

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and providing against trespassing animals, approved January 21st, one thousand eight hundred and forty-two, is hereby repealed.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

on each side of the river, the right to use and occupy said land: provided further, that said dam shall contain a sufficient lock as is required by the act incorporating said company, and shall be subject to all the foregoing liabilities and restrictions.

SEC. 4. Any future legislature may amend, alter, or repeal, this act, whenever they may see fit.

Approved, 14th February, 1844.

CHAPTER 18.

PUBLIC ROADS.

AN ACT to punish the obstructing of public roads, etc.

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

SECTION 1. **Obstruction of roads, streams, etc.; establishment of offensive trades, pollution of streams, etc. prohibited; penalty for; nuisance, how abated.** That if any person in this territory shall obstruct, or injure, or cause or procure to be obstructed or injured, any public [25] road or highway, or common street or alley of any town, or any public bridge or causeway, or public river or stream, declared navigable by law; or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufactory, or business, or continue the same after it has been erected or established; or shall in anywise pollute any water course, lake, pond, marsh or common sewer, or continue such pollution so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabout, every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars; and every such nuisance may, by order of the district or proper court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon had, under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this act.

SEC. 2. **This act to be part of criminal law of the territory—duty of judges.** That this act shall be a part of the criminal code of this territory; and the judges of the district courts shall give the same in charge to the grand jurors of the several counties at each term of the court.

Approved, 14th February, 1844.

CHAPTER 19.

ROAD TAX.

AN ACT to amend certain acts relating to roads and highways.

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

SECTION 1. **Road tax, by whom and when levied, amount of, how to be applied; may be worked out on roads at \$1.00 per day.** That it shall be the duty of county commissioners of each county in this territory, at the time