



ANNO DECIMO QUINTO

GEORGII V REGIS.

A.D. 1924.

No. 1639.

An Act relating to Dividing Fences.

[Assented to, December 24th, 1924.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Fences Act, 1924."

Short title.

2. The provisions of this Act are arranged as follows :—

Arrangement of Act.

PART I.—Preliminary :

PART II.—Construction of Dividing Fences :

PART III.—Maintenance and Repair of Dividing Fences :

PART IV.—Proceedings for the Recovery of Contributions :

PART V.—General Provisions.

3. The Fences Act, 1892, and the Fences Act Amendment Act, 1903, are hereby repealed.

Repeal of Acts No. 559 of 1892, and No. 826 of 1903.

4. In this Act, except where the subject matter or context requires a different construction—

Interpretation.

"Dividing fence" means a fence separating the lands of different occupiers :

"Occupier"

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“Occupier” includes any person who is in the actual occupation of or entitled as owner to occupy any land alienated from the Crown by grant, agreement, or lease, or who holds lands under licence from the Crown; but does not include any person in the occupation of land by yearly licence under any Act relating to the sale or occupation of land belonging to the Crown.

Sufficient fence.
Cf. Vic. 2651, 1915,
s. 4.

5. (1) Any fence of any of the kinds hereinafter mentioned and described shall be a sufficient fence within the meaning of this Act—

- I. A post and rail fence of at least three feet six inches in height of substantial material firmly erected, with no greater distance between the rails or the bottom rail and the ground than one foot unless there is a wire inserted between the rails, and the posts not more than nine feet asunder :
- II. A substantial paling or picket fence at least five feet in height with no greater distance between the pickets than three inches :
- III. A substantial galvanized-iron fence at least five feet in height :
- IV. A substantial wire fence at least three feet six inches in height having wires tightly stretched with no greater distance between each of the three lowest wires or the bottom wire and the ground than seven inches and the posts or standards or binding wires of which are not more than twelve feet from each other with straining posts not more than three hundred yards apart :
- v. A substantial post and wire fence ordinarily capable of resisting the trespass of cattle :
- VI. A close hedge or live fence at least four feet six inches in height and capable of resisting the trespass of cattle :
- VII. A combination of any of the above-mentioned fences at least four feet in height.

(2) In the construction of a sufficient fence within the meaning of this section in which wire may be used, the wire may be wholly or partly barbed wire.

PART II.

PART II.

CONSTRUCTION OF DIVIDING FENCES.

Liability of occupiers of adjoining lands to fence.
Ibid., s. 5.

6. The occupiers of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions.

Service of notice to fence.
Ibid., s. 7.

7. Any person desiring to compel any other person to contribute to the construction of a dividing fence under the provisions of this Act may serve on such person a notice to fence which shall specify the boundary to be fenced, shall contain a proposal for fencing the same, and shall specify the kind of fence proposed to be constructed.

8. (1) If

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PART II.

8. (1) If within one month after the service of any notice to fence the person serving the notice and the person served with the notice do not agree as to the construction and kind of fence a Court of Summary Jurisdiction, on the complaint of either of them, may make an order determining the kind of fence to be constructed, and what portion thereof shall be constructed by each person, and, in cases where a further order is necessary, the position of the fence.

Proceedings in default of agreement consequent on notice to fence.
Cf. *ibid.*, s. 8.

(2) The Court of Summary Jurisdiction may refer the determination of the matters to be decided to the award of some arbitrator who shall be appointed by an order of the Court, and the award of the arbitrator shall be delivered by him within the time named in the order in that behalf to the Clerk of the Court of Summary Jurisdiction, and shall have the same effect as and be deemed an order of the Court. If and as often as any arbitrator so appointed dies, or neglects, declines, or becomes incapable to act, the Court of Summary Jurisdiction may appoint another arbitrator in his place who shall have the like powers and duties.

(3) In making any order or award the Court of Summary Jurisdiction or arbitrator (as the case may be) shall be guided as to which of the kinds of fences described in section 5 the Court or arbitrator orders or awards to be constructed by the kind of fence usually constructed in the locality where it is proposed to erect the fence.

