

Hon. Mr. McKenzie.

## FENCING.

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### A BILL INTITULED

AN ACT to regulate the Erection and Maintenance of Dividing and Rabbit-proof 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, 1894." Short Title.

It shall not come into force until the *first* day of January, in the year one thousand eight hundred and *ninety-five*. Commencement.

Interpretation.

2. In this Act, if not inconsistent with the context,—
- “Alienate” and “alienation” respectively include a limited disposal by lease or license, as well as an absolute disposal by sale or otherwise :
  - “Crown lands” include all lands vested in the Crown of whatever description : 5
  - “Crown tenant” means an occupier of Crown lands other than land held on deferred payments, or on agricultural lease or license with right of purchase, or perpetual lease, or lease in perpetuity granted under the Land Acts, and includes *Wardens of Hundreds, Trustees of commonages*, occupiers of public reserves, and Native reserves, and *miners’ occupation leaseholds* : 10
  - “Dividing-fence” means a fence of any of the kinds mentioned in Schedule A separating the lands of different occupiers : 15
  - “Land Acts” means “The Land Act, 1892,” and all Acts passed in amendment thereof :
  - “Native lands” mean lands in the colony which are owned by Natives under their customs or usages, but of which the ownership has not been determined by the Native Land Court : 20
  - “Native reserves” mean all reserves, whether of Native lands or Crown lands, made for the use or benefit of Natives :
  - “Notice” means a notice in writing or in print, or partly in writing and partly in print, and may be served upon any *Struck out.* 25

person either personally or by post, or by leaving the same with some adult inmate at his usual residence or place of business, or, if such person or occupier shall be absent from the colony, then by delivering or sending by post the same to or leaving the same at the residence of his known agent in the same manner : 30

If there shall be no such agent resident in the colony, or if such first-mentioned person 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 : 35

The burden of proving the due service or publication of every such notice shall rest with the giver of the notice : 40

*New.* 40

delivered to the person liable, either personally or by leaving the same at or posting the same in a registered letter addressed to his last known place of abode or business in New Zealand ; and it shall not be necessary to prove the actual receipt of such notice by the person to whom it is addressed : 45

If any person upon whom such notice should be served is unknown, or after due inquiry cannot be found, or is absent from the colony, then a service upon his known agent or attorney shall be deemed a sufficient service ; and if such person has no known agent or attorney in the colony, or such agent or attorney cannot after due inquiry be found, then a publication of such notice in a newspaper circulating in the district in which such notice is issued, and affixing a copy of the notice upon a 55

conspicuous part of the property in respect of which such notice is issued, or on some public road adjacent thereto, shall be deemed to be a sufficient service.

5 "Occupier" includes any person who is in the actual occupation of or entitled as owner to occupy any land alienated from the Crown; and also any person who has in any manner purchased or acquired, or who may hereafter from time to time purchase or acquire, Crown lands or any estate or interest therein, *and also any local authority, trustees, or persons in whom any public reserve is vested:*

10 "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 ten 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:

15 "Public reserves" mean all reserves of Crown lands made for any purpose of public use or benefit:

20 "Rabbit-proof fence" means any fence or portion of a fence which is, or may be, erected or converted for the purpose of preventing the passage of rabbits, and of any of the kinds mentioned in Schedule B:

25 "Road" or "street" includes any public highway, by-way, crossway, or public place, whether it be a carriage-way, horse-way, or footway:

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

30 3. This Act shall apply to all lands in the colony owned by Natives other than lands held by them under their customs or usages, and the title to which has not been determined by the Native Land Court, *and to all lands vested in the Public Trustee under "The West Coast Settlement Reserves Act, 1892."*

Act to apply to Native lands. Exception.

35 4. This Act shall not apply to any unalienated Crown lands, or public reserves *not vested in any local authority, trustees, or persons,* 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 public reserves *as aforesaid,* or who may by virtue of his office, however styled, have any such management or control, be liable  
40 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.

Act not to apply to unalienated Crown lands.

