

sessions of the peace where sentence has been suspended, a nolle prosequi or discontinuance entered, or where there has been a non-conviction for any cause whatever, shall be as valid and effectual in law and shall be paid in the same manner as bills of costs taxed in criminal cases in said courts where there has been a conviction and sentence.

69. SEC. 2. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately. Repealer.

Fences and Boundary Lines.

I. FENCES.

1. Amended by section 24.
2. How division fences made and repaired.
3. Amended by section 25.
4. Each party's share adjusted.
5. Rule where brook, &c., divides lands.
6. Partition fences not to be removed without notice.
7. But written agreements binding.
8. If committee cannot agree, may call in third person.
9. Persons neglecting to make their part of the fence liable.
10. Where persons do not keep up fence, shall not impound, or have damages.
11. If they injure beasts breaking in, liable in damages.
12. Remedy if cattle break lawful fence. Impounding.
13. What, if there be no pound.
14. Penalty if township committee neglect.
15. Their compensation and by whom paid.
16. Township clerk to provide book for registering agreements for division of fences, &c.
17. Copy of record evidence.
18. Penalty for failure to enter or register.
19. When fence divided, time to be specified when to be made.
20. Owners of lowland meadow exempt from fencing against sheep.
21. Swinging gates part of a partition fence, a lawful fence.
22. To apply to private roads.
23. Damages by trespass, how appraised.
24. What a lawful fence.
25. Proceedings to place partition fence when parties cannot agree.
26. Barbed wire fences prohibited without consent of adjoining owner.
27. Person erecting such fence without consent liable for damages.

II. HEDGES.

28. Fences authorized in the road to protect hedges.
29. Overseer not to plough or dig within four feet of a hedge.
30. Penalty for violating this act.
31. Provisions of act extended to all evergreen or other hedges.

III. BOUNDARY LINES.

32. Proceedings in case of dispute between owners of adjoining lands.
33. Commissioners to take and subscribe oaths.
34. May enter on lands and examine witnesses. Report to be filed.
35. Parties aggrieved may appeal to circuit court.
36. Compensation of commissioners, &c., and by whom paid.

I. Fences.

An act regulating fences.

Rev. 387.

Passed January 23, 1799.

R. S. 479.

1. [Amended by Sec. 24, *post.*]
2. That where the lands, marshes or meadows of any two or more persons shall join each other, each of them shall make or amend and maintain a just proportion of the division or partition fence between them, except such persons as shall choose to let their adjoining lands lie vacant and open; and if any person shall, after due notice, neglect or refuse to make or amend and maintain his or her part or proportion of such fence, then the other party may make or amend and maintain the same wholly, and shall be entitled to receive one-half of the expenses of the party so neglecting or refusing, as the same shall be appraised and certified in writing by any two of the township committee where the lands lie, residing nearest the premises, and being disinterested and indifferent between the parties, together with the legal fees of such committee for their services, as the same shall also be ascertained in writing; and on non-payment, by the party delinquent as aforesaid, of the sum so found, and fees certified to be due, it shall and may be lawful for the other party to recover the same, by action of debt, with costs of suit, in any court where the same may be cognizable.

How division fences shall be made and repaired.

3. [Amended by Sec. 25, *post.*]
4. That the place where any partition fence is or shall be made, shall be equally divided, regard being had to the quantity of fence necessary, and other conveniences of fencing, and each party shall take an equal share of such fence to make or amend and maintain, so that it may be known

Partition fences shall be equally divided, made and maintained by the parties.

which part thereof is his own ;(a) and if the parties cannot agree in making such division, then any two of the township committee as aforesaid, residing nearest the premises, and being disinterested and indifferent between the parties, shall, on the application of either party, in the presence of the parties, (if they will be present) make such division, and determine the part or share of such fence, which each party is to make or amend and maintain ; which determination, being delivered to each of the parties in writing, shall be binding upon such parties and the succeeding owners or occupiers of the same lands.

If lands of different occupants be bounded upon, or divided by a pond or brook, how the partition fence shall be fixed, made and maintained.

