

New Zealand.



FENCING.

1908, No. 61.

AN ACT to consolidate certain Enactments of the General Assembly relating to the Erection and Repair of Dividing and Rabbit-proof Fences.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is "The Fencing Act, 1908." Short Title.

(2.) This Act is a consolidation of the enactments mentioned in the First Schedule hereto, and with respect to those enactments the following provisions shall apply:— Enactments consolidated.

(a.) All notices, orders, agreements, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. Savings.

(b.) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context,—

"Adjoining occupiers" means the occupiers of the lands on either side of a boundary-fence: Interpretation.
1895, No. 32, sec. 2
1904, No. 5, sec. 3

"Alienate" and "alienation" include a limited disposal by lease or license, as well as an absolute disposal by sale or otherwise:

- “Crown lands” includes all lands of whatever description vested in the Crown :
- “Crown tenant” means an occupier of Crown lands or public reserves, or of Maori lands as provided in paragraph (c) of section three hereof; and includes the Wardens of Hundreds, and the trustees, managers, or other persons having the control of commonages or mining reserves; but does not include any person holding Crown lands on deferred payment, agricultural lease, license with right of purchase, perpetual lease, lease in perpetuity, mining district occupation lease, or as a small grazing-run :
- “Fence” means a sufficient fence of any of the kinds mentioned in the Second Schedule hereto separating the lands of different occupiers, and includes all necessary gates, floodgates, culverts, and channels :
- “Maori” means an aboriginal Native of New Zealand, and includes half-castes and their descendants :
- “Occupier” includes any person who is in the actual occupation of or entitled as owner to occupy any land alienated from the Crown, or any Maori or other land to which this Act applies as provided in paragraphs (a) and (b) of section three hereof, and also any person who has in any manner purchased or acquired any such land or any estate or interest therein; and also any local authority, trustees, or persons in whom the title to or control of any public reserve is vested :
- “Owner” includes a registered proprietor of any land, a tenant in fee-simple, a tenant in tail, a tenant for life, and a tenant for any term of not less than ten years, and the trustee of any owner as herein defined, but does not include a mortgagee not in possession :
- “Public reserves” means all reserves of Crown or other lands made for any purpose of public use or benefit :
- “Rabbit-proof fence” means a fence of any of the kinds mentioned in Part II of the Second Schedule hereto, erected or converted for the purpose of preventing the passage of rabbits :
- “Road” or “street” includes any public highway, by-way, cross-way, or public place, whether a carriage-way, horse-way, or foot-way :
- “To repair” includes to trim, keep, and maintain a live fence, and to clean, deepen, or straighten a river, creek, ditch, or natural or artificial watercourse used as a fence.

Application of Act.

3. This Act shall not apply to any Maori lands except the following, to which it shall apply, that is to say: All lands—

- (a.) Owned by Maoris under Crown grant or under any title that has been determined by the Native Land Court or otherwise; or

(b.) Vested in the Public Trustee under "The West Coast Settlement Reserves Act, 1892," or otherwise in trust for Maoris; or

(c.) Held by Maoris under their customs or usages, or reserved for their use, the title to which has not been determined, but which are leased for the benefit of those concerned.

4. (1.) With respect to the lands referred to in paragraph (a) of the last preceding section the following provisions shall apply:—

Judgment against Maori, how enforceable. 1895, No. 32, sec. 3 (2), (3)

(a.) Where judgment for any sum is recovered against the Maori owner in respect of the erection of a fence under this Act, then, on registration of a certificate in the form in the Third Schedule hereto or to the like effect, the land shall stand charged with the payment to the judgment creditor of the amount of the judgment, together with interest thereon at the rate of six pounds per centum per annum.

(b.) The Court before whom such judgment is recovered shall, at the request of the judgment creditor, issue such certificate.

(c.) Such certificate shall be deemed an instrument within the meaning of "The Land Transfer Act, 1908," and an instrument affecting land within the meaning of "The Deeds Registration Act, 1908," and may be registered accordingly.

(d.) No sale, lease, or other disposition of the land affected by any such charge shall be made or shall have any validity until the charge is satisfied, and a discharge thereof is registered in like manner as in the case of a mortgage.

