

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....
1821.

ERRATA:

**The following leaf is
inserted because one or more pages
in this chapter have errors
noticed and corrected here.**

VOLUME THE FIRST.

Page.
 40 L. 12 of the page for 'preceding' read 'presiding'
 54 Sec. 4 L. 14 of Sec. for 'time' read 'term'
 55 7 2 for 'a' read 'or'
 55 7 9 before the word 'said' insert 'the'
 56 9 3 for 'the' read 'her'
 57 1 6 for 'to' read 'in'
 58 1 5 for 'and' after the word 'house'
 read 'or'
 61 in the title of the act, ch. vi. insert 'the' before the
 word 'crimes'
 62 Sec. 2 L. 9 of S. before the word 'offender' insert 'such'
 69 16 8 for 'Treasurer' read 'Treasury'
 73 1 15 after the word 'for' insert 'the'
 77 13 6 for 'to' read 'of'
 78 first line of the page, dele the word 'by'
 80 L. 2 of the p. after the word 'willingly' insert 'aid or'
 80 17 for 'counterfeited' read 'counterfeit'
 82 1 after the word 'in' insert 'all'
 82 Sec. 7 L. 4 of Sec. after the word 'devised' dele 'or'
 and insert '
 83 Sec. 7 L. last of S. for 'aggravations' read 'aggravation'
 84 10 6 for 'and' read 'or'
 90 1st L. of p. for 'Commissioner' read 'Commissioners'
 90 L. 20 before the word 'Commissioner' insert 'said'
 97 6 for 'assumst' read 'assumpsit'
 97 14 for 'cover' read 'covin'
 98 at the end of the act for 'January' read 'February'
 99 L. 17 of p. after the word 'year' dele ';' & insert ', and'
 100 15 at the end of the line insert 'the'
 105 at the end of the Act for '1820' read '1821'
 108 L. 14 of page, for 'nuisances' read 'nuisance'
 108 20 after the word 'each' insert 'one'
 111 25 after the word 'fail' insert 'of'
 113 11 for 'on' read 'or'
 144 last for 'performance' read 'performing'
 145 Sec. 2 L. 9 of Sec. after the word 'of' insert 'the'
 147 7 6 before the word 'release' for 'to'
 read 'a'
 150 Sec. 6 L. 2 of Sec. for 'in' read 'is'
 151 in the title, before the word 'Lands' insert 'reserved'
 153 1st line of the p. for 'whenever' read 'wherever'
 155 last before the word 'Court' for 'a' read 'any'
 156 Sec. 4 L. 26 of Sec. for 'notification' read 'notifications'
 159 9 8 for 'purpose' read 'purposes'
 167 14 5 for 'votes' read 'vote'
 193 4 10 dele 'such'
 199 17 1 for 'when' read 'where'
 202 22 6 after the word 'near, dele 'to'
 202 23 10 for 'be' read 'he'
 203 24 16 for 'of' read 'in'
 203 25 16 for 'meeting' read 'meetings'
 205 L. 18 of p. before the word 'estate' insert 'other'
 210 2 before the word 'tenement' insert 'other'
 215 4 before the word 'guardians' insert 'guard-
 dian or'
 226 Sec. 73 L. 6 of Sec. dele 'a'
 229 3 last for 'agreeably' read 'agreeable'
 230 7 19 for 'agreeably' read 'agreeable'
 231 8 6 for 'resided' read 'reside'
 242 2 5 for 'sentence' read 'sentences'
 245 7 3 after the word 'herein' insert 'be-
 fore'
 247 L. 7 of the act, ch. 56, after the word 'otherwise' in-
 sert 'interested'
 247 11 for 'statement' read 'statements'
 247 Sec. 1 L. 2 of Sec. for 'whenever' read 'wherever'
 248 3 1 for 'whenever' read 'wherever'
 248 3 14 for 'Justice' read 'Justices'