45 5. All persons being holders of land on deferred payments, or on agricultural lease, *or by license with right of purchase, or perpetual lease, or lease in perpetuity,* shall be deemed to be occupiers of the land held by them, and liable to the provisions of this Act accordingly.

Act to apply to leaseholders under Land Acts.

50 6. Crown tenants shall be deemed to be occupiers of the land held by them, and liable to the provisions of this Act accordingly, with the exception following, that is to say,—

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

55 Where any fence is constructed under the provisions of this Act dividing any lands held by any person as Crown tenant from any adjoining lands, it shall be at the option of such Crown tenant, instead of paying half the cost of such fence, to pay to the person who erected such fence, or other person entitled thereto, interest on the said half-

cost, at the rate of fifteen per centum per annum for each year of his term of occupation, and proportionally for part of any year of such term.

Land Board may declare rabbit-fence an improvement.

7. The Land Board, under "The Land Act, 1892," may declare that any rabbit-fence erected, or to be erected, shall be a substantial improvement of a permanent character within the meaning of this Act. 5

#### CONSTRUCTION AND MAINTENANCE OF FENCES.

What deemed a sufficient fence.

8. A dividing-fence or a rabbit-proof fence of any of the kinds mentioned and described respectively in Schedules A or B to this Act shall be a sufficient fence within the meaning of this Act. 10

Barbed-wire fence may be prohibited in towns.

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 such borough or town district, or within such limits thereof respectively as may be provided by any by-law which may from time to time be made in that behalf. 15

Existing fences preserved.

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. 20

Adjoining occupiers to share cost of fencing.

11. The 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 notwithstanding that such dividing-fence shall not extend along the whole boundary-line. 25

But no occupier shall be liable to contribute to any fence which is not, as far as practicable, continuous throughout its length.

Notice to fence to be given.

12. Any person desiring to compel any other person to contribute to the construction of a dividing-fence or rabbit-proof fence, or to the converting of a dividing-fence into a rabbit-proof fence under the provisions of this Act, may serve on such person a notice to fence, which shall be in the form in the Schedule C 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. 30

If any 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. 35

Objections to proposed fence.

13. If any person upon whom a notice to fence is served shall object to the kind of fence specified in such notice, and shall desire to erect a sufficient fence of a different kind, he may, within ~~fourteen~~ *twenty-one* days of the service of 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 by a Stipendiary Magistrate in the manner provided by section *thirty-six* of this Act. 40 45

Provision in cases where fencing notices vary.

14. If the occupiers of adjoining lands shall have served each other with notices to fence, 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 within ~~fourteen~~ *twenty-one* days after the service of the last of the said notices 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 by a 50

Stipendiary Magistrate in the manner provided by section *thirty-six* of this Act.

15. If on referring to the Stipendiary Magistrate the question of the erection of a rabbit-proof fence or the conversion of a dividing-fence into a rabbit-proof fence, he should determine that the owner or occupier on whom the notice was served is not liable to contribute to the cost of affixing the netting on such rabbit-proof fence, then the owner or occupier who served the said notice may affix or erect wire netting, as defined in Schedule B hereto, for the purpose of preventing the passage of rabbits on any part of the boundary of his land; and the person erecting the same, or any subsequent owner or occupier of the land, may remove such wire netting erected, and deal therewith as his own property: Provided, however, that any decision given shall not relieve the adjoining owner or occupier of the necessity for contributing the half-cost of erecting a sufficient dividing-fence, or repairing such fence as a rabbit-proof fence in the manner hereinafter provided.

As to cost of rabbit-proof fence when in dispute.

*Struck out.*

16. If, on the expiry of fourteen days after the service of a notice to fence, the receiver thereof shall not serve on the giver thereof an objection to the kind of fence specified in manner provided by section *twelve* of this Act, then the person giving the notice to fence may proceed to erect a fence sufficient within the meaning of this Act, and recover the actual half-cost of erecting such fence from the adjoining owner or occupier.

If parties cannot agree, fence may be made.

