

or worm fence, shall not exceed three inches from the ground or embankment on which the same is, or may be built, and the width between the rails or plank, comprising the fence, shall be such as is usual in the construction of good post and rail, plank or worm fences; and if any live stock of any kind or description whatever shall break into any person's enclosure, the same being of the height and sufficiency aforesaid, the owner of said 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 said damages to be recovered in the manner prescribed by law for the recovery of small debts; provided, nevertheless, that upon the trial before any justice of the peace, for damages, it shall be the duty of said justice, at the instance of either party, to issue a *subpœna* for such witnesses as either plaintiff or defendant may require, not to exceed three, to prove the facts in question.

1874, ch. 46

97. Wherever joint fences have been or may be established in said first district of 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 at least four feet high, and all worm and other fences shall be at least four feet and one-half high, the height in every case to be computed from the ground or base of the embankment upon which said fence is or may be placed.

Ibid.

98. If either of the parties so making or keeping a joint fence in said first district, shall not comply with section 97, and shall refuse or delay to make or repair the said fence within ten 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 the said justice, under his hand and seal, to authorize the party aggrieved and suffering by such refusal or delay, to make or repair the said