Page.
 252 L. 3 of p. for 'where' read 'wherein'
 257 5 after the word 'have' insert 'his or'
 265 Sec. 39 L. 3 of Sec. for 'when' read 'where'
 271 L. 1 and 3 of p. for 'affect' read 'effect'
 271 Sec. 6 L. 2 of Sec. before the word 'execution'
 insert 'the'
 278 19 4 for 'on' read 'in'
 280 L. 2 of p. for 'have' read 'had'
 281 22 for 'of' read 'on'
 283 13 for 'lies' read 'lays'
 283 last before the word 'defendant' insert 'the'
 284 Sec. 32 L. 2 of Sec. for 'a' read 'any'
 288 5 18 for 'whenever' read 'wherever'
 291 9 4 for 'as' read 'or'
 292 L. 4 of p. for 'examinations' read 'examination'
 293 Sec. 13 L. 5 of Sec. after the word 'article' in-
 sert 'or articles'
 297 7 5 for 'and' read 'or'
 301 L. 8 of p. for 'he' read 'be'
 309 24 between the words 'the' and 'day' should
 be a '
 310 20 for 'debt' read 'debtor'
 311 2 for 'with' read 'and of'
 312 7 for 'summon' read 'summons'
 312 9 between the words 'our' and 'Court'
 should be a '
 318 31 for 'writ' read 'writ a'
 328 Sec. 8 L. 4 of Sec. for 'grieved' read 'aggrieved'
 353 L. 14 of p. at the end of the line insert 'the'
 361 Sec. 1 L. 18 of Sec. for 'cause' read 'case'
 370 3 10 for 'to' read 'of'
 371 2 7 dele 'to'
 373 L. 15 of p. before the word 'require' insert 'to'
 376 Sec. 1 L. 10 of Sec. dele 'the' before the word
 'payment'
 378 at the end of the act, for '17' read '20'
 378 in the title, for 'selection' read 'selecting'
 379 Sec. 4 L. 5 of Sec. before the word 'divide' in-
 sert 'shall'
 394 1 9 for 'part' read 'parts'
 395 1 8 for 'acceptances' read 'accep-
 tance'
 404 1 34 before the word 'authorized'
 insert 'hereby'
 407 7 4 dele 'the'
 414 last word of the 1st act on the page, for 'therein'
 read 'thereon'
 423 Sec. 3 L. 15 of Sec. after the word 'assignments'
 insert 'thereof, and also of the assignments'
 424 Sec. 6 L. 13 of S. after the word 'papers' insert 'as'
 425 L. 7 of p. before the word 'action' insert 'an'
 428 22 for 'twelve' read 'twenty'
 431 8 for 'fifteen' read 'fifty'
 432 first line of the page should be put after the third
 432 L. 5 of the p. dele 'entering'
 432 between the 28th and 29th lines of the p. insert
 'Every blank writ of attachment, with a sum-
 mons thereon, fifteen cents'
 432 L. 37 of p. for 'judgment' read 'jurymen'
 435 9 for 'appear' read 'appears'
 435 10 for 'make' read 'makes'
 435 18 for 'taking' read 'taxing'
 444 Sec. 1 L. 6 of Sec. before the word 'records' in-
 sert 'the'
 445 1 9 for 'within' read 'of'
 445 1 19 after the word 'escape' insert
 'sickness'
 455 11 1 after the word 'of' insert 'the'

had been no such division made, and until the same records shall be lodged with the clerk of the town in which the land lies; and when the lands lie in several towns, they may be lodged with the clerk of such town, as the Court of Sessions, upon application to them made for that purpose, shall order and direct; and the clerk with whom they may be lodged, and his successors in office shall be fully authorized to authenticate any copies therefrom, as from the records of the town of which he is clerk.

When lands lie in several towns, Court of Sessions to decide with what clerk they shall be lodged;

which clerk may certify copies thereof.

SEC. 9. *Be it further enacted,* That where, after such final division of any lands or other real estate, which have been or shall have been held as a proprietary, the proprietors making such division have ordered and delivered or shall order and deliver the record of their proprietary into the custody of the town clerk in which such land or other real estate, or part thereof, may lie; the proprietors who shall hold any meeting for the purpose before mentioned, may recall the said record, and may cause the clerk then appointed, and sworn, or the town clerk to whom such records, have been committed, to record all votes and proceedings which shall be had at any meeting as aforesaid and copies of the same may be certified as by law is provided for certifying any other part of such record.

