

make and keep in repair division fences to bound and enclose said lands at their joint expense, unless said lands are not cultivated and have been used as general outlets or commons.

Height.

75. All such joint division fences shall be substantially built, and if made of iron, wire, stone, hedge, post and rail or plank, shall be four and a half feet high, but if made of cap and stakes or stake and rider, commonly called worm fences, shall be five feet high.

Disputes as to fences.

76. If either party, his tenant, overseer or other representative, shall refuse or neglect to make or keep in good repair his portion of said fence, after ten days' notice shall have been given him, his tenant, overseer or other representative, by the person aggrieved, the person so aggrieved may apply to a justice of the peace of said county, who shall, upon affidavit and proof of the notice aforesaid, appoint three discreet and sound judging freeholders of said county, not related to either party, and whose lands do not adjoin the parties litigant, who shall have full power to hear and determine all matters in dispute connected with said fences; and the testimony of one disinterested witness shall be proof that notice has been served by the party aggrieved; and said notice may be either oral or in writing.

Apportionment of repairs.

77. The said freeholders, if they, or a majority of them, upon examination, find the allegations of the person aggrieved to be sustained, shall proceed to apportion to each owner, his tenant, overseer or other representative, his just proportion of said division fence to be built or repaired, and mark and bound the same, and shall make out their award in writing under their hands and seals, requiring the recusant party to make or repair his part of said fence by a day to be specified in said 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 other representative, in case one of the parties is absent from, or is a non-resident of the county.

Failure to make repairs.

78. If the party, his tenant, overseer or other representative being 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 a certificate of the freeholders, or a majority of them, certifying that the work has been satisfactorily done, shall entitle the party interested to the amount specified in the award, or any