

also lawful for the party aggrieved or likely to be injured, instead of pursuing the remedy above allowed, to discontinue said fence by giving three months' notice in the manner aforesaid; and in other cases, unless by mutual consent, twelve months' notices shall be required to discontinue any joint fence.

Discontinue.

SEC. 5. *And be it enacted*, That whenever any person or persons shall, under and by virtue of this act, or any law of this State, be summoned or called upon to value and assess the damages done upon any enclosed land in said district aforementioned by trespassing of live stock of any kind or description whatsoever, the said person or persons so valuing or assessing said damages shall inspect and examine into the State and condition of the enclosure of the land upon which the said trespass or damages shall have been alleged to have been done or committed; and if the said enclosure shall not be such as is hereinbefore described, he or they shall not make out any award or assess any damages whatever, but either party may controvert the evidence and opinion of said person or persons by other witnesses, and such judgment shall be given upon the whole evidence as to the Justice or the Court, as the case may be, seems right and proper.

Inspect and examine.

SEC. 6. *And be it enacted*, That in all cases of action for trespass *quare clausum fregit* or legal process of any kind hereafter to be sued out or commenced in said district herein provided for, to recover damages for trespass upon land by any kind or description of live stock, the defendant or defendants may plead the general issue and give the special matter in evidence under this act, and the plaintiff or plaintiffs in each and every suit shall be nonsuited and mulcted in costs wherever it shall be clearly proven by legal and competent testimony that the land, whenever the said trespass was committed, was not enclosed according to the provisions of this act; but nothing

May plead general issue.