(2.) For the purposes of this Act the Public Trustee shall be deemed to be the owner of all the lands vested in him as mentioned in paragraph (b) of the last preceding section:

Provided that he shall be liable under this Act only in his representative capacity and to the extent of the funds from time to time available.

5. This Act does not apply to unalienated Crown lands, or to public reserves not vested in any local authority, trustees, or persons; nor shall the Crown, the Governor, any Land Board, or any public officer having the administration, management, or control of Crown lands, or public reserves as aforesaid, be liable under this Act to make any contribution towards the erection or repair of any fence.

Act not to apply to unalienated Crown lands.

Ibid, sec. 4

6. Nothing in this Act shall affect any covenant, contract, or agreement made between landlord and tenant, or between any adjoining occupiers, or between any other persons relative to the cost of erecting or repairing fences.

Act not to interfere with agreements.

Ibid, sec. 43

7. Every covenant or agreement made or entered into between owners of adjoining lands for the purpose of modifying or varying the rights and liabilities conferred or imposed on them by this Act—

Fencing covenants to run with land.

1904, No. 5, sec. 2

(a.) Shall run with the land, whether assigns be named therein or not; and

(b.) Where the land affected, or any part thereof, is subject to the provisions of "The Land Transfer Act, 1908," shall

be deemed to create an interest in land within the meaning of that Act, and shall be registrable accordingly:

Provided, however, that the assigns shall not be bound unless the covenant or agreement is registered.

Erection of Fences.

What deemed a sufficient fence. 1895, No. 32, sec. 7
Barbed-wire fence may be prohibited in towns.
Ibid, sec. 8

8. A fence of any of the kinds mentioned in the Second Schedule hereto is a sufficient fence within the meaning of this Act.

9. Any Borough Council or Town Board may prohibit the erection of any fence composed wholly or partly of barbed wires within the limits of the borough or town district, or within such portions thereof respectively as are provided by any by-law from time to time in that behalf.

Existing fences preserved.
Ibid, sec. 9

10. Where a sufficient fence has been erected within the meaning of any former Act relating to fencing, such fence need not be made a sufficient fence within the meaning of this Act until the erection of a new fence.

Adjoining occupiers to share cost of fencing.
Ibid, sec. 10

11. (1.) Subject to the provisions of this Act, the occupiers of adjoining lands not divided by a sufficient fence are liable to contribute in equal proportions to the erection of a fence between such lands, notwithstanding that such fence may not extend along the whole boundary-line.

(2.) An occupier shall not be liable to contribute to any fence that is not, as far as practicable, continuous throughout its length.

(3.) The erection of a fence includes the conversion of a non-rabbit-proof fence into a rabbit-proof fence, as described in clause three of Part II of the Second Schedule hereto.

Notice to fence to be given.
Ibid, sec. 11

12. (1.) Any person desiring to compel any other person to contribute to the erection of a fence under this Act must serve on him a notice to fence.

(2.) Such notice shall be in the form numbered (1) in the Fourth Schedule hereto or to the like effect, and shall specify the boundary to be fenced, and the kind of fence proposed to be erected.

(3.) If any person erects a fence without serving notice as aforesaid, the occupier of the adjoining land shall not be liable to pay any portion of the cost of erecting such fence, but shall not thereby be relieved from liability to pay half the cost of repairs.

Objections to proposed fence.
Ibid, sec. 12

13. (1.) If the receiver of a notice to fence objects to any of the proposals therein contained, he may, within twenty-one days after the service of such notice, serve on the giver a cross-notice signifying such objection and making counter-proposals to fence.

(2.) Such cross-notice shall be in the form numbered (2) in the Fourth Schedule hereto or to the like effect.

(3.) If he fails to serve such cross-notice within the said period of twenty-one days he shall be deemed to have agreed to the proposals contained in the notice served on him.

Where fencing notices vary.
Ibid, sec. 13

14. If notices to fence have been duly served by both parties, and the proposals therein contained do not correspond, or if a notice and cross-notice have been served, then (unless within twenty-one days after the service of the last of the said notices the parties can agree) the questions in dispute shall be determined by a Magistrate in the manner hereinafter provided.

