

may apply to any justice of the peace of said county, who, upon proof of the notice aforesaid, shall appoint three discreet and sound judging freeholders of said county, not related to either party, who shall have full power to hear and determine all matters in dispute connected with said fence.

1880, ch. 289.

141. The said freeholders, if they or a majority of them shall find that the making or repairing of said fence is for the mutual advantage and protection of 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 said fence by a day to be specified in their award, and also giving their estimate of the cost of making or repairing said fence, and shall deliver a copy of said award to each party interested, or his agent, tenant or other representative, in case either of the said parties is a non-resident of the county.

Ibid.

142. 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 obtained the certificate 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 said 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 such fence 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 agent, tenant or other representative, shall be a sufficient service of such writ upon the owner; and in case the owner of such fence shall be a married woman, she shall be liable for the amount expended as aforesaid, in the repair of the same, and may be sued therefor, and judgment may be had against her as fully as if she were a *feme sole*, which said judgment may be enforced by execution against her separate estate.