



ANNO DECIMO-SEPTIMO

## VICTORIÆ REGINÆ,

No. 12.

*By His Excellency SIR WILLIAM THOMAS DENISON, Knight,  
Lieutenant-Governor of the Island of Van Diemen's Land  
and its Dependencies, with the Advice and Consent of the  
Legislative Council.*

*AN ACT to repeal the Act of Council of this Island  
intituled An Act to provide for the Erection of  
Boundary Fences and to substitute other Provisions in  
lieu thereof.* [29th September, 1853.]

WHEREAS a certain Act of Council or Ordinance of this Island was passed in the sixth year of the reign of His late Majesty King William the Fourth intituled *An Act to provide for the Erection of Boundary Fences* whereby provision was made for the erection of Boundary Fences in this Colony—AND WHEREAS the provisions of the said recited Act have not been found to work advantageously for the objects and purposes thereby intended and it is expedient therefore that the same should be repealed and other provisions be substituted in lieu thereof in manner hereinafter provided—BE IT THEREFORE ENACTED by His Excellency SIR WILLIAM THOMAS DENISON Knight Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council of the said Island that from and after the passing of this Act the said recited Act of Council of this Island intituled *An Act to provide for the Erection of Boundary Fences* shall be and the same is hereby repealed excepting always as to all matters and things as shall have been done under the authority of the said recited Act all which matters and things shall be dealt with as if this present Act had not been passed.

II. AT any time after the passing of this Act it shall be lawful for the owner or tenant in possession of Land by notice in writing under  
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his hand to require the owner of any Land adjoining to assist in erecting a proper and sufficient dividing fence along the boundary between such Lands or in repairing the existing dividing fence along such boundary in case one shall have been already there erected which notice may be in the form or to the effect contained in the Schedule to this Act annexed marked A—PROVIDED that nothing herein-before contained shall in any manner extend or apply to any boundary line or lines between Landlord and Tenant.

III. IN cases where the owner of any Land is under legal disability or absent from the Colony any such notice as aforesaid may be given either by or to (as the case may be) the agent of such owner or by or to the person who shall have the actual possession of such Land whether as tenant or otherwise who shall for the purpose of giving or receiving any such notice be deemed the agent of the owner of such Land if in addition to the service of such notice upon any such person so having possession as aforesaid a copy of such notice shall also at the same time or within ten days next following the service thereof be published in the *Hobart Town Gazette*.

IV. WITHIN Fourteen Days next after the receipt of any such notice as aforesaid the owner of such adjoining Land or in his default the person by whom such notice shall have been received shall nominate some person as an Arbitrator to act jointly with the Arbitrator for that purpose nominated by the party giving such notice and shall inform the party giving such notice of the name of the person so nominated as an Arbitrator by the party to whom the said notice shall be given and the said Arbitrators so nominated as aforesaid shall forthwith by writing under their hands appoint a time and place for proceeding in the matter of such Arbitration and in default of such nomination or of such information being given or of such appointment of a time and place as aforesaid the Arbitrator named by the party giving such notice shall be the sole Arbitrator of and for both parties—AND the said two Arbitrators or sole Arbitrator (as the case may be) shall inquire into and determine the several matters hereinafter in that behalf mentioned—PROVIDED that before such two Arbitrators shall enter upon such inquiry they shall by writing under their hands appoint some third person as and to be the Umpire or person by whom alone the said matters shall be determined upon in case of any difference between them—PROVIDED ALSO that the time so appointed as aforesaid shall be not less than three days nor more than fourteen days next after such information shall be given of the nomination of an Arbitrator as aforesaid nor the place so appointed be more than five miles distant from the place where the fence is situate or is proposed to be erected as the case may be.

V. IF in any case (after appointment of such time and place as aforesaid) the Arbitrator of either party shall fail to attend such appointment or if (in case both Arbitrators attend) such Arbitrators shall not then duly appoint an Umpire or if (such Umpire being appointed) such Arbitrators or Umpire shall not duly make their or his Award or

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Umpirage between the parties such award to be made within Fourteen Days or such Umpirage within Twenty-one Days next after the day appointed for proceeding in the matter of such Arbitration then and in either of such cases it shall be lawful for any Justice of the Peace at any time afterwards upon the application of the party giving such notice as by the Second Section of this Act is provided to inquire into and determine the matters in question and to make his Award accordingly and such Justice shall have power to award such Costs for or towards defraying the expenses of the Award survey or otherwise attending the same to be paid by either party to the other not exceeding in any case in the whole the sum of Twenty-five Pounds as such Justice shall think fit to order—PROVIDED that no such Justice shall be competent to act under this Section who shall be directly or indirectly interested in the matter in question or be in any manner directly or indirectly connected with the parties interested therein or either of them.