*New clause.*

16A. If, on the expiry of twenty-one days after the service of such notice to fence, the receiver thereof shall not serve on the giver thereof an objection to the kind of fence specified in manner provided by section *twelve* of this Act, then the fence to be erected shall be of the description so specified, and, unless the receiver of such notice shall join in erecting such fence, the person giving the notice to fence may proceed to erect such fence, and recover the actual half-cost of erecting the same from the adjoining owner or occupier.

If objection not lodged within twenty-one days, fence may be erected.

17. If either party shall neglect or fail for the space of one month to commence, or, having so commenced, shall neglect or fail to continue to perform his part of any such agreement which may be so made, the other party may thereupon, or at any time within three months thereafter, make a fence of the kind or description so agreed upon, and may immediately thereupon, or at any time thereafter, recover from the defaulting party the cost as agreed upon of making such fence.

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

18. The occupier of the adjoining land to whom a notice to fence has been given, or, when the half-cost of a dividing-fence or any proportion of contribution to the erection or conversion of a rabbit-proof fence has not been previously paid, any person who, during the continuance of any such fence as aforesaid, shall go into occupation of such adjoining land, shall be liable for and shall pay to the person who constructed the fence, or his assigns, one-half of the original value of such fence, within one month after a demand made upon him for the purpose by due notice.

Contribution thereto to be made.

19. Any person becoming the occupier of any land separated from any adjoining land by a *dividing or rabbit-proof* fence made by the occupier of such adjoining land is, in respect of such fence, subject to the same liabilities as the previous occupier of such first-mentioned land was subject to when he relinquished possession.

Succeeding occupier liable for contribution.

Where adjoining lands are Crown lands or Native lands.

20. When a fence is erected on any land, and the lands adjoining thereto are at the time of the erection of such fence excepted from the application of this Act, or of any Act hereby repealed, then the occupier thereafter of such adjoining lands shall, within one month after demand upon him by written notice given, pay to the person who erected the fence one-half of the then value of the fence. 5

Maximum price for half-cost of fencing.

21. The maximum price to be paid in respect of one-half of the actual cost of erecting any sufficient dividing-fence shall not exceed twenty shillings per chain, exclusive of any extra cost for clearing bush along the line of such fence. 10

But in the case of a fence erected in a borough or town district of the description mentioned in Schedule A numbered *three*, the maximum price mentioned above shall not exceed thirty-five shillings per chain in respect of one-half of the cost :

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. 15

Bush may be cleared on just line of fence.

22. 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 ~~twelve feet~~ *one chain* on each side along the entire length of such fence, and may fell any tree standing in the immediate line of any such fence ; and the cost of such clearing shall be added to the cost of the erection of such fence, and be apportioned accordingly. 20

But nothing in this section contained shall empower any person to fell, or cause to be felled, any ornamental plantation, or any belt or patch of standing bush preserved for shelter, and which is not more than three chains in width. 25

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

23. When a river, creek, natural watercourse, or rocky or impracticable land forms the boundary of contiguous lands, the occupiers of such contiguous lands may agree upon a line of fence on either side of such river, creek, or natural watercourse, and, in the event of their not making any such agreement, either party may apply to the Stipendiary Magistrate of the district, who may appoint one or more persons to inspect the proposed line of fencing, and who shall determine whether any 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 made to either of the parties occupying such contiguous lands in consideration of loss of occupation of land. 30 35 40

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.

*New clause.*

Watercourse, under certain circumstances, may be deemed equivalent for fence.

23A. Where any watercourse, natural or artificial, forms the boundary of any two properties, or is situate on the boundary-line thereof, and is accepted by the owners of such two properties by agreement in writing as sufficient for a dividing-fence, then such owners shall keep such watercourse in a thorough state of repair, either by cleaning out, deepening, or straightening, as the case may be, as if such watercourse were a sufficient fence within the meaning of this Act. 45 50

Half of dividing-fence may be on adjoining land.

24. The 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), and use the soil taken 55

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.

But no ditch or bank shall be made upon any such adjoining land in any case where a hedge of live thorns, gorse, or other live hedge  
5 may have been planted and kept in good thriving condition thereon, so as to disturb or injure such hedge, without the consent of the occupier of such land first obtained.

