

MAINE STATE LEGISLATURE

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To Francis G. Bussell, Chief, Division of Animal Industry, Department of Agriculture
From Abraham Breitbard, Deputy Attorney General

Partition Fences.

We answer in the order in which the questions are proposed, as follows:

1. What constitutes a legal fence for cattle in the State of Maine, both regarding electric and barbed wire fences?

Answer. Chapter 32, §1, R.S. 1930, makes provision for legal and sufficient fences where adjoining owners do not by "mutual written consent" agree. In speaking of this provision our court in Cotton vs. Railroad Co., 98 Maine at page 513, says:

"This statute is as old as the State. An analysis shows that it is very indefinite in describing what constitutes a 'legal and sufficient' fence. First, it must be four feet high. Second, it may be of rails, timber, boards, iron or wire. But how shall it be put together? How many rails, how many timbers, how many wires? Upon these details the statute is silent. It would not be contended that one rail, one timber or one strand of wire, erected at a height of four feet, would constitute such a fence, nor that twenty of either kind would be required. How many then are required? Where is the mean between these two extremes? The statute does not say and therefore does not fully define what constitutes a 'legal and sufficient' fence. In the very nature of the case it could not, for what might be 'legal and sufficient' for one purpose might not be for another. A fence that would be sufficient against oxen might not be effective against sheep, but it might be unreasonable to require a fence against oxen to be sheep tight. All these matters were, therefore, wisely left to the discretion of the fence viewers so that the sufficiency of each particular line of fence could be determined with reference to the purpose which it was intended to serve. If the parties disagree as to whether a piece of fence is 'legal and sufficient' to effect the result expected of it, then the fence viewers are the tribunal designated to settle that question. They can undoubtedly determine whether the material prescribed by statute as suitable, is so put together as to constitute, in the particular case upon which they are called to pass, a 'legal and sufficient' fence. That is, the legality and sufficiency of a fence is determined, not upon the number of rails or wires it contains, but with reference to the particular office it is intended to serve."

What I have quoted is sufficiently explicit so that further comment is not necessary.

2. In adjoining lots, is each owner liable for half the construction and material for fencing providing only one owner uses his lot for pasturing?

Answer. Adjoining owners are liable for the construction of a division fence in the proportion found by a determination of the fence viewers, by agreement of the parties, or by prescription. R. S. 1930, Chapter 32, §5. In speaking of this provision our court, in Mecquier vs. Bachelder, 112 Maine at page 343, says:

"The conception of the fence chapter is based upon the theory that each party to a division fence is required to build his part, not necessarily in length, but in value. 'His share thereof' is the bight of section five. To make each party build 'his share' is the primary purpose of the section. But he cannot be so required until his part is first determined, either by the fence viewers, by agreement of the parties, or by prescription. Accordingly, to permit one party to build the entire fence before any division, would be an act without the pale of the statute, and consequently void."

3. Provided deer or moose break down a fence from the outside inward, allowing cattle to escape, is the owner of cattle liable for damage done by these cattle?

Answer. No, unless the owner of the cattle unreasonably delays the repair of the fence or to restrain his cattle until such repairs are made.

4. If a gate is left open by persons unknown, is the owner liable for damage done by cattle that have escaped in this manner?

Answer. No.

5. What is the legal age limit at which a bull may be pastured, and what constitutes a legal fence for an older bull's exercise pen?

Answer. There is no statutory provision with relation to this inquiry, and a legal fence would be one as defined by the answer to Question 1.

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