VI. EVERY Award or Umpirage under this Act may be in the form or to the effect contained in the Schedule to this Act annexed marked B and shall be signed by the parties or party making the same in duplicate in the presence of not less than two witnesses who shall thereupon attest the same and the Arbitrators or Arbitrator Umpire or Justice (as the case may be) making any such Award or Umpirage shall have power to award and determine the several particulars next mentioned—that is to say—first what proportion and what particular parts or part of the lines or line of fence or fencing required by the notice given in pursuance of the Second Section of this Act to be erected or repaired each of the owners and tenants in possession of such adjoining lands shall be liable to erect or repair (as the case may be) having reference in such determination to the nature of the ground the relative situation and rights of the parties and such other circumstances as may seem proper to be taken into consideration—secondly what kind of fence shall be erected (if no fence or no sufficient fence shall already exist) on the respective parts of the lines or line of fencing so determined on—thirdly (whether there be any existing fence or not) with what description of materials the fence or fencing in question shall be erected or repaired and in what particular mode and within what time such parts of such fence or fencing shall be erected or repaired (as the case may be) by each party respectively—fourthly the amount or rate per rod of fencing which shall be paid by each person liable to erect or repair any parts or part of any lines or line of fencing by virtue of any such Award (in the event of such person neglecting so to erect or repair any such part of such lines or line of fencing) to the person who shall erect or repair the same as hereinafter provided—the time within which from the completion by such person as last aforesaid of such part of such lines or line of fencing payment of such amount or rate per rod shall be made to such person—the rate of interest which shall be payable on the sum so to be paid to such person from the time of the completion of such part of such lines or line of fencing to the time of the payment of such sum and the times of payment of such interest—and fifthly the yearly sum to be payable by any such

tenant or sub-tenant in possession as in the Twelfth Section of this Act mentioned.

VII. IF any person liable to erect or repair any parts or part of any lines or line of fencing by virtue of any such Award as aforesaid shall not erect or repair the same in the manner and within the time in that behalf by the said Award fixed and determined it shall be lawful for any other person liable to erect or repair any other parts or part of any lines or line of fencing by virtue of such Award to erect or repair (as the case may be) such parts or part of such lines or line of fencing as shall not be so erected or repaired as aforesaid and such person who shall so erect or repair any parts or part of any lines or line of fencing which shall not have been erected or repaired in pursuance of such Award by the person thereby made liable so to do shall be entitled to receive from the person last aforesaid in respect of such parts or part of such lines or line of fencing payment of such sum of money at the amount or rate per rod of fencing together with such interest thereon as shall in that behalf be fixed and determined by such Award as aforesaid and for the purpose of erecting or repairing any such parts or part of such lines or line of fencing it shall be lawful for any such person with all necessary and proper assistance means and appliances to enter upon the Land of any person or persons without being deemed a trespasser thereon.

VIII. THE term "Award" used in this Act shall be invariably construed to extend to and include equally an "Umpirage" and the term "Arbitrators" to extend to and include equally any single "Arbitrator" or "Umpire" and as well the Arbitrators or Arbitrator nominated by the parties or party as any such Justice as aforesaid except in cases where it is otherwise distinctly expressed or there is something in the context repugnant to such construction.

IX. EVERY Award under this Act shall and may for the purposes next hereinafter mentioned be deemed an Instrument in Writing affecting Land within the meaning of the Acts of this Island providing for the Registration of Deeds Wills and Instruments affecting real property and a Memorial thereof may be accordingly entered and registered in the Office of the Registrar of Deeds in the manner by those Acts directed—PROVIDED that such Memorial shall be delivered into the said Office for such Registration within Twelve Months after the making of the Award to which it relates and shall be signed by one of the parties to or affected by such Award in the presence of some credible witness who shall attest the same and by whom the same Memorial shall afterwards be verified by oath made before the said Registrar or some Commissioner of the Supreme Court or Justice of the Peace that such Memorial contains a true account of the several particulars therein set forth—AND PROVIDED ALSO that every such Memorial shall be intituled "Memorial of Award made pursuant to the Boundary Fences Act 1853" and shall according to the circumstances of the case contain the following particulars—that is to say—the date of the Award and by whom made and who were or are the

Parties thereby affected and to what Lands in particular such Award relates and in what district or place the same respectively are situated and what is or are the particular fence or fences or line or lines of fencing awarded to be erected or repaired by each such party respectively and the amount or rate per rod made payable under such Award in the event of any part of the fencing in question being erected or repaired for any party by any other of such parties together with the interest thereon and when the same is payable and also the yearly sum to be payable by any such Tenant or Sub-Tenant in possession as in the Twelfth Section of this Act mentioned.

