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protested for non-acceptance or non-payment, the party liable for the contents thereof, on due notice and demand, shall pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents, together with the interest on such contents, computed from the date of protest. The amount of such contents, damages, and interest shall be in full of all damages, charges, and expenses. (2234)

2744. Rate of damage on interstate bills—Whenever any bill of exchange drawn upon any person out of the state, but within the United States, is duly presented for acceptance or payment, and is protested for non-acceptance or non-payment, the drawer or indorser thereof, after due notice of such dishonor, shall pay said bill according to its tenor, with interest and five per cent. damages, together with charges of protest. (2235)

2745. Notes payable to maker or order—Promissory notes made payable to the order of the maker, or of a fictitious person, if negotiated by the maker, shall have the same effect and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer. (2236)
69-46, 71+822.

2746. No days of grace—All promissory notes, bills of exchange, and other negotiable instruments, except bills payable at sight, shall be payable at the time therein specified without grace. ('03 c. 261 s. 1)

See 1905 c. 345

2747. Instrument obtained by fraud—No person, nor the heirs or personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury. (2239)

51-480, 53+766; 57-391, 59+486; 63-525, 65+952; 88-401, 93+307; 89-473, 477, 95+308.

2747
102-M - 414
104-M - 430
113-NW 1011

CHAPTER 52

PARTITION FENCES

2748. Fence viewers—Supervisors in their respective towns, aldermen of cities in their respective wards, and village trustees in their respective villages shall be fence viewers. (929)

2749. Legal fences—All fences not less than 54 inches high, consisting of boards firmly fastened to well set posts not more than 9 feet apart, the space between the ground and bottom board being not more than 20 inches, and each space between the boards not more than 9 inches; all fences consisting of not less than one smooth and two barbed wires, with at least 40 barbs to the rod, the wires to be firmly fastened to posts not more than 33 feet apart, with two stays between the posts, the top wire to be not more than 52 nor less than 48 inches high, and the bottom wire not less than 16 nor more than 20 inches from the ground; or four smooth wires, the top wire to be not more than 54 nor less than 48 inches high, and the bottom one not less than 16 nor more than 20 inches from the ground, with like posts and stays; and all fences consisting of rails, timbers, wires, boards, stone walls, or any combination thereof, or of streams, lakes, ditches, or hedges, which shall be considered by the fence

viewers as equivalent to any of the fences herein described—shall be deemed legal and sufficient fences. (2054, 2055)

29-336, 340, 13+168; 30-1, 13+906; 30-489, 16+271; 32-88, 19+392; 80-508, 83+454; 104+827. See §§ 1997, 1998.

2750. Occupants to maintain—The respective occupants of land inclosed by 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. (2056)

15-350, 283.

2751. Neglect—Complainant may repair—In case any person neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the fence viewers, who, after notice to the parties, shall examine such fence, and, if they determine that it is insufficient, they shall notify the delinquent occupant in writing to that effect, and direct him to repair or rebuild the fence within such time as they deem reasonable; and if the delinquent fails to comply with such direction, the complainant may repair or rebuild such fence. (2057)

65-310, 315, 67+997.

2752. Value of repairs, etc., recoverable—When any such deficient fence, repaired or rebuilt by the complainant under the provisions of § 2751, is adjudged sufficient by the fence viewers, they, after giving the occupants reasonable notice and an opportunity to be heard, shall ascertain the expense thereof, and give to the complainant repairing or rebuilding the same a certificate of their decision, under their hands, and of the amount of such expense, together with their fees; and thereupon such complainant may demand, either of the owner or occupant of the land where the fence was deficient, double such ascertained expense, together with such fees; and, in case of failure to pay the sum so due within one month after demand, the complainant may recover the same, with interest, in a civil action. (2058)

42-363, 44+255; 65-310, 67+997.

2753. Controversy, how settled—If a controversy arise in regard to the rights in partition fences of the respective occupants, or their obligation to maintain the same, either party may apply to the fence viewers, who, after due notice to the parties, may assign to each his share in such fence, and direct the time within which the same shall be erected or repaired. Such assignment may be filed for record with the register of deeds, and thereupon shall be binding upon the parties and upon all succeeding occupants of the lands. (2059)

30-1, 13+906; 42-363, 44+255.

2754. Failure to maintain—In case any party fails to erect or maintain the part of any fence so assigned to him, the aggrieved party may erect and maintain the same, and shall be entitled to double the value thereof, to be ascertained and recovered as provided in the case of repairs. (2060)

30-1, 13+906.

2755. Division of fences—All divisions of fences made by fence viewers under this chapter, or which shall be made by owners of adjoining lands in writing, witnessed by two witnesses, signed and acknowledged by the parties, and filed for record with the register of deeds, shall be valid against the parties thereto and their heirs and assigns. (2061)

2756. Party erecting more than share—When, in any controversy 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 has voluntarily erected, or otherwise become the proprietor of more than his just share of such fence, before a complaint was made, the other occupant shall pay for so much thereof as may be assigned to him to repair and maintain, the value of which shall be ascertained and recovered in the manner in this chapter provided. (2062)