15. (1.) If the questions in dispute relate to the erection of a rabbit-proof fence, or the conversion of a non-rabbit-proof fence into a rabbit-proof fence, and the Magistrate decides that the receiver of the notice will not derive adequate benefit from such erection or conversion, and therefore should not be required to contribute the half-cost thereof, then—

(a.) The giver of the notice may at his own cost erect or convert the fence, and may at any time remove the wire netting affixed by him for the purpose of such conversion, and at all times deal with such wire netting as his own property.

(b.) The receiver of the notice shall be liable to contribute a sum equal to the half-cost of erecting a sufficient non-rabbit-proof fence (unless one already exists), together with such additional sum (if any) as the Magistrate, having regard to the benefit received from the rabbit-proof fence, considers to be equitable.

(c.) The receiver of the notice shall also be liable to bear the half-cost of repairing such fence as a rabbit-proof fence until the wire netting is removed as aforesaid.

(2.) This section shall not apply to the South Island of New Zealand, or to any county within the North Island that the Governor, on the petition of the Council of such county, exempts from the operation thereof.

16. If any person desires to erect a dividing-fence of a description different from any fence mentioned in the Second Schedule hereto, he shall give notice as hereinbefore provided, and if the person served with such notice does not within twenty-one days of the service of such notice object in writing to the description of fence proposed to be erected, then the person giving such notice may proceed to erect such fence accordingly, and such fence shall be deemed to be a sufficient fence within the meaning of this Act; and, in case of objection being made, the questions in dispute shall be determined by a Magistrate in manner hereinafter provided.

17. If either party neglects or fails for the space of twenty-one days to commence, or, having so commenced, neglects or fails for the space of fourteen days to continue, to erect or convert such fence, the other party may thereupon, or at any time within three months thereafter, proceed to make or complete the fence, and may, at any time thereafter, recover from the defaulting party such party's proportion of the cost thereof.

18. If any person becomes the occupier of any land separated from any adjoining land by a fence made by the occupier of such adjoining land, such person shall be subject to the same liabilities in respect of such fence as his predecessor was subject to when he relinquished occupation.

19. Where a fence is at any time erected on the boundary of any land, and the adjoining land is at that time excepted from this Act, but afterwards becomes subject thereto, then so soon as such adjoining land becomes subject to this Act the following provisions shall apply:—

Special provision for certain parts of North Island.
1895, No. 32, sec. 14
1898, No. 24, secs. 2, 3, 4

Fences not mentioned in Second Schedule.
1895, No. 32, sec. 15

If default made by one party, other may fence and recover.
Ibid, sec. 16

Succeeding occupier liable for contribution.
Ibid, sec. 17

Where adjoining lands are excepted from Act when fence erected.
Ibid, sec. 18

- (a.) The person who erected the fence, or his successor in title, may serve upon the occupier of such adjoining land a notice in writing requiring him to pay a duly proportionate share of the value of the fence at the time of serving such notice.
- (b.) Such occupier shall within one month after receiving the notice pay to the person who erected the fence, or to his successor in title, such proportionate share as aforesaid, and shall also be liable to bear half the cost of repairing the fence so long as he continues to be such occupier.
- (c.) The amount of such proportionate share shall in case of dispute be determined by a Magistrate in the manner hereinafter set forth :

Provided that if such occupier holds under a lease having a less currency than five years, he shall have the same rights as a Crown tenant has under the next succeeding section :

Provided also that upon the expiry or earlier determination of such lease the person who thereupon becomes the occupier shall be liable as mentioned in paragraph (b) of this section.

20. Where any fence is erected under the provisions of this Act dividing any land held by any person as Crown tenant from any adjoining land, it shall be lawful for such Crown tenant, instead of paying his proportionate share of the cost of erecting such fence, to pay to the person who erected the fence, or to his successor in title, interest on such proportionate share at the rate of ten per centum per annum during such Crown tenant's term of occupation :

Provided that such Crown tenant shall be liable to pay half the cost of repairs to such fence during the said term.

21. (1.) Where the land or any part thereof on which any fence is to be erected is covered with standing bush, the person erecting such fence shall be entitled to fell and clear the bush for a width not exceeding sixty-six feet on each side along the entire length of such fence ; and the cost of such clearing shall be added to the cost of erection, and be apportioned accordingly :

Provided that in case of dispute such width shall be determined by a Magistrate in the manner hereinafter provided.

