

CHAPTER 90.

FENCES.

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90.01 Fence viewers. The supervisors in their respective towns, the aldermen of cities in their respective wards, and the trustees of villages in their respective villages shall be fence viewers.

90.02 Legal fences; space between ground and bottom. (1) The following and none other are legal and sufficient fences:

(a) A fence of strong woven wire not less than twenty-six inches wide with three barbed wires above.

(b) A fence of strong woven wire not less than thirty inches wide with two barbed wires above.

(c) A fence of strong woven wire not less than forty-six inches wide with one barbed wire above.

(d) A fence of strong woven wire not less than fifty inches wide.

(e) A fence of boards firmly fastened to posts well set, not more than eight feet apart, the space between the boards to the height of thirty inches to be not more than six inches and at no point to be more than ten inches.

(f) A fence of two boards with three barbed wires above, firmly fastened to sufficient posts well set not more than eight feet apart, the space between the boards to be not more than six inches.

(g) A fence of three or more wires not less than No. 12, with pickets not less than four feet long properly woven in or fastened thereto, and set not more than six inches apart.

(h) All fences consisting of rails, boards, wires or walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches, or hedges, which shall, in the judgment of the fence viewers, be equivalent to either of the fences before mentioned.

(2) The strands of woven wire shall not be smaller than No. 12 wire and the cross wires and meshes shall not be smaller than No. 16 wire; the strands shall not be more than eight inches apart, and the cross wires not more than twelve inches apart, and the meshes shall not exceed eight inches square. All wires must be tightly stretched and securely fastened to sufficient posts firmly set not more than sixteen feet apart. The space between barbed wires shall not exceed eight inches; and the space between the top board or upper edge of woven wire and the bottom barbed wire shall not exceed six inches.

(3) Fences shall not be less than fifty inches high, and the bottom of the fence shall be not more than four inches from the ground, measurements to be made at the posts.

90.03 Partition fences; when required. The respective occupants of adjoining lands, used and occupied for farming or grazing purposes, and the respective owners of adjoining lands when the lands of one of such owners is used and occupied for farming or grazing purposes, shall keep and maintain partition fences between their own and next adjoining premises in equal shares so long as either party continues to so occupy the same, and such fences shall be kept in good repair throughout the year unless the occupants of the lands on both sides otherwise mutually agree. [1935 c. 145]

Note: Owner of land is relieved from maintaining partition fence where he conveys to county for highway purposes parcel lying parallel to and adjoining said partition fence. 20 Atty. Gen. 128. This section applicable to county. 20 Atty. Gen. 454. Provisions of this section are not applicable when land is held in trust for state by state historical society. 21 Atty. Gen. 934.

90.04 Effect of fences on action for trespass by animals. Owners of lands who do not maintain and keep in repair lawful partition fences shall not be entitled to recover any damages whatever for trespasses by the animals of owners of any adjoining lands with whom partition fences might have been maintained if such lands had been inclosed;

but the construction of such a fence shall not relieve the owner of swine from liability for any damage they commit upon the inclosed premises of an adjoining owner.

90.05 How partition made. Every partition of the fence or of the line upon which partition fences are to be built between adjoining owners, made by the owners thereof in writing, signed, sealed and witnessed by two witnesses, or by the fence viewers, in writing under their hands, in the cases and in the manner hereinafter provided, after being recorded in the town clerk's office, shall oblige such owners, their heirs and assigns, so long as such adjoining land on each side respectively shall remain in the same ownership, and after a severance of ownership until a new partition of such fence shall be made, to build and maintain such fence agreeably to said partition. But neither such owner nor his heirs or assigns shall be bound to build or maintain any part of such partition fence during any time when none of such adjoining lands shall be so occupied.