Proprietors may in certain cases recall their records—and cause clerk to make a record of their proceedings.

[Approved March 15, 1821.]

CHAPTER XLIV.

An Act for regulating Fences, and general and common Fields.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That in every town within this State, there shall be chosen annually by the inhabitants thereof, at the time of their meeting for the choice of town officers, two or more judicious and discreet freeholders, being inhabitants of the same town, to be Fence Viewers, to be sworn as other town officers are sworn, to the faithful discharge of the duties of their office.

Every town to choose annually two or more fence viewers.

SEC. 2. *Be it further enacted,* That all fences of four feet high, and in good repair, consisting of rails, timber, boards or stone walls; and also brooks, rivers, ponds, creeks,

What shall be considered as legal fences.

ditches and hedges, or other matter or thing equivalent thereto, in the judgment of the Fence Viewers, within whose jurisdiction the same shall lie, shall be accounted legal and sufficient fences; and the respective occupants of lands inclosed with fence, shall keep up and maintain partition fences between their and the next adjoining inclosures, in equal halves, so long as both parties continue to improve the same; and in case either party shall neglect or refuse to repair or rebuild the fence, which of right he ought to maintain, the aggrieved party may forthwith apply to two or more Fence Viewers of such town, duly chosen and sworn, to survey the same; and upon their determination that the fence is insufficient, they shall signify the same in writing, to the occupant of the land, and direct him to repair or rebuild the same within six days; and if the same fence shall not be repaired or rebuilt within the said term of six days, it shall be lawful for the complainant, that improves the lands adjoining, to make up, amend or repair the deficiency; and when the same shall be completed and adjudged sufficient by two or more of the Fence Viewers, and the value thereof, together with the Fence Viewers' fees ascertained in writing, the complainant shall have a right to demand and receive of the occupant, lessor or freeholder of the land where the fence was deficient, as aforesaid, at his election, double the sum thus ascertained as aforesaid, for the expense of amending, surveying and viewing the fence; and in case of neglect or refusal to make payment thereof, for the space of one calendar month after demand made of the person against whom he shall make his election, he may sue for and recover the same, by a special action of the case in any Court proper to try the same, and interest, one per cent. per month until judgment shall be rendered therefor.

Occupants of adjoining inclosures to maintain partition fences.

Proceedings in case of neglect.

Party neglecting, to pay double the adjudged value,

and after one month, liable to suit and 12 per cent. interest.

Fence viewers to assign in writing the shares of partition fences each occupant is to repair.

SEC. 3. *Be it further enacted,* That when any dispute shall arise about the respective occupants' right in partition fences, and his or their obligation to maintain the same, upon application made by either party to two or more Fence Viewers of such town where the lands lie, they are hereby empowered, after due notice to each party, to attend at time and place, if they see cause, to assign to each party his

share thereof, in writing: which assignment, being recorded in the Town Clerk's office, shall be binding upon such persons and the succeeding occupiers of the respective lands, and they obliged always thereafter to maintain their part of said fence; and in case any of the parties shall refuse, or neglect to erect, keep up and maintain the part to such party assigned, the same may be done by the aggrieved party, in the manner before in this Act provided, and for which he shall be entitled to double the sum ascertained, in manner as aforesaid, and to be recovered in like manner. And all divisional fences between man and man shall be kept in good repair throughout the year, unless the occupiers of the lands on both sides shall otherwise agree.

Assignment to be recorded.

Proceedings in case of refusal to build or repair.

Divisional fences to be kept in good repair unless otherwise agreed.

SEC. 4. *Be it further enacted*, That when lands belonging to, or occupied by different persons, and subject to be fenced, are bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence in the judgment of the Fence Viewers, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in the middle or other part thereof, being the true boundary line between them; if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence on one side or the other, or shall disagree respecting the same, then two or more Fence Viewers of the town or towns wherein such lands lie, on application to them made, shall forthwith view such brook, river, pond or creek; and, if they shall determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence at the true boundary line; they shall judge and 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, as to them shall appear just, and reduce such their determination to writing, having first given notice to the parties to be present at such assignment: and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the Fence Viewers' determination in writing, as aforesaid, the same may be done and performed, as in this Act is before provided, and the delin-

Fence viewers to decide in writing how or on which side of a stream a divisional fence shall be built.

