The Court Archive:
Fencing

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The very first law passed by the Illinois General Assembly in 1819 was to adopt the English common law system. The purpose of this reception statute was to provide a body of laws and decisions to the new state. The Northwest Territory adopted a similar reception statute in 1785, and each of the new states born from the territory followed suit. As Illinois grew in age, it began to create its own body of laws and judicial decisions that resulted in less reliance on the English common law. One of the better examples involves fencing and the 1848 Illinois Supreme Court case, *Seeley v. Peters*, 10 Ill. 130 (1848).

A predominately agricultural society in its early history, Illinois had plenty of open land, and one judicial opinion supported those prairie influences. In May 1847, William Peters sued Samuel Seeley in an action of trespass requesting $20 in damages because Seeley's hogs had broken into Peters's land and damaged his wheat. Seeley argued that Peters's fences were in poor condition. The jury found Seeley not guilty, and Peters appealed to the Peoria County Circuit Court. The jury found for Peters and awarded $4.10 in damages. Seeley appealed to the Illinois Supreme Court on the grounds that Peters's jury instruction was improper. It instructed the jury that the landowner (Peters) was not required to maintain adequate fencing against straying livestock, but that the livestock owner (Seeley) must fence to restrain his animals. This instruction was supported by the English common law.

The Illinois Supreme Court reversed and remanded the circuit court judgment, providing a victory for the hogs's owner Seeley. Justice Lyman Trumbull stated that the English common law requiring livestock owners to confine their animals with fences had not been adopted in Illinois. He observed that the English rule worked well in a densely populated area like England but that it was impractical in Illinois, where conditions favored open-range pasturing of livestock. Justice John Caton, who had presided in the circuit court, dissented in a twenty-page opinion. Caton's dissent emphasized that the legislature, not the courts, was responsible for determining which parts of the English common law were applicable to the state. Caton reasoned that a "law so important as this, affecting the whole agricultural interest of the State, should only be changed by the positive action of the legislature, clearly manifesting such intention, and not by a doubtful supposition."

Subsequent Supreme Court cases affirmed the *Seeley* ruling until 1874, when the General Assembly passed the first Animals Running Act, which prevented animals from running free by penalizing livestock owners for not fencing in their animals. The 1893 Supreme Court case of *Bulpit v. Matthews*, 145 Ill. 345 (1893) affirmed this Act and stated that the conditions of 1847 and *Seeley* were no longer applicable and re-established the common law principle of fencing in livestock.

This principle was most recently affirmed by the Illinois Supreme Court in *Raab v. Frank*, 2019 IL 124621.