

New Parliament.]

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
28th November, 1879.

Hon. Mr. Waterhouse.

Fencing.

ANALYSIS.

<p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Act not to apply to all Native lands. 3. Act to apply to selectors of land on deferred payments or agricultural leaseholders. 4. Repeals. 5. Interpretation. 6. Inspectors of Fences. 7. Not to act where personally concerned. 8. Disputes to be settled by Magistrate. 9. What deemed a sufficient fence. 10. Existing fences preserved. 11. Gorse not to be planted without consent of neighbours. 12. Power to construct a fence on road to protect live fence. 13. Adjoining occupiers to share cost of fencing. 14. Runholders in Canterbury and Southland may not be required to fence. 15. Notice to fence to be given. 16. Mode of service of notice, and proof of service. 17. If parties cannot agree, fence may be made. 18. If default made by one party, other may fence and recover. 19. Where adjoining lands are Crown or Native lands. 20. Party using a fence to contribute towards the cost thereof. 21. Objections to proposed fence. 22. Provision in cases where fencing notices vary. 23. As to erection of fences not in Schedule A. 24. Fences erected by mutual consent to be deemed sufficient. 25. Maximum price for half-cost of fencing. 26. Bush may be cleared on just line of fence. 	<ol style="list-style-type: none"> 27. In case of stream or ditch which does not form a sufficient fence. 28. Where river, &c., natural boundary, power to agree on line of fence. 29. Half of dividing fence may be on adjoining land. 30. Crown tenant may pay interest on half cost of erection. Proviso. 31. Person using fence liable to pay interest on half cost. 32. Interest recoverable. 33. Adjoining occupiers to keep dividing fences in repair. 34. Procedure to compel contribution to the repair of dividing fences. 35. From whom moneys recoverable under this Act may be recovered. 36. Jurisdiction of Justices and Resident Magistrates in matters arising under Act. 37. What may be heard and determined by Courts. 38. How proceedings to be enforced. 39. Act not to interfere with agreements. 40. Act not to apply to unalienated Crown lands. 41. Fences on Crown lands to be provided with gates or openings, &c. 42. Persons constructing fences can enter upon contiguous lands where not orchards, gardens, &c. 43. When garden, orchard, crop, &c., damaged, owner entitled to compensation. 44. Method of recovering compensation. Compensation may be recovered summarily. 45. Power of landlord to come in and defend proceedings against his tenant under this Act. 46. Provision when the whole of the Counties Act is not in operation. Schedules.
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A BILL INTITULED

AN ACT to regulate the Erection and Maintenance of Dividing Fences. Title.

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

1. The Short Title of this Act is "The Fencing Act, 1879;" Short Title.
5 and it shall take effect on and after the first day of January, in the year one thousand eight hundred and eighty.

2. This Act shall not apply to any Native lands, except such as, Act not to apply to all Native lands.
10 having passed through the Native Land Court, are held under memorial of ownership or certificate of title issued by the said Court, and are occupied by Europeans: Provided that it shall be lawful for the Governor from time to time, whenever he shall think fit, by Order in Council, to declare that this Act shall apply to all the lands within a district to be defined in such order, and this Act shall apply accordingly.

Any such order may from time to time be varied or revoked by any other such order, as the Governor thinks fit.

3. The provisions of this Act shall apply to all persons being selectors of land on deferred payments or agricultural leaseholders, as if such persons held the land so selected by them as freehold, and the said persons shall be liable in respect of the fencing of such land in the same manner as freeholders of land are liable hereunder. 5

Act to apply to selectors of land on deferred payments or agricultural leaseholders.

4. The several enactments enumerated in the last Schedule hereto annexed are hereby repealed, but this repeal shall not affect any order, award, requisition, appointment, nomination, or notice made or given, or the proof of any act, matter or thing, or any liability, claim, or right or cause of action accrued under either of the said repealed enactments before the coming into operation of this Act, but the same shall continue and shall have the like effect and operation, and may be enforced in the same manner, as if this Act had not passed. 10 15

Repeals.

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

“To repair” includes to trim, keep, and maintain a live fence, or ditch, or part thereof.

