

232. All such joint division fences, if made of post and rail, or plank, shall be four feet and a half high; all worm fences shall be five feet high, made of good and sound rails, staked and ridged and substantially built.

233. If either party shall refuse or neglect to make or keep in good repair his portion of said division fence, after twenty days' notice shall have been given to him, his tenant or overseer, by the person aggrieved, the person so aggrieved may apply to the county commissioners, who shall, upon proof of the notice aforesaid, 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.

234. Said freeholders, if they find that the making or repairing of the fences is for the mutual advantage or 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 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.

235. 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.

236. 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