Proceedings in case of neglect to build fence accordingly.

quent party subject to the same costs and charges to be recovered in like manner.

When persons owning in severalty have improved in common, and one wishes to improve in severalty what proceedings are to be had.

SEC. 5. *Be it further enacted,* That where any lands belonging to two persons in severalty, shall have been improved in common, without a partition fence between them, and one of the occupants shall be desirous to improve his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, it shall be in the power of the party desiring it, to have the same divided and assigned by two or more of the Fence Viewers of the same town, in the way and manner in this Act provided; and the same Fence Viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making up the fence; and if the occupant complained of shall not build and erect his part of the fence within the time so assigned, it shall and may be lawful for the other party, after having made up his own part of the fence, to make up the other's part, and recover therefor double the sum it shall cost, with the fees of the Fence Viewers, in the way and manner in this Act before provided.

When one party shall cease to improve his land, before under improvement, and lay it in common—the partition fence shall remain, on payment of value, &c. by the owner of the adjoining inclosure.

When lands which have laid unimproved and in common shall be inclosed or improved—proceedings to be had.

SEC. 6. *Be it further enacted,* That when one party shall cease to improve his land, or shall lay his inclosure, before under improvement, in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next inclosure that is improved: *Provided,* The party continuing to improve will allow and pay therefor, so much as two or more Fence Viewers shall, in writing, determinè the reasonable value thereof. And whenever any lands which have laid unimproved and in common, shall be afterwards inclosed or improved by depasturing, the occupant, lessor or freeholder thereof shall pay for the one half of each partition fence standing upon the divisional line between the same land and the land of the inclosures of any other occupant or proprietor, the value and part thereof to be ascertained, in writing, in case they shall not agree between themselves, by two or more of the Fence Viewers of the same town wherein such land lies; and in case such occupant, lessor or proprietor as aforesaid,

shall neglect or refuse to pay for a moiety of the partition fences, for the space of thirty days after demand made, the value having been ascertained as aforesaid, the proprietor of the fence may have and maintain in form aforesaid, an action of the case for such value and the costs of ascertaining the same. And in all cases where the line upon which partition fence is to be made or divided is the boundary line of one or more towns, or partly in one town and partly in another town, a Fence Viewer shall be taken from each town.

Where towns' lines, &c. are boundaries, a fence viewer to be taken from each town.

SEC. 7. *Be it further enacted*, That when a water fence, or fence running into the water is necessary to be made, the same shall be done in equal halves, unless by the parties otherwise agreed: and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall be had, as in other cases of the like kind respecting fences out of the water, in this Act mentioned: *Provided*, That nothing in this Act contained shall extend to house lots, the contents of which do not exceed half an acre; but if the owner or owners of such lots shall improve, his neighbour shall be compellable to make and maintain one half of the fence between them, whether he improve or not; or to make void any written agreement respecting the making or maintaining partition fences.

Water fences to be maintained equally by parties.

Proceedings in case of neglect.

Proviso as to house lots not exceeding half an acre.

SEC. 8. *Be it further enacted*, That any Fence Viewer duly chosen and sworn, who, on due notice given him and being requested by any person interested to view any fence complained of, as insufficient, shall neglect forthwith to attend the same, shall forfeit and pay the sum of three dollars, to him or them who shall sue for the same, within forty days after such neglect, and each Fence Viewer shall be paid one dollar a day, fifty cents for half a day, and under that twenty five cents, for the time he shall be engaged in the business of his office, by the person employing him. And in case the complainant shall neglect to pay the Fence Viewers their legal fees, within thirty days after the service done, they may severally recover, by an action of the case, double the amount of such fees; and each Fence Viewer may be a witness for or against his companion in such suit.

Penalty if fence viewers neglect their duty.