(2.) Nothing in this section shall empower any person to fell any ornamental plantation, or any belt or patch of standing bush preserved for shelter, and not more than five chains in width.

22. (1.) Where a river, creek, ditch, natural or artificial water-course, or rocky or impracticable land is on the boundary of adjoining lands, the occupiers of such lands may agree upon a line of fence on either side of such boundary, and if they cannot agree, the line of the fence shall be determined by a Magistrate in manner hereinafter provided.

(2.) The Magistrate may appoint one or more persons to inspect the proposed line of fencing, and shall determine whether any fence is necessary, and, if so, what line is to be adopted ; and whether any and, if so, what compensation in the shape of an annual payment or otherwise is to be made to either of the occupiers in consideration of loss of occupation of land.

Crown tenant may pay interest on half cost of erection of fence.

1895, No. 32, sec. 5

Bush may be cleared along line of fence.

Ibid, sec. 19

1898, No. 24, sec. 5

Where river, &c., natural boundary, occupiers may agree on line of fence.

1895, No. 32, sec. 20

(3.) The reasonable costs of such inspection, as fixed by the Magistrate, shall be costs in the cause.

(4.) The occupation of lands on either side of such line of fence shall not be deemed adverse possession, and shall not affect the title to or possession of any such lands, save for the purposes of this Act.

23. (1.) The occupier of any land in making a ditch-and-bank fence may make the ditch on the adjoining land (Crown lands inclusive), and use the soil taken therefrom towards making the bank, or he may make the ditch on his own land and place the bank on such adjoining land.

Ditch-and-bank fences.
1895, No. 32, sec. 21

(2.) No ditch or bank shall be made upon any such adjoining land so as to disturb or injure a live fence or hedge without the previous written consent of the occupier of such land.

24. Where a fence is made of posts and rails, or wire, or palings, the posts of such fence shall be placed on the boundary-line, or as near thereto as practicable.

Posts to be on boundary-line.
Ibid, sec. 22

25. (1.) If the occupier of any land bounded by a road has erected a fence on the boundary between his land and such road, and any other person adopts or takes advantage of any means by which such fence is rendered of beneficial use to himself, and avails himself of such fence, such person, so long as he continues to avail himself thereof, shall be liable to pay to the person who erected such fence, or to the occupier of the land whereon the same is erected, interest on half the then value of such fence, at the rate of ten pounds per centum per annum, and also to bear half the cost of repairs.

Person using fence on further side of road liable to pay interest on half-cost.
Ibid, sec. 23
1904, No. 5, sec. 4

(2.) The person so availing himself of any such fence shall, for the purposes of sections thirty-one to thirty-three hereof, be deemed to be an "adjoining occupier."

26. (1.) No person shall, whether for the purpose of making a live fence or otherwise, plant or sow gorse or trees—

Gorse, &c., not to be planted without consent of adjoining occupier.
1895, No. 32, sec. 24

(a.) On or alongside any boundary line or fence without the previous written consent of the occupier of the adjoining land; or

(b.) On or alongside any boundary line or fence bounding or abutting on any Crown lands, public reserve, or railway without the previous written consent of the proper authority having the management or control thereof.

(2.) No person shall under any circumstances or for any purpose plant or sow sweetbriar, bramble, or blackberry on or alongside any such boundary line or fence as aforesaid.

(3.) Every person who commits a breach of any of the provisions of this section is liable for every such offence to a fine not exceeding twenty pounds.

(4.) Irrespective of any such fine, the occupier or proper authority as aforesaid may enter on the land and cut down, uproot, and destroy all gorse or trees, sweetbriar, bramble, or blackberry planted or sown in breach of this section, and may recover the cost of so doing from the person who planted or sowed the same.

27. With the consent in writing of the local authority having the control of any road, and subject to such terms and conditions as such local authority in writing prescribes, the occupier of any land

Power to erect a fence on road to protect live fence.
Ibid, sec. 25

bounded by such road may erect on such road a fence for the purpose of protecting, until it becomes fully grown, any live fence planted by him on the boundary between his land and such road: Provided—

- (a.) That no part of the fence erected on the road is distant more than five feet from the nearest point on the boundary-line; and also
- (b.) That such fence does not reduce to less than twenty-four feet the width of the road available for traffic; and also
- (c.) That the occupier removes the fence whenever, in the opinion of the local authority, the exigencies of traffic require its removal or the live fence no longer needs protection.