“Alienate” and “alienation” respectively include a limited disposal by lease or license, as well as an absolute disposal by sale or otherwise. 20

“Owner” includes a tenant in fee-simple, a tenant in tail, a tenant for life, and a tenant for any term of years not being less than twelve years, subject to the enactments hereof, and the trustee of any owner as herein defined who is under any legal disability, but shall not include a mortgagee not in possession. 25

“Occupier” includes any person who is in the actual occupation of or entitled as owner to occupy any land alienated from the Crown. 30

“Inspector” means any Inspector of Fences duly appointed under this Act.

“Dividing fence” means a fence separating the lands of different occupiers.

“Road” or “street” includes any public highway, by-way, cross-way, or public place, whether it be a carriage-way, horse-way, or footway. 35

“Crown lands” include all lands vested in the Crown of whatever description.

“European” includes all persons other than those of the Native race. 40

Inspectors of Fences.

6. The Council of every county may from time to time appoint for each riding or district of a county as many fit and competent persons as shall be requisite to be Inspectors for the purposes of this Act; and shall fix the scale of fees which may be charged by such Inspectors for their services. 45

Not to act where personally concerned.

7. No such Inspector shall act in any matter in which he shall have a direct personal interest, and in any such case coming before an Inspector so interested another Inspector shall act in his place.

Disputes to be settled by Magistrate.

8. In case of any dispute respecting the erection, maintenance, or repair of fences and the cost thereof, or the description of fence to be erected, such dispute shall be heard and determined by a Resident Magistrate, who may award that the costs incident to such hearing and determination shall be borne by the party against whom the decision shall be given, or shall be divided between the parties, and such costs may be recovered in a summary way. 50 55

What deemed a sufficient fence.

9. A fence of any of the kinds mentioned and described in Schedule A to this Act shall be a sufficient fence within the meaning of this Act.

10. Where a sufficient fence has already been erected under the provisions of any enactment hereby repealed, it shall not be necessary that any such fence should, until its re-erection, be made a sufficient fence within the meaning of this Act.

Existing fences preserved.

5 11. No person shall plant gorse or sweetbriar upon any boundary line or dividing fence without the consent of the owners or occupiers of the adjoining lands; and no person shall plant as aforesaid upon any fence bounding or abutting upon any public road or public reserve, or Crown lands, without the consent first obtained of the proper authority
10 having control over such road, reserve, or Crown lands; and any person who shall contravene the provisions of this section shall be guilty of an offence against this Act, and shall be liable, for every such offence, to a penalty not exceeding *twenty* pounds, to be recoverable summarily.

Gorse not to be planted without consent of neighbours.

15 12. If the owner or occupier of any land bounded by a road desire to plant a live fence on the common boundary of his land and such road, and for that purpose to construct a fence upon such road until such live fence shall have grown up, such owner or occupier may at any time, with the consent of the Road Board or Council having control of
2 such road and on conditions to be prescribed by it, proceed to construct a fence on such road, so that no part of such fence be more than five feet distant from the nearest point on the boundary of his land, and that the width of such road available for traffic after the construction
25 of such fence be in no place where the same is reduced by the construction of such fence less than *twenty-two* feet; and if such owner or occupier forthwith after the construction of such fence proceed to plant a live fence on the boundary of his land and such road, such owner or occupier, constantly with all proper diligence keeping, maintaining, and protecting from injury such live fence, may maintain
30 on such road the fence so constructed for such time not exceeding six years, or such longer time as the Road Board or Council having the control of such road may in writing allow, until such live fence becomes a sufficient fence within the meaning of this Act.

Power to construct a fence on road to protect live fence.

35 13. The owners or 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. And the owner or occupier of adjoining land shall be liable to join in or contribute to the construction of a dividing fence, notwithstanding that such dividing fence shall not extend along the whole boundary
40 line.

Adjoining occupiers to share cost of fencing.

