

NEW YORK STATE
DEPARTMENT OF
AGRICULTURE AND MARKETS
ALBANY, NY 12235

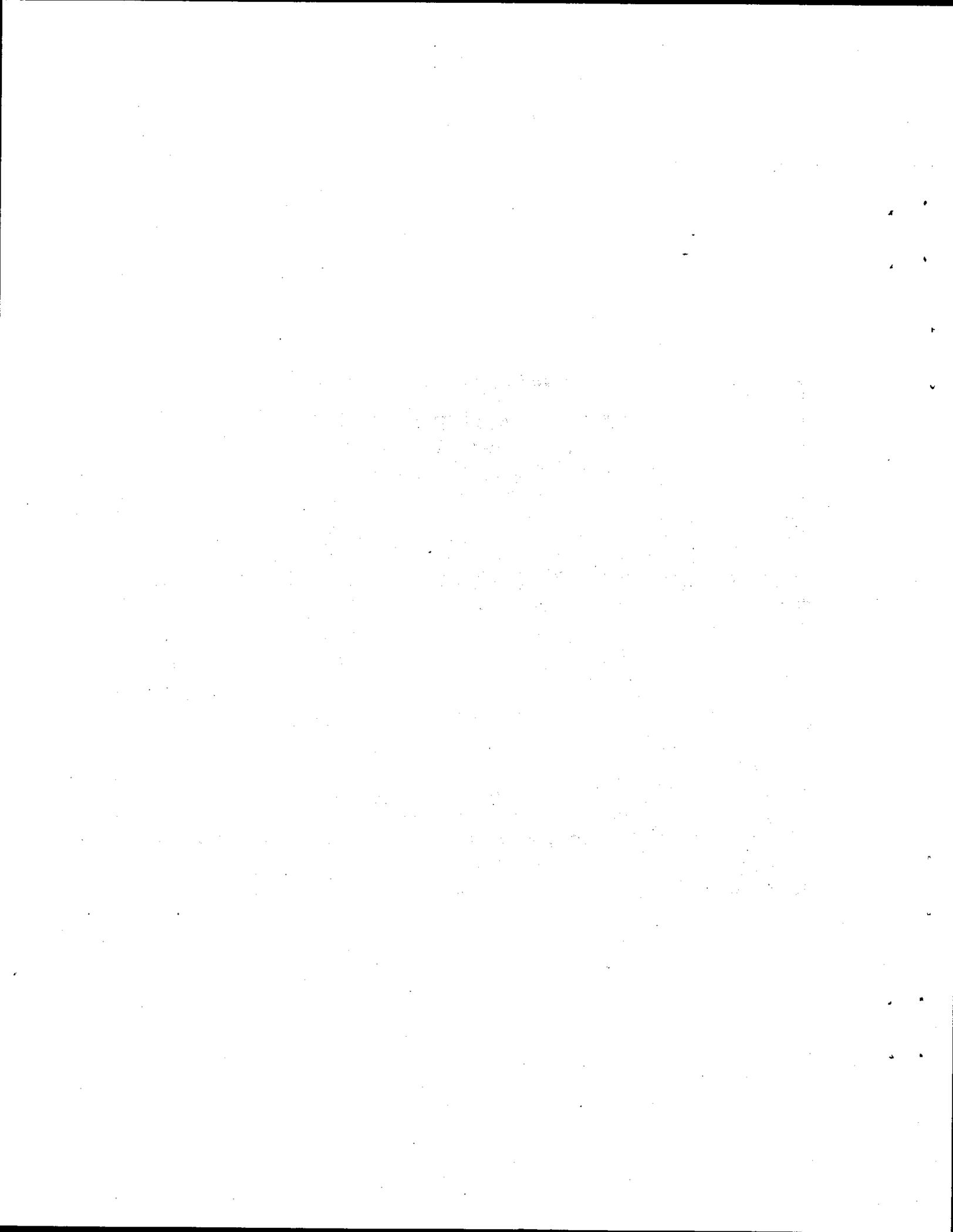
ARTICLE 18 OF THE TOWN LAW
(CHAPTER 634, LAWS OF 1932)
RELATING TO FENCES, STRAYS AND POUNDS

SECTION 95 OF THE AGRICULTURE AND MARKETS
LAW
(CHAPTER 190, LAWS OF 1953, AS AMENDED)
RELATING TO PROTECTING THE BREEDING OF PURE BRED STOCK

SECTION 52 OF THE RAILROAD LAW
(CHAPTER 281, LAWS OF 1915, AS AMENDED)
RELATING TO FENCES, FARM CROSSINGS AND CATTLE-GUARDS

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TOWN LAW

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Section 300 - Apportionment of division fence

Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless both of said adjoining owners shall agree to let their said lands lie open, along the division line, to the use of all animals which may be lawfully upon the lands of either; provided, however, that the owner of an adjoining tract of land who does not keep such animals thereon within five years of the date of the erection or repair of a division fence shall not be obligated or liable for erecting, maintaining or repairing such a division fence under this article. Unless otherwise agreed, an adjoining owner who erects or repairs a division fence shall be entitled to recover from the owner of the other adjoining tract, twenty percent of the proportionate cost thereof otherwise ascribable to such other owner for each year or part thereof in which the other adjoining tract is regularly used for keeping animals occurring within five years of the date of such erection or repair. When the adjoining lands shall border upon any of the navigable lakes, streams or rivers of the state, the owners of the lands shall make and maintain the division fence between them down to the line of low water mark, in such lakes, streams or rivers except those lands which overflow annually so as to be so submerged with water that no permanent fence can be kept thereon, and known as low flat lands; and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

Section 301 - Lands lying open

When the owners of adjoining lands shall choose to let them lie open as provided in section three hundred, neither of such owners shall be liable to the other in any action or proceeding for any damages done by animals lawfully upon the other's premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. Either owner of any lands so lying open and adjoining may, unless the agreement is for a specified period, and after such agreement has expired may then have the same enclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, whereupon it shall be the duty of both parties to build and maintain their several proportions of a division fence.

Section 302 - Division fence on change of title

Whenever a subdivision or new apportionment of any division fence shall become necessary by reason of transfer of the title of either of the adjoining owners, to the whole or any portion of the adjoining lands, by conveyance, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence. The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two of the fence viewers of the town, in case of disagreement.

Section 303 - Settlement of disputes

If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such disputes shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice, to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forth with filed in the office of the town clerk; and shall be final upon the parties to such dispute, and all parties holding under them.

Section 304 - Powers of fence viewers

Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses. A subpoena issued under this section shall be regulated by the civil practice law and rules. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them shall be liable to an action for the same with costs.

Section 305 - Neglect to make or repair division fence

If any person who is liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.

Section 306 - Fence destroyed by accident

Whenever a division fence shall be injured or destroyed by floods, or other casualty; the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs.

Section 307 - Damages for insufficient fence

Whenever the electors of any town shall have made any rule or regulation prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rules or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

Section 308 - Damages for omitting to build fence

If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be put out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands, where such beasts are lawfully kept, by reason of such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed by the fence viewers making the same, but shall be only prima facie evidence of the amount of such damages.

Section 309 - Use of barbed or other wire for division fence

Barbed or other wire may be used in the construction of any division fence, provided, that such fence, be built in the following manner: The fence shall be of at least four strands of wire with the posts and supports of such fence, at such distances apart, as the fence viewers of the town may prescribe, but the posts thereof shall be no further apart than fourteen feet; and such fence shall be otherwise substantially built and a reasonable sufficient enclosure for holding the particular kind or class of cattle or animals usually pastured on either side of the fence. Nothing contained in section three hundred seven shall be construed to authorize the electors of any town to prohibit the use of wire fences, for division fences, if such fences comply with the requirements of this section. Whenever such fence shall become so out of repair as to be unsafe; it shall be the duty of the owner or owners to immediately repair the same. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section fifty-two of the railroad law.

Section 310 - Lien upon strays

Whenever any person shall have any strayed horses, cattle, sheep, swine or other beast upon his enclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien upon such beasts for the damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beast until such damages, charges, fees and costs are paid, or such

lien is foreclosed, upon complying with the provisions of this article relating thereto.

Section 311 - Notice of lien to town clerk

If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such books shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

Section 312 - Impounding strays

Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they be redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

Section 313 - Notice of strays to owner

Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

Section 314 - Charges for notice of strays

The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers cannot agree, they shall select another to act with them, and the decision of any two of them shall be final.

Section 315 - Fees of fence viewers as to strays

Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for a certificate of the charges as ascertained by them.

Section 316 - Foreclosure of lien upon strays

If the owner of such beasts shall not redeem the same within one month after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of this keeping such beasts and the proceedings thereon.

Section 317 - Notice of sale of strays by fence viewers

After such one month, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. At the time and place mentioned, such fence viewers shall sell such beats to the highest bidder, unless redeemed by the owner.

Section 318 - Proceeds of sale of strays

Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale as are allowed on sales under executions issued out of justices' courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

Section 319 - Notice to owner of strays of fence viewers' meeting

When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.

Section 320 - Duties of fence viewers as to strays

The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimants' lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

Section 321 - Foreclosure of lien upon strays by action

When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence and from where and how such beasts came upon the lands of the person claiming such damages and charges shall be proven upon the trial of such action and no certificate of fence viewers upon such questions shall then be necessary.

