

CHAPTER 15.

AN ACT defining a lawful fence, and providing against trespassing animals.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Trespassing animals—description of a lawful fence—aggrieved owner to apply to fence viewers. That if any horse, mare, mule or ass, or any cattle, hogs, sheep or goats, shall break into any ground being enclosed with a strong worm fence, sufficiently staked and ridged, or locked at each joint, [12] five feet in height, or with strong post and rails, or post and pailings five feet high, or with a hedge two feet high upon a ditch three feet deep and three feet wide, or instead of such hedge a rail fence three feet high, or with a sod fence three feet high, with a ditch on each side three feet wide and three feet deep, or a stone fence four feet high, or with a fence five feet six inches high, composed of strong timber, put up in any other proper manner not herein particularly expressed, and the owner or occupier of such enclosure shall consider him or herself aggrieved thereby, the person so injured may apply to the fence viewers of the township, who shall forthwith repair to the place where such injury was done, and then diligently examine such fence.

SEC. 2. If fence is good—damages to be assessed—certified and delivered to injured party—owner refusing to pay—certificate delivered to justice of peace—process issued thereon—judgment entered—execution issued. That if, in the opinion of the fence viewers, the fence over or through which the trespassing animal entered, is of such height and strength as is defined in the first section of this act, and in all other respects such a fence as good husbandmen generally keep, they shall proceed from view and enquiry to assess the damages sustained by such applicant, from such trespassing animal or animals; which assessment, including the sum due the fence viewers for their services by this act allowed, the said fence viewers or a majority of them, shall, under their hands and seals, certify and deliver to the person sustaining the damages; and if the owner or possessor of such trespassing animal or animals aforesaid, refuses to pay the said damages on demand, the person injured may deliver said certificate to any justice of the peace within the township, who shall issue process thereon as in other cases of damages; and after trial had, shall enter up judgment and issue execution thereon agreeably to law.

SEC. 3. Damage sustained—execution to issue for amount and costs of suit as in other cases before justice of peace—damage not sustained—execution awarded against plaintiff for cost of suit—appeal. That if it shall appear to such justice, that damage hath been done the plaintiff, he shall give judgment for the amount thereof, with costs of suit; and shall issue execution thereon, in the same manner and under like regulations as is by law directed, in other cases tried before a justice of the peace; but if it shall appear that the plaintiff hath not sustained any damage, the justice shall give judgment against him, and award execution thereon for the costs of suit; provided, nevertheless, that either party shall have the privilege of an appeal to the district court, as in other causes tried before a justice of the peace.

SEC. 4. Compensation of fence viewers—fine in case of failure or refusal to act. That the sum of fifty cents per day, shall be allowed to each of the fence viewers, for their services rendered under this act; and if any fence viewer, directed to view and report the situation of any fence as aforesaid, shall fail or refuse to do the same, not having reasonable excuse for such failure or refusal, such person shall be subject to a fine not exceeding two dollars, at the discretion of the justice of the peace, for the use of the township, or county, where the townships are not organized.

SEC. 5. Justice of peace may appoint viewers. If there be no fence viewers elected or qualified, the person injured may apply to any justice of the peace within his county, who shall appoint two householders, being citizens of the county, to examine said fence, and do all the duties required by the fence viewers.

SEC. 6. When to take effect. This act to take effect and be in force, from and after the first day of May next.

Approved January 21, 1842.

[13] CHAPTER 16.

AN ACT to legalize certain acts of the board of commissioners of Clinton county.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Sale of lots town of Vandenburg before record of plat, legalized—commissioners relieved from penalty. That all sales of town lots, by the board of commissioners of Clinton county, in the town of Vandenburg, the seat of justice of said county, which were made before the plat of said town was recorded, are hereby legalized and made obligatory on the part of said board to fulfill and perform, according to the terms of the contracts made with the purchasers; and said commissioners are hereby relieved from all penalties which they may have incurred, by reason of said sales, before the plat of said town was recorded.

Approved January 24, 1842.

CHAPTER 17.

AN ACT to legalize the location of a territorial road in Henry county.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Names of commissioners—when surveyed—where located—good and valid in law. That a certain road located and surveyed by George Humphrey and Joseph Newell, commissioners, and Daniel Brewer, surveyor, on the eleventh and twelfth days of March, in the year eighteen hundred and forty-one, in the county of Henry, beginning at the post corner of sections thirty-six and twenty-five, on township line number seventy-four north of range five west; (at which point a territorial road from Blackhawk to Mount Pleasant first intersects the line of Henry county,) thence in a direction to Mount Pleasant till it intersects the national road, is hereby declared to be a territorial road, and as good and valid in law, to all intents and purposes, as if the same had been located and surveyed in pursuance of a special act of the legislative assembly.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved January 25, 1842.