45 14. Within the limits of the Provincial District of Canterbury and of the former Province of Southland, respectively, any person occupying land under any pasturage license held under the Crown may require any owner or occupier of any adjoining land granted by
50 the Crown to make or repair a fence between the land in their respective occupation; and all the provisions of this Act shall apply to such case as if both such occupiers held land which had been granted by the Crown; but an owner or occupier of land granted by the Crown abutting on land occupied under such license as aforesaid shall not be
55 entitled to require the person occupying such last-mentioned land to make a fence between the lands occupied by them respectively.

Runholders in Canterbury and Southland may not be required to fence.

15. 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 be in the
60 form in the Schedule B hereto, and 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. And if any

Notice to fence to be given.

person shall erect any fence without giving notice as aforesaid, the occupier or owner, as the case may be, of such adjoining land shall not be liable to pay any portion of the value of such fence.

Mode of service of notice, and proof of service.

16. Every notice required by this Act shall be in writing or in print, or partly in writing and partly in print, and may be served upon an occupier or owner either personally or by leaving the same with some adult inmate at his usual residence, or, if such owner shall be absent from the provincial district, then by delivering the same to or leaving the same at the residence of his known agent in the same manner; and, if there shall be no such agent resident in the provincial district, or if such owner is not known or cannot be found, or any land is unoccupied, then it shall be sufficient to insert such notice at least three consecutive times in some newspaper circulating in the district: Provided always that the burden of proving the due service or publication of every such notice shall rest with the giver of the notice.

If parties cannot agree, fence may be made.

17. If, within two months when the land to be fenced is open land, and within six months when the land is covered with standing bush, after the service of such notice or publication thereof as hereinbefore provided, the giver and receiver thereof do not enter into an agreement as to the nature of the fence to be made and the cost thereof and the mode and time of making the same, and if the receiver thereof shall not serve on the giver thereof an objection in manner provided by section *twenty-one* of this Act, then the person giving such notice may proceed, subject to the provisions of section *eight*, to erect a sufficient fence within the meaning of this Act; and the owner or occupier of such adjoining land to whom such notice shall have been given, or any person who, during the continuance of such fence, shall go into occupation of such adjoining land, shall be liable for and shall pay to such person or any other in his right, within one month after a demand made upon him personally, or at his dwelling-place if within the provincial district, or upon or at the residence of his known agent if absent from the provincial district, or by notice in some newspaper circulating in the district, one-half of the original value of such dividing fence.

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

18. If either party shall neglect or fail for the space of two months to perform his part of any such agreement which may be so made, the other party may thereupon, or at any time within six months thereafter, make a fence of the kind or description so agreed upon, or may at his discretion make any other sufficient fence within the meaning of this Act, and may immediately thereupon or at any time thereafter recover from the defaulting party one-half of the actual cost of making such fence.

Where adjoining lands are Crown lands or Native lands.

19. When a fence is erected on any land, and the lands adjoining thereto are at the time of the erection of such fence either Crown lands, or Native lands held under any tenure and not being in the occupation of Europeans, then and in such case the purchaser, occupier, or Crown lessee of such adjoining lands in the case of Crown lands, and the purchaser or occupier of such Native land when it comes into the occupation or ownership of Europeans, shall, not later than one calendar month after the time of his becoming the purchaser, occupier, or lessee, as the case may be, after a demand made upon him or notice given as provided herein, pay to the owner, occupier, or Crown lessee who has erected the fence, one-half of the then value of such fence.

Party using a fence to contribute towards the cost thereof.

20. If any owner or occupier of land shall, at any time after the passing of this Act, make use of or avail himself of any sufficient dividing fence erected or made before his acquiring such land or entering into occupation thereof respectively, towards the erection

or making of which a contribution equal to one moiety of the original cost of such fence shall not have been given by him or any former owner or occupier, he shall be liable to pay one moiety of the then value thereof, or of so much thereof as shall be available as a dividing fence for his land, to the owner or occupier of the land divided by such fence from his land, less the value of any contribution originally given towards the construction of such fence.

