

hands and seals, verified by affidavit, requiring the recusant party to make or repair his part of said fence, by a day to be specified in the award, and also giving their estimate of the cost of making or repairing such fence, and shall deliver a copy of said award to each party interested, or his tenant, overseer, or other representative, in case one of the parties is a non-resident of the county.

34. And if the party thus required to make or repair his part of said fence, shall fail to do so within the time specified, it shall be lawful for the other party interested to make or repair the same at an expense not exceeding that specified in the award, and as soon as he shall have made or repaired said fence, and have obtained the certificate of the freeholders aforesaid, or a majority of them, that he is entitled to the amount specified in the award, or any part thereof, he shall be entitled to recover the amount, so expended, from the owner of said fence, as the other debts are now recovered; and if the owner of such fence is a non-resident of said county, the party so making or repairing, shall be entitled to judgment against him, in the circuit court or before a justice of the peace of said county, as the case may be, and the serving of the summons in such suit upon the tenant, overseer, or other representative, shall be a sufficient service of such writ upon the owner.

Ibid s. 5.
Where party fails to repair, &c.

35. But if the said freeholders shall find that the said fence, or any part thereof, the making or repairing of which is sought to be enforced, would be of no use or benefit to the party refusing, by reason of its lying contiguous to uninclosed or waste lands, or for any other reason, they shall so report in their award, and no one shall be required to make or repair more than one-half of such fence as shall be to him necessary.

Ibid s 6.
Fencing contiguous to waste lands

36. If any person having an interest in any joint division fence, shall fail to make or keep in repair his part thereof, he shall not be entitled to damages on account of any trespass through said part, by

Ibid s 7
Party failing to repair, &c., not to have damages for trespass