Swing-gates across roads and bridges. 1895, No. 32, sec. 26

28. (1.) Subject to the provisions of "The Public Works Act, 1908," relating to gates across roads, the local authority may by writing permit any person to erect a swing-gate or rabbit-proof gate, properly hung, and furnished with an efficient fastening capable of being opened by a person on horseback, across any road or bridge, and such permission shall continue in force during the pleasure of the local authority.

(2.) Every person who damages or leaves open any swing-gate erected across any road or bridge, or in any rabbit-proof fence, is liable to a fine not exceeding five pounds, and is also liable to the person suffering damage as aforesaid for all damage done.

(3.) The provisions of "The Public Works Act, 1908," relating to gates across roads shall, for the purposes of this Act, apply to gates across bridges.

Fences on Crown lands to have gates, &c. Ibid, sec. 27

29. (1.) Where any person has erected or erects any fence upon any Crown lands, the Commissioner of Crown Lands of the district may direct such person to make such and so many gates, and at such places in the fence, as he deems necessary for the public convenience.

(2.) If such person does not comply with such direction within one month after the receipt thereof, he is liable to a fine not exceeding twenty pounds, and the Commissioner may forthwith have such gates made at the expense of such person.

(3.) Any person who leaves any such gate open is liable to a fine not exceeding five pounds.

Damaging or destroying fences. Ibid, sec. 28

30. Every person who wilfully destroys, or breaks down, or injures, or removes any rabbit-proof fence, or any portion thereof, whether set up on Crown lands or private lands, is liable to a fine not exceeding one hundred pounds, or to imprisonment for any term not exceeding six months.

Repairs of Fences.

31. Where any fence is out of repair, the adjoining occupiers shall bear the cost of repairing the same in equal proportions.

32. (1.) Where either of the adjoining occupiers desires to repair any fence, he may serve a notice upon the other requiring him to assist in repairing such fence, and may, if such other occupier refuses or neglects so to do for the space of seven days after the service of such notice, himself repair the fence and recover half the cost thereof from such other occupier.

Adjoining occupiers to keep fences in repair. Ibid, sec. 30
Procedure to compel contribution to the repair of fences. Ibid, sec. 31

(2.) Such notice shall be in the form numbered (3) in the Fourth Schedule hereto or to the like effect.

33. If any fence is damaged or destroyed by sudden accident or other cause, and requires immediate repair, either of the adjoining occupiers may repair the same without any notice, and, subject to the provisions of the next succeeding section, may recover half the cost thereof from the other occupier.

Contribution where fence destroyed by accident.
1895, No. 32, sec. 32

34. If by reason of the neglect or fault of any occupier any fence is damaged or destroyed, whether by stock, or fire, or the falling of any tree, or otherwise howsoever, such occupier shall be liable for the whole cost of repairing the fence so damaged or destroyed.

Exception where accident results from neglect.
Ibid, sec. 33

35. Nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for any damage to any fence occasioned by the reckless or negligent use of fire, or otherwise howsoever.

Liability for reckless use of fire.
Ibid, sec. 34

Procedure.

36. A Magistrate shall have jurisdiction to hear and determine all questions and disputes arising under this Act in so far as relates to—

Jurisdiction of Magistrates in matters arising under Act.

Ibid, sec. 35

(a.) The erection and repair of fences :

(b.) The kind of fence to be erected (the sowing or planting of a live fence or trees either at the time of erection or at any time thereafter, and the question of shelter, to be taken into consideration in deciding on the kind of fence) :

(c.) The width of the bush to be felled and cleared :

(d.) The persons by whom any such fence is to be erected or repaired :

(e.) The conversion of a non-rabbit-proof fence into a rabbit-proof fence :

(f.) The line of fence to be adopted, and the amount of compensation (if any) to be paid for loss of occupation of land :

(g.) The date on or before which, and the manner wherein any fence is to be erected or repaired :