5. That when lands, belonging to, or occupied by different persons, and subject to be fenced, are bounded upon or divided from each other, by any creek, brook, stream, pond or run of water, not navigable for boats or flats, and which of itself is not a sufficient fence, and the owner or possessor of the land on one side shall refuse to join with the owner or possessor of the land on the other side, in making a partition fence on the one side or the other, or cannot agree respecting the same, then any or either of such owners or possessors may apply to any two of the township committee as aforesaid, residing nearest the premises, and being disinterested and indifferent between the parties, and if the said committee, on examination, shall be of opinion that such creek, brook, stream, pond or run of water, does not answer the purpose of a sufficient fence, and that it is impracticable or inconvenient, without unreasonable expense, for such partition fence to be made in the middle, or other part of the water, being the true division line between the parties, they, the said committee, in the presence of the parties (if they will be present), shall determine, fix and ascertain how or on which side thereof the fence shall be set up and maintained, or whether partly on the one side, and partly on the other side of such water, and the part or share of the fence which each person shall in such case make and maintain, as to them shall appear just and reasonable, and reduce their determination to writing, delivering a part thereof to each of the parties ; and if either of the said parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging or assigned, according to the determination of the said committee in writing as aforesaid, the same may be done and performed as in the second section of this act is provided ; and the party delinquent shall be liable and subject to such recovery against him as in the said section is expressed and mentioned ; *provided always*, that if lands belonging to different persons, are bounded on the division line between two townships, then and in that case one person shall be taken from the township committee of each of the said townships, to determine the place where such fence shall be set up and maintained, and the part or share thereof, which each person shall in such case make and maintain.

Partition fences not to be removed without giving twelve months' notice to the other party.

6. That when any partition fence is or shall be made between any two persons, as by this act is directed, if either of them shall think proper to give up his improvement, and leave the same open and common, such person shall not take up or remove the said fence so made between them, without giving twelve months' notice in writing to the person or persons in possession of the lands adjoining thereto ; and if such person shall remove such fence, without giving such notice, or before the expiration of the said year, then and in every such case, he shall be liable to make good all damages which the party injured by such removal shall sustain thereby, to be recovered, with costs of suit, in any court having cognizance of the same.

(a) The division may be made by parol agreement between the owners. *Twins v. Ackerson*, 9 Vr. 220. A continuous maintenance of a part of a line fence, although for full twenty years and as if of duty, will not raise a presumption of a right to have such part perpetually maintained, for the user will be referred to an agreement or a determination fixing the proportion of the line fence to be maintained by each. *Custner v. Eiegel*, 25 Vr. 498. An agreement between such owners or a determination of township committeemen under the statute, will remain in force

while the two tracts bear the same relation to each other. If one of them is afterwards divided by conveyance so that parts of it and contiguous portions of the other tract become lands of two or more persons adjoining each other, the statute applies to the new division lines, and new cases are presented for agreement or determination under the statute. *Id.* A determination fixing the proportion of fence to be made and maintained by each adjoining owner should apportion the whole and not a part of the dividing line. *Id.*

7. *Provided, always*, that nothing in this act contained, shall be construed to make void any written agreement between neighbors or others, respecting the making or maintaining partition fences. (a)

But agreements respecting fences not to be affected by this act.

8. That in every case, in which, by this act, two of the township committee shall be called to determine any matter in difference, and it shall so happen, that such two of the committee cannot agree in their determination, it shall and may be lawful for them to call upon some third person of the neighborhood, being a freeholder, and disinterested and indifferent between the parties, to join them in the business, any two of whom agreeing, their determination, made and certified in writing in manner aforesaid, shall be binding and conclusive between the parties.

If two of the township committee cannot agree, they may call in a third person.

