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VICTORIÆ REGINÆ.

A.D. 1891.

No. 538.

An Act to consolidate and amend the Law relating to Fences.

[Assented to, December 19th, 1891.]

WHEREAS it is desirable to consolidate and amend the law relating to dividing fences—Be it Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows: Preamble.

1. This Act may be cited as “The Fences Act, 1891.” Short title.

2. “The Fencing Act, 1865,” sections 167 and 168 of “The Crown Lands Act, 1888,” and the words “in any Local Court” in section 41 of “The Impounding Act of 1858,” are hereby repealed; but this repeal shall not affect anything done or suffered, or any right or title accrued, or notice given, or proceeding commenced under the said Act or section before the passing of this Act; and every Act of Parliament in which the words “Fencing Act, 1865,” occur shall be read and construed as if the said words had been omitted therefrom and the words “The Fences Act, 1891,” had been inserted in lieu thereof. Repeal.

3. In the construction of this Act, the following terms shall, unless inconsistent with the context or subject matter, have the respective meanings hereafter assigned to them respectively, that is to say:— Interpretation of terms.

“Fence” or “Dividing fence” shall mean a fence separating the lands of different occupiers which:— Fencing Act, 1865.

(A) Is

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- (A) Is ordinarily capable of resisting the trespass of great cattle:
- (B) Is ordinarily capable of resisting the trespass of sheep:
- (c) Shall have been or shall be added to, under section 5 hereof, so as to be capable of resisting the trespass of sheep: and
- (D) Shall have been made rabbit or vermin proof under section 6 hereof:

“Occupier” shall include any person who is in the actual occupation of, or entitled as owner to occupy, any land alienated from the Crown by grant, agreement, lease, or licence; but shall not mean or include any person in the occupation of or entitled to occupy land held under the Crown by yearly licence under any Act relating to the sale and occupation of Crown lands heretofore or hereafter to be in force:

“Avail.”—Any occupier shall be deemed to have availed himself of a fence within the meaning of this Act who shall use or occupy land which abuts on such fence.

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CONSTRUCTION OF DIVIDING FENCES.

Occupiers availing themselves of existing dividing fence to pay half value.

4. When any occupier has heretofore availed himself, or shall hereafter avail himself, of any dividing fence erected before the passing of this Act, of which he is not the owner, such occupier shall, within three months after demand upon him in writing, be liable to pay to the owner of such dividing fence one-half part of the value thereof at the time of such demand: Provided that no occupier shall be liable in respect of the value of any fence which is sheep proof only, and is not capable of resisting the trespass of great cattle, until he shall avail himself thereof by keeping sheep upon the land abutting on such fence.

Part occupiers depasturing sheep to pay half cost of making fence capable of resisting trespass of sheep.

5. Whenever any dividing fence shall have been or shall hereafter be made by either of the occupiers capable of resisting the trespass of sheep, the other adjoining occupier, so soon as he shall keep and depasture sheep on the land adjoining the said fence, shall, within three months after demand upon him in writing, be liable to pay to the occupier by whom such fence shall have been made capable of resisting the trespass of sheep as aforesaid, or to any succeeding occupier, for any additions made to such fence for the purpose aforesaid, one-half of the value of such additions at the time at which the said adjoining occupier commences to depasture sheep.

Part occupiers, when land becomes vermin-infested, to pay half cost of making fence vermin-proof.

6. Whenever any dividing fence within any district declared by the Commissioner of Crown Lands to be infested with rabbits or other vermin shall have been, or shall hereafter be, made rabbit or vermin proof by either of the occupiers, the other adjoining

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adjoining occupier shall, within three months after demand upon him in writing, be liable to pay to the occupier by whom such fence shall have been made rabbit or vermin proof, or to any succeeding occupier, one-half part of the then value of any additions made to such fence for the purpose aforesaid, or interest at the rate of Six Pounds per centum per annum on the cost of such additions.

7. The occupier of any land not heretofore separated from any adjoining lands by any dividing fence may require the occupier of such adjoining lands to join in, or contribute in an equal proportion to, the construction of a dividing fence between their respective lands; and so soon as the occupier of such adjoining lands shall avail himself of any dividing fence, he shall be liable to pay the occupier by whom such fence was erected, or the succeeding occupier, half the value of the fence at the time when such adjoining occupier first availed himself of such fence.

Liability of occupiers of adjoining lands to fence.

8. Any person desiring to compel any adjoining occupier to join in or contribute to the construction of a dividing fence, may, in manner provided in section 18 hereof, serve on such adjoining occupier a notice to fence, which shall specify the boundary to be fenced and contain a proposal for fencing the same, and shall specify the kind of fence proposed to be constructed.

Service of notice to fence.

9. If, within three months after the service of any notice to fence the person serving and the person served with such notice do not agree as to the construction and kind of fence, the person serving such notice may construct the whole fence, and may recover half the cost of constructing the same in any Court of competent jurisdiction.

In default of agreement consequent the person giving notice may erect fence.

10. Any person erecting a dividing fence shall be entitled to clear all scrub for a width not exceeding six feet on each side along the length of such fence, and the cost of such clearing shall be deemed to be part of the cost of such fence.

Undergrowth and trees in line may be cleared.