X. FROM and after the time of any such Registration as aforesaid the Award so registered shall as to the Lands respectively to which the same relates have equal force and effect against any and every subsequent Owner thereof so as to render every such Owner liable to erect or (as the case may be) to uphold and keep in repair at all times the fence or fences on and along the same line or lines which the Owner originally affected by such Award was thereby made liable to erect or repair in respect of such Land—AND so also as that where any fence which the Owner of such Land for the time being shall be liable to erect or repair shall not be well and sufficiently erected repaired or upholden either such Owner or the Tenant in possession for the time being of such Land shall be answerable in damages for any injury thereby occasioned and any person so injured may sue for and recover such damages accordingly either against such Owner or such Tenant in possession at his election and on the other hand no such Owner or Tenant in possession shall be entitled to claim damages or have redress by Law for or in respect of any loss or alleged injury which such neglect shall occasion or may at any time have occasioned to himself.

XI. NOTHING in the preceding Section of this Act contained shall be construed in any manner to alter or affect the actual liability as between themselves of the Owner or Tenant in possession of such Land as aforesaid to erect or repair any such fence or fences under any Contract or Agreement made or to be made between them in respect of such erection or repairs but the defendant in any such Action as aforesaid shall and lawfully may in every case have his remedy over against the Owner or Tenant in possession (as the case may be) upon whom such actual liability whether exclusive or proportional may have been imposed by virtue of any such contract or agreement as aforesaid any thing in the said preceding Section to the contrary notwithstanding.

XII. PROVIDED ALWAYS that where at the time of the making of any such Award as aforesaid any Lands in respect of which any boundary fence or fencing is required under the provisions of this Act to be erected or repaired shall be under lease for years of which not more than fourteen shall at the making of such Award be unexpired the Owner of such Lands and not the Tenant in possession thereof shall be the party against whom such Award shall be made and upon whom

the liability to erect or repair (as the case may be) any such fence or fencing shall thereby be imposed whether such Tenant in possession shall have been the party requiring such erection or reparation of such fence or fencing or not—AND in every such case it shall be lawful for the Arbitrators at the request of the Owner and after notice and opportunity of a hearing given to the Tenant and any Sub-Tenant in possession to award and determine whether any and what proportion of the expense of erecting or repairing such fence or fencing shall be contributed to by such Tenant or Sub-Tenant in possession and if in any case any such contribution shall (by reason of any increased value or benefit accrued or to accrue thereby to such Tenant or Sub-Tenant) be deemed fair and proper it shall be lawful for such Arbitrators to fix and determine a stated yearly sum in respect thereof to be payable to such Owner by such Tenant or Sub-Tenant quarterly or otherwise during the continuance of his Lease or possession of such Land as and by way of rent and which yearly sum shall be recoverable by such Owner from such Tenant or Sub-Tenant in such manner as rent in arrear is or may be recoverable in this Colony.

XIII. IF in any case any sum of money or interest thereon to which any person shall be entitled by virtue of any such Award as aforesaid or otherwise by virtue of the provisions of this Act shall not be paid by the person liable to pay the same to such person as aforesaid at the time or as herein in that behalf appointed it shall be lawful for such person so entitled to such sum of money or interest thereon as aforesaid to sue for and recover the same together with full costs of suit by action of debt in any Court of Requests in this Island where the amount of such sum of money or interest thereon as aforesaid shall be within the jurisdiction of such Court or where the amount of such sum of money or interest thereon as aforesaid shall be beyond the jurisdiction of such Court of Requests in the Supreme Court of this Island and such person liable to pay the same shall be liable to be sued for such sum of money or interest thereon as aforesaid and the same shall and may be recovered from such person in the manner hereinbefore provided notwithstanding that such person may have ceased to be the Owner of or to occupy as the case may be the Lands in respect of which such liability to pay such sum of money or interest was incurred or may have transferred relinquished or forfeited the right to the occupation of such lands.

XIV. IF in any case it shall appear to the Arbitrators that any boundary line between the lands of the respective parties is unascertained or in dispute so that no Award can satisfactorily be made until such line be determined it shall be lawful for such Arbitrators before deciding upon the other matters of the Award to inquire into and fix and determine such boundary line and for that purpose to examine witnesses upon oath (which such Arbitrators are hereby empowered to administer) and take such other lawful steps for that purpose as they may deem expedient and upon the settlement by such Arbitrators of such disputed line or boundary it shall be lawful for such Arbitrators to set out and

mark and distinguish the same accordingly upon the ground and until such boundary line shall have been so settled it shall be lawful for such Arbitrators to postpone the making of any Award under this Act from time to time at their discretion.