9. That if any person, to whom any part or share of any partition fence is or shall be assigned to make or amend and maintain, as in and by this act is directed, shall neglect or refuse, after due notice given, to make and repair such part or share thereof, so that his own or the beasts of any other person shall break in, enter into or upon his neighbor's land, over or through the said fence, the person so neglecting or refusing is hereby rendered liable to make good all damages sustained thereby, to be ascertained according to the directions of this act, and for which such delinquent's beasts shall be liable to be impounded, and held in pound, until he shall pay the same, and all charges occasioned thereby, as hereinafter mentioned; or, if the beasts of any other person only shall have trespassed, by means of such neglect or refusal to make or repair the said fence, then the party injured may sue for and recover his damages against the party so neglecting or refusing to make or repair the said fence, in an action of trespass, with costs, in any court where the same may be cognizable; and if the beasts of the person who shall have made and maintained his part or share of the partition fence assigned to him, according to the directions of this act, or the beasts of any other person, should trespass on his next adjoining neighbor, through that part of the fence so by him neglected or refused to be made or maintained as aforesaid, he or they shall not be liable to have his or their beasts impounded, nor be liable to any action to recover any damage accruing thereby. (b)

Persons who neglect to make their part of a partition fence, to make good all damages.

Beasts of an innocent person, trespassing through an unlawful fence, not to be impounded, nor any damages recovered in consequence thereof.

10. That if any owner or possessor of land shall neglect or refuse to make and keep in good repair the fence and fences about his own land, as by this act is directed, and for default thereof, the beasts of any other person shall break in, or enter into or upon the said land, over or through such fence, then the owner of the said beasts shall not be liable to any action, nor the beasts be impounded, for any damage sustained thereby; and if any action be commenced therefor, the owner of such beasts may plead the general issue, and give this act in evidence to support the same; *provided always*, that nothing in this section contained shall be deemed to affect any regulations as to partition fences, or to prevent the recovery of damages for any beasts entering into or upon any person's land, over or through such fence as by this act is directed and allowed. (1)

Where persons do not keep up their part of fences, beasts trespassing through the same shall not be impounded nor damages recovered.

11. That if any owner or possessor of land, being damnified for want of such lawful and sufficient fence as by this act is directed, shall hurt, wound, lame, kill or destroy, or cause the same to be done, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, cattle, or sheep, he, she or they so offending shall pay and satisfy to the owner of the beasts so injured or destroyed full damages, to be recovered in an action of trespass, with costs, in any court where the same may be cognizable.

And if they injure such beasts, they shall pay full damages, with costs.

^a A license to build a fence upon a division line between two adjoining tracts will authorize a fence to be placed on the division line so as to occupy an equal space on each side of the mathematical line of division for a reasonable width, but will not authorize the erection of a fence which, like a worm or zig-zag fence, is not built on the division line, but crosses it from

side to side and incloses part of the adjoining tract. *Morton v. Reynolds*, 16 Vt. 326.

(b) If the partition fence has never been divided, as provided in the act, and the portion to be kept up by each, ascertained, trespass will lie if the cattle of one enter the close of the other. *Coxe v. Robbins*, 4 Hal. 384. See *Angus v. Radin*, 1 South. *815.

(1) By act of March 8th, 1861 (P. L. 1861, p. 235), the owners of improved lands in the townships of West Milford, in the county of Passaic, and Readington, in the county of Hunterdon, are compelled to build road fences.

Horses, cattle or sheep breaking over lawful fences, their owners shall pay all damages, to be ascertained by appraisers.

Party injured by beasts found trespassing, may impound them in his own inclosure for twenty-four hours, and then in the public pound.

Allowance for pounding and feeding.

Beasts impounded may be advertised and sold.

Damages and charges to be first satisfied, and the residue paid to the owner or township.

Where there is no public pound, the person injured may pound beasts in his yard or field.

