

AGRICULTURAL: INCLOSING FIELDS: PARTITION FENCES.

AN ACT to revise and consolidate the laws in relation to Inclosures and Fences, Partition and Hedge, being chapter eighty of the General Statutes, entitled "Of Inclosing Fields and Salt Petre Works," and an act entitled "An act concerning partition fences, and to encourage the growing of hedges," approved March 4, 1869.

SECTION	SECTION
1. Fields and inclosures; how inclosed.	9. If parties cannot agree as to repairs, viewers may designate the portion to be kept in repair; duties of viewers.
2. What constitutes a sufficient fence.	10. Compensation of viewers, and to be taxed as costs.
3. Owners of animals trespassing liable for damages; court of jurisdiction; judgment a lien on animals.	11. Liable in double damages; when.
4. View of property when trespasses occur.	12. No division fence; not to be removed; when.
5. Double damages in case of wounding or killing animals.	13. Persons aggrieved; how to proceed.
6. Partition fence.	14. Petition to state grounds of objection; circuit court to hear cause.
7. Case of failure to agree as to value of partition fence.	15. Sections of General Statute repealed.
8. Recovery of value in case of neglect or refusal to pay.	

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. All fields and inclosures shall be inclosed by hedge, or with a fence sufficiently close, composed of posts and rails, posts and pailings, posts and planks, posts and wires, palisades, or rails alone laid up in the manner commonly called a worm fence, or of turf with ditches on each side, or of stone or brick.

SEC. 2. All hedges shall be at least four feet high, and all fences composed of posts and rails, posts and pailings, posts and wire, posts and planks or palisades, shall be at least four and a half feet high; those composed of turf shall be at least four feet high, and with ditches on either side at least three feet wide at the top, and three feet deep; and what is commonly called a worm-fence, shall be at least five feet high to the top of the rider, or if not ridered, shall be five feet to the top of the top rail or pole, and shall be locked with strong rails, poles or stakes; those composed of stone or brick shall be at least four and a half feet high.

SEC. 3. If any horses, cattle, or other stock shall break into any inclosure, (the hedge or fence being of the height and sufficiency aforesaid), or if any hog, shoat or pig shall break into the same, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages sustained, to be recovered with costs before a justice of the peace, or in any court of competent jurisdiction; and for any subsequent trespass, the party injured may put up said animal or animals, and feed and take good care of the same, and immediately notify the owner, who shall pay to the taker up the amount of the damages sustained, and such compensation as shall be reasonable for the taking up and keeping of such animals, before he shall be allowed to remove the same; and if the taker up and owner cannot agree upon the amount of the damages and compensation, either party may make complaint to a justice of the peace of the township, setting forth the fact of such disagreement, and the justice shall be possessed of the cause and shall issue a summons to the adverse party, and proceed with the cause as in other

civil cases. If the owner recover, he shall recover his costs, and any damages he may have sustained, and the justice shall issue an order requiring the taker-up to deliver to him the animals. If the taker up recover, the judgment shall be a lien upon the animals taken up, and in addition to a general judgment and execution, he shall have a special execution against such animals to pay the judgment rendered, and costs.

SEC. 4. Upon complaint of the party injured to any justice of the peace of the township, such justice shall, without delay, issue an order to three disinterested householders of the neighborhood, not of kin to either party, reciting the complaint, and requiring them to view the hedge or fence where the trespass is complained of, and take memoranda of the same, and appear before the justice on the day set for trial; and their evidence shall determine the lawfulness of such fence.

SEC. 5. If any person damaged for want of such sufficient hedge or fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals in this chapter mentioned, such person shall satisfy the owner in double damages with costs.

SEC. 6. Whenever the fence of any owner of real estate now erected or constructed, or which shall hereafter be erected or constructed, (the same being a lawful fence, as defined by sections one (1) and two (2) of this act), serves to inclose the land of another, or which shall become a part of the fence inclosing the lands of another, on demand made by the person owning such fence, such other person shall pay the owner one-half the value of so much thereof as serves to inclose his land, and upon such payment shall own an undivided half of such fence: *Provided*, The person thus benefited shall have the option to build (within eight months from date of such demand) a lawful fence half the distance along the line covered by the above mentioned fence. The demand shall be made in writing and served on the party interested, his agent or attorney, or left with some member of the family over fourteen years of age, at his usual place of abode; if the party notified fails to comply with the demand within the specified time, the party making the demand may, at his option, proceed to enforce the collection of one-half the value of such fence, as in this act provided, or remove his fence without any other or further notice.

SEC. 7. If the parties interested shall fail to agree as to the value of one-half of such fence, the owner of the fence may apply to a justice of the peace of the township, who shall, without delay, issue an order to three disinterested householders of the township, not of kin to either party, reciting the complaint, and requiring them to view the fence, estimate the value thereof, and make return under oath to the justice on the day named in the order.

SEC. 8. If the person thus assessed or charged with the value of one-half of any fence, under the provisions of this act, shall neglect or refuse to pay over to the owner of such fence the amount so awarded, the same may be recovered before a justice of the peace, or other court of competent jurisdiction.

SEC. 9. If the parties cannot agree as to the part each shall have and keep in repair, either of them may apply to a justice of the peace of the township, who shall forthwith summon three disinterested householders of the township to appear on the premises, giving three days' notice to each of the parties of the time and place where said viewers shall meet, and said viewers shall, under oath, designate the

portion to be kept in repair by each of the parties interested, and notify them in writing of the same.

SEC. 10. The persons appointed by the justice under sections 7 and 9 of this act, to discharge the duties therein specified, shall receive one dollar each per day for the time actually employed, which, together with the fees of the justice and constable, shall be taxed as costs in the case against the parties in proportion to their respective interests, and collected accordingly.

SEC. 11. Every person owning a part of a division fence, shall keep the same in good repair, according to the requirements of this act; and upon neglect or refusal to do so, shall be liable in double damages to the party injured thereby.

SEC. 12. No division fence shall be removed without the consent of all the owners thereof, unless for the purpose of opening a public road or highway, or unless the party desiring to remove his portion of such fence shall first give to the other owner or owners six months' notice, in writing, of his intention to move the same, and at the expiration of said time, he may move his part or portion thereof.

SEC. 13. Any person aggrieved by any order or judgment of the justice made or entered under the provisions of sections 4, 7 and 9 of this act, may have the same reviewed by a petition in the circuit court of the county wherein such proceedings were had, verified by affidavit. A copy of the petition shall be delivered to the adverse party at least fifteen days before the commencement of the next term of the court, and the original filed in the office of the clerk: *Provided*, That such petition may be filed within thirty days after such order or judgment was made or rendered, and not afterwards.

SEC. 14. The petition shall set forth the grounds of objection, and upon the filing thereof, the circuit court shall be possessed of the cause, and proceed to hear and determine the objections, and make such order or judgment as may be right and just in the premises.

SEC. 15. Sections 1, 2, 3, 4, 5, 6 and 7 of chapter 80 of the General Statutes, entitled "Of inclosing fields and salt petre works," and sections 1, 2, 3, 4, 5, 6 and 7 of an act entitled "An act concerning partition fences, and to encourage the growing of hedges as such," approved March 4, 1869, and all acts and parts of acts in conflict with this act are hereby repealed.

Approved April 9, 1877.