11. If the occupier of any land bounded by a road shall have erected a fence on the boundary of his land and such road, and any other person shall adopt any means by which such fence shall be rendered of beneficial use to himself, or shall avail himself of such fence, such person shall be liable to pay to the person who erected such fence, or to the occupier of the land whereon such fence is erected, interest on half the then value of such fence at the rate of seven per centum per annum, for so long as he shall continue to avail himself of such fence, and shall also as long as aforesaid be further liable for half the costs of the repairs of such fence:

Person using fence on further side of road liable to pay interest on half costs and contribute to repair.

- (1) If the person who shall adopt any means by which such fence shall be rendered of beneficial use to himself shall not depasture sheep on any land adjoining such fence or road, he shall be liable to pay interest only on so much of the cost of the fence as was expended to make the same capable of resisting great cattle: (2) If

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(2) If such fence shall not be in any district infested with vermin, such person shall not be liable to pay the interest on so much of the cost as to make such fence rabbit or vermin proof.

PART II.**PART II.****MAINTENANCE AND REPAIRS OF FENCES.**

Adjoining occupiers to keep dividing fences in repair.

12. When any dividing fence made or to be made shall be out of repair, or become insufficient, the occupiers of land on either side thereof shall be liable to the cost of repairing such fence in equal proportions.

Procedure to compel contribution to the repair of dividing fence.

13. The occupier of any land separated from any adjoining land by a dividing fence may, in manner provided by section 18 hereof, serve a notice upon the occupier of such adjoining land requiring him to assist in repairing or renewing such fence, and if such occupier shall refuse or neglect for the space of fourteen days after the service of such notice to assist in repairing or renewing such fence, it shall be lawful for such first-mentioned occupier to repair or renew such fence and to demand and recover of and from such other occupier half the cost of repairing or renewing the same: Provided that if any dividing fence or any portion thereof shall be destroyed by accident, the occupier of land on either side may immediately repair or renew the same without any notice, and shall be entitled to recover half the expense of so doing from the occupier of the adjoining land: Provided always that in case such dividing fence shall have been destroyed by fire, or by the falling of any tree or trees, the occupier through whose neglect (if any) such fire shall have originated, or caused injury to the fence, or such tree or trees shall have fallen, shall be the party bound to repair or renew the entire of the fence so damaged as aforesaid.

PART III.**PART III.****GENERAL PROVISIONS.**

Interest recoverable.

14. In any case where a person shall be liable to pay interest on the half cost of a dividing fence, such interest shall be recoverable in like manner as the half cost of a dividing fence is recoverable.

Act not to interfere with agreements.

15. 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 between occupiers of adjoining land.

Persons constructing fences can enter upon contiguous lands.

16. Every person engaged in constructing or repairing a fence under this Act, his agents and servants, may, with or without horses, cattle, carts, or carriages, at all reasonable times during such construction

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struction or repairing, enter upon the contiguous lands adjoining such 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 such fence.

17. Any person may come in and defend any proceeding under this Act against any tenant of such person in consequence of which such person 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 proceeding against his tenant under this Act.

18. 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 upon the person resident upon the land, or, if there be no such person, then such 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 the province; and if there shall be no such occupier residing in the province, the service of such notice may be dispensed with.

Notices, how to be served.

19. No greater sum shall be recovered from any person under this Act for the cost of constructing, repairing, or making sheep-proof or rabbit or vermin proof any fence than the amount which would be payable if such fence had been an ordinary fence, and had been constructed, repaired, or made sheep-proof or rabbit or vermin proof for the price usually paid in the district for constructing, repairing, or making sheep-proof, or rabbit or vermin proof, such a fence at the time when such sum first became payable.

Maximum rates to be recoverable for fences.

20. Any person who shall suffer the layers, roots, branches, or cuttings of any briar, furze, or prickly pear hedge upon his land to grow upon or over any land the property of any other person, so as to injure such other person's land, shall, within three months after being thereunto required by writing under hand of such other person, remove such layers, roots, branches, or seedlings, and in default thereof be liable to a penalty not exceeding Two Pounds; and after such default such other persons may remove such growth, and, on summary proceedings before two Justices, may recover from the occupier or owner making such default the expenses included in such removal.

Owner of hedge to be responsible in certain cases.

21. Any Special Magistrate or two Justices of the Peace, not interested in the matter at issue, shall have jurisdiction in the manner provided by an Ordinance, No. 6 of 1850, or any other Act in force relating to the duties of Justices to hear and determine any claim between adjoining occupiers for contribution, provided such claim shall not exceed Twenty Pounds.

Special Magistrate or two Justices to have jurisdiction in cases under Twenty Pounds.

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Court may enter
verdict for the person
claiming, &c.

Sufficiency of fence
to be decided by
Court.

22. In any case or proceeding under this Act the Court may enter a verdict for the person claiming contribution, notwithstanding any demand or notice provided for by this Act may not have been made or given, either wholly or in part, if the Court shall be satisfied that the person entitled thereto waived such notice or demand.

23. In every case or proceeding under this Act, where any dispute shall arise as to sufficiency of the service of any notice, or any waiver of notice, or as to the sufficiency of any fence, or whether it was necessary to erect any rabbit or other vermin proof fence, such question or dispute shall be determined by the Court.

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

KINTORE, Governor.