

organized county in this territory; and all voters living in unorganized counties, shall vote in the organized counties to which their unorganized counties are respectively attached for election purposes.

Who entitled to vote and hold office.

Sec. 50. Every free white male person above the age of twenty-one years, who shall have been a resident of the territory ninety days, and twenty days in the county, next preceding the election, who is a citizen of the United States, or who has declared upon oath his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citizens of the territory, shall be entitled to vote; and all persons possessing the qualifications mentioned in this section, and who have resided in this territory nine months, shall be eligible to any office in the said territory.

Acts repealed.

Sec. 51. All acts and parts of acts, conflicting with the provisions of this act, are hereby repealed.

When to take effect.

Sec. 52. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6th, 1866.

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## FENCES

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### CHAPTER 15.

#### *An Act to Establish a Fence Law.*

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

What deemed a lawful fence.

Section 1. That a fence constructed by placing the end of posts firmly in the ground, not to exceed twelve feet apart, and by firmly securing thereto rails, poles, or boards, either by morticing the posts and inserting the ends of the rails, poles, or boards therein, or by sufficiently nailing, spiking, or pinning them to said posts; *Provided*, That there shall not be less

than three rails, poles, or boards, to each joint or length of fence, and *provided further*, That the bottom tier of such rails, poles, or boards, shall not exceed twenty inches above the average surface of the ground along each joint or length of fence, and that the top of said fence shall be not less than four and one-half feet above the average surface of the ground along each joint or length of fence; or a fence constructed by placing crutches or timbers of suitable size in the ground, and by placing thereon rails or poles of suitable size, not less than three in number, to each joint or length, the bottom tier of such rails or poles not to exceed twenty inches above the average surface of the ground, and the top tier not less than four and one half feet above the average surface of the ground along each joint or length of fence; the top tier to rest securely in stakes set in the ground at the end of each joint. Or any fence constructed in any other manner of rails, timber, boards, walls or embankments, or any combination thereof; and all brooks, creeks, ponds, ditches, rivers and hedges that shall be considered equivalent to the fence described in this section, shall be deemed a lawful fence when in good repair.

Sec. 2. In order to bring a fence to the standard of a "lawful fence," it is not necessary that such fence be deemed sufficient to turn sheep or swine.

Not necessary to turn sheep and swine.

Sec. 3. If two or more persons join in the construction of a partition fence, each party shall thereafter keep in good repair his portion of such fence; and neither party shall abandon his part of such partition fence or remove the same or any part thereof, until after one year's notice to the other party or parties interested therein, of his intention so to do; unless by the consent of all the parties interested.

Where parties join in constructing partition fence.

Sec. 4. Any person or persons owning or having in his, her or their charge or possession any horses, mules, cattle, sheep or swine, or any one of such animals, which shall breach over, under or break into any lawful enclosure belonging to any person or persons other than the owners of such animal or animals, within either of the counties hereinafter named, such person or persons owning or having in charge or possession such breaching animal or animals shall be liable to the party or parties sustaining such injury, for all damages he, she, or

Owners liable for damage done by animals.

they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof, in the county where such damage may have accrued, and the proceedings shall be the same in all respects as in other civil actions; *Provided*, That no exemption laws shall apply to executions issued on judgments obtained under the provisions of this act.

Exemption laws not to apply.

Who considered owners.

Sec. 5. Any person or persons occupying or having the charge or possession of an enclosure, shall be considered the owner thereof in any action under the provisions of the last section.

Party suffering damage shall notify owner before commencing action.

Sec. 6. The party sustaining damage done by animals, as mentioned in section four, before commencing an action thereon, shall notify the owner or person having in charge such offending animal or animals, of such damage and the probable amount thereof, provided he knows to whom such animal or animals belong, and that such owner or keeper resides and is then within the county where the damage was committed.

Party suffering damage may restrain animals

Sec. 7. The person suffering damage done by animals, as mentioned in section four, may restrain and keep in custody such offending animals until the finding of the court be ascertained, unless before such suit, the amount of his claim and the expense of keeping such animals be tendered to him.

Trial.

When it appears that fence is lawful.  
Damage.

Sec. 8. If, upon the trial of an action under the provisions of section four, it shall appear by competent testimony that the plaintiff's enclosure is a lawful fence under the provisions of this act, he shall be allowed to prove the amount of damage sustained, and (if he has retained in custody the animals committing such damage,) the amount of expense incurred for keeping the offending animals; and any judgment rendered for damages, costs, and expenses, against the defendant, shall be a lien upon the animals committing the damage. But if it shall appear upon the trial that the plaintiff's enclosure is not a lawful fence, or that no damage was sustained, judgment shall be rendered against the plaintiff for costs of suit.

Judgment lien on animals.  
When enclosure not lawful.

When it appears defendant not owner.

Sec. 9. If upon the trial it appears that the defendant is not the owner or the person in charge of such offending animals, he shall be discharged from the action, and the suit may proceed as against a defendant whose name is unknown; and if,

at the commencement of the action, the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring suit against a defendant unknown, in which case service shall be made by posting copies of the summons in three of the most public places within the county not less than ten days previous to the day of trial, which posting may be done by the proper officer, or by any voter of the county.

When owner unknown.

Service in such case.

Sec. 10. This act shall govern in all actions and proceedings instituted and transacted under the provisions thereof, any law to the reverse notwithstanding.

This act to govern in all cases.

Sec. 11. The provisions of this act shall apply only to the counties of Union, Clay, Yankton, and Bon Homme.

What counties act apply to.

Sec. 12. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 11th, 1866.

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## FERRIES.

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### CHAPTER 16.

**An Act to regulate Ferries in the Organized Counties of the Territory of Dakota.**

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

Section 1. That it shall not be lawful for any person or persons to keep a ferry across any stream of water running through the organized counties of this territory, without first having obtained a lease from the board of county commissioners of the proper county, for that purpose, as hereinafter provided.

Persons to obtain ferry lease from county commissioners.

Sec. 2. That the board of county commissioners of the county to whom application shall be made for a ferry, in the manner hereinafter provided, are hereby authorized and it shall be their duty to grant a lease of such ferry for a term

Lease not to exceed five years, &c.