12. That if any horses, cattle or sheep shall get over, creep through, or break down, any fence by this act declared lawful, the owner or owners of the beasts shall pay to the person injured, all damages occasioned thereby, to be appraised and certified in writing by two substantial and indifferent men of the neighborhood, mutually chosen by the parties; [see Sec. 23, *post*] but if the owner or owners of such beasts shall refuse or neglect to choose one of the said appraisers, then the injured party may choose them both himself, and in case the said appraisers, chosen as aforesaid, cannot agree upon an appraisement of the damages, then the said appraisers may choose a third person of the neighborhood, being a freeholder, to join them therein, any two of whom agreeing, their appraisement, made and certified as aforesaid, shall be binding and conclusive to the parties; and if any dispute shall arise concerning the sufficiency of the fence, it shall be determined, on a view thereof, by the same persons, and their decision respecting the same, in like manner reduced to writing, shall also be conclusive; and it shall and may be lawful for the party injured to take and impound such beasts found trespassing or doing damage as aforesaid, in his field or yard, or other inclosure, for the space of twenty-four hours, he giving notice thereof to the owner or owners of the said beasts, if known and easily to be found; and if such beasts are not redeemed within the said twenty-four hours, by payment of, or satisfaction for the damages so certified as aforesaid, he shall lead or drive them to the public pound of the township, where the poundkeeper shall receive and keep them, until the damages so certified, with the charges of conveying and pounding, are paid; and the said party shall have four cents for horses and cattle, and one cent for sheep, per head, for taking such beasts to the pound, and the poundkeeper shall have the same fees, for letting in and out of the pound; and for pounding, feeding and attending, ten cents for horses and cattle, and three cents for sheep, per head, for every twenty-four hours they shall continue in the pound; and if the owner of any beasts, so impounded, shall not pay the damages and charges of impounding, within four days after such beast shall be impounded, or replevy the same beasts, then it shall be the duty of the poundkeeper to set up advertisements in at least three of the most public places in the township, to which the pound belongs, and in one or more of the most public places in the two next adjoining townships, particularly describing such beasts, and giving at least thirty days' notice of an intended day and place of sale, and that if the owner do not appear and redeem the said beasts before the time so notified, they will then be sold at public vendue; at which time and place, if no owner, or other person for him, shall appear and redeem the said beasts, the said poundkeeper shall sell the same accordingly, and out of the moneys arising from such sale shall pay the said damage and charges of conveying to the pound, and retain in his hands his fees for pounding, keeping and feeding the said beasts, and forty cents for such sale and collecting the money, and return the overplus to the owner of the same beasts; and if no owner shall appear and claim such overplus, within twelve calendar months after such sale, the same shall be paid to the clerk of the township where such beasts were impounded, for the use of the said township. (a)

13. That where there is not a public pound kept within the township, then the person damnified by such beasts trespassing as aforesaid, may pound them in his or her own field, yard or other inclosure, till redeemed as aforesaid; and he shall act in such cases in all respects, and be entitled to the same fees, as the poundkeeper should or ought to have done, or been entitled to by this act; *and further*, shall enter all such trespassing creatures kept in his possession, at any time after the first day of November, and before the first day of April, in the town-book, agreeably to the act entitled, "An act concerning stray cattle, horses and sheep." [See *ante*, p. 56, Sec. 134.]

(a) The statute must be strictly pursued. He must prove that his fence was lawful, that the horses crept through or broke

down the fence and did damage, and that the appraisers were chosen, &c. *Brittin v. Van Camp, Pen.* *681.

14. That if any person, being of any township committee, who, on due notice given him, and being requested by any person interested to do any of the duties in and by this act assigned to him, shall refuse or neglect forthwith to attend accordingly, every person so neglecting or refusing shall forfeit and pay the sum of four dollars, with costs, to him or them who shall sue for the same, within thirty days after such neglect or refusal.

Penalty on any of the township committee who shall neglect or refuse to perform the duties required by this act.

15. That each and every person of such township committee shall be allowed one dollar per day, and fifty cents for a half day, for the time he shall be engaged in the duties of his office in virtue of this act, to be paid by the person or persons employing him; and in case such person or persons shall refuse or neglect to pay the said committee their legal fees, within thirty days after the service done, they may severally recover double the amount of such fees, by action of debt, with costs of suit; and each one of the committee may be a witness for or against his companion in any such suit.

Their compensation, and by whom to be paid.

Supplement.

Approved February 22, 1850.