(h.) The removal of fences that are not erected on the proper boundary :

(i.) The entry on adjoining land for the purpose of erecting or repairing a fence :

(j.) The reasonable and proper cost of erecting, converting, or repairing any fence, and the persons by whom and the proportions in which such cost is to be borne :

Provided that in the case of a rabbit-proof fence the Magistrate shall, where section fifteen hereof applies, have regard to the extent of the benefit received from the fence, as mentioned in that section :

1898, No. 24, secs 3, 4

(k.) Any question or dispute that by this Act is to be determined by the Magistrate :

(l.) The costs of the proceedings, and the parties by whom and to whom such costs are to be paid.

Proceedings to be
by summons.
1895, No. 32, sec. 36

37. (1.) All proceedings before a Magistrate in respect of any of the matters mentioned in the last preceding section shall be by summons in the prescribed form, and such proceedings shall be conducted and all orders thereon by the Magistrate may be made, enforced, and acted upon in like manner as in the case of summary proceedings under "The Justices of the Peace Act, 1908."

(2.) In all such proceedings the provisions of "The Magistrates' Courts Act, 1908," relating to the joinder, striking-out, or substitution of parties shall apply.

38. A Magistrate shall have jurisdiction to hear and decide any claim arising under this Act whatever its amount, and notwithstanding that title to land may be involved.

39. Subject to any order made by a Magistrate under the powers conferred on him by this Act, all moneys recoverable under this Act may be sued for and recovered in any Court of competent jurisdiction.

40. (1.) Any notice under this Act to be served on any person may be served—

(a.) Either personally or by leaving the same at or posting the same in a registered letter addressed to such person's last known place of abode or business in New Zealand; or

(b.) If such person is unknown, or after due inquiry cannot be found, or is absent from New Zealand, then by serving the notice in any one of the modes aforesaid upon his known agent or attorney; or

(c.) If there is no known agent or attorney in New Zealand, or such agent or attorney cannot after due inquiry be found, then by publishing a copy of such notice in a newspaper circulating in the neighbourhood of the land to which the notice relates, and affixing a copy of the notice upon a conspicuous part of such land, or on some public road adjacent thereto.

(2.) It shall not be necessary to prove the actual receipt of such notice by the person to whom it is addressed.

Miscellaneous.

41. (1.) In every case where the half-cost of erecting or repairing a fence is payable under this Act, the amount so payable—

(a.) Shall be a reasonable and proper sum, to be fixed if necessary by a Magistrate; and

(b.) Shall not exceed the actual half-cost, including interest on outlay, and reasonable remuneration for the superintendence and labour of the occupier when he is personally engaged on the work.

(2.) The maximum price payable under this Act in respect of the half-cost of erecting a fence shall not exceed,—

(c.) In the case of a fence erected in a borough, of the kind described in clause three of Part I of the Second Schedule hereto, thirty-five shillings a chain:

(d.) In the case of any other non-rabbit-proof fence, twenty shillings a chain, exclusive of half the reasonable and

Magistrate to have
jurisdiction
notwithstanding
title involved.

Ibid, sec. 37

Moneys recoverable
in any Court of
competent
jurisdiction.

Ibid, sec. 38

How notices may
be served.

Ibid, sec. 39

Maximum price
payable in respect
of half-cost of fence.

Ibid, sec. 40

proper cost of felling and clearing bush along the line of such fence :

- (e.) In the case of a rabbit-proof fence, or the conversion of a non-rabbit-proof fence into a rabbit-proof fence, such sum as is agreed upon, or as the Magistrate fixes as a reasonable and proper one, due regard being had to the considerations referred to in section fifteen hereof in cases where that section applies.

1898, No. 24, secs. 3, 4

42. (1.) Any occupier erecting or repairing a fence under this Act, his agents and workmen, may, if access thereto over his own land is more difficult, inconvenient, or expensive than over the adjoining land, enter, with or without horses, cattle, and carts, at all reasonable times upon any portion of such adjoining land, and do thereon such things as are reasonably required in order to erect or repair such fence :

Persons constructing fences may obtain order to enter on adjoining land.

1895, No. 32, sec. 41

Provided that he first obtains from a Magistrate, on summons, an order (which the Magistrate is hereby empowered to grant) authorising such entry.