Section 322 - Surplus money upon sale of strays

If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale, he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the supervisor of the town, or, in cities, to the treasurer, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the supervisor of the town, or, in cities, to the treasurer he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

Section 323 - Damages from other personal property

When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or planks, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies and shall proceed therein in the same manner and with the same powers as herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He must deliver his notice of lien to the town clerk, describing the property, within thirty days after it lodges upon his lands, and he shall keep the same in some convenient place without removal to a pound until the property is sold or reclaimed. The same officer shall conduct proceedings therein as in proceedings where beasts are found doing damage and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities, and with the same force and effect. The fee of the town clerk for filing and recording such notices of lien shall be one dollar and the charges of the land owner claiming such lien and delivering such notice to the town clerk, pursuant to this section, shall be at the rate of five cents for each such stray, but shall in no event exceed the sum of fifty dollars upon any one lien. Any lien for logs, timber, boards or planks, in rafts or otherwise, filed herein may be discharged in the manner provided in sections nineteen and twenty of the lien law, with reference to the discharge of mechanics' liens, so far as such provisions are applicable.

Section 324 - Penalty of conversion of floating lumber

Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards or planks, floating in any of the waters of this state, or lying on the banks of shores of any such waters, or on any island where the same may have drifted, shall, for every offense, forfeit to the owner of such logs, or other lumber, three times the value thereof. Nothing contained in this section shall be construed to extend to that kind of lumber called driftwood.

Section 325 - Application of article

The villages and cities of this state shall be considered towns for the purpose of construing provisions of this article relating to strays; and the trustees of the village and the alderman, councilmen or members of the legislative body of the city shall be fence viewers therein for such purposes.

Section 326 - Erection and discontinuance of pounds

Whenever the electors of any town shall determine at a biennial town election to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be appointed for that purpose. The electors of any town may, at a biennial town election, discontinue any pounds therein.

Section 327 - Pound-master's fees

The pound-masters shall be allowed the following fees for their services, to wit: For taking into the pound and discharging therefrom every horse, mule and head of cattle, fifteen cents; for every other beast, ten cents.

AGRICULTURE AND MARKETS LAW

Section 95 - Protecting the breeding of pure bred stock

It shall be unlawful for any person or persons owning or in the possession of any bull of the age of more than six months, any stallion of the age of more than eighteen months, or buck or boar over five months of age, to suffer or permit such animal or animals to go, or range, or run at large on any lands or premises without the consent of the person entitled to the possession of such land or premises.

No right of action shall accrue under this section to any person who, being liable to contribute to the erection or repair of a division fence as required by the town law, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, for damages done by any animal described in this section coming, by reason of such defective fence, from adjoining lands where such animal was lawfully kept.

RAILROAD LAW

Section 52 - Fences, farm crossings and cattle-guards

Every railroad corporation, and any lessee or other person in possession of its road, shall, before the lines of its road are opened for use, and so soon as it has acquired the right of way for its roadway, erect and thereafter maintain fences on the sides of its road of height and strength sufficient to prevent cattle, horses, sheep and hogs from going upon its road from the adjacent lands, with farm crossings and openings with gates therein at such farm crossings whenever and wherever reasonably necessary for the use of the owners and occupants of the adjoining lands, and shall construct where not already done, and hereafter maintain, cattle-guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from going upon its railroad. So long as such fences and cattle-guards are not made, or are not in good repair, the corporation, its lessee or other person in possession of its road, shall be liable for all damages done by their agents or engines or cars to any domestic animals thereon. When made and in good repair, they shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence within the provisions of this section, but barbed wire shall not be used in its construction.

No railroad need be fenced, when not necessary to prevent horses, cattle, sheep and hogs from going upon its track from the adjoining lands. Every adjoining land owner, who, or whose grantor, has received compensation for fencing the line of land taken for a railroad, and has agreed to build and maintain a lawful fence along such line, shall build and maintain such fence. If such owner, his heir or assign shall not build such fence or if built, shall neglect to maintain the same during the period of thirty days after he has been notified so to do by the railroad corporation, such corporation shall thereafter build and maintain such fence, and may recover of the person neglecting to build and maintain it, the expense thereof. And when such railroad shall cross timbered or forest lands, the company shall construct and maintain suitable and sufficient crossings, whenever and wherever reasonable necessary to enable the respective owners of said lands to transport logs, timber and lumber for manufacture or sale, or for banking on any stream, to be floated or driven down the same. In case of any neglect or dispute the supreme court may by mandamus or other appropriate proceedings, compel the same, and also fix the point or location of any such crossing.

