

strict regard shall be paid to the requisitions and intentions of the foregoing section.

[21] SEC. 3. **Repealing clause; acting justices not to be affected.** That so much of the above named act, and all other acts that conflict with the provisions of this act, and so much of the sixth section of the act to which this is amendatory as authorizes the election of three justices of the peace in the city of Keosauqua, be and the same are hereby repealed: provided, that those persons now acting as justices of the peace in said township and city of Keosauqua shall not be affected hereby.

SEC. 4. **Time of taking effect.** This act to take effect and be in force from and after its passage.

Approved, 15th February, 1844.

CHAPTER 16.

LAWFUL FENCES.

AN ACT to define lawful fences, and restrain trespassing animals.

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

SECTION 1. **What to be deemed a lawful fence; how high and how built.** That a worm fence, composed of strong and sufficient rails, with stakes and riders, closely put up and in good repair, five feet high; a post and rail, or post and paling, or post and board fence, well built and in good repair, four and a half feet high; and any other fences or obstacles, whether artificial or natural, which shall, in the opinion of the fence viewers of the township or precinct, be considered equivalent to any of those above described, shall be deemed lawful fence in this territory.

SEC. 2. **Division fence, by whom built and repaired.** That in all cases where different owners or occupiers improve land contiguous to each other and divided by a single fence, it shall be the duty of each owner or occupier, to build and keep in repair one half of said fence.

[22] SEC. 3. **Amount to be paid for privilege of joining fence to that of another; if fence removed by owner who to rebuild.** That whenever any person shall join his fence to the fence of another, he shall pay to the person owning such fence one half the cost thereof, or such sum as the owner shall see fit to accept, or build the fence anew, provided the owner of the first fence, or his agent, shall remove the same.

SEC. 4. **Disagreement as to fence on division line, by whom determined; effect of such decision.** That whenever there shall be any disagreement as to the part or parts of the division line on which each shall be required to keep a fence, it shall be lawful for either party to apply to the fence viewers of the township to determine the same; and their decision, given in writing to each party, shall be final and conclusive.

SEC. 5. **Intended removal of division fence, what notice required; penalty for want of notice—if occupied as enclosure, penalty for refusing to build division fence, how assessed and collected.** That whenever either of the owners or occupiers shall determine to remove or suffer to go to decay his share of a division fence, he shall give six months notice in writing of the same to the other owner or occupier; and if he fail so to do, he shall be liable for all damage which may be occasioned by the removal or decay of such fence. And it is further provided, that if any person refuse to pay for, or build his

share of a division fence, according to the decision of the fence viewers, and shall occupy the land adjoining as an enclosure, the person so refusing shall be liable for all damages occurring for the want of such fence, to be assessed and recovered as hereinafter provided in case of trespassing animals.

SEC. 6. Upon trespass of any animal, viewers to examine fence. That if any horse, mare, mule or ass, or any cattle, hogs, sheep or goats, shall break into any field enclosed by any of the fences described in the first section, and the owner or occupier of such enclosed field shall feel himself or herself injured or 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 there diligently examine such fence.

SEC. 7. If fence not legal, viewers to give no damages; if legal assess the damages and fees, and certify the same—certificate, to whom given; amount, how and when collected. That in all cases where there is no fence, or if, in the opinion of the fence viewers, the fence over or through which the trespassing animal entered, be not a lawful fence, according to the requirements of the first section of this act, no damages shall be recoverable; but if the fence shall be deemed a lawful fence, they shall proceed to ascertain and assess the damages sustained by the applicant from such trespassing animal or animals, which assessment, including the sum due the fence viewers for their services as allowed by this act, the fence viewers, or a majority of them, shall certify and deliver to the person sustaining the damages; and if the owner or keeper of such trespassing animal or animals refuse to pay on demand the said damages and costs, the person injured may recover the same before any justice of the peace in the township in an action for debt.