SEC. 9. *Be it further enacted*, That in any and every

Proprietors of general and

common fields
may have an-
nual meetings
in March, and
agree on mode
of improving,
&c.

town or plantation in this State, where several allotments of lands are inclosed and fenced in one general field, or where they have been so inclosed, fenced and improved, or where all the proprietors of any land shall hereafter see cause to inclose, fence and improve the same in such manner, such proprietors may, some time in March, annually, and from time to time, as they judge proper, meet together to make such rules and adopt such modes of improvement, as they shall think just and equitable and most for the general benefit; and the proprietor or proprietors of each lot respectively, during the time of his or their pasturing, planting, mowing or otherwise improving his or their part in such general field, shall make and maintain his or their respective part of the whole fence, according to the quantity of acres of land contained in his or their allotment, until the major part of the propriety, at a meeting of such proprietors legally warned for that purpose, shall see cause to alter the form of their improvement. And the whole general fence shall be measured, and each proprietor's part set out and apportioned by two or three discreet indifferent persons, appointed and sworn for that purpose, by any Justice of the Peace for the said county, unless the major part of the propriety agree, and proportion the same among themselves. And when the proportion of each proprietor in such general fence is adjusted and determined, the same shall be entered upon record by the Clerk of the propriety; and where there is no such Clerk, by the Clerk of the town wherein the land lies, any law, usage or custom to the contrary notwithstanding. And the charge arising by dividing and setting off the several parts of such fence, to and among the proprietors of lands inclosed and fenced in one general field, and also the charge of making and maintaining of such fence, as cannot justly be set off to any particular proprietor or proprietors, as his or their part, shall be borne by the several proprietors, in proportion to their respective interests in such field.

Each proprie-
tors' propor-
tion of a gener-
al fence being
determined, to
be recorded.

Expense to be
borne by pro-
prietors in
proportion to
their interest,
&c.

Proceedings
whenever
fence round a
common field
belonging to
any occupant,
&c. is defi-
cient, &c.

SEC. 10. *Be it further enacted*, That whenever the fence around any general and common field, belonging to any freeholder, occupant, or improver of any land in such field, shall become deficient and need repairing, the owner thereof shall immediately repair such defective fence, after being duly no-

tified of such deficiency by any Fence Viewer of the town wherein such field lieth; and in case the owner thereof shall neglect to repair such defective fence, for the space of three days, after due notice given thereof by any Fence Viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to repair such defective fence; and when the same shall be completed and adjudged sufficient, by two or more of the Fence Viewers of the town wherein such fence lieth, and the value thereof, together with the Fence Viewers' fees, ascertained in writing, by them subscribed, the person who shall make up or repair such deficient fence, shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up or repair the same, at his election, double the expense of making or repairing, surveying and viewing, such fence; and in case of neglect or refusal to make payment thereof for the space of one month, after notice and demand made of the person against whom he shall make his election, to satisfy him therefor, he may sue for and recover the same by a special action of the case, with cost of suit, in any Court proper to try the same. And whereas it often happens that fences around general and common fields are blown down, carried away, or otherwise destroyed by sudden floods or tempests, and it is necessary the same should be immediately repaired to prevent the destruction of the grain and crops growing therein:

SEC. 11. *Be it therefore enacted*, That whenever any such fence shall be thus suddenly blown down, carried away, or destroyed, and the crops of grain or grass therein growing, shall be thereby exposed to be immediately destroyed, the occupant or freeholder of the same, to whom the same fence belonged to repair, shall immediately repair the same; and in case of neglect for the space of twenty four hours, after notice given him thereof by any Fence Viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to set up and sufficiently repair such fence; and when the same shall be completed and adjudged sufficient by two Fence Viewers or more, as aforesaid, and the value thereof, together with the Fence Viewers' fees, ascertained in writing as aforesaid, the person who

Proceedings
when fences
round common
fields are
blown down,
&c.

shall set up or repair the same, shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up and repair such fence, at his election, double the sum thus ascertained as aforesaid, for the expense of setting up, repairing, surveying and viewing the same; and in case of neglect or refusal to make payment thereof, for the space of one month as aforesaid, after demand made of the person against whom he shall make his election to receive the same, he may sue for and recover the same, with costs of suit, in manner as is before directed.