21. If any person upon whom a fencing notice shall have been served as provided by section *fifteen* of this Act, shall object to the kind of fence specified in such notice, and shall desire to erect a fence of a different kind (being one of the fences which are a sufficient fence in the provincial district where the land to be fenced is situate), he may, within twenty-one days of receiving such notice, signify such objection and desire in writing to the giver thereof; and thereupon (unless the parties can agree upon the kind of fence to be erected), the question of the description of fence which shall be erected, and the cost thereof, shall be determined in the manner provided by section *eight* of this Act.

Objections to proposed fence.

22. If the owners or occupiers of adjoining lands shall have served each other with fencing notices, as provided by section *fifteen* of this Act, and in such notices the descriptions of the kind of fence which the respective givers thereof desire to be erected shall vary, then (unless the parties can agree upon the kind of fence to be erected), the question of the kind of fence which shall be erected, and the cost thereof, shall be determined in the manner provided by section *eight* of this Act.

Provision in cases where fencing notices vary.

23. If any person shall desire to put up a dividing fence of a description different from any fence mentioned in Schedule A, he shall give the required notice as hereinbefore provided, to the parties whom he wishes to join in the making of such fence; and if the said parties shall not, within one month of the delivery of the aforesaid notice, object in writing to the erection of such fence, then such person first mentioned may proceed to erect such fence accordingly, and such fence shall be deemed to be a sufficient fence under this Act, and such persons shall be entitled to recover from the owners of the adjoining lands a contribution towards the cost of erecting such fence, not exceeding in amount the maximum price allowed by this Act as the half cost of erecting a sufficient fence hereunder.

As to erection of fences not in Schedule A.

24. Any fence erected by mutual consent between adjoining owners or occupiers shall, for all purposes of this Act, be a sufficient fence.

Fences erected by mutual consent to be deemed sufficient.

25. The maximum price to be paid in respect of one-half of the actual cost of erecting any sufficient fence shall not exceed twenty shillings per chain, except in the case of a fence erected in any borough of the description mentioned in Schedule A, No. 3, when the maximum price mentioned above shall not exceed thirty-five shillings per chain: Provided always that no greater sum shall be charged for the erection of any fence than the absolute half of the cost of such fence; but nothing herein contained shall include any extra cost for clearing bush along the line of any fence beyond the amount mentioned in the next following section.

Maximum price for half-cost of fencing.

26. Where any fence is required to be erected on land covered with standing bush, and the required notices as hereinbefore provided have been given, the person erecting such fence shall be entitled to clear the bush for a width not exceeding six feet on each side along the entire length of such fence, and may fell any tree standing in the immediate line of any such fence, or any tree that from its position may threaten the destruction of such fence; and the cost of such clearing shall be deemed to be part of the cost of the erection of such fence, and be apportioned accordingly.

Bush may be cleared on just line of fence.

In case of stream or ditch which does not form a sufficient fence.

27. When any stream or ditch which does not form a sufficient fence shall divide two properties, and the owner or occupier of the land on one side of the stream or ditch shall, after having given the notice required by this Act to the owner or occupier of the land on the other side of the stream or ditch, have erected a sufficient fence 5 for half the distance between the said properties, and the owner or occupier of the land on the opposite side shall have refused or neglected to complete a dividing fence by erecting a sufficient fence for the other half of such distance, then it shall be lawful for the owner or occupier who shall have given such notice and erected such fence as aforesaid, 10 and his workmen, to enter upon the land on either side of the stream or ditch, and erect or cause to be erected thereon a sufficient fence for the remainder of the distance, following the boundary as nearly as circumstances will permit, and connect the said fences in such a way as occasion may require and he may deem most advisable, and he shall 15 be entitled to recover one-half of the entire cost of such fence from the owner or occupier of the land on the opposite side of such stream or ditch.

Where river, &c., natural boundary, power to agree on line of fence.

28. When a river, creek, or natural watercourse forms the boundary of contiguous lands, it shall be competent for the owners 20 or occupiers of such contiguous lands to agree upon a line of fence on either side of such river, creek, or natural watercourse, and in the event of their not agreeing upon a line of fence it shall be competent for either party to call in Inspectors, where any such Inspector has been appointed, as hereinbefore provided, who shall determine whether any 25 fence is necessary, and decide the line of fence to be erected, and whether any and what compensation in the shape of an annual payment shall be paid to either of the parties occupying such contiguous lands in consideration of loss of occupation of land; and the Inspectors so called in shall be entitled to receive from such occu- 30 piers in equal proportions the actual cost of their travelling expenses incurred by them in visiting and inspecting the ground. But 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: Provided that in 35 cases where the Inspectors decide that no fence is required the cost of the inspection shall be paid by the party calling in such Inspectors.