9. If the person serving and the person served with a notice pursuant to section 7 agree as to the construction of the fence or if, in default of agreement, an order of a Court of Summary Jurisdiction or an award of an arbitrator is made pursuant to section 8, and in either case either of the said persons fails within the time named in the agreement, order, or award, or, if no time is named, within three months after the date of the agreement, order, or award, to perform his part of the agreement or to comply with the order or award, then the other of the said persons may construct the whole fence as agreed upon or determined by the order or award, and may summarily recover from the person in default half the cost of constructing the fence.

Proceedings on failure to carry out order.
Ibid., s. 9.

10. (1) When the occupier of any land is absent from South Australia, or cannot be found, or any land is unoccupied, the occupier of any adjoining land may insert in a newspaper circulating in the neighborhood of the land a notice addressed to the occupier of the land describing him as the occupier of the land, requiring him to contribute to the construction of a fence, and may then proceed *ex parte* to obtain from a Court of Summary Jurisdiction or an arbitrator appointed by the Court an order or award (as hereinbefore provided in the case of persons not agreeing as to the construction or kind of fence) authorising the construction of the fence and specifying the kind of fence to be constructed, and the position thereof, and may construct a fence in compliance with the order or award.

Cases where occupier cannot be found.
Ibid., s. 10.

(2) If

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(2) If afterwards during the continuance of the fence any person goes into occupation of the first mentioned land the occupier of the adjoining land may, within one month thereafter, serve any person who, if the fence had not been in existence, would be liable to contribute to the construction of a fence in the place thereof with a copy of the order or award, and shall after the expiration of one month from the date of service thereof be entitled to recover one-half the value of the fence at the said date of service.

(3) If the order or award so made is inequitable a Court of Summary Jurisdiction, on the complaint of any person interested in disputing the same made within one month after service of the order or award, may relieve the complainant from the whole or any portion of the sum claimed as the value of the fence, and may order that the line of the fence be altered on such terms as are just.

(4) The value of the fence shall be ascertained as soon as practicable after the service of the order or award; and in default of agreement between the parties, the value may, on the complaint of either of them, be determined by a Court of Summary Jurisdiction.

(5) Any sum recoverable under this section may be recovered summarily.

Rights of persons
fencing along
unoccupied Crown
land.

Ibid., s. 13.

11. (1) Where any person has constructed a sufficient fence on the boundary of his land and the land adjoining is land belonging to the Crown, in respect of which there is no occupier within the meaning of this Act, the occupier of the first-mentioned land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the actual value of the sufficient fence forming the dividing line or fence between the said lands at the time when the adjoining land is first occupied.

(2) The value of the said fence shall be ascertained as soon as practicable after the adjoining land has become so occupied; and, in default of agreement between the parties, the value may, on the complaint of either of them, be determined by a Court of Summary Jurisdiction.

(3) Any sum recoverable under this section may be recovered summarily.

Liability of person
using fence on
further side of road.
Cf. 559, 1892, s. 11.

12. (1) If the occupier of any land bounded by a road erects a sufficient fence on the boundary of his land and the said road, and any other occupier of any land afterwards adopts any means whereby his land is in any way enclosed by the said fence, or afterwards avails himself of the said fence or renders the same of beneficial use to himself, the last mentioned occupier shall be liable to contribute to the occupier of the land whereon the fence is erected interest on one-half the value of the said fence at the rate of Eight Pounds per centum per annum for so long as he continues to avail himself of the said fence or renders the same of beneficial use to him, and shall also for so long as aforesaid be further liable in manner provided in Part III. of this Act for half the cost of repairs to the said fence.

(2) The

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(2) The value of the said fence for the purposes of this section shall be its value at the time when the person liable first adopted such means as aforesaid, or first availed himself of the said fence, or rendered the same of beneficial use to himself, and the said value shall, in default of agreement of the parties, on the complaint of either party be determined by a Court of Summary Jurisdiction.

(3) Any interest payable under this section shall be payable annually.

(4) Any sum recoverable under this section may be recovered summarily.

13. When adjoining occupiers have not agreed as to the accurate position of the boundary line between their respective holdings on which either of the occupiers desires that a fence shall be erected, either one may give notice to the other of his intention to have the boundary line defined by a licensed surveyor.

Proceedings for defining of boundary line by surveyor. 826, 1903, s. 3.

14. The occupier to whom notice is given shall, within seven days after the service of the notice—

Person receiving notice to peg out boundary line or employ a surveyor. *Ibid.*, s. 4.