SEC. 8. Amount of fine for second trespass of same animals; consequences of continued trespass; remedy, amount of judgment, effect of. That if the owner or keeper of any animal or animals so trespassing, shall refuse or neglect to take care of the same after the fence viewers shall have approved the fence, or awarded damages for the trespass, and the said animal or animals shall again break into the field or enclosure of the plaintiff or applicant for damages, the owner or keeper shall be liable to a fine double the amount of damages; and if the said animal shall continue to trespass the owner thereof shall be liable for every subsequent trespass to an action therefor, and judgment shall be rendered against him for three times the amount of [23] damages sustained; and such trespassing animal shall be subject to levy and sale under execution issued upon such judgment, any law of this territory to the contrary notwithstanding.

SEC. 9. Owner of any animal breaking lawful fence to be liable for all damage done by others thereby admitted; how assessed and recovered. That in all cases where a trespassing animal shall break down a lawful fence, and thereby occasion damage by the admission of other animals, the owner or keeper of such animal so breaking down the fence shall be liable for all the damage which may be done, to be assessed and recovered as already provided in the seventh section of this act.

SEC. 10. Viewers, compensation of how paid; penalty for refusing to act, amount of, how collected and applied. That the fence viewers shall be entitled to receive fifty cents a day for their services rendered under this act, to be paid where a trespass has been sustained as provided in section seven, or by the complainant where no trespass is sustained on account of unlawful fence; and if any fence viewer, upon application, shall fail or refuse to view and report the situation of any fence, and damages committed, [he] shall be subject to a fine not exceeding three 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. 11. When no viewers elected justices may appoint. That if there be no fence viewers elected and qualified, the person injured may apply to the justice of the peace in the same township where they are organized, and to the nearest justice where they are not, who shall appoint two householders to perform the duties required of the fence viewers.

SEC. 12. Repealing clause. That an act defining lawful fences, and providing against trespassing animals, approved January 21st, one thousand eight hundred and forty-two, is hereby repealed.

SEC. 13. Time of taking effect. This act to take effect and be in force from and after its passage.

Approved, 14th February, 1844.

CHAPTER 17.

DAMS.

AN ACT authorizing the raising of dams on the Des Moines river.

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

SECTION 1. Proprietors of mill dams allowed to build them higher; not to interfere with the rights of others, nor to obstruct navigation of river; to be liable for any damage occasioned. That all the persons to whom charters and privileges have heretofore been granted to erect dams and construct mills and machinery upon the Des Moines river, their heirs and [24] assigns, be and they are hereby authorized and allowed to raise their said dams, or any one of them, to such height as he or they may deem fit: provided, however, that by such raising, the water shall be flowed back on any mill dam that may be erected, or that may hereafter be erected by virtue of any charter that may have been heretofore granted, when the same, in the opinion of the county commissioners, may be required to improve the navigation of the said river; but in so doing the said county commissioners shall regard equally the interests of said charter: and provided further, that nothing herein contained, shall be so construed as to authorize said charters or corporators to overflow the lands of any person, to obstruct the navigation of said river, or to exempt them from liability for any damages that may be sustained by any person, by the raising of such dam or dams.

SEC. 2. Application to build dams higher; to whom made, by whom granted, under what restrictions. That any person or persons applying for a change in any dam as aforesaid shall make application to the board of county commissioners of the county in which said dam may be situated, who are hereby authorized to grant such change, provided the applicant or applicants shall comply with the requisitions of an act entitled "An act authorizing the several boards of county commissioners to grant permits for constructing dams across navigable rivers," approved February 15th, 1843, in the same manner as is required in the erection of new dams, excepting the ninth section of the aforesaid act.

SEC. 3. "Plymouth company" to erect dam, where to be located; to obtain consent of the owners of the land on each side the river; to have a lock, and be subject to foregoing restrictions. That the incorporation known as the "Plymouth Mill and Manufacturing Company" shall have the right to erect a dam across the Des Moines river for the use of the mill belonging to said company on section thirty-five, township sixty-eight range eight west: provided, said incorporation shall obtain from the owner or owners of the land