P. L. 1850, p. 114.

16. SEC. 1. That the clerk of every township in this state shall provide, at the expense of the township, a book for the purpose of registering the agreements in writing of any persons who may agree to make a division of their fence or fences of their adjoining lands; and said clerk shall also record in said book the certificate in writing of any two of the township committee who may make a division of any fence or fences, agreeable to the provisions of the act to which this is a supplement; and said agreements and certificates in writing shall be recorded by the clerk or clerks of the township or townships in which said fences may be, and the said clerk or clerks shall be entitled to receive twenty-five cents for recording the same; *provided*, that before any such agreement or certificate shall be recorded, the same shall be acknowledged by the parties or said township committeemen, or the execution thereof proved in the same manner as deeds of conveyance of lands are required to be acknowledged or proved before the recording thereof.

Township clerk to provide book for registering agreements for division of fences, &c.

17. SEC. 2. That a copy of said record, certified by the clerk of the township, shall be admitted as evidence in any court of this state; and for a certified copy of said record, the said clerk shall be entitled to receive twenty-five cents.

Copy of record, evidence.

18. SEC. 3. That if any township clerk shall not, within two weeks after any agreement or certificate so made and delivered to him, and the fees aforesaid tendered to him, enter or register the same, he shall forfeit five dollars, to be recovered by an action of debt, with costs of suit, by any person who shall sue for the same.

Penalty for failure to enter on register.

19. SEC. 4. That when two of the township committee shall, at any time hereafter, determine the parts or shares of any partition fence to be made under the provisions of the said act, they shall also specify in writing the time within which such fence shall be made by the parties, respectively, to whom such parts or shares shall have been assigned.

When fence divided, time to be specified when to be made.

Supplement.

Approved March 23, 1859.

P. L. 1859, p. 623.

20. SEC. 1. That so much of the act to which this is a supplement as requires that all fences set in the line of partition between persons, either of whom improve their adjoining lands, shall be so close, strong and sufficient as to prevent sheep from going through or under the same, shall not hereafter apply or be extended to lands of adjoining owners lying upon streams or rivers subject to overflow, commonly known as lowland meadow, but said owners shall be exempt from fencing as against sheep in all such cases, unless by mutual agreement; *provided always*, that nothing in this act shall exempt the owners of said lands from fencing against horses and neat cattle, as required by existing laws.

Owners of lowland meadow exempt from fencing against sheep.

A further supplement.

Approved March 12, 1861.

P. L. 1861, p. 254.

Swinging gates
part of partition
fence a lawful
fence.

21. SEC. 1. That any owner or owners of land may erect swinging gates as a part of the partition fence between adjoining lands, and the same shall be considered a lawful fence, provided the same shall be four feet six inches high, and so close and strong as to prevent horses, cattle and sheep from going through or under the same; and if any person or persons shall stake, shore or leave open or insecure, or cut, break or pull down, or destroy or in any way leave any such gate so that the cattle or horses of the owner or owners of the adjoining lands may pass through the same, he, she or they shall, for every such offense, forfeit five dollars, to be recovered by action of debt, with costs, by any person prosecuting for the same; and shall also pay to the owner or owners of the lands trespassed upon, his or their tenants, all damages which he or they may have sustained thereby, to be appraised by two substantial and indifferent freeholders of the neighborhood, as is in such case made and provided by the aforesaid original act, which damage, so assessed, shall be recovered by action of debt, and the owner or owners of any of the kind or breed of horses, cattle or sheep, so trespassing upon lands by reason of the neglect or damage to the gates as aforesaid, shall be entitled to all the protection from injury as is provided by section eleven of the act to which this is a supplement, and he or they shall not be liable to have his or their beasts impounded, nor be liable to any action to recover any damage accruing thereby.

Section 5 to apply
to private roads.

22. SEC. 2. That all of the provisions and regulations in making partition fences as is provided by section five of the aforesaid act to which this is a supplement, shall also be applied to private roads.

Supplement.

Approved April 3, 1872.

P. L. 1872, p. 62.

Damages by
trespass, how
appraised.

23. SEC. 1. That damages by trespass of persons or animals shall be appraised by parties owning a class of property similar to that damaged, unless otherwise agreed upon between plaintiff and defendant.

Supplement.

Approved March 8, 1883.

P. L. 1883, p. 82.

What shall be
esteemed lawful
fences.