2757. Lands bounded by stream, etc.—When lands of different persons which are required to be fenced are bounded upon or divided by a stream or

pond, which in the judgment of the fence viewers is not in itself a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for a partition fence to be made on such waters in the place where the true boundary line is, if the occupant on either side refuses or neglects to join with the occupant on the other in making a partition fence on one side or the other, or if such occupants disagree respecting the same, the fence viewers, on application of either party, shall forthwith view such stream or pond, and, after giving due notice to the parties, shall determine, in writing, on which side thereof the fence shall be erected and maintained, or whether partly on one side and partly on the other. If either party fails to build or maintain his part of such fence according to such determination, it may be built and maintained by the other party, and the delinquent party shall be subject to all the charges and costs as in other cases in this chapter provided, to be recovered in like manner. (2064, 2065)

2758. Lands occupied in common—Whenever one of the occupants of inclosed lands belonging to different persons in severalty, which have been occupied by them in common without a partition fence, desires to occupy his part in severalty, and the other party refuses or neglects to divide the land with him or to build a fence on his part of the land when divided, the party desiring it may have the same divided and assigned by the fence viewers in the manner provided in this chapter. (2066)

2759. Viewers to fix time for building—Upon such division and assignment being made, the fence viewers may in writing, under their hands, assign a reasonable time for building the fence, having regard to the season of the year, and if either party fails to build his part thereof within the time so assigned the other party may, after completing his own part thereof, build the other part, and recover therefor double the expense thereof, together with the fees of the fence viewers, to be ascertained as provided in this chapter. (2067)

2760. Fences, when not removable—A party opening his inclosure, or ceasing to improve his land, shall not take away any partition fence belonging to him if the owner or occupant of the adjoining inclosure, within two months after the same has been ascertained, shall pay therefor such sum as the fence viewers, in writing under their hands, determine to be the value thereof. (2068)

2761. Notice of determination not to improve lands—Any person who determines not to improve his lands adjoining any partition fence that has been divided according to the provisions of this chapter may give six months' written notice of such determination to all adjoining occupants, and shall not thereafter be required to maintain any part of such fence during the time his lands are open and unimproved, and may remove his portion of such fence unless the owner or occupant of the adjoining inclosure will pay therefor as provided in § 2760. (2073)

2762. Rule when lands are first inclosed—When uninclosed lands are afterwards inclosed, the owner or occupant thereof shall pay one-half of the value of each partition fence extending upon the line between his land and the inclosure of any other owner or occupant. In case the parties do not agree, such value shall be ascertained by the fence viewers and stated in writing under their hands, and, if such owner or occupant fails to make such payment within sixty days after the value is so ascertained and a demand made, the owner of such fence may recover such value and the cost of ascertaining the same in a civil action. (2069)

24-307.

2763. Viewers when fence on town line—Where a partition fence is to be built on a line between towns, or partly in one town and partly in another, a supervisor taken from each town shall be the fence viewers thereof. (2070)

2764. Where fence runs into water—Unless otherwise agreed by the parties partition fences running into water shall be built in equal shares, and, in case either party fails to build or maintain the share belonging to him, similar

proceedings shall be had as in the case of other fences and with like effect. (2071)

2765. Effect of record of division—Where the line upon which a partition fence is to be built between unimproved lands has been divided by the fence viewers, or by the recorded agreement of the parties, the several owners thereof, and their heirs and assigns forever, shall erect and maintain such fences agreeably to such divisions. (2072)

2766. Neglect to perform duty—Penalty—Any fence viewer who shall unreasonably neglect to perform any duty required by this chapter shall forfeit five dollars to the town, and shall also be liable to the party injured for all damages consequent upon such neglect. (2074)

2767. Compensation of viewers—Each fence viewer shall be paid for his services by the person employing him at the rate of one dollar for each day's employment. If such compensation be not paid within thirty days after the service is performed, he may recover double the amount thereof in a civil action. (2075)

2768. Viewers in counties not divided—In counties not divided into towns, the county commissioners shall be fence viewers, and shall be governed by the provisions of this chapter. (2076)

CHAPTER 53

ESTRAYS AND BEASTS DOING DAMAGE

ESTRAYS

2769. Who may take up—No person shall take up any estray, except horses or mules, unless such estray shall be found on lands owned or occupied by him in the town wherein he resides. (2080)

31-451, 18+315.

2770. Finder to give notice—Penalty—Every finder of an estray, within seven days thereafter, shall notify the owner thereof, if to him known, and request him to pay all reasonable charges and take such estray away; but, if such owner be to him unknown, he shall within ten days file a notice with the town clerk. Such clerk shall transmit a copy thereof to the register of deeds, who shall record the same in a book designated "Estray Book." If the estray is of less value than five dollars, such finder shall give posted notice thereof in said town, but, if the value exceeds five dollars, he shall give four weeks' published notice thereof. Such notice shall briefly describe the estray, giving its marks, natural and artificial, as near as practicable, naming the residence of the finder, and specifying the town, section, and time when taken up. For failure to give such notice, the finder shall be liable to the owner of such estray in double the amount of damages sustained by him thereby. (2081, 2082)

2771. Appraisalment—Every finder of an estray of the value of ten dollars or more at the time of taking up shall also within one month thereafter cause the same to be appraised by a justice of the peace of such town, and the certificate of such appraisalment shall be filed with the town clerk. The finder shall pay the justice fifty cents for such certificate, and six cents per mile for each mile necessarily traveled to make the same. (2083)

2772. Charges for keeping—The person entitled to the possession of any such estray at any time within one year after such notice is filed with the town clerk may have the same restored to him upon proving his right thereto, and paying all lawful charges that occur in relation to the same. If such person and the finder cannot agree as to the amount of such charges, or upon what