(2.) If the owner or occupier of such adjoining land, by himself, his agents, or servants, obstructs such entry, or the erection or repair as aforesaid of such fence, then, in addition to any other penalty that he may incur, he shall be liable to pay the entire cost of the erection or repair of such fence.

Penalty for obstructing entry.

43. With respect to every such order the following provisions shall apply :—

Order to be subject to certain provisions.

(a.) The right thereby conferred shall be exercised with as little damage as possible to the land entered upon.

Ibid, sec. 42

(b.) Nothing in such order or in this Act shall authorise the entry for the purpose aforesaid on any land in crop, or on any garden, orchard, plantation, shrubbery, or pleasure-ground, without the consent of the owner thereof; or shall, without the like consent, authorise any person to cut down, lop, or injure any tree or shrub.

44. Every owner or occupier of any land who suffers any loss or damage by reason of any act or thing wilfully done by any person, contrary to any of the provisions of the two last preceding sections, shall be entitled to recover compensation for the same.

Compensation for wilful damage.

Ibid, sec. 42

45. Any person may come in and defend any proceeding under this Act against any other person where by reason of the proceeding such first-mentioned person might ultimately incur any liability, and may in such proceeding avail himself of any defence that such other person might set up.

Power to come in and defend proceedings against other person.

Ibid, sec. 44

46. For the purposes of this Act any minor holding any land under any lease, license, certificate of occupancy, or other form of tenure under "The Land Act, 1908," or any former Land Act shall be deemed to be of the full age of twenty-one years.

Minor to be deemed to be of full age.

1895, No. 58, sec. 11

47. The Governor may from time to time, by Order in Council gazetted, make regulations prescribing, in all cases not herein specially provided for, the practice and forms in all proceedings before a Magistrate under this Act.

Governor in Council may make regulations.

1895, No. 32, sec. 45

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS CONSOLIDATED.

- 1895, No. 32.—“The Fencing Act, 1895”: Except sections 6 and 29.
 1895, No. 58.—“The Land Act Amendment Act, 1895”: Section 11, so far as the same relates to “The Fencing Act, 1895.”
 1896, No. 48.—“The Fencing Act Amendment Act, 1896”: Except section 3.
 1898, No. 24.—“The Fencing Act Amendment Act, 1898”: Except section 6.
 1904, No. 5.—“The Fencing Act Amendment Act, 1904.”

SECOND SCHEDULE.

PART I.—DESCRIPTION OF SUFFICIENT NON-RABBIT-PROOF FENCE.

1. A POST-AND-RAIL fence, at least 3 ft. 9 in. in height, of substantial material, firmly erected, with not less than four rails, the space between the two bottom rails, and the bottom rail and the ground, not to exceed 5 in., and the posts to be not more than 9 ft. apart.
2. A batten-and-wire fence, at least 3 ft. 9 in. in height, of substantial material, firmly erected, with one or more wires; the wires to be not lighter than No. 8 in steel, or black or galvanised iron; the battens to be either driven into the ground and securely stapled, or intertwined in wires in an upright position, and to be not more than 3 in. apart.
3. Any paling fence, at least 3 ft. 9 in. in height, with posts and two rails, and having split or sawn timber placed upright, and well nailed to both rails, there being not more than 4 in. of opening between each upright piece of timber.
4. A substantial wire fence, having not less than seven wires tightly stretched, or six wires with a top rail, or barbed wire, with or without battens or lacing affixed to the wires between the posts or standards; the posts or standards to be of durable wood or iron, well and substantially erected, and not more than 9 ft. apart; the top wire not to be less than 3 ft. 9 in. from the surface of the ground; the wires to be not lighter than No. 8 in steel, or black or galvanised iron; and the space between each of the three bottom wires, or the bottom wire and the ground, not to exceed 5 in.
5. A substantial wire fence, having not less than seven wires tightly stretched, or six wires with a top rail or barbed wire, with battens not more than 6 ft. apart, the wires being stapled to or let through such battens, which shall be of durable wood or iron, well and substantially erected; the posts or standards to be not less in number than three to the chain; the top wire not to be less than 3 ft. 9 in. from the surface of the ground; the wires to be not lighter than No. 8 in steel, or black or galvanised iron; and the space between each of the three bottom wires, or the bottom wire and the ground, not to exceed 5 in.
6. A stone wall, well and substantially built, not less than 4 ft. in height, and not less than 2 ft. 6 in. in width at base.
7. A close and sufficient live fence.
8. A combination of the above kinds of fences, at least 3 ft. 9 in. in height.
9. Any other description of fence (including in the expression “fence” any natural or artificial watercourse) mutually agreed upon in writing by the persons interested.
10. Within the County of Westland, but not elsewhere, a substantial post-and-wire or standard-and-wire fence, having not less than three barbed wires tightly stretched and securely fixed to the posts or standards, the posts or standards being not more than 12 ft. apart.