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  
10 on the boundary-line.

Posts to be on boundary-line.

25. If the 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  
15 such fence, such person shall be liable to pay to the person who erected such fence, or to the occupier of the land whereon such fence is erected, interest on half the then value of such fence, at the rate of 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  
20 liable for half the cost of the repairs of such fence.

Person using fence on further side of road liable to pay interest on half-cost.

26. No person shall plant gorse, ~~sweetbriar, broom, or bramble or blackberry~~ upon or alongside any boundary-line or dividing-fence without the consent of the occupiers of the adjoining lands; and no person shall plant as aforesaid upon any fence bounding or abutting  
25 upon any Crown lands, public reserve, public road, or railway, without the consent first obtained of the proper authority having control over such Crown lands, reserve, road, or railway; and any person who shall contravene the provisions of this section shall be liable, for every such offence, to a penalty not exceeding *twenty* pounds; and the occupier  
30 of the adjoining land, or local authority as aforesaid, shall be entitled to take and destroy such gorse, ~~sweetbriar, broom, or bramble, or blackberry~~ fence, and to recover in any Court of competent jurisdiction the cost of such work from the person who shall have so contravened the provisions of this section: *Provided that no occupier shall sow or*  
35 *plant sweetbriar, broom, or blackberry in any fence erected in accordance with the provisions of this Act.*

Gorse not to be planted without consent of neighbours.

27. If the 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  
40 fence shall have grown up, he may at any time, with the consent of the local authority having control of such road, and on conditions to be prescribed by it, proceed to plant such live fence, and 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,  
45 and that the width of such road available for traffic after the construction of such fence be in no place where the same is reduced by the construction of such fence less than twenty-four feet.

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

And if such occupier forthwith after the construction of such fence proceed to plant a live fence on the boundary of his land and  
50 such road, constantly with all proper diligence keeping, maintaining, and protecting from injury such live fence, he may maintain on such road the fence so constructed for such time as the local authority having the control of such road may in writing allow.

28. On the application of any person, the local authority may  
55 authorise the erection of swing-gates or rabbit-proof gates, properly

Swing-gates across roads.

hung, and provided with an efficient fastening, across any road or bridge, and such permission shall remain in force during the pleasure of said local authority.

*Struck out.*

Every person who, whether using the road or bridge as a highway or not, leaves open any swing-gate in any fence, or, after passing through such gate, does not close it, shall be liable on summary conviction to a penalty not exceeding five pounds for every such offence. 5

*New paragraph.*

Every person leaving open any swing-gate erected on a road or bridge, or in any rabbit-proof fence, or who after passing through such gate does not close it, shall be liable on summary conviction to a penalty not exceeding five pounds for every such offence. 10

#### REPAIRS OF FENCES.

Adjoining occupiers to keep dividing-fences in repair.

29. When any dividing-fence, or rabbit-proof fence, or any part thereof, shall be out of repair or become insufficient, or in the case of live fences require to be cut or trimmed, and ~~refuse burned~~, the occupiers of land on either side thereof shall be liable to the cost of repairing, cutting, or trimming ~~and burning such cuttings or trimmings~~ of such fence in equal proportions. 15 20

Procedure to compel contribution to the repair of dividing-fences.

30. The occupier of any land separated from any adjoining land by a dividing-fence or rabbit-proof fence may serve a notice upon the occupier of such adjoining land requiring him to assist in repairing such fence, or part thereof, and, if such occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, such first-mentioned occupier may repair such fence, and demand and recover of and from such other occupier half the cost of repairing the same. 25

Contribution where fence destroyed by accident.

31. If any dividing-fence or rabbit-proof fence or any portion thereof is destroyed by accident, the 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 occupier of the adjoining land. 30

Exception where accident results from neglect.

