

Province of Hawke's Bay.



FENCING ACT 1874.

IN THE THIRTY-SEVENTH YEAR OF THE REIGN OF HER
MAJESTY QUEEN VICTORIA.

SESSION XXI, No. 2.

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An Act to consolidate and amend the Laws ^{Title.}
relating to Fencing within the Province.

WHEREAS it is necessary to consolidate and amend the ^{Preamble.}
laws relating to Fencing within the Province.

BE IT THEREFORE ENACTED by the Superintendent of the Province of Hawke's Bay by and with the consent of the Provincial Council thereof as follows :—

I. The Act of the Provincial Council of Wellington Session 1 No. 13 and the Act of the Provincial Council of Hawke's Bay Session 8 No. 7 are hereby repealed ^{Repeal and saving clause} When before the coming into operation of this Act any notice have been given or any liability incurred under any of the Acts hereby repealed or any matter or thing done before the coming into operation of this Act has accrued or any action suit or other proceeding in respect of such matter or thing has been commenced Every such notice matter or thing shall be of the same force and effect and every such liability shall continue and every such action suit or other proceeding shall be prosecuted continued and defended as if such Acts were not repealed.

Owners to pay half-cost of dividing fence.

II. If any person after the passing of this Act shall erect a sufficient fence dividing his land from the adjoining land the owner of the land adjoining shall be liable to pay the owner of the land who shall erect such fence half the value thereof or such part of it shall serve as a dividing fence between their respective land.

Owner may require adjoining owners to assist in making fence. Procedure in case of refusal or neglect to join.

III. The owner of any land not having a sufficient dividing fence between it or any part of it and the adjoining land may by writing require the owner of such adjoining land (except such land as shall be held of the Crown by temporary occupation only) or his agent to assist in making any dividing fence between their respective lands in equal proportions. If the owner of such adjoining land or his agent shall refuse or neglect for fourteen days to assist in making or having commenced shall not use due diligence in completing such dividing fence after a requisition as aforesaid shall have been given to him or left for him at his usual or last known place of abode it shall be lawful for the owner who shall have given or left such requisition and who shall have made or erected his share of such dividing fence to complete or contract with any other person to complete the other portion of it. The owner who shall have neglected or refused or whose agent shall have neglected or refused to assist in making or completing such dividing fence shall be liable to pay to the owner of the land who shall have completed the same half of the costs of erecting or making the whole dividing fence. Any necessary expense incurred in cutting a boundary line through bush for the purpose of erecting a boundary fence shall on the completion of such fence be deemed an additional part of the cost of the erecting of the same.

Right to recover where fences already erected between land and Crown land.

IV. If any person shall heretofore have erected or shall hereafter erect a sufficient fence dividing his land or any part of it from any adjoining land which shall not have been duly granted by the Crown or otherwise held as private property such person shall be authorised to claim and recover from the person to whom such adjoining land may hereafter be granted or leased for any term exceeding three years certain half the value of the said fence or of such part of it as shall divide their respective lands.

Cost of repairing dividing fence.

V. When any dividing fence which shall have been or shall be erected shall be out of repair or become insufficient the owners of the land on either side thereof shall be liable to the cost of repairing such fence in equal proportions. Either owner may give notice in writing to the other or his agent to assist in repairing such fence and on neglect or refusal of such lastly mentioned owner or his agent so to do for the space of seven days the owner who shall have given such notice may cause the same to be repaired and made a sufficient fence and shall be entitled to recover from the other owner half the costs thereof. Provided however if any fence or any portion thereof shall be destroyed by any accident fire falling of timber or otherwise the occupier of land on either side may

immediately repair the same without any notice and shall be reimbursed half the expense of so doing in manner herein provided.

VI. For the purpose of this Act a fence shall be considered a sufficient fence if the same be of the description specified in the Schedule to this Act. What is a sufficient fence.

VII. When the owner of any land who shall have erected or shall be desirous of erecting a fence dividing his own from the adjoining land cannot after due enquiry ascertain who is the owner of such adjoining land or when the owner of any adjoining land shall be absent from the province or when such owner or his agent cannot be found the insertion in a newspaper published in the Town of Napier of a notice addressed to the owner of such adjoining land requiring him to make or assist in making such fence shall be a sufficient requisition or notice for the purposes of this Act and the owner giving the same may proceed to erect or complete such fence and be entitled to recover half of the value of making completing or repairing the same fence or any portion thereof in like manner as if such requisition as aforesaid had been given to and received by the owner of such adjoining land. Such insertion shall be made for four successive weeks if the newspaper be published at not less intervals than weekly. No such notice or insertion shall be necessary where assistance or contribution towards repairing any fence shall be required. Procedure where owner cannot be ascertained or absent from province.

VIII. The amount to be recovered under this Act for either making or repairing any fence shall in no case exceed a sum equal to the half of a fair contract price for erecting a fence of the description mentioned in the Schedule. What amount may be recovered for making or repairing fence.

IX. When land shall be in *bona fide* and beneficial occupation but the occupier thereof shall not have a greater interest therein than for two years from the time when a contribution towards making a dividing fence shall be demanded the owner of the freehold shall be the party liable to contribute towards the expense of making any such fence as aforesaid. Where owner liable for making fence.

X. The beneficial occupier for any term exceeding three years shall be the party liable to contribute towards the repairs of any fencing. Provided always that nothing in this Act contained shall avoid or affect any covenant contract or agreement relative to fencing existing at the time of the passing of this Act between any landlord and tenant. When occupier liable

XI. All notices given under this Act shall be given in writing previous to the commencement of any of the work as herein authorised to which they respectively relate and no person shall be compelled to erect or construct any of the fences or work for which such notices are given till the party giving such notice shall have performed his share of the work for which they are respectively given. Notices to be given in writing previous to commencement of work

How sums recoverable
under this Act to be re-
covered

XII. All sums recoverable under this Act shall be recovered by summary proceedings in all cases in the manner provided by "The Resident Magistrate's Act 1867" in all cases in which the sums sought to be recovered shall be within the jurisdiction of Resident Magistrate's Courts but in all cases where such sums shall be beyond the jurisdiction of Resident Magistrate's Courts the sums shall be recoverable in any Court of competent jurisdiction.

Interpretation

XIII. In the construction of this Act the word "owner" shall be taken to include the tenant in fee simple a tenant in tail a tenant for life and a tenant for any term of years not being less than two years subject to the enactments referring to the persons liable to contribute to the making or repairing of fences.

Short Title

XIV. The Short Title of this Act shall be "The Fencing Act 1874."

SCHEDULE.

1. Stone wall four foot and a half high.
2. Four rail fence the top of same to be not less than four feet from the ground and the two lower rails to be respectively not more than six inches from the surface of the ground or from each other.
3. A ditch and bank fence the bank not less than eighteen inches in height with morticed posts and two rails the said rails to be not more than six inches from the top of the bank and each other or posts or four iron wires the same not to be more than fourteen feet from each other respectively with not less than one tie. In case of such a fence being a dividing fence with an adjoining owner the same shall have on each side of it a ditch not less than three feet wide and two feet deep.
4. A wire fence the posts or iron standards shall not be more than sixteen feet apart with two wire ties and the wires shall not be less than seven in number the top wire not being more than three feet nine inches from the ground.
5. A paling fence such being any paling fence of four and a half feet high with morticed posts and two rails and having split or sawn timber placed upright and firmly nailed to both rails and not more than three inches of open space intervening between each two neighboring pieces of such upright timber.