24. SEC. 1. That the first section of "An act to regulate fences," passed January twenty-third, one thousand seven hundred and ninety-nine, be and the same is hereby amended to read as follows:

[That all fences^(a) consisting of posts and rails, timber, boards, brick or stone walls, and all other fences, shall be esteemed lawful, if four feet and two inches high, measuring from the level or surface of the earth, and close, strong and sufficient to prevent horses and neat cattle from going through or under the same; and all fences set in the line of partition between persons, either of whom improve their adjoining lands, shall be so close, strong and sufficient as to prevent sheep from going through or under the same; and all ditches and drains made in or through salt marshes and meadows, for fencing and draining the same, being five feet wide and three feet deep, shall also be esteemed and adjudged lawful fences; and all ditches and drains made in or through other meadows, being nine feet wide at the surface of the meadow, four feet and a half wide at bottom, and three feet deep, and lying on a mud or miry bottom, shall likewise be esteemed and adjudged lawful fences; and all brooks, rivers, ponds, creeks and hedges, or other matter or thing equivalent to any such fence as aforesaid, may be adjudged lawful fences, at the discretion of those who may be called to

(a) This section extends only to the owners of adjoining closes. *Chambers v. Matthews*, 3 Har. 368.

view the same as by this act is prescribed ; and all such beasts as shall creep through, get over or break down any such fence, may be impounded, and the owner thereof shall be obliged to pay and satisfy all damages occasioned thereby, in manner and form as by this act is directed.] (1)(a)

Animals may be impounded for breaking through fence, &c.

Supplement.

Approved April 17, 1885.

P. L. 1885, p. 248.

25. SEC. 1. That section three of said act to which this is a supplement, be amended so that it shall read as follows :

[That to avoid the difficulty that may arise touching the placing of any partition fence, if the parties cannot agree upon the place themselves, it shall and may be lawful for the persons proposing to make the fence to apply to any two of the township committee of the township, or to any two of the street committee of council in any city, incorporated town or borough where the lands lie, residing nearest the premises, and being disinterested and indifferent between the parties, who, on hearing the allegations and proofs of the parties, shall fix and appoint (by writing under their hands, to be delivered to each of the parties), the place where such fence is to be made ; and when made in the place so appointed (if the other party shall have neglected or refused to make his just part or proportion thereof), it shall be sufficient to entitle the party so making the same to recover such part or proportion of the charges thereof as aforesaid, although it may not happen to be exactly in the division line between the same parties ; *provided always*, that the place so appointed for making the said fence shall not be construed to exclude or deprive any or either of the parties of any lawful claim to a greater quantity of land ; but such person or persons may maintain his, her or their action for the same, as though such determination of either the township or street committee, or the partition fence, had never been made.] (b)

Proceedings to place partition fence where parties cannot agree.

Proviso.

Supplement.

Approved May 15, 1894.

P. L. 1894, p. 326.

26. SEC. 1. That no fence constructed of barbed wire, or wire on which is strung or fastened barbs or points, shall be deemed a lawful fence between the lands of adjoining landowners, unless the erection thereof shall be consented to by such adjoining owners, and that without such consent, all such fences are hereby prohibited.

Barbed wire fences prohibited without consent of adjoining landowner.

27. SEC. 2. That every person who shall, without the consent of the adjoining landowner, erect any such fence as is prohibited in the foregoing section, as a line fence, or boundary fence between his lands and those of adjoining proprietors, shall be liable for any and all damages which may be caused thereby to the horses, cattle or other animals belonging to such non-consenting adjoining proprietor.

Persons erecting such fence without consent liable for damages.

II. Hedges.

An act to encourage the growth of thorn hedges in this state.

Passed March 2, 1836.

R. S. 532.

28. SEC. 1. That from and after the passage of this act, all the inhabitants of this state who have already planted, or shall hereafter plant, any thorn hedges, for fencing, upon the line of any public highway in this

Fences authorized in the road to protect hedges.