Any person owning lands in a general field, may inclose the same at his own expense,

SEC. 12. *Be it further enacted,* That any person now owning, or who may hereafter own any lands lying within the limits of any general and common field within this State, shall have the right to inclose his own land, at his own expense; and at all seasons of the year, to have the exclusive and separate right of using and improving his own land so inclosed with a good and sufficient fence: *Provided,* That such proprietor shall be held to maintain his proportion of the general fence around said field.

provided he must maintain his share of the general fence.

Mode of calling meetings of proprietors of general fields.

SEC. 13. *Be it further enacted,* That for the better enabling such proprietors to call a meeting for the ends aforesaid, it shall be in the power of any Justice of the Peace for the county where such lands lie, upon application to him made by any two of the proprietors of such general fields, to issue out a warrant for such meeting; which warrant, and also the notification of the meeting, shall express the business thereof, and shall be directed to one of the proprietors asking the same, or to the proprietors' Clerk, requiring him to notify the proprietors of the meeting, and the time, place and occasion of the same; which notification, in case such field lies in any incorporated town, shall be given in writing to each proprietor therein, or posted up in some public place or places within such town, fourteen days, at least, before the day appointed for such meeting, or in case any of the proprietors do not reside in said town, the notification shall, for the like time be advertised in any two of the Portland newspapers, and in one other newspaper (if such there be) printed in the county where such estate lies, at least four weeks successively before such meeting; or such meetings may be otherwise warned by posting up written notifications

in some public place in each and every town and plantation where any one or more of the said proprietors may reside, fourteen days at least before the time appointed for holding such meeting.

SEC. 14. *Be it further enacted,* That the proprietors of such general fields respectively shall be and are hereby fully authorized and empowered, in a proprietors' meeting for that purpose regularly convened, by a major vote of the proprietors then present, (the votes to be collected according to the interest of the proprietors) to agree upon and pass one or more votes for the raising and collecting such sum or sums of money from time to time, as they shall judge necessary for defraying the charges aforesaid, and for carrying on, or managing any common affairs relating to such proprietors; and that they be alike empowered to choose three or five assessors for the assessing and apportioning such sum or sums so agreed on, and voted upon the proprietors of such fields, according to their several interests therein; and to appoint a collector or collectors to gather in and collect the same; which collector or collectors shall be, and are hereby fully empowered to levy and collect the sum or sums, so set and apportioned for such proprietors to pay, in the same manner as constables of towns within this State are empowered to levy and collect the public rates or taxes; and to pay in the same to the proprietors or their Clerk, who is hereby empowered to grant warrants, for the levying and collecting such assessment at such time as shall be by them appointed for the payment thereof: and such Clerk shall be accountable to the proprietors therefor; the person or persons so assessing the said proprietors, and the collector or collectors that shall be so appointed for the gathering and collecting the sum or sums so granted and agreed upon by the said proprietors to be assessed and collected as aforesaid, shall be under oath for the true and faithful performance of their services respectively; which oath shall be administered to them as the law provides for swearing town officers: *Provided nevertheless,* That any such proprietor, who apprehends himself aggrieved; or overrated in the making or apportioning such assessment, shall have liberty to apply to the Justices of the Court of Sessions in the respective counties, where such

Proprietors at such meetings may raise money, elect officers, &c. for assessing and collecting monies.

fields lie, for relief; and in such case the said Justices are hereby fully empowered to grant relief accordingly; and their judgment shall be final.

May choose
hay wards and
field drivers—
who are to be
sworn.

SEC. 15. *Be it further enacted*, That the proprietors aforesaid, or the major part of such of them as shall be present at a meeting legally warned for that purpose may choose Hay Wards or Field Drivers, who shall be under oath, and shall have the same powers as if they had been chosen by a town.

Penalty for
putting cattle
&c. into such
fields, before
the time ap-
pointed; or
more than
their propor-
tion.

SEC. 16. *Be it further enacted*, That if any proprietor in any common or general field shall put, or cause to be put therein any horse, cattle, sheep or other creature, over and above the number allowed him, or before the day agreed upon; or keep them longer there than the time set and limited by a major vote of the proprietors, he shall be deemed a trespasser; and his creatures so put in shall be proceeded with by any of the proprietors as creatures taken damage feasant, to all intents and purposes, as much as if he owned no land within such general field.