90.06 Removal of fence. When any owner or occupant of land shall build a fence before the location of the boundary line between such land and any land adjoining the same and the location of such line shall establish the fact that said fence is on such adjoining land, the ownership thereof shall be in the person who built it or his grantee, devisee or heirs, but such fence shall be removed to the boundary line within 30 days after the location thereof and the service of written notice upon the person who built it or who has acquired his rights, by the owner or occupant of the land upon which the fence is situated; such notice shall be served personally or by leaving a copy thereof at the usual place of abode of such person with some member of his family of suitable age and discretion who shall be informed of the contents thereof; if the removal is not made within 30 days thereafter the party who served or caused such notice to be served may remove the fence to the boundary line and set it up there and recover the expense of so doing from the other party; provided, that no such fence shall be removed by the party giving the notice during a time when annual crops will be damaged unless by agreement of the owners or occupants of the adjoining lands.

[1941 c. 26]

90.07 Division of partition fence. (1) A division of a partition fence, or the line upon which a partition fence between adjoining lands shall be built, may be made by fence viewers in the following cases:

(a) When a division of a partition fence, or the line upon which a partition fence between adjoining lands shall be built, shall not have been made in the manner prescribed by section 90.05, either of the owners of adjoining lands may have the line between his land and the adjoining land of any other person divided, and the portion upon which the respective owners shall erect their share of the partition fence assigned, regardless of whether his land be inclosed or not and regardless of whether such adjoining land be inclosed or not.

(b) When any lands belonging to different persons in severalty shall have been occupied in common or without a partition fence between them and one of the occupants shall be desirous to occupy his part in severalty, and the other shall refuse or neglect, 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 line, when divided, the occupant desiring it may have the same divided and the share of each assigned.

(c) When any controversy shall arise about the right of the respective occupants in partition fences or their obligation to maintain the same, either party may have the line divided and the share of each assigned.

(2) In either such case application may be made to two or more fence viewers of the town where the lands lie or to two or more fence viewers of two towns, if the lands lie in two towns, who, after eight days' notice in writing to each party to be served as a summons is in a civil action in a court of record, shall, in writing under their hands, divide the partition fence or line and assign to each owner or occupant his share thereof; and in each of said cases they shall also therein direct the time within which each party shall build or repair, as may be proper, his share of the fence, having regard to the season of the year, and shall file such decision in the town clerk's office, who shall record the same. If either party shall refuse or neglect to build or repair within the time so assigned his part of the fence the other may, after having completed his own part, build or repair such part and recover the expense thereof as provided in section 90.11 of the statutes.

90.08 Partition of fences in water. Where 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.

90.09 Partition when land bounded by water. When the boundary line between inclosed lands of different persons is a river, brook, pond or creek, which of itself is not a sufficient fence, and it is impracticable, without unreasonable expense, for a partition fence

to be built on the true boundary line, and either owner or occupant shall refuse to join in making a partition fence on either side thereof, or if they shall disagree respecting the same, either party may apply to two or more fence viewers of the town, who, after giving notice as provided in section 90.07, shall proceed to view such river, brook, pond or creek; and if they shall determine that the same is not a sufficient fence and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line they shall, in writing under their hands, determine how or on which side thereof the fence shall be built or whether partly on one side and partly on the other, and assign to each owner or occupant his share thereof and the time within which the respective parties shall build the same, and file such determination in the office of the town clerk, who shall record the same. If either party shall refuse or neglect to build within the time so assigned his part of the fence the other may, after having completed his own part, build such part and recover the expense thereof as hereinafter provided. If said fence viewers shall determine that it is impracticable, either from the formation of the banks of such river, brook, pond or creek or from any other cause, to maintain any fence along or near said boundary line they shall give written notice to the parties of such determination.

90.10 Compulsory repair of fence. In case any person shall neglect to repair or rebuild any partition fence which by law he ought to maintain the aggrieved party may complain to two or more fence viewers of the town, who, after giving notice as provided in section 90.07, shall examine the same, and if they shall determine such fence is insufficient they shall signify the same to the delinquent party and direct him to repair or rebuild the same within such time as they shall deem reasonable. If such fence shall not be repaired or rebuilt within the time so fixed, the complainant may repair or rebuild the same and recover the expense thereof as hereinafter provided.