(a) If the cattle of the owner escape through his negligence and are injured, he cannot recover. *Vandegrift v. Rediker*, 3 Zab. 185. *Price v. New Jersey Railroad Co.*, 2 Vr. 229, 3 Vr. 19.
(b) There must be notice to the landlord and tenant. *State v. Ford*, Cove 53. The surveyors cannot alter a line fence which has been acquiesced in for twenty-five years. *Id.* They have no authority where there is a partition fence already estab-

lished ; nor can they change the location of such fence. *Miller v. Barnet*, 2 South. *547. The title remains the same. The object of the act is to provide a temporary fence, and to enable the party making the fence to recover from the other his just proportion of the expense. *Corlis v. Little*, 1 Gr. 229. See *Vandorn v. N. J. Southern R. R. Co.*, 15 Steu. 463.

(1) By a supplement of April 4th, 1873 (P. L. 1873, p. 790), it shall be lawful for persons owning land on the line between the township of Warren, in the county of Somerset, and the township of Passaic in the county of Morris, to fence their said lands along the Passaic river. For proceedings in case parties fail to agree and for refusal to comply with decision of arbitrators, &c., see sections 2 and 3 of said act.

state, of three rods or more wide, shall be authorized to erect and keep up, for any period, not exceeding six years from the time of planting such hedge, a fence of such kind as he or she may choose, in front thereof, at the distance of four feet from such hedge, out into the public highway, for the protection and preservation of such thorn hedge or hedges; and it shall not be lawful, at any time within the said period of six years, for any overseer or overseers of the highways, or any other person or persons, to take up, remove, break down, destroy or in any manner injure the said fence, so erected as aforesaid.

Overseer not to plough or dig within four feet of a hedge.

Penalty for violating this act.

29. SEC. 2. That it shall not be lawful for any overseer or overseers of the highway, or any other person or persons, at any time after the passing of this act, to plough, dig or otherwise turn up or remove any earth or soil within four feet of any thorn hedge now growing, or which shall hereafter be planted upon the line of any public highway in this state, whether the fence authorized in the first section of this act be put up or not.

30. SEC. 3. That if any person or persons shall offend against the provisions of this act, or shall willfully injure, dig up, or otherwise deface or destroy any thorn sets, or hedges now growing, or hereafter to be planted, or fence erected for their protection, in this state, the person or persons so offending shall, for each and every such offense, forfeit and pay the sum of thirty dollars, to be recovered by an action of debt, by the person injured, in his own name, in any court of competent jurisdiction in this state, with costs, and in addition to such penalty, shall be liable to all damages to the party injured.

Supplement.

Approved February 26, 1873.

P. L. 1873, p. 22.

Provisions of act extended to all evergreen or other hedges.

31. SEC. 1. That the provisions of the act to which this is a supplement shall be and hereby are extended to all evergreen or other hedges heretofore planted or hereafter to be planted for fencing in this state.

III. Boundary lines.

An act entitled "An act for regulating and ascertaining the lines between adjoining lands of different owners."

Approved March 17, 1882.

P. L. 1882, p. 122.

Proceedings in case of dispute between owners of adjoining lands.

32. SEC. 1. That in all cases of any dispute between the owners of adjoining lands, respecting the location of any dividing line or lines between said lands, it shall and may be lawful for either owner or owners to make application in writing, to any judge of the court of common pleas of the county in which said lands lie, for the appointment of three disinterested commissioners, whose duty it shall be to fix, ascertain and regulate such line or lines, and which appointment the said judge is hereby authorized and empowered to make in writing; *provided, always*, that the party making the application shall have given the opposite party at least ten days' written notice of said application. (a)

Proviso.

Commissioners to take and subscribe oaths.

33. SEC. 2. That one of said commissioners shall be a practical surveyor, and, before entering upon their duties, all of said commissioners shall take and subscribe an oath, before any person authorized by the laws of this state to administer the same, that they, and each of them, will fairly and impartially, and to the best of their judgment, ascertain the true location of said lines, which oath or affirmation shall be filed with said judge within twenty days after the said appointment is made.

Commissioners empowered to enter on lands and examine witnesses.

