

of the height and sufficiency aforesaid, then the owner of such live stock shall be liable to make good all such damages to the owner of such enclosure, as shall be found and awarded by two or more judicious persons, to be appointed by a justice of the peace in said county; said persons to view the same, under oath, and make return before the justice of the peace by whom they were appointed; and the damages shall be recovered in the same manner provided by law for the recovery of small debts; provided, nevertheless, that upon trial before a justice of the peace for damages, it shall be the duty of the justice, at the instance of either party, to issue a *subpoena* for such witness, as either plaintiff or defendant may require.

1878, ch. 108.

97. Whenever joint fences have been or may be established in said county for the mutual benefit and advantage of different owners or possessors of adjoining lands, it shall be the duty of each party to keep up in good repair his just and respective proportion thereof, in manner following, that is to say: all post and rail or plank fences shall be four feet high, and all worm and other fences shall be at least five feet high, the height in every case to be computed from the ground or base of any embankment upon which said fence is or may be placed.

Ibid.

98. If either of the parties so making or keeping a joint fence shall not comply with the foregoing provisions, and shall refuse or delay to make or repair such fence within twenty days after notice in writing shall be given to said party, his agent, overseer or tenant, then, upon proof thereof before a justice of the peace in said county, it shall be lawful for said justice of the peace, under his hand and seal, to authorize the party aggrieved and suffering by such refusal or delay to make or repair said fence as above required, and for so doing he shall be reimbursed all cost and reasonable expenses thus incurred, to be recovered from the party so refusing or delaying, in the same manner as debts of a like amount are now recoverable.

Ibid.

99. In case joint fences are not made and kept in repair according to the provisions of this sub-title of this article, it shall