Mode of esti-
mating dam-
ages done, or
trespasses, &c.

SEC. 17. *Be it further enacted*, That when and so often as any trespass or trespasses, shall be done in any common or general field, by reason of the insufficiency of the fence belonging to any person owning the adjoining land, the party or parties injured shall forthwith procure two sufficient persons of good repute to view and adjudge of the damage done, giving notice of such trespass to the owner or claimer of the horse, cattle, sheep or other creature, that did the same (if he be known and resident in the same town, or near thereto) that he may be present, and nominate one of the appraisers of such damage, if he see cause: and the damage shall be answered according to such appointment. And where damage happens through the insufficiency of the fence, the owner or occupant of the land to which the defective fence belongs, shall be liable to answer and make good all such damage.

Lines to be run
and bounda-
ries marked
once in 2 years.

SEC. 18. *Be it further enacted*, That each proprietor of lands lying unfenced, or in any common field, shall, once in two years, on six or more days warning, previously given him by the proprietor or proprietors of the land next ad-

joining, run the lines, and make or keep up the boundaries between their respective lands, by sufficient mete stones, on pain that every party so neglecting or refusing shall forfeit the sum of two dollars to the party moving or requesting to run the line; the conviction of such neglect or refusal being had before any Justice of the Peace within the same county who is hereby empowered to hear and determine the case.

Penalty for neglect.

SEC. 19. *Be it further enacted*, That it shall and may be lawful to and for the proprietors who own the major part of the interest or property in any common or general field, at a legal meeting to be warned for that purpose, to dissolve and discontinue such field; six months being allowed to elapse before such discontinuation.

Major part of proprietors may dissolve and discontinue such common and general field.

SEC. 20. *Provided always, and be it further enacted*, That nothing contained in this Act shall prevent or hinder the proprietors of any such common field already fenced, from making and maintaining their fences according to rules and orders formerly agreed on by them at any meeting legally warned.

Provision for common fields under existing rules and orders.

SEC. 21. *Be it further enacted*, That at every meeting of such proprietors the votes shall, by the Moderator, be collected and counted according to the interests of the proprietors present, where such interests are known. And whereas it often happens that horses, cattle, and other creatures are clandestinely turned into general fields, or, being unruly, break into the same in places where the fence is good and sufficient according to law; and when, in such cases, proprietors of general fields, impound horses, cattle or other creatures, the owners replevy them because the fence inclosing the general field is deficient in some distant place from that where the horses, cattle or other creature entered the same, and in consideration of such deficiency judgment is unreasonably recovered against such proprietors:

Proprietors to vote in their meetings according to their interest.

SEC. 22. *Be it therefore further enacted*, That whenever horses, cattle or other creatures, shall be clandestinely turned into any general field, or, being unruly, break into the same, and shall be taken and impounded by a proprietor thereof and a writ of replevin shall be purchased by the owner of the horses, cattle or other creatures so impounded,

Damages may be recovered if cattle are clandestinely turned in, or break in where the fence is good-although other parts of

the fence be deficient. for the purpose of replevying them, it shall be in the power of the Court or Justice, before whom the action shall be brought, to give judgment in favour of the proprietor of the general field, upon his producing satisfactory evidence to the said Court or Justice, that the horses, cattle or other creatures replevied as aforesaid, were either clandestinely turned into the general field, or broke into the same in a part thereof, where the fence was good and sufficient according to law, some other parts of the fence inclosing the general field being deficient, notwithstanding: And whereas it often happens in fencing general fields, for the convenience of fencing considerable quantities of rocky and barren land not capable of tillage, are taken into such fields, the owners of which may be obliged to make fence, and also pay taxes equally with the other proprietors whenever an assessment is made by the proprietors of such field; which is very unjust:

Barren and Rocky lands to be excluded in estimating expenses of fences, and from taxes.

