The Bloomfield Cimes.

HOUSE, FARM AND GARDEN .

The Law of Division Fences.

The fourth annual report of the Pennsylvania Board of Agriculture will contain a valuable article on "Farm Fences and Ways Over the Farm," an advance copy of which has been received through the courtesy of Thomas J. Edge, secretary of the State Board. It goes into the legal aspect of the case very thoroughly, and gives the former and existing legislation on this subject. There is a good deal of confusion in the minds of the average agriculturalists as to his individual rights and his duties towards his neighbors.

Partition fences are expressly provided for by a statute passed March 11, 1842, which provides "that when any persons shall improve lands adjacent to each other, or when any person shall enclose any lands adjoining anothr's land already fenced in, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, so far as it enclosed on both sides, shall be equally borne and maintained by both parties."

The same act make the auditors of the township, fence viewers, who, upon due notice shall examine such fences and state in writing whether, in their opinion, the fence of one already built is sufficient, and, if not, what portion of the expense of building a new one or repairing the old one shall be borne by the several parties. The opinion of the viewers is to be delivered in writing and if after ten days either of the parties refuse to comply with its provisions the aggrieved party has the right to build or repair it, and bring suit against the delinquent before any justice of the peace or alderman for the labor and material. If, therefore, one farmer does not keep his part of the line fence in good order, he cannot recover damages if his neighbor's cattle trespass, as he suffers through his own neglect.

When, however, the cattle of one farmer escape through the defective fence of his neighbor and trespass upon the lands of a third party, the latter can recover against the first, even tho' the fences of the first are good, as at common law a man is bound to keep his cattle on his own land. The only recourse in such a case is against the neighbor through whose negligence the damage occurred. If stock is turned into a public highway, or if through the neglect of a passer-by bars are let down and the cattle escape into the road and wander upon the lands of others, the owner is responsible for the damage they may cause. When, however, cattle are driven along a public road and they run upon the lands of another without any fault of the owner, and the latter drives them off as soon as he can, he is not liable for damages, because every one has a right to transact a legitimate business on the highways.

Under the provisions of the act of 1700, still in force, it has been held that unless cultivated lands are properly enclosed the owner cannot maintain trespass for damages. The owner of improved lands must protect them against the roving cattle of his neighbors, otherwise he has no legal recourse. In this State fences are required to be not less

State fences are required to be not less than five feet high, of rail or logs, and sufficiently closed at the bottom. To recover damages it is only necessary to have the testimony of practical men that the fence is sufficient.

When the owners of adjoining properties cannot agree about erecting division fences they are mutually liable for the trespass of their cattle. Where a division fence has stood for twenty one years it can only be removed by the consent of the joint owners, and the consent of the joint owners, and neither party strange to say, has any ownership in the material of the part erected by himself. One of the owners of unimproved land cannot ask the other to contribute to the cost of putting up a division fence. The obli-gation to erect division fences exists only where the lands of both parties is improved, as it would be unjust to the improved, as it would be unjust to the owner of unimproved land to compel him to assist in protecting that of his neighbor while he derived no benefit from the transaction himself. No man however, is compelled by law to build a fence on the dividing line between himself and his neighbor. He can, if he prefers, build a fence of his own but he must build it entirely on his own land must build it entirely on his own land must retain and keep it in repair, and if his cattle breaks through and trespass on the land of another he is liable for damages. Where division lines pass through wooded lands, neither owner is obliged to put up a fence.

Railroad companies are not required fence their roads, neither are they liable to the owners for stray cattle that may be killed. Even though cattle esmay be killed. Even though cattle escape from a properly enclosed lot and are killed, the railroads are not liable. Even where a railroad company in buying the right of way obligates itself to fence in its tracks through the seller's lands, but neglects to do so, when the stock of the latter strays upon the track and is killed, the owner cannot recover for the injury in any action of tork for the injury in any action of tort.— These are the important laws now in force governing this question of division fences, which all farmers will do well to bear in mind.—Lancaster New Era.



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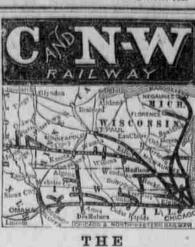
SARAH RICE, Executive. January 18, 1881 - 61



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