Half of dividing fence may be on adjoining land.

29. The owner or occupier of any land may, in making a ditch and bank fence dividing his land from the land thereto adjoining, make a ditch on such adjoining land (Crown lands inclusive), 40 and use the soil taken therefrom towards the making of a bank, or he may make the ditch on his own land and place the bank on such adjoining land: Provided always that it shall not be lawful to make any ditch or bank upon any such adjoining land in any case where a hedge of live thorns, gorse, or other live hedge may have been planted 45 and kept in good thriving condition thereon so as to disturb or injure such hedge, without the consent of the owner or occupier of such land first obtained. And where a dividing fence is made of posts and rails, or wire, or palings, the posts of such fence shall, as near as may be, be placed on the boundary line. 50

Crown tenant may pay interest on half cost of erection.

30. Where any fence is constructed under the provisions of this Act dividing any lands held by any person as Crown lessee or licensee from any adjoining lands, it shall be at the option of such Crown lessee or licensee instead of paying half the cost of such fence to pay to the person who erected such fence, or other person entitled thereto, 55 interest on the said half cost, at the rate of ten per centum per annum for each year of his term of occupation, and proportionally for part of any year of such term: Provided that such payment of interest shall not prevent the recovery of the value of the moiety of the dividing fence as provided by section *eighteen* of this Act. 60

Proviso.

Person using fence liable to pay interest on half cost.

31. If the owner or occupier of any land bounded by a road shall have erected a fence on the common 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, and shall avail himself of such fence, such person shall be liable to pay to the person who erected such fence, or to the owner or occupier of the land whereon such

5 fence is erected, interest on half the cost of erecting such fence, at the rate of ten 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 the repairs of such fence, in the manner provided by section *thirty-three* of this Act.

10 **32.** In any case where a person shall elect or be liable to pay interest on the half cost of a dividing fence, the person entitled to such interest shall have the same remedy for the recovery thereof as he would have for the recovery of the half cost of such fence. Interest recoverable.

15 **33.** When any dividing fence, or part thereof, 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. Adjoining occupiers to keep dividing fences in repair.

20 **34.** The owner or occupier of any land separated from any adjoining land by a dividing fence may serve a notice upon the owner or occupier of such adjoining land requiring him to assist in repairing such fence, or part thereof, and, if such owner or occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, it shall be lawful for such first-mentioned owner or occupier to repair such fence, and to demand and recover of

25 and from such other owner or occupier half the cost of repairing the same: Provided that, if any dividing fence or any portion thereof shall be destroyed by accident, the owner or occupier of land on either side may immediately repair the same without any notice, and shall be entitled to recover half the expense of so doing from the owner or occupier of the adjoining land: Provided always that in case such dividing

30 fence shall have been destroyed by fire, or by the falling of any tree or trees, the owner or occupier through whose neglect (if any) such fire shall have originated or have caused injury to the fence or such tree or trees shall have fallen, or by whose stock such fence shall have been

35 damaged, shall be the party bound to repair the entire of the fence so damaged as aforesaid.

Procedure to compel contribution to the repair of dividing fences.

Nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for or in respect of any damage or injury to any fence occasioned by the reckless

40 or negligent use of fire.

45 **35.** 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, may be recovered from any person liable to contribute to the cost of constructing or repairing such fence who is served with notice to fence or repair, or from any person who may come in and defend under the provisions of this Act any proceedings consequent on such notice. From whom moneys recoverable under this Act may be recovered.

All moneys recoverable under this Act by any person served with any notice to fence or repair may be recovered from the person

50 serving the same, or from any person liable to contribute to the construction or repair of such fence.

