489 (20). Snow Fences.
Rev. Stat. c.
210.

WATER GATES.

6. For compelling the owners of lands, through which any open drain or watercourse passes, to erect and keep up water-gates where fences cross such drain or watercourse. 55 V. c. 42, s. 489 (21) part. Water courses.

BOUNDARIES OF MARSH LANDS.

By the councils of townships :

7. For declaring that in case of any lands, the boundary line, or any part of the boundary line whereof passes through a marsh or swamp, or any land covered with water, the same shall, so far as respects that part of such boundary line which so passes through a marsh or swamp land covered with water, be deemed to be wholly enclosed within the meaning of section 1 of the Act respecting Petty Trespasses, if posts are put up and maintained along such part of such line at distances which will permit of each being clearly visible from the adjoining post. 55 V. c. 42, s. 521 (13). Boundaries of
Marsh Lands

Rev. Stat., c.
120.

FENCES.

By the councils of counties :

8. For the exercise, in respect of fences along highways, or parts thereof which it is the duty of the council to maintain, of the powers conferred upon the council of townships, cities, towns and villages, by sub-sections 2 and 5 of this section. Fences.

(a) The council of every county shall be deemed and held to have had and possessed on, from, and since the first day of February, 1883, the powers conferred by the preceding clause 8, and also the power to assist, aid, and compensate, either by payment of money or otherwise, any owner or occupier of land bordering upon any public highway within the county, for the taking down, altering or removing any fence or fences, which in the opinion of the council would be likely to cause such an accumulation of snow or drift as would impede or obstruct travel on such highway or any part thereof, or for the erection and construction of some other description of fence approved of, or designated by the council, and subject to such terms and conditions in that behalf as by such council may be fixed and prescribed. 55 V. c. 42, s. 511 (3).

An Act Respecting Pounds.

(R. S. O., 1897, CHAP. 272.)

Disputes regarding demand for damages how determined.

20. If the owner, within forty eight hours after the delivery of such statements, as provided in section 6, (a) disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fenceviewers of the municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the poundkeeper. R. S. O., 1887, c. 215, s. 19.

Fence-viewers to view and appraise damage.

21. Such fenceviewers or any two of them shall, within twenty four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass : (b) and if it was a lawful fence, then they shall appraise the

(a) Section 6 above referred to is as follows :

6. The owner of any animal impounded shall, at any time be entitled to his animal, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the pound-keeper for all costs, damages, and poundage fees that may be established against him, but the person distraining and impounding the animal shall, at the time of the impounding deposit poundage fees, if such are demanded, and within twenty-four hours thereafter deliver to the pound-keeper duplicate statements in writing of his demands against the owner for damages (if any), not exceeding \$20, done by such animal, exclusive of such poundage fees, and shall also give his written agreement (with a security if required by the pound-keeper) in the form following, or in words to the same effect :

"I (or we, as the case may be) do hereby agree that I (or we) will pay to the owner of the (describing the animal) by me (A. B.) this day impounded, all costs to which the said owner may be put, in case the distress by me the said A. B. proves to be illegal, or in case the claim for damages now put in by me the said A. B. fails to be established."

(b) A municipal by-law, passed pursuant to the Municipal Act, enacted that certain descriptions of animals (naming them) and all four-footed animals known to be breachy, should not be allowed to run at large in the township ; and provided for fixing the height of fences. The plaintiff's cattle strayed from the highway into the lands of the defendant, Williams, whose fences were not of the height required by the by-law. He distrained them and they were impounded, defendant Steeper being the pound-keeper. In an action of replevin : Held, that as the by-law did not affirmatively authorize these

damages committed, (c) and, within twenty-four hours after having made the view, shall deliver to the poundkeeper a written statement signed by at least two of them of their appraisal and of their lawful fees and charges. R. S. O., 1887, c. 215 s. 20.

22. If the fenceviewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the poundkeeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the poundkeeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices. R. S. O., 1887, c. 215, s. 21.

Proceedings where fenceviewers decide against the legality of a fence.

24. Any fenceviewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of \$2. to be recovered for the use of the municipality, by summary proceedings before a Justice of the Peace upon the complaint of the party aggrieved or the treasurer of the municipality. R. S. O., 1887, c. 215, s. 23.

Penalty for neglect of duty by fenceviewers

cattle to run at large by negatively providing that certain other classes of animals should not be allowed to do so, the plaintiff was liable at common law, and under R. S. O., 1877, ch. 195 (now R. S. O. 1897, ch. 284) for the damage done, irrespective of any question as to the height of the defendants' fences. *Crowe v. Steeper*, 46 Q. B. 87.

(c) A master is liable for the acts of his farm servant in impounding cattle in his absence, the servant acting within the general scope of his authority. *Spafford v. Hubble*, E. T. 7, Will. IV.

A by-law enacting that certain animals shall not run at large does not impliedly allow other animals not named to do so, contrary to the common law. *Jack v. the Ontario, Simcoe & Huron Railway Co.* 14 Q. B. 328.

Animals cannot be impounded unless they are running at large, within the strict construction of the statute. It has been held that sheep-grazing on private, unenclosed property in charge of a boy are not running at large. *Ibbottson v. Henry*, 8 O. R. 625, Q. B. D.

Cattle are at large within the meaning of the Act when the herdsman, in following one of the herd which has strayed, goes so far away from the main body that he is unable to reach them in time to prevent their loitering or stopping on the highway at its intersection with a railway when he sees a train approaching. The question as to whether cattle are at large or not need not, under all circumstances, be submitted to the jury. It is for the judge in that case, as in others, to say whether there is any evidence for the jury that the cattle were in charge within the meaning of the Act. *Thompson vs. Grand Trunk Railway Co.* 22 A. R. 453.

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