

both parties, shall apportion to each his just proportion thereof, and mark and bound the same, and shall make out their award in writing, under their hands and seals, verified by affidavit, requiring the recusant party to make or repair his part of the 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 representative, in case one of the parties is a non-resident of the county.

1864, ch. 204.

94. If the party thus required to make or repair his part of the 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 certificates of the freeholders aforesaid, 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 the fence, as 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 for the county, and the serving of the summons in such suit upon the tenant, owner or representative, shall be a sufficient service of such writ upon the owner.

Ibid.

95. 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, will be of no use or benefit to the party refusing, by reason of its lying contiguous to unenclosed 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 necessary to him.

Ibid.

96. 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