36. All matters or questions arising between owners or occupiers of property liable to the provisions of this Act which may be heard and determined before any Resident Magistrate, may be so determined

55 notwithstanding that the decision of any such matter or question shall be beyond the ordinary jurisdiction of such Resident Magistrate. Jurisdiction of Justices and Resident Magistrates in matters arising under Act.

37. Any Resident Magistrate may hear and determine any such matters, being any one of the following matters, that is to say,— What may be heard and determined by Courts.

60 (1.) Hearing and taking evidence and making any order as to the erection or repair of dividing fences, and making any order as to the removal of dividing fences if not erected on the proper boundary between adjoining lands:

- (2.) Deciding upon the description or kind of fence to be erected or maintained, or that in the opinion of the Court ought to be erected or maintained, in accordance with this Act :
- (3.) Determining the date, time, and manner in which such fence should be erected, and by whom it should be erected or repaired :
- (4.) Determining the expense of erecting or repairing any such fence, and the proportion of such expense to be borne and paid by any person.

How proceedings to be enforced.

38. All proceedings before any Resident Magistrate upon or in respect of any of the matters in the last preceding clause, or of any combination or modification thereof, shall and may be taken and conducted, and any order may be enforced and acted upon, in like manner as the proceedings and orders of such Courts are taken, conducted, and enforced in their summary jurisdiction under "The Justices of the Peace Act, 1866," or any other Act for the time being in force relating to such Courts.

Act not to interfere with agreements.

39. 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, or between any other persons whomsoever.

Act not to apply to unalienated Crown lands.

40. This Act shall not apply to any unalienated Crown lands; nor shall the Crown, the Governor, any Land Board, nor any public officer appointed by the Governor or by the Governor in Council for the administration, management, or control of the Crown lands, or who may by virtue of his office however styled have any such management or control, be liable under the authority of 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.

Fences on Crown lands to be provided with gates or openings, &c.

41. Where any person shall have erected, or shall hereafter erect, any fence upon any Crown lands, it shall be lawful for the Commissioner of Crown Lands of the district to direct such person to make such gates at such places in such fence as he may deem necessary for the public convenience of the district; and if such person shall not comply with such direction within one calendar month after the receipt thereof, he shall be liable to a penalty not exceeding *twenty* pounds, and such Commissioner may forthwith have such gates made at the expense of the person so failing to do so.

Persons can enter upon contiguous lands not being gardens, orchards, &c.

42. Any person constructing or repairing a fence under this Act, his agents and servants, may, if there be no available access thereto over their own land, with or without horses, cattle, carts, or carriages, at all reasonable times during such construction or repairing, enter upon any portion of the contiguous lands and do thereon such acts, matters, and things as are necessary or reasonably required to carry into effect the construction or repairing of such fence.

Provided always that nothing herein contained shall authorize the entry, for the purpose aforesaid, upon any land in crop, or upon any garden, orchard, plantation, shrubbery, or pleasure ground, without the consent of the owner thereof; or shall authorize any person to cut down, lop, or injure any fruit, exotic, or ornamental tree or shrub without the special sanction of the aforesaid owner.

When garden, orchard, crop, &c., damaged, owner entitled to compensation.

43. Every owner or occupier of any land who shall incur or suffer any loss or damage by any act or thing done by any person wilfully acting contrary to the provisions of the last foregoing section, shall be entitled to compensation for the same.

Method of recovering compensation.

44. Upon the application of any person claiming such compensation as aforesaid, any Resident Magistrate or Justice of the Peace

may summon the person complained of to appear before a Resident Magistrate or two Justices of the Peace, at a time and place to be named in the summons, and upon the appearance of the parties, or, in the absence of either of them, upon proof of the service of the summons, the said Resident Magistrate or Justices shall hear the question and determine the amount of compensation, and for that purpose may examine the said parties or either of them and their witnesses upon oath, and the costs of every such inquiry shall be at the discretion of the said Resident Magistrate or Justices, and they shall settle the amount thereof.

Every sum awarded by way of compensation or of costs shall be recoverable in a summary manner.

Compensation may be recovered summarily.

45. 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 proceedings against his tenant under this Act.

