

Fences.

CHAPTER 78.

FENCES IN PENNINGTON, CUSTER, LAWRENCE, MANDAN AND FORSYTHE.

AN ACT to Establish a Fence Law in the Counties of Pennington, Custer, Lawrence, Mandan and Forsythe.

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

§ 1. DESCRIPTION OF LAWFUL FENCE.] That in the counties of Pennington, Custer, Lawrence, Mandan and Forsythe, a fence constructed in the manner hereinafter described shall be a lawful fence:

First—By placing the ends of ordinary fence posts firmly in the ground, at least twenty inches deep and not more than eight feet distant from each other, and by firmly fastening thereto good sound rails or poles of sufficient size, two to the panel, the top rail or pole to be not less than four feet from the surface of the ground, and the bottom rail or pole not more than fifteen inches from the ground, with two wires, not less than the size of telegraph wire, firmly stretched and secured to each post so as to equally divide the space between the rails or poles above provided for: *Provided*, That two rails or polls may be substituted in place of the wires.

Second—By placing posts as provided in the first subdivision of this section, but not more than eight feet apart, and nailing or firmly fastening thereto ordinary sound fencing boards, two boards and two wires, the same as provided in said first subdivision to the panel, said boards and wires to be fastened to each post in the same position as provided for rails or poles, and the wires in the first subdivision: *Provided*, That two boards may be substituted in the place of the wires.

§ 2. REPAIRING PARTITION FENCE.] 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 portion 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 parties interested therein.

§ 3. LIABILITY OF STOCK OWNERS FOR DAMAGE.] Any person or persons owning or having in his or their possession or charge any horses, mules, cattle, or any one of such animals, which shall breach over or under, or breach into any lawful enclosure belonging to any person or persons, other than the owners of such animal or animals, 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 they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof.

§ 4. WHO CONSIDERED OWNER OF ENCLOSURE.] Any person or persons occupying or having the charge of an enclosure shall be considered the owner thereof in any action under the provisions of the last section.

§ 5. PARTY DAMAGED TO GIVE NOTICE AND MAKE DEMAND.] The party sustaining the damage shall notify the owner or person having in charge such offending 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 within the county where the damage was committed; which notice shall be given and demand for payment of said damages shall be made, before any action shall be commenced and maintained for any such damage.

§ 6. MAY RESTRAIN OFFENDING ANIMALS.] The person suffering such damage done by animals as mentioned in section three, may restrain and keep in custody as many of such offending animals as are equal in value to the damage done until the finding of the court, unless before such suit the amount of his claim or expense of keeping such animals be tendered him.

§ 7. RECOVERING DAMAGES, PROOF, ETC.] If upon the trial of any action under the provisions of section three of this act 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 the expense incurred for keeping such 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 and damages sustained by defendant.

§ 8. CERTAIN FENCE DECLARED LAWFUL.] That the fence known as a "worm fence" or a stone wall, or any fence constructed of any material, shall be a lawful fence: *Provided*, Such worm fence shall be as effective for resisting breaching stock as the fences made in the manner prescribed by section one of this act.

§ 9. This act shall take effect and be in force from and after its passage and approval.

ENDORSED.—Received at Executive Office, February 9, at 12:35 P. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the House of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

Geo. H. Hand,

Secretary of the Territory.