XV. A description of every boundary line so fixed and determined and set out marked and distinguished as aforesaid shall be inserted in or annexed to the Award of such Arbitrators and be authenticated by the Signatures of such Arbitrators subscribed thereto in the presence of and attested by one of the witnesses to such Award and from thenceforth the line or lines so fixed and determined set out marked and distinguished as aforesaid shall for the purposes of this Act as against the several parties to the said Award and all persons thereafter representing or claiming title under them or either of them be deemed and taken to be in fact the boundary or boundaries of and between such lands respectively.

XVI. IF at any time afterwards the Lieutenant-Governor for the time being shall signify at the foot of such description as aforesaid his approval of the same then from and after Registration of the Award in manner aforesaid the line or lines so described as aforesaid shall as against the said several parties and persons be deemed and taken conclusively to be the boundary or boundaries of and between such lands to and for all intents and purposes whatsoever.

XVII. EVERY person beneficially entitled to land or to have a grant thereof whether legally or equitably and whether as Mortgagor or Mortgagee Tenant in fee or for life or as Tenant for years only (if for a term exceeding fourteen years unexpired at the time of the giving any such notice under this Act as first aforesaid) who shall at the time of the making of the Award be by himself his Agents or Tenants in the actual possession of such land and every person occupying land in this Colony belonging to Her Majesty Her Heirs and Successors by virtue of any Licence from the Crown to occupy and depasture such land commonly called and known as a "Grazing Licence" shall for the purposes of this Act be deemed and taken to be the Owner of such land.

XVIII. THE terms "fence" and "fencing" used in this Act shall be understood to mean and apply to any sufficient kind of enclosure whatsoever whether by wall hedge logs posts and rails ditch sunk fence or otherwise.

XIX. IN all cases where any fence or fencing shall under this Act be awarded to be erected the same shall be erected on the Land of the party upon whom the liability to erect such fence or fencing shall have been imposed but as near to the boundary line between the adjoining properties as shall be practicable and every fence awarded under this Act to be erected or repaired shall be deemed to be the property of the person made liable to such erection or repairs so as to enable him and all persons from time to time claiming under him continually to uphold the same and to obtain redress by Action or otherwise for any injury at any time done thereto.

XX. IN all cases where any question shall arise whether any such Award as aforesaid was in fact made or if made was duly made according to the provisions of this Act it shall (as against the several parties thereto or affected thereby and as against every person representing or claiming title under them or either of them) be sufficient for the person on whom the proof of the affirmative shall lie to produce or cause to be produced one of the originals or counterparts of such Award or any instrument purporting in fact to be such Award and to be made under this Act and to bear the Signatures of any such Arbitrators and of two persons as witnesses thereto without proving any such signature or adducing any other proof whatever or (instead of producing any such original or counterpart) to produce or cause to be produced from the Office of the Registrar of Deeds the Memorial of such Award or any Writing purporting in fact to be the Memorial of an Award substantially corresponding with the one alleged together with the usual Certificate of the Registrar as to the receipt of such Memorial without proving any Signature to such Memorial or Certificate or adducing any other proof whatever.

XXI. PROVIDED ALWAYS that no such proof as aforesaid shall be received other than as *prima facie* proof only and that nothing in the preceding Section shall extend to prevent any such Award from being at any time within seven years after the date thereof impeached and invalidated by showing the same not to have been made in accordance with the provisions of this Act but to be contrary to the true intent and meaning thereof yet so nevertheless as that no Award under this Act shall be in any case set aside where no injustice shall appear to have been done and that no defect in matter of form only shall be regarded.

XXII. IN all cases where an Award made under this Act shall have been duly registered as aforesaid the same and every provision therein shall as to the Lands to which the same relates have the force and effect of a Judgment at law so as to operate as a charge or lien thereon in the hands of every Owner thereof present or future—PROVIDED ALWAYS that nothing in this Section contained shall in any manner extend or apply to any Lands belonging to Her Majesty Her Heirs and Successors occupied by virtue of any such Grazing Licence as aforesaid.

XXIII. NO Award shall be made or proceeding be had under this Act in respect of any Land situated within the limits of the City of Hobart Town or the Town of Launceston as such limits now are or hereafter may be defined under any law in force for that purpose.

