

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING
THE GENERAL STATUTES OF 1866
As amended by subsequent Legislation to the close of the Session of 1873
TOGETHER WITH
ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY
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CHICAGO
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1873

CHAPTER XXVI.

PARTITION FENCES.*

(This Chapter is Chapter XVIII. of the Statutes of 1866.)

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SECTION 1. *Legal fence defined.*—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, or any such fences as the parties interested may agree upon, shall be deemed legal and sufficient fences.

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

19 Wis. 49.

SEC. 3. *Penalty for neglect.*—In case any party neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the town supervisors or a majority of them, who after due notice to each party, shall proceed to examine the same; and if they 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 judge reasonable; and if such fence is not repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

SEC. 4. *Value of building or repairing partition fence recoverable, when.*—When any deficient fence, built up or repaired by any complainant as provided in the preceding section, is adjudged sufficient by two or more of said supervisors, and the value of such repairing or building up, together with their fees, is ascertained by a

* Vide 3 Wend. 142; 11 Wend. 46. Party removing partition fence liable for damage done by his cattle escaping afterwards.

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 is made, the complainant may recover the same, with interest at one per cent. a month, in a civil action.

SEC. 5. *Controversy, how settled.*—When any controversy arises about the rights of respective occupants in partition fences, or their obligation to maintain the same, either party may apply to a majority of the supervisors of the town 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 registry of deeds, 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.

SEC. 6. *Party neglecting to maintain fence, how liable.*—In case any party refuses or neglects to erect or maintain the part of any fence assigned to him as aforesaid, 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.

SEC. 7. *Division of fence may be agreed upon.*—All divisions of fences made by town supervisors 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 registry of deeds, shall be good and valid against the parties thereto, and their heirs and assigns.

SEC. 8. *Party voluntarily erecting whole fence may recover, when.*—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 supervisors 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.

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

SEC. 10. *Proceedings when land is bounded by rivers.*—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 supervisors, 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 refuses or neglects 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 disagree respecting the same, then two or more supervisors of the town in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond, or creek.

SEC. 11. *Supervisors to give notice, and render decision.*—If such supervisors

determine that such river, brook, pond, or creek will not 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, and shall reduce such determination to writing and sign the same; and if either party refuses or neglects to make or maintain his part of the fence, according to the determination of said supervisors, 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.

SEC. 12. *Lands occupied in common, how fenced.*—When any lands belonging to different persons in severalty have been occupied in common without a partition fence between them, and one of the occupants is desirous to occupy his part in severalty, and the other occupant refuses or neglects on 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 a majority of the supervisors of the same town, in the manner provided in this chapter.

SEC. 13. *Supervisors to assign time for making fence.*—Upon the division and assignment as provided in the preceding section, the supervisors 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 supervisors, in the manner provided in this chapter.

SEC. 14. *Partition fence, when removable.*—When one party ceases to improve his land, or opens 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 is ascertained, pay therefor such sum as a majority of the supervisors shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties.

SEC. 15. *Rule in case of uninclosed lands afterward fenced.*—When any uninclosed grounds are 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 a majority of the supervisors of the town in writing under their hands, in case the parties do not agree; and if such owner or occupant neglects or refuses 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 each fence may maintain a civil action for such value and the cost of ascertaining the same.

SEC. 16. *Supervisors, how selected in certain cases.*—In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between towns, or partly in one town and partly in another, a supervisor shall be taken from each town.

SEC. 17. *Rule when partition fence runs into the water.*—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

refuses or neglects to make or maintain the share belonging to him, similar proceedings shall be had as in case of other fences, and with like effect.

SEC. 18. *Effect of record of division.*—In all cases where the line upon which a partition fence, to be built between unimproved lands, has been divided by the supervisors, 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 for ever, shall erect and support said fences agreeably to such divisions.

SEC. 19. *Effect of notice of determination not to improve lands.*—If any person determines not to improve any of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and gives 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 are 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.

SEC. 20. *Supervisor neglecting to perform duty—penalty.*—Any supervisor 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 be liable to the party injured for all damages consequent upon such neglect.

SEC. 21. *Fees of supervisors.*—Each supervisor shall be paid by the person employing him, at the rate of one dollar a day for the time he is so employed; and if such person neglects to pay the same within thirty days after the service is performed, each supervisor having performed any such service may recover in a civil action double the amount of such fees.

SEC. 22. *County commissioners to be fence viewers, when.*—In all counties not divided into towns, the county commissioners shall act as fence viewers, and be governed by the provisions of this chapter.

SEC. 23 (ADDED BY ACT OF MARCH 7, 1873). *Goodhue county excepted from effect of chapter.*—The provisions of this chapter shall not apply to the county of Goodhue, but said county shall be and hereby is excepted from the operation and effect thereof: *provided*, that the provisions of said chapter shall apply to the respective occupants of lands inclosed with fences, for the purpose of pasturage.

S. L. 1873, 221. Sec. 2 of said act provides that it shall go into effect from 1st day of April 1874.