I. If satisfied of the accurate position of the boundary line, define the same by pegs; or

II. Employ a licensed surveyor to define the boundary line: and in either case shall notify the other adjoining occupier in writing of what he has done.

15. If within one month from the service of the notice provided for in section 13 the occupier to whom the notice was given—

Liability of person giving notice. *Ibid.*, s. 5.

I. Has defined the boundary line by pegs; or

II. Has failed to have the boundary line defined by a licensed surveyor;

then the occupier giving the first notice may have the boundary line defined by a licensed surveyor.

16. If the boundary line when defined by a licensed surveyor is ascertained to be in the same position as defined by any pegs placed there by the occupier receiving the first notice, the said occupier shall be entitled to summarily recover any costs of the survey incurred by him from the occupier giving the first notice, but in all other cases where a licensed surveyor has been employed all reasonable expenses incurred shall be paid in equal shares by the adjoining occupiers.

How costs of survey to be paid. *Ibid.*, s. 6.

PART III.

PART III.

MAINTENANCE AND REPAIR OF DIVIDING FENCES.

17. Whenever any dividing fence is out of repair or ceases to be a sufficient fence within the meaning of this Act, the occupiers of land on either side thereof shall be liable to pay the cost of repairing the fence in equal proportions.

Adjoining occupiers to keep dividing fences in repair. 559, 1892, s. 11.

18. The

PART III.

Fences Act.—1924.

Procedure to compel contribution to the repair of dividing fence.

Ibid., s. 13.

18. The occupier of any land separated from any adjoining land by a dividing fence may serve a notice upon the occupier of the adjoining land requiring him to assist in repairing or renewing the said fence; and if the last-mentioned occupier neglects, for the space of fourteen days after the service of the notice, to assist in repairing or renewing the fence, it shall be lawful for the first-mentioned occupier to repair or renew the fence and to demand and recover from the other occupier half the cost of repairing or renewing the same: Provided that—

- I. If any dividing fence has been erected partly by one occupier and partly by another, each occupier shall pay the cost of repairing the part so erected by him:
- II. If any dividing fence, or any portion thereof, is destroyed by accident, the occupier of the land on either side may immediately repair or renew the same without any notice to the other occupier, and shall be entitled to recover half the expenses of so doing from the occupier of the adjoining land:
- III. In case the dividing fence has been destroyed in whole or in part by fire or by the falling of any tree or trees, the occupier through whose neglect (if any) the fire originated or caused injury to the fence, or the tree or trees fell shall be the party bound to repair or renew the entire portion of the fence so damaged as aforesaid; and in default, the other occupier may repair or renew the same and demand and recover from the occupier so liable and in default the entire cost of the repair or renewal.

PART IV.

PART IV.

PROCEEDINGS FOR THE RECOVERY OF CONTRIBUTIONS.

From whom moneys recoverable under this Act.

Vic., 2651, 1915, s. 29.

19. All moneys recoverable under this Act in respect of the construction or repairing of any fence by any person serving any notice to fence or repair or any *ex parte* order or award may be recovered from any person liable to contribute to the cost of constructing or repairing the fence who is served with notice to fence or repair or the *ex parte* order or award, or any person who comes in and defends under the provisions of this Act any proceedings consequent on the said notice or the service of the order or award: And all moneys recoverable by any person served with notice as aforesaid may be recovered from the person serving the same or any person liable to contribute to the construction or repair of the said fence as tenant of whom the person serving the said notice holds the lands bounded by the fence.

Summary disposal of complaints under this Act.

Cf. *ibid.*, s. 30.

20. All proceedings under this Act shall be disposed of summarily, and the costs of every complaint under the provisions of this Act shall be in the discretion of the Court of Summary Jurisdiction hearing the same, but when any such Court appoints an arbitrator the Court may, if it thinks fit, refer the costs of the reference to the award of the arbitrator.

PART

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PART V.

PART V.

GENERAL PROVISIONS.

21. (1) Where, under the provisions of this Act, any fence is constructed or repaired which divides any lands held by any person as tenant of any landlord from any adjoining lands, the cost thereof as between the landlord and the tenant shall be payable in the proportions following—

Apportionment of the cost of fencing as between landlord and tenant.

Cf. *ibid.*, s. 11.