XXIV. THIS Act may be called and cited as "The Boundary Fences Act 1853."



## SCHEDULE A.

IN pursuance of "The Boundary Fences Act 1853" I hereby give notice to C. D. as the Owner of the Land next adjoining the Land belonging to me [or occupied by me as the case may be] situate at [place] in the District of [District mentioned in the books of the Survey Office] within the Police District of [mention the District] that I require him to assist in erecting proper and sufficient dividing fences [or repairing the existing dividing fences as the case may be] between our respective Lands and for that purpose to nominate an Arbitrator on his behalf to decide pursuant to the said Act jointly with W. H. K. the Arbitrator named by me how when in what proportions and by whom the same shall be effected. Dated [place] the

day of

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A. B.

## SCHEDULE B.

WE A. B. and C. D. being duly nominated under "The Boundary Fences Act 1853" to act as Arbitrators respecting the erection [or repair as the case may be] of dividing fences between the respective lands of E. F. of [place] and G. H. of [place] situate in the District [or Parish] of R. do make our Award in the premises as follows that is to say We award that E. F. as owner of the lands situate [here describe same] shall erect [or repair as the case may be] the part [or parts] of the fencing between the said lands [here describe the part or parts of fencing to be erected or repaired by E. F. by reference to distances and to marks on the ground or otherwise or] shown by the plan in the margin hereof [or the plan hereunto annexed] that J. K. as tenant in possession of the lands situate [here describe same] shall erect [or repair as the case may be] the part [or parts] of the fencing between the said lands [here describe as above the part or parts of fencing to be erected or repaired by J. K. and so on setting forth the persons by whom the several parts of the fencing between the said lands shall be erected or repaired]—that [in the case of the erection of a fence] the part [or parts] of the said fencing so to be erected by the said E. F. shall be [here describe kind of fence to be erected by E. F. and so on describing kind of fence to be erected by each person]—that the part [or parts] of the said fencing so to be erected [or repaired as the case may be] by the said E. F. shall be erected [or repaired] with [here describe materials with which and mode in which E. F. to erect or repair his portion of the fencing] and that the said part [or parts] of the said fencing shall be so erected [or repaired] by the said E. F. within weeks [or months] from this date [and so on describing materials with which mode in which and time within which parts of fencing to be erected or repaired by each person]—that in the event of any part of the said fencing so to be erected [or repaired] by the said E. F. being erected [or repaired] by any other person as by "The Boundary Fences Act 1853" is provided the said E. F. shall pay to such person the sum of per rod for every rod of such fencing so erected [or repaired] by such person together with interest on the amount payable to such person at the rate of pounds per centum per annum from the time of the completion of the said fencing by such person till the time of the payment of such amount by the said E. F. to such person—that the said E. F. shall pay such amount to such person within months [or years] from the time of the completion of such fencing and shall pay such interest thereon to such person by equal portions on every [here specify periods of payment of interest and so on specifying in the case of each person the sum per rod of fencing and interest and times of payment in the event of such person's portion of fencing being erected or repaired by any other person.]

[In the event of any such Contribution as in the Twelfth Section mentioned being awarded add as follows]—

THAT L. M. as such tenant [or sub-tenant as the case may be] in possession of the lands situate [here describe same] as in the Twelfth Section of "The Boundary  
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Fences Act 1853" mentioned shall in respect of the fencing hereby awarded to be erected [or repaired] by the said E. F. as owner of such lands contribute to the said E. F. the yearly sum of                      pounds by equal quarterly payments on every [here specify periods of payment] during the continuance of his lease [or possession of such lands as the case may be.] Dated this                      day of                      185 .

[Attested by two Witnesses.]

[Signatures of Arbitrators.]

*N.B.—Every Award must be signed in duplicate and where any award is made by one Arbitrator only or by an Umpire or by a Justice of the Peace under Section Five the above form will require adaptation accordingly.*

[Where any Boundary Line has been unascertained or disputed and been settled under Section XIV. annex to the Award a Memorandum as follows]—

*Memorandum.*—The boundaries [or boundary] between the lands of A. B. and C. D. having been unascertained [or in dispute as the case may be] we the undersigned by virtue of the provision in that behalf contained in "The Boundary Fences Act 1853" have enquired into and fixed determined set out marked and distinguished the same which are [or is] as follows [here describe boundaries or boundary] or which are [or is] as contained in the following [or annexed] plan. Dated this                      day of                      185

[Signatures of Arbitrators.]

[Attested by one of the Witnesses to the Award.]

RICHARD DRY, *Speaker.*

Passed the Legislative Council this twenty-first day of September, one thousand eight hundred and fifty-three.

FR. HARTWELL HENSLOWE,  
*Clerk of the Council.*

In the name and on the behalf of Her Majesty I assent to this Act.

W. DENISON,  
*Lieut.-Governor.*

*Government House, Hobart Town,  
29th September, 1853.*