46. In all parts of New Zealand wherein the whole of "The Counties Act, 1876," is not in operation, the powers hereby granted to County Councils shall be exercised by the Road Board of the district where there are road districts, and everywhere else by the Governor.

Provision when the whole of the Counties Act is not in operation.

SCHEDULES.

SCHEDULE A.

DESCRIPTION OF SUFFICIENT FENCE.

Schedules.

1. A post-and-rail fence, at least 4 feet in height, of substantial material, firmly erected, with no greater distance between the rails or between the rails and the ground than 9 inches, and the posts not more than 8 feet 6 inches asunder.

2. A substantial upright paling, at least 4 feet in height, with no greater distance between the palings than 4 inches.

3. Any paling fence, 4 feet 3 inches high, with posts and two rails, and having split or sawn timber placed perpendicularly, and well nailed to both rails, there being not more than 4 inches of opening between each perpendicular piece of timber.

4. A substantial wire fence, with posts of hardwood or iron, well and substantially erected, the posts or standards to be not more than 9 feet apart, top wire not to be lighter than No. 7, and not less than 4 feet from the surface of the ground; the other wires to be not lighter than No. 8. The space between the top and second wire not to exceed in the mean 1 foot, and the mean spaces between the other wires not to exceed 6 inches. A bank may be substituted for the lower wires, provided always that such bank be well formed, and made up to within 3 inches of the lower wire; provided also that a wooden rail may be substituted for the top wire.

5. A stone wall not less than 4 feet 6 inches in height, exclusive of the coping, and not less than 2 feet 6 inches in width at base.

6. A bank or wall of substantial materials, at the least 4 feet 6 inches in height, of which the slope is not more than 1 foot from the perpendicular.

7. A close and sufficient live fence, at least 4 feet in height, proof against cattle. Gorse hedges to be kept properly trimmed once at the least in every year.

8. A combination of the above kind of fences, at least 4 feet in height.

9. A ditch not less than 3 feet in width and 2 in depth, with a bank and wires not less than 3 feet 6 inches in height, the wires to be tightly strained, with not more than 8 inches between the wires, and 6 inches between the bottom wire and the bank, and the standards or binding wires to be not more than 9 feet apart.

10. A natural stream, ditch, or watercourse not less than 7 feet broad at the top and 4 feet broad at the bottom, not less than 3 feet 6 inches deep, with a stream of water running in it, and with a bank with a slope of not more than 1 in 3, or any fence or combination of the above sorts of fences on either side thereof, being not more than 9 inches from the edge of the ditch, the top of which shall not be less than 2 feet above the level of the ground or the sea or ocean.

11. A double sod wall not less than 33 inches wide at the bottom, and 18 inches at the top: the sod work to be not less than 26 inches above the level of the ground, with a ditch on each side not less than 9 inches below the level of the ground, and three wires above the wall tightly strained; the total height of the fence to be not less than 39 inches above the level of the ground.

12. A sod wall not less than 16 inches above the level of the ground, with four wires above the wall, with a ditch on each side not less than 9 inches below the level of the ground; the total height of the fence to be not less than 39 inches above the level of the ground.

13. An American chock-and-log fence, not less than four logs, and not less than 4 feet 6 inches from the surface of the ground.

14. A stub fence, not less than double chock and logs, and sound timber firmly studded in, not less than 4 feet 6 inches above the surface of the ground.

15. A fence of butts of fern trees, erected perpendicularly, and stuck not less than 2 feet 6 inches in the ground, not less than 4 feet 6 inches above the surface of the ground, nor more than 5 inches apart.

16. For swampy land a ditch, not less than 6 feet wide and 2 feet deep, with bank not less than 3 feet high, with posts not less than 4 feet high from the surface of the ground, and more than 9 feet apart, with not less than two rails or three wires, or with one rail and two wires, or posts and four rails, or posts and seven wires, with ditch, as already described, and no bank, the posts being not less than 4 feet 6 inches high from the surface of the ground, nor more than 9 feet apart where rails are used, nor more than 8 feet apart where wires are used, the posts being inserted into the ground not less than 2 feet.