34. SEC. 3. That upon filing said oath with the said judge, the commissioners shall and they are hereby authorized to enter upon any lands or real estate, for the purpose of ascertaining and deciding the location of the line or lines in dispute, and they shall have power for the purpose to

(a) Where parties owning adjoining lands had made an agreement as to the location of their division line, and differing as to the construction of their agreement, came into equity for its determination, the court, after construing the agreement,

stated that if the parties could not agree upon the location of the line, it would appoint a surveyor to define it. *Delbit v. Buckley*, 11 *Stew.* 291.

examine witnesses under oath, and fully inquire into the questions in dispute, and after ascertaining the same, shall, within twenty days thereafter, file a report thereof with said judge, and which report, together with the notice of application and the order of appointing said commissioners, the said judge shall file within ten days after receiving the same, in the office of the clerk of the court of common pleas of said county, and which report shall be final and conclusive against all parties, their heirs and assigns, unless the same shall be appealed from in manner herewith provided. (a)

Report to be filed.

35. SEC. 4. That either party may appeal, within thirty days after the filing of said reports, to the circuit court of said county, by filing with the clerk of said court, within said time, a notice of dissent from said report, in which the party dissenting shall state the ground of the dissent, and in such case the said circuit court shall have full power and authority to try and determine said appeal, and the decision of said court shall be final and conclusive between all parties, their heirs and assigns; *provided, however,* that either party, upon application to the court and upon ten days' notice, in writing, to the opposite party, may demand and shall be entitled to a trial by jury of the matter in controversy, in like manner as issues of fact are now tried in the circuit courts of this state, which said jury may be a struck jury, and shall be summoned in the manner now provided by law for the summoning of petit juries, or struck juries, as the case may be, in the circuit court, and the circuit court of said county shall, on application of either party to said controversy, direct a proper issue for the trial of said controversy to be formed between the said parties, and the trial thereof shall proceed in like manner as other jury trials in said circuit court, and with the same rights of appeal by writ of error or otherwise, as now provided and practiced in the courts of law of this state in cases of trial by jury; judgment therein shall have the same force and effect as judgments in cases of jury trial in said courts now have.

Parties aggrieved may appeal to circuit court.

Proviso.

36. SEC. 5. That the surveyor shall receive for his services the sum of three dollars per day, and the remaining two commissioners two dollars per day, for each day employed, and the judge shall receive one dollar and fifty cents for each order made in the proceedings, which fees and all costs shall be paid by the party against whom said report, decision or verdict is made or rendered.

Compensation of commissioners, &c., and by whom paid.

(a) Special authority delegated by the legislature for the purpose of taking a man's property against his will must be strictly pursued, and it must appear to have been so pursued on the face of the papers, and especially should it appear that notice

of the meeting of commissioners, assuming to have such authority as is claimed under this act, was given, or that the parties interested were present. *Davis v. Howell*, 13 Vr. 280.

Ferries.

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| <ol style="list-style-type: none"> 1. Rates of ferridge, how fixed. 2. Table of, posted up. 3. Clerk's fee for copy. 4. Penalty for overcharge. 5. Good boats, &c., to be kept. 6. Penalty for using insufficient boats. 7. Penalty for not having sufficient implements or skillful ferrymen. | <ol style="list-style-type: none"> 8. Penalty for delaying passengers, &c. 9. Ferryman's authority. 10. Persons to be carried over ferries according to their arrival. 11. Good wharves, &c., to be kept. 12. Corporations owning and enjoying ferry rights may sell franchise for operating ferries. |
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An act concerning ferries.

Rev. 408.

Passed February 6, 1799.

R. S. 542.

1. That the board of chosen freeholders shall be, and they hereby are empowered and directed to fix the rates to be taken at the several ferries within their respective counties, and the same, from time to time, to revise, alter, amend, or make anew at their discretion. (a)

Board of freeholders to fix rates to be taken at ferries.

(a) Applies to ferries of which only one landing is in the county and the other in another state. *Freeholders of Hudson*

v. State, 4 Zab. 718. See *Columbia Bridge Co. v. Geisse*, 5 Vr. 268, 6 Vr. 558. *S. C.*, 9 Vr. 39, 530.