32. In case any dividing-fence or rabbit-proof fence is destroyed by fire, or by the falling of any tree or trees, the occupier through whose neglect (if any) such fire shall have originated or have caused injury to the fence, or such tree or trees shall have fallen, or by whose stock such fence shall have been damaged, shall be the party bound to repair the whole of the fence so damaged as aforesaid. 35

Liability for reckless use of fire.

33. 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 or negligent use of fire. 40

#### MISCELLANEOUS.

Interest recoverable.

34. In any case where a person shall elect or be liable to pay interest on the half-cost of a dividing-fence or rabbit-proof 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. 45

From whom moneys recoverable under this Act may be recovered.

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 50



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.

- 5 All moneys recoverable under this Act by any person served with any notice to fence or repair may be recovered from the person serving the same, or from any person liable to contribute to the construction or repair of such fence :

10 Provided that, with the exception of orders made by Stipendiary Magistrates under the powers conferred by section *thirty-six* of this Act, all moneys recoverable under this Act may be sued for and recovered in any Court of competent jurisdiction.

15 36. Any Stipendiary Magistrate *sitting with two Assessors* may hear and determine all matters or questions arising between owners or occupiers of property liable to the provisions of this Act, notwithstanding that the decision of any such matter or question shall be beyond the ordinary jurisdiction of such Stipendiary Magistrate, in so far as relates to,—

Jurisdiction of Stipendiary Magistrates in matters arising under Act.

20 (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 :

25 (3.) Determining the date, time, and manner in which such fence shall be erected, and by whom it shall be erected or repaired :

30 (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, which shall be—

(a.) In respect to dividing-fences, the half of the total cost of erecting such fence and the proportion of the cost of repairing the same as may be decided, and

35 (b.) In respect to rabbit-proof fences, whether the owner or occupier on whom the notice was served is liable for the half-cost of erecting such fence, or if it can be shown he is not benefited, or only to a small extent, by the erection of such fence, then what proportion he shall pay over and above the actual half-cost of erecting a dividing-fence : Provided, however, that any decision given shall not relieve the adjoining owner or occupier of the necessity for contributing the half-cost of repairing such fence :

40 (5.) Awarding 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.

45 37. All proceedings before any Stipendiary Magistrate upon or in respect of any of the matters in the *last-preceding* section, 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,

How proceedings to be enforced.

conducted, and enforced in their summary jurisdiction under "The Justices of the Peace Act, 1882," or any other Act for the time being in force relating to such Courts.

*New clause.*

Assessors to sit with Magistrate in case of dispute, how appointed.

37A. The Assessors, to sit with a Magistrate in cases of dispute 5  
between private owners, shall be appointed by the parties to such  
dispute, each of whom shall appoint one Assessor; and in case either  
of the said parties shall have failed to appoint an Assessor in his behalf  
when any case comes on for hearing before the Magistrate, such  
Magistrate may appoint an Assessor in behalf of the party so in 10  
default, or if neither party had appointed an Assessor, then such  
Magistrate shall decide the case in dispute.

The remuneration of such Assessors shall be paid by such party or parties to such case as the Court shall direct.

Act not to interfere with agreements.

38. Nothing in this Act contained shall be deemed or taken to 15  
affect any covenant, contract, or agreement made, or hereafter to be  
made, relative to the cost of erecting or maintenance of fencing,  
between landlord and tenant, or between occupiers of adjoining land,  
or between any other persons whomsoever.

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

39. Where any person shall have erected, or shall hereafter 20  
erect, any fence upon any Crown lands, the Commissioner of Crown  
Lands of the district may 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.

If such person shall not comply with such direction within 25  
one 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;  
and any person wilfully leaving such gates open shall be liable to a  
penalty not exceeding *forty* shillings. 30

Persons constructing fences can enter upon contiguous lands where not orchards, gardens, &c.