Not to be erected within Towns.

17. A ditch, not less than 3 feet broad, with a bank or any fence or combination of the above sorts of fences on either side thereof, the top of which shall be at least 5 feet 6 inches from the bottom of the ditch and 3 feet 6 inches above the level of the ground, and where the slope of the bank on the ditch side thereof is not more than 1 in 3, and the slope of the ditch on the bank side not more than 1 in 2.

18. A bank or dyke, not less than 4 feet 6 inches high, substantially formed, with turf on both sides, on a base not less than 3 feet 6 inches broad, and having a ditch not less than 3 feet wide and 2 feet deep on each side of such bank.

SCHEDULE B.

NOTICE TO MAKE FENCE.

To _____, occupier [or owner, or lessee, or agent, as the case may be]
of _____ [describing adjoining land].
TAKE NOTICE that I desire that a boundary or dividing fence between [describing
the lands] be made immediately (on or before the _____ day of _____, 18 ____),
and that such fence shall be a [describe the fence].
Dated the _____ day of _____, 18 ____.

A. B.,

Occupier [or owner, or lessee, or agent] of, &c.

LAST SCHEDULE.

SCHEDULE OF ACTS AND ORDINANCES REPEALED.

(1.) *Ordinance of the Governor and Legislative Council of New Zealand.*
Sess. VIII., 1847, No. 8.—An Ordinance to encourage the Fencing of Land.

(2.) *Act of the General Assembly.*
1874, No. 85.—The Provincial Fencing Laws Empowering Act, 1874.

(3.) *Acts of the Province of Auckland.*
Sess. II., 1855, No. 5.—An Act to make Provision relative to fencing Land in the
Province of Auckland.
Sess. XXIX., No. 23.—The Fencing Act 1855 Amendment Act, 1874.
Sess. XXIX., No. 24.—The Fencing Acts Suspension Act, 1874.

(4.) *Ordinances of the Province of Taranaki.*
Sess. VIII., No. 3.—The Furze Ordinance, 1859.
Sess. XVI., No. 4.—The Furze Ordinance, 1868.
Sess. XXIV., No. 2.—The Fencing Ordinance, 1875.
Sess. XXIV., No. 5.—The Furze Ordinance 1868 Amendment Ordinance, 1875.

(5.) *Acts of the Province of Hawke's Bay.*
Sess. XXI., No. 2.—The Fencing Act, 1874.
Sess. XXII., No. 2.—The Provincial Fencing Laws Empowering Act 1874 Adoption
Act, 1875.

(6.) *Acts of the Province of Wellington.*
Sess. XV., No. 10.—The Fencing Act, 1867.
Sess. XXII., No. 9.—The Fencing Act, 1872.

(7.) *Acts of the Province of Nelson.*
Sess. VIII., No. 2.—The Nelson Gorse Hedges Act, 1861.
Sess. IX., No. 6.—The Fencing Act, 1862.
Sess. X., No. 3.—The Pastoral Districts Fencing Act, 1863.

Sess. XIV., 1866, No. 2.—An Act to repeal the Fencing Act, 1862, so far as relates to Districts constituted under the Pastoral Districts Fencing Act, 1863.

(8.) *Acts of the Province of Marlborough.*

Sess. VII., No. 2.—The Marlborough Fencing Act, 1863.

Sess. XV., No. 2.—The Fencing Act Amendment Act, 1866.

(9.) *Ordinances of the Province of Canterbury.*

Sess. XIV., 1861, No. 3.—The Gorse Ordinance, Session XIV., No. 3.

Sess. XXXVII., No. 8.—The Canterbury Fencing Ordinance, 1872.

(10.) *Ordinance of the Province of Westland.*

Sess. III., No. 1.—The Fencing Ordinance, 1875.

(11.) *Ordinance of the Province of Otago.*

Sess. XXX., No. 366.—The Fencing Ordinance, 1872.

(12.) *Ordinances of the Province of Southland.*

Sess. XII., No. 73.—The Fencing Ordinance, 1866.

Sess. XX., No. 6.—The Fencing Ordinance 1866 Amendment Ordinance, 1868.