

1899, relating to "governor only can reprieve," be amended to read as follows:

§ 8308. GOVERNOR ONLY CAN REPRIEVE.] No judge, court or other officer [other than the governor] can reprieve or suspend the execution of the judgment of death, except the warden or his duly acting deputy, as provided in this act, unless an appeal is taken.

§ 16. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 17. EMERGENCY.] Whereas, an emergency exists in this, that there are now several persons in the state under sentence of death before the first of July, 1903, and if the said persons are executed according to the existing laws the erection of several scaffolds will be necessary, which will entail considerable cost, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1903.

FENCES.

CHAPTER 100.

[H. B. 118—Richmond.]

LEGAL FENCES.

AN ACT Defining Legal Fences, Providing for the Construction and Maintenance of Partition Fences, How Controversies Over Construction of Legal Fences May be Settled and Providing Penalties for Violating the Provisions of this Act.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. LEGAL FENCES DEFINED.] All fences four and a half feet high and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks ditches and hedges, or other things which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, or any such fences as the parties interested may agree upon, shall be deemed legal and sufficient fences.

§ 2. WIRE FENCE LEGAL.] In all cases where any law of this state requires to be erected or maintained any fence or fences for any purpose whatever, it shall be sufficient and a compliance with such law, if there shall be erected and maintained a barbed wire fence, consisting of two barbed wires and one smooth wire, with at least forty barbs to the rod, the wire to be firmly fastened to the posts not more than two rods apart, with one stay between the posts, the top wire to be not more than fifty-two inches high or less than forty-eight, and the

bottom wire not less than sixteen inches from the ground; or four smooth wires with posts not more than two rods apart, and with good stays not to exceed eight feet apart, the top wire to be not more than fifty-six inches high nor less than forty-eight, and the bottom wire not less than sixteen inches nor more than twenty inches from the ground, provided, that five smooth wires shall be required to constitute a legal partition fence; provided, that any other fence authorized by law shall also be held a legal fence.

§ 3. OCCUPANTS TO MAINTAIN PARTITION FENCES.] The respective occupants of land enclosed with fences shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same.

§ 4. PENALTY FOR NEGLECT.] In case any party neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the civil township supervisors or a majority of them, who, after due notice to each party, shall proceed to examine the same and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they deem reasonable; and if such fence is not repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

§ 5. SAME. VALUE OF REPAIRS, ETC., RECOVERABLE.] When any deficient fence, built or repaired by any complainant as provided in the preceding section, is adjudged sufficient by two or more of said supervisors, and the value of such repairing or building up, together with their fees, is ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the owner or occupant of the land where the fence was deficient, the sum so ascertained; and in case of neglect or refusal to pay the sum so due for one month after demand thereof is made, the complainant may recover the same, with interest at one per cent a month, in civil action.

§ 6. CONTROVERSY. HOW SETTLED.] When any controversy arises about the rights of respective occupants in partition fences, or their obligation to maintain same, either party may apply to a majority of the supervisors of the civil township where the lands lie, who, after due notice to each party, may, in writing, assign to each his share thereof and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment, being recorded in the registry of deeds, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence.

§ 7. PARTY NEGLECTING TO MAINTAIN FENCE. HOW LIABLE.] In case any party refuses or neglects to erect or maintain the part of any fence assigned to him as aforesaid, the same may be erected and main-

tained by the aggrieved party, in the manner before provided, and he shall be entitled to the value thereof, ascertained in the manner aforesaid, and be recovered in like manner.

§ 8. DIVISION OF FENCES VALID.] All divisions of fences made by supervisors according to the provisions of this chapter, or which shall be made by the owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the registry of deeds, shall be good and valid against the parties thereto, and their heirs and assigns.

§ 9. PARTY VOLUNTARILY ERECTING WHOLE FENCE MAY RECOVER. WHEN.] When any controversy that may arise between the occupants of adjoining lands, as to their respective rights in any partition fence, it shall appear to the supervisors that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for as much as shall be assigned to him to repair and maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter.

§ 10. FENCES TO BE KEPT IN REPAIR THROUGHOUT THE YEAR.] All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides otherwise mutually agree.

§ 11. PROCEEDINGS WHEN LAND IS BOUNDED BY RIVERS.] When lands of different persons which are required to be fenced are bounded upon or divided by any river, brook, pond or creek, which of itself, in the judgment of the supervisors, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is; if in such case the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side, in making a partition fence on the one side or the other, or if such person disagrees respecting the same, then two or more supervisors of the civil township in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek.