- I. In case the interest of the tenant at the time of the construction or repair of the fence is less than for a term of three years, the whole cost shall be payable by the landlord :
- II. In case the interest of the tenant is for a term of three years and less than for a term of six years, three-fourths of the cost shall be payable by the landlord and one-fourth of the cost by the tenant :
- III. In case the interest of the tenant is for a term of six years and less than for a term of twelve years, one-half of the cost shall be payable by the landlord and one-half by the tenant :
- IV. In case the interest of the tenant is for twelve years or upwards, the whole of the cost shall be payable by the tenant.

(2) In case either the landlord or the tenant pays more than his proper proportion of such cost, he may summarily recover the excess from his tenant or landlord (as the case may be), and any tenant may set off any sum recoverable by him under this section against any rent payable to his landlord.

22. Any tenant having a right to purchase at a fixed rate any land occupied by him shall, on the completion of the purchase, pay to his landlord in augmentation and as part of the purchase money any sum paid during the tenant's occupancy by the landlord under section 21, together with interest on the same at the rate of Six Pounds per centum per annum.

Position of occupier having a right to purchase.

Ibid., s. 12.

23. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement made or hereafter to be made relative to fencing between landlord and tenant or occupiers of adjoining land.

Act not to interfere with agreements. 559, 1892, s. 15.

24. Every person engaged in constructing or repairing a fence under this Act and his agents and servants may, with or without horses, cattle, carts, or carriages, at all reasonable times during the construction or repairing, enter upon the lands adjoining the fence and do thereon such acts, matters, and things, except the cutting and felling of timber, as are necessary or reasonably required to carry into effect the construction or repairing of the fence.

Powers of persons constructing fences to enter upon contiguous land.

Ibid., s. 16.

25. Any person may come in and defend any proceeding under this Act against any person who is his tenant in consequence of which he may ultimately incur any liability, and any defence which the person originally proceeded against might set up shall be available to the person so coming in to defend.

Power of landlord to come in and defend proceedings against his tenant.

Ibid., s. 17.

26. Any

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Responsibility of
owner of hedge.
Ibid., s. 20.

26. Any occupier who suffers the layers, roots, branches, or seedlings of any briar, furze, or prickly pear hedge or other live fence upon his land to grow upon or over the land of any adjoining occupier so as to injure the adjoining occupier's land, shall, within three months after being thereunto required in writing by the adjoining occupier, remove the layers, roots, branches, or seedlings, and, in default thereof, shall be liable to a penalty not exceeding Two Pounds; and upon default the adjoining occupier may remove the growth, and may summarily recover from the occupier making the default the expenses reasonably incurred in the removal.

Effect of waiver of
demand or notice.
Ibid., s. 23.

27. In any proceedings under this Act any Court of Summary Jurisdiction may make an order or enter a verdict for the person claiming contribution, notwithstanding that any demand or notice provided for by this Act may not have been made or given, either wholly or in part, if the Court is satisfied that the person entitled thereto waived the demand or notice.

Effect of judgment
or order under this
Act.
Ibid., s. 24.

28. A judgment, order, or conviction duly made under this Act may be pleaded in bar of any suit, action, or complaint which shall be commenced, instituted, or prosecuted for the same cause or offence in any other Court.

Undergrowth in line
of fence may be
cleared.
Cf. *ibid.*, s. 10.

29. In erecting a dividing fence, all scrub for a width not exceeding six feet on each side along the length of the fence may be cleared, and the cost of clearing shall be deemed to be part of the cost of the fence.

Service and form of
notices.
Cf. *ibid.*, s. 18.

30. Any notice or demand to be given or made under this Act may be in writing or in print, or partly in writing and partly in print, and signed by the person giving or making the same, or by his attorney or agent, and may be served on any person resident upon the land, or if there be no such person, then the notice or demand may be served on the occupier or occupiers, or one of them, either personally or by leaving the same at or by forwarding the same through the post office in an envelope addressed to him or them at his or their usual or last known place of abode or business in South Australia.

Act not to apply to
unalienated Crown
lands.
Cf. *Vic.*, 2851, 1915,
s. 32.

31. This Act, except as is in section 11 otherwise provided, shall not apply to any unalienated Crown lands; nor shall the Crown, the Governor, or any public officer be liable under this Act to make any contribution towards the construction or repairing of any dividing fence between the land of any occupier and any Crown lands.

In the name and on behalf of His Majesty, I hereby assent to
this Bill.

TOM BRIDGES, Governor.