40. Any person constructing or repairing a fence under this Act,  
his agents and servants, may, if there be no available access thereto  
over his own land, with or without horses, cattle, carts, or carriages,  
at all reasonable times during such construction or repairing, enter  
after due notice upon any portion of the contiguous lands and do 35  
thereon such acts, matters, and things as are necessary or reasonably  
required to carry into effect the construction or repairing of such  
fence; but in so doing he or they shall do as little damage as possible:

Provided always that nothing herein contained shall authorise the  
entry, for the purpose aforesaid, upon any land in crop, or upon any 40  
garden, orchard, plantation, shrubbery, or pleasure-ground, without  
the consent of the owner thereof; or shall authorise any person to cut  
down, lop, or injure any fruit or ornamental tree or shrub without the  
special sanction of the aforesaid owner.

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

41. Every owner or occupier of any land who shall incur or suffer 45  
any loss or damage by any act or thing done by any person wilfully  
acting contrary to the provisions of the *last-preceding* section shall  
be entitled to compensation for the same.

Method of recovering compensation.

42. Upon the application of any person claiming such compen- 50  
sation as aforesaid, any Stipendiary Magistrate may summon the person  
complained of to appear before him, 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 Stipendiary Magistrate 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 Stipendiary Magistrate, and he shall settle the amount thereof.

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

43. 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.

44. Every person who wilfully destroys or breaks down, or who injures or removes any rabbit-proof fence or other fence, or any portion thereof, or leaves open any gate in such fence, whether set up on Crown lands or private lands, is liable, on summary conviction before any Stipendiary Magistrate or two Justices of the Peace, to a penalty not exceeding one hundred pounds, or to be imprisoned for any period not exceeding six months.

45. The several Acts and enactments and the Provincial Ordinance enumerated in the Schedule D hereto annexed are hereby repealed.

Compensation may be recovered summarily.

Power of landlord to come in and defend proceedings against his tenant under this Act.

Penalty for damaging or destroying fences.

Repeals.

## SCHEDULES.

Schedules.

### SCHEDULE A.

#### DESCRIPTION OF SUFFICIENT FENCE.

1. A post-and-rail fence, at least 3ft. 9in. 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 5in., and the posts not more than 9ft. asunder.

2. A batten-and-wire fence, to be at least 3ft. 9in. in height, of substantial material, firmly erected, with one or more wires; the wires to be not lighter than No. 8 in iron and No. 12 in steel; 10 in steel or 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 3in. apart.

3. Any paling fence, at least 3ft. 9in. 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 4in. of opening between each perpendicular 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 such posts; posts of durable wood or iron, well and substantially erected, the posts or standards to be not more than 9ft. apart, top wire not to be less than 3ft. 9in. from the surface of the ground; and the wires to be not lighter than No. 8 in iron or No. 12 in steel 10 in steel or iron. The space between each of the three bottom wires, or the bottom wire and the ground, not to exceed 5in.

#### New.

4A. 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 6ft. apart, the wires being stapled 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 3ft. 9in. from the surface of the ground, and the wires to be not lighter than No. 10 in steel or iron. The space between each of the three bottom wires, or the bottom wire and the ground, not to exceed 5in.

5. A stone wall, well and substantially built, not less than 4ft. in height, and not less than 2ft. 6in. in width at base.
6. A close and sufficient live fence; ~~such fences to be kept properly trimmed.~~
7. A combination of the above kind of fences, at least 3ft. 9in. in height.
8. Any other description of fence mutually agreed upon by the persons interested, ~~but not less than 3ft. 9in. in height.~~

#### SCHEDULE B.

##### DESCRIPTION OF RABBIT-FENCE.

1. A substantial fence, having split or sawn timber placed perpendicularly thereon to a height of not less than 3ft. from the surface of the ground, and sunken ~~into the ground therein~~ not less than 6in. from the surface, and well fixed, there being not more than 1in. of opening between each perpendicular piece of timber; or
2. A substantial fence at least 3ft. 9in. in height, posts or iron standards not more than 9ft. apart, and with at least two iron or steel wires, and one barb wire on top; ~~or any of the above fences as described in Schedule A, or that may be mutually agreed upon, or presently existing,~~ to which shall be attached galvanised wire-netting firmly affixed to wires, and securely fastened to the ground, or sunken therein not less than 6in., and *such wire netting* to be not less than a total of 42in. wide, 16 gauge