90.11 Cost of repairs. (1) Whenever any owner or occupant shall have built, repaired or rebuilt any fence in pursuance of the preceding sections which the adjoining owner or occupant shall have been lawfully directed by fence viewers to build, repair or rebuild, and have failed to do within the time prescribed, he may call upon any two or more fence viewers of the town, who shall, after having given notice to such adjoining owner or occupant as provided in section 90.07, examine such fence and ascertain the expense thereof; and if they shall adjudge such fence sufficient they shall give to such party a certificate under their hands of such decision and of the amount of the expense of such building or repairing, and the fees of the fence viewers who made such order and of their own; and thereupon such party may demand the amount of such ascertained expense, together with such fees, from such adjoining owner or occupant; and in case of neglect and refusal to pay the same for one month after so demanded the amount of such expenses and fees together with interest at the rate of one per cent a month shall constitute a special charge and lien against such adjoining lands and may be recovered in the manner provided in subsection (2) of this section.

(2) The person to whom such certificate shall be executed and delivered may file the same with the town clerk of the town in which the lands charged with such expense are located. Upon the filing of such certificate such town clerk shall issue his warrant for the amount thereof upon the town treasurer payable to such person. The amount so paid together with interest at the rate of one per cent a month shall be included by the town clerk in the next tax roll as a special charge against such lands and such charge shall be collected by the town treasurer with the other taxes in such town. Any such charge remaining unpaid shall be added to the list of delinquent taxes returned to the county treasurer, who shall collect the same or sell the land as for delinquent taxes; and all proceedings in relation thereto shall be the same in all respects as in the case of land sold for other delinquent taxes. Every county treasurer who shall collect or receive any moneys on account of such delinquent charges shall pay the same to the treasurer of the proper town.

90.12 Apportionment of cost of fence. 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 or maintain; the just value thereof which he ought to pay shall be ascertained by proceeding as prescribed in the next preceding section.

90.13 Partition fence on newly-inclosed land. When any uninclosed land shall afterwards be inclosed the owner or occupant thereof shall pay for one-half of each partition fence standing upon the line between his land and the inclosure of any other owner or occupant, unless such line shall have been theretofore divided, in which case he shall pay the value of the fence on the part of such line so assigned to him; and the value thereof at the time in either case shall be ascertained on the application of either as pro-

vided in section 90.11, in case the parties do not agree; and if such owner or occupant shall neglect or refuse to pay the same for sixty days after the value has been so ascertained and demand made the proprietor of such fence may recover such value with the fence viewers' fees and costs.

90.14 Fence on town line. 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 fence viewer shall be taken from each town; and divisions of such fences by them or by agreement of the parties shall be recorded in the office of the clerk of each town.

90.15 Fees of viewers; neglect of duty. Each fence viewer shall, for services rendered by him in accordance with the provisions of this chapter, be entitled to the following fees, viz: Two dollars per day for the time he shall be so necessarily employed; for each mile actually and necessarily traveled in the performance of any service required, five cents; twenty-five cents for serving any notice or other process upon each person named therein, and twelve cents per folio for all writing required and actually done. Said fees shall be paid by the parties to the controversy, equally, and if they or any of them shall neglect to pay the same within thirty days after the services shall have been performed each fence viewer may recover from delinquent parties jointly double the amount of such fees. Any fence viewer who, when requested, unreasonably neglects to perform any duty required of him shall forfeit five dollars, and be liable to the party injured for all damages consequent upon such neglect. In the performance of any duty required under this chapter fence viewers may administer oaths.

90.16 Record of partition. Every partition of a division fence or line made by fence viewers, signed and recorded as hereinbefore provided, and the record or a certified copy thereof, shall be presumptive evidence of the regularity of all the proceedings prior to the making thereof.