§ 12. SUPERVISORS TO GIVE NOTICE AND RENDER DECISION.] If such supervisors determine that such river, brook, pond or creek will not answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line they shall, after giving notice to the parties, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on one side and partly on the other side, and shall reduce such determination to writing and sign the same; and if either party refuses or neglects to make or maintain his part of the fence, according to the determination of said supervisors, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner.

§ 13. LANDS OCCUPIED IN COMMON. HOW FENCED.] When any lands belonging to different persons in severalty have been occupied in common without a partition fence between them, and one of the occupants is desirous to occupy his part in severalty, and the occupant refuses or neglects, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the lines when divided, the party desiring it may have the same divided and assigned by a majority of the supervisors of the same civil township, in the manner provided in this chapter.

§ 14. SUPERVISORS TO ASSIGN TIME FOR MAKING FENCE.] Upon the division and assignment as provided in the preceding section, the supervisors may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year; and, if either party shall not make his part of the fence within the time assigned, the other party may, after having completed his part of the fence, make the part of the other, and recover therefor the ascertained expense thereof, together with the fees of the supervisors, in the manner provided in this chapter.

§ 15. PARTITION FENCE. WHEN REMOVABLE.] When one party ceases to improve his land, or opens his enclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next enclosure, if the owner or occupant of such adjoining enclosure will, within two months after the same is ascertained, pay therefor such sum as a majority of the supervisors shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties.

§ 16. RULE IN CASE OF UNINCLOSED LANDS AFTERWARDS FENCED.] When any uninclosed grounds are afterwards inclosed, the owner or occupant thereof shall pay one-half of each partition fence, standing upon the line between his land and the inclosure of any other owner or occupant, and the value thereof shall be ascertained by a majority of the supervisors of the civil township, in writing under their hands, in case the parties do not agree; and if such owner or occupant neglects or refuses for sixty days after the value has been ascertained and demand made to pay for one-half of such partition fence, the proprietor of each fence may maintain a civil action for such value and the cost of ascertaining the same.

§ 17. SUPERVISORS. HOW SELECTED IN CERTAIN CASES.] In all cases where the line upon which the partition fence is to be made, or to be divided is the boundary line between civil townships, or partly in one civil township and partly in another, a supervisor shall be taken from each civil township.

§ 18. RULE WHEN PARTITION FENCE RUNS INTO WATER.] When a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share belonging to him, similar proceedings shall be had as in case of the other fences, and with like effect.

§ 19. EFFECT OF RECORD OF DIVISION.] In all cases where the line upon which a partition fence, to be built between unimproved lands, has been divided by the supervisors, or by agreement in writing between the owners of such lands, recorded in the office of the register of deeds of the county where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fence agreeably to such divisions.

§ 20. NOTICE OF DETERMINATION NOT TO IMPROVE LANDS.] If any person determines not to improve any of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and gives six months' notice of such determination to all the adjoining occupants of the lands, he shall not be required to keep up or support any part of such fence during the time his lands are open and unimproved, and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining inclosure will not pay therefor, as provided in the fourteenth section of this chapter.

§ 21. SUPERVISOR NEGLECTING TO PERFORM DUTY. PENALTY.] Any supervisor who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall be liable to the party injured for all damages consequent upon such neglect.

§ 22. FEES OF SUPERVISORS] Each supervisor shall be paid by the person employing him, at the rate of one dollar per day for the time he is so employed; and if such person neglects to pay the same within thirty days after the service is performed, each supervisor having performed any such service may recover in civil action the amount of such fees.

§ 23. FENCE VIEWERS.] In all counties not divided into civil townships, the county commissioners shall act as fence viewers, and be governed by the provisions of this chapter; provided, the provisions of this act shall apply to the respective occupants of the land enclosed with fences for the purpose of pasturage or grazing.

§ 24. CIVIL ACTION FOR FAILURE TO BUILD. RECOVERY.] In case any person neglects or refuses to erect or maintain the part of any such fence assigned to him to erect or maintain, the same may be erected and maintained by the party aggrieved thereby in a good and substantial manner, and he may recover of the party so neglecting or refusing, in a civil action in any court having jurisdiction of the amount involved, the value of that part of said fence so erected or maintained which was assigned to the party so neglecting or refusing, together with all the costs and expenses of such action, and all the costs and expenses of the assignment in the first section of this act provided for.

Approved March 10, 1903.