PART II.—DESCRIPTION OF SUFFICIENT RABBIT-PROOF FENCE.

1. A substantial fence, having split or sawn timber placed upright thereon to a height of not less than 3 ft. from the surface of the ground, and sunken therein not less than 6 in. from the surface, and well fixed, there being not more than 1 in. of opening between each upright piece of timber.
2. A substantial fence at least 3 ft. 9 in. in height, with posts or iron standards not more than 9 ft. apart, and at least two galvanised iron or steel wires not lighter

Sections 2, 8, 11, 16,
41.

1895, No. 32,
Schedule A.

1896, No. 48, sec. 2

than No. 8, and one barb wire on top, to which shall be attached galvanised-wire netting firmly affixed to wires, and securely fastened to the ground, or sunken therein not less than 6 in., such wire netting to be not less than a total of 42 in. wide, 16 gauge, and not larger than 1½ in. mesh.

3. Any fence converted into a rabbit-proof fence by attaching thereto galvanised-wire netting firmly affixed to wires, and securely fastened to the ground, or sunken therein not less than 6 in.; such wire netting to be not less than a total of 42 in. wide, 16 gauge, and not larger than 1½ in. mesh:

Provided that in the case of existing fences on which netting as above described could not be stretched, then netting of a less width may be affixed.

THIRD SCHEDULE.

CERTIFICATE OF JUDGMENT.

Section 4 (1).
1895, No. 32,
Schedule B.

Magistrate's Court,
District of
[or as the case may be.]

A. B. [Name and description], having this day recovered judgment against C. D. [Name and description], for £ under "The Fencing Act, 1908," the under-mentioned lands stand charged with the payment to the said A. B. of the amount of the said judgment, together with interest at the rate of £5 per centum per annum, from the date hereof until payment.

Description of lands affected:

Dated this day of , 19 E. F., Magistrate
[or Judge, as the case may be].

FOURTH SCHEDULE.

(1.) NOTICE TO FENCE.

Section 12.

To C. D., Occupier of [Describe land with sufficient particularity to identify it].

Ibid, Schedule C.

TAKE NOTICE that I desire that a fence between the above-described land and the adjoining land—viz., [Describe land with sufficient particularity to identify it]—of which I am occupier, be erected immediately [or on or before the day of , 19], and propose that such fence shall be a [Describe the fence, identifying it by reference to Second Schedule].

This notice is given under "The Fencing Act, 1908."

Dated this day of , 19 A. B.

(2.) CROSS-NOTICE.

Section 13.

To A. B., Occupier of [Describe land with sufficient particularity to identify it].

TAKE NOTICE that I object to your notice to fence, dated the day of , 19 , in so far as it does not correspond with the proposal I now make, to wit, that a fence between the above-described land and the adjoining land, of which I am occupier—viz., [Describe land with sufficient particularity to identify it]—be made immediately [or on or before the day of , 19], and that such fence shall be a [Describe the fence, identifying it by reference to Second Schedule].

This notice is given under "The Fencing Act, 1908."

Dated this day of , 19 C. D.

(3.) NOTICE TO REPAIR.

Section 32.

To A. B., Occupier of [Describe land with sufficient particularity to identify it].

TAKE NOTICE that the fence between the above-described land and the adjoining land, of which I am occupier—viz., [Describe land with sufficient particularity to identify it]—is out of repair, and I require you to assist in repairing the same.

This notice is given under "The Fencing Act, 1908."

Dated this day of , 19 C. D.