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by law of the officer in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office, to which he shall be so appointed; until such vacancy shall be regularly supplied; as provided by law.

CHAPTER 11.

OF FENCES AND FENCE VIEWERS; OF POUNDS AND THE IMPOUNDING OF CATTLE.

SECTION

1. What to be deemed a legal fence.
2. Partition fences.
3. Neglect to maintain partition fence.
4. Double value of repairs may be recovered of delinquent.
5. Fence viewers to determine controversies relative to partition fences.
6. Other party may erect fence in case of neglect, and recover double value.
7. Divisions of fences recorded, &c., to be valid.
8. When either party erects more than his share, the other party to pay for the same.
9. Partition fences to be kept in good repair.
10. How partition fences made when lands divided by river, pond, &c.
11. How fence viewers to decide in such cases; if either party neglect to build fence, the other may build it.

SECTION

12. Divisions of partition fence between persons occupying lands in common.
13. If party neglect to make his part of fence, party may make same and recover double the expense.
14. When one party wishes to open inclosure, the other party may purchase.
15. The owner of uninclosed land to pay for half of division fences.
16. Fence viewers may be taken from either county in certain cases.
17. Partition fences running into water.
18. Owner to support division fences.
19. Owner may remove partition fence on six months' notice.
20. Supervisors of roads to be fence viewers.
21. Penalty for neglect of fence viewers to act.
22. Fees of fence viewers, and how recovered.
23. County may maintain pounds.
24. Penalty for injuring pound.

SEC. 1. All fences four and a half feet high and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

What to be deemed a legal fence.

SEC. 2. The respective occupants of lands, inclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same.

Partition fences.

SEC. 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the county, who after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land; and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

Neglect to maintain partition fence.

SEC. 4. When any deficient fence, built up or repaired by any com-

Double value of repairs may be recovered of delinquent.

plainant as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers, and the value of such repairing, or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand either of the occupant or owner of the land, where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due for one month after demand thereof be made, the complainant may recover the same, with interest at one per cent. a month, in a civil action.

Fence viewers to determine controversies relative to partition fences.

SEC. 5. When any controversy shall arise about the rights of the respective occupants, in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the county where the lands lie, who after due notice to each party, may, in writing assign to each, his share thereof, and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment being recorded in the register of deeds office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence.

Other party may erect fence in case of neglect, and recover double value.

SEC. 6. In case any party shall refuse or neglect to erect or maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner before provided; and he shall be entitled to double the value thereof ascertained in the manner aforesaid, and to be recovered in like manner.

Divisions of fences recorded, &c., to be valid.

SEC. 7. All divisions of fences made by fence viewers, according to the provisions of this chapter, or which shall be made by owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the register of deeds office, shall be good and valid against the parties thereto, and their heirs and assigns.

When either party erects more than his share, the other party to pay for the same.

SEC. 8. When in any controversy that may arise between occupants of adjoining lands, as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him, to repair and maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter.

Partition fences to be kept in good repair.

SEC. 9. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise mutually agree.

How partition fences made where lands divided by river, pond, &c.

SEC. 10. When lands of different persons which are required to be fenced, are bounded upon or divided by any river, brook, pond or creek, which of itself, in the judgment of the fence viewers, is not a sufficient fence, and it is in their opinion impracticable without unreasonable expense for the partition fence to be made in such waters, in the place where the true boundary line is; if in such case the occupant of the land on one side, shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence on the one side or the other, or if such persons shall disagree respecting the same, then two or more fence viewers of the county in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek.

How fence viewers to decide in such cases.

SEC. 11. If such fence viewers shall determine such river, brook, pond or creek, in the preceding section mentioned, not to answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, they

shall, after giving notice to the parties, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and shall reduce such determination to writing and sign the same; and if either party shall refuse or neglect to make or maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner.

If either party neglect to build fence, the other may build it.

SEC. 12. When any lands belonging to different persons in severalty shall have been occupied in common without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, or demand to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the lines when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same county, in the manner provided in this chapter.

Divisions of partition fence between persons occupying lands in common.

SEC. 13. Upon the division and assignment as provided in the preceding section, the fence viewers may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year, and if either party shall not make his part of the fence, within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover therefor, double the ascertained expense thereof, together with the fees of the fence viewers in the manner provided in this chapter.

If party neglect to make his part of fence, party may make same and recover double the expense.

SEC. 14. When one party shall cease to improve his land, or shall open his inclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure, will within two months after the same shall be ascertained, pay therefor, such sum as two or more fence viewers shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties.

When one party wishes to open inclosure, the other party may purchase.

SEC. 15. When any uninclosed grounds shall be afterwards inclosed, the owner or occupant thereof, shall pay one-half of each partition fence, standing upon the line between his land and the inclosure of any other owner or occupant, and the value thereof shall be ascertained by two or more fence viewers of the county, in writing under their hands, in case the parties do not agree; and if such owner or occupant shall neglect or refuse for sixty days after the value has been so ascertained, and demand made, to pay for one-half of such partition fence, the proprietor of such fence may maintain a civil action, for such value, and the cost of ascertaining the same.

The owner of uninclosed land to pay for half of division fences.

SEC. 16. In all cases where the line upon which a partition fence is to be made, or to be divided is the boundary line between counties, or partly in one county and partly in another, a fence viewer shall be taken from each county.

Fence viewers may be taken from either county in certain cases.

SEC. 17. When a partition fence running into the water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make, or maintain the share belonging to him, similar proceedings shall be had as in case of other fences, and with the like effect.

Partition fences running into water.

SEC. 18. In all cases where the line upon which a partition fence to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between the owners of such lands, recorded in the office of the register of deeds of the county where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences agreeably to such divisions.

Owners to support division fences.

SEC. 19. If any person shall determine not to improve any of his

Owner may remove partition fence on six months notice.

lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months notice of such determination, to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence, during the time his lands shall be open and unimproved; and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining inclosure will not pay therefor, as provided in the fourteenth section of this chapter.

FENCE VIEWERS.

Supervisors of roads to be fence viewers.

SEC. 20. The supervisors of roads in the several counties of this territory, shall be fence viewers in their respective counties.

Penalty for neglect of fence viewers to act.

SEC. 21. Any fence viewer who shall, when requested unreasonably, neglect to view any fence or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall also be liable to the party injured, for all damages consequent upon such neglect.

Fees of fence viewers, and how recovered.

SEC. 22. Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service, may recover in a civil action double the amount of such fees.

POUNDS AND IMPOUNDING CATTLE.

County may maintain pounds.

SEC. 23. Each county may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle, may be restrained and kept from going at large, contrary to law, or to any by-law of such county.

Penalty for injuring pound.

SEC. 24. If any person shall wilfully injure any pound maintained by such county, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail, not exceeding ninety days, at the discretion of the court.

CHAPTER 12.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

SECTION

1. What property liable to taxation.
2. Definition of real property.
3. Definition of personal property.
4. What property exempt from taxation.
5. Where lands to be assessed.

SECTION

6. Unoccupied lands may be assessed as such in certain cases.
7. Real estate of corporations, where assessed.
8. Undivided real estate of deceased persons to be assessed to heirs, &c., without name.