SEC. 23. *Be it therefore further enacted,* That all lands now lying in general fields, or that hereafter, may be taken into the same, that are so rocky or barren that the owners thereof have never improved them, either by mowing, ploughing, or feeding, such owners shall not be obliged to make, on account of such lands, any part of the fence in compassing such general fields; nor shall they be taxed for them in any rate or tax, raised by the proprietors of such field, until they shall make improvement thereon. And whereas the minor part of the owners or proprietors of common fields, in some instances, have been and may be desirous of a partition of such field into two or more distinct fields, from a persuasion that their shares or lots might (if separated and fenced off from the rest) be improved much more to their advantage, in some manner different from that agreed on by the majority: To the end therefore that such of the owners as are or may be so minded, may not be unreasonably restrained by the rest from having such partition:

When 3 or more owners in general field wish to improve their lots separate from the general

SEC. 24. *Be it enacted,* That when any three or more of the owners or proprietors of lots in any common or general field, lying within one general fence or inclosure, shall make application, in writing, under their hands to the proprietors of such field, (at any meeting legally warned for

that purpose) to have the lots or shares of the owners or proprietors so applying, or theirs with other lots or shares (taken together) to make one entire field, to be separated from the rest by one common fence, and to be improved as a distinct and separate, but common field; in such case, if the proprietors, who have the greater part of the interest among those who are present at such meeting, shall withhold or refuse their assent to such division or partition, it shall and may be lawful for the Justices of the Court of Sessions for the said county, upon application made to them, to appoint a committee of five freeholders within the said county (under oath) to make the partition prayed for, if it shall appear to such committee to be expedient, and to assign to each field its part or proportion of the divisional fence in consequence of such partition, to be made, kept up and maintained by the proprietors of the respective common fields; and the return being made under the hands of the major part of such committee, and accepted by the said Court of Sessions, the fields so separated shall be considered as distinct and separate common fields, and the owners or proprietors of each field a distinct and separate property, as fully to all intents and purposes whatsoever, as the owners or proprietors of such general field were considered before such partition was made: *Provided*, That no order for partition be made, or committee appointed, until the rest of the proprietors have been duly notified of such application, and opportunity given them to make their objections thereunto; which notice shall be given by serving the Clerk of such proprietors with a copy of such written application, thirty days at least before such order or appointment be made; and every committee that shall be appointed and employed as aforesaid, shall make return of their doings, in writing, under their hands, unto the said Court, as soon after as may be, for acceptance and confirmation: and the proprietors, whose interest shall be so set off, as well as the remaining proprietors, shall have and enjoy all the powers and privileges which the proprietors of general fields are by law vested with.

field—proceedings in such cases.

Case of proprietors refusing.

Court of Sessions to appoint a Committee to make partition.

Proviso for notice to the proprietors.

SEC. 25. *Be it further enacted*, That when the major part, in interest, of the proprietors of any tract of land, consisting

When major part of the proprietors of

a tract of land, consisting of several allotments, wish to inclose the whole in a general field—what proceedings are to be had.

of several allotments, shall be desirous of inclosing, fencing and improving the same in one general field, they may apply to the Circuit Court of Common Pleas in the county where such land lies; and when such land lies in different counties, then to the Supreme Judicial Court to be holden in either; and on such application the said Court shall notify the proprietors concerned in said land to appear at the same Court, at the same or the next term thereof, in such manner and form as the Court shall judge proper; and if on hearing the said proprietors, it shall be deemed for their general benefit by the said Court, they shall decide that such land shall be fenced, inclosed and improved in one general field; and after such tract of land shall be so established as a general field, the first meeting of the proprietors may be called, on application to a Justice of the Peace, in the manner provided by this Act, at any time in the year; and at such first meeting, the proprietors of such field may agree upon the manner of calling and notifying future meetings, as well the annual as special meetings, of such proprietors; and such proprietors shall be entitled to all the rights and privileges, and subject to all the duties, to which proprietors of general and common fields are.

[Approved February 24, 1821.]

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CHAPTER XLV.

An Act for the support and regulation of Mills.

Owners of water mills built on their own land, &c. may raise a sufficient head of water, paying damages, &c.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That where any person hath already erected, or shall erect any water mill, on his own land, or on the land of any other person, by his consent legally obtained, and to the working of such mill it shall be found necessary to raise a suitable head of water; and in so doing any lands shall be flowed not belonging to the owner of such mill, it shall be lawful for the owner or occupant of such mill to continue the same head of water to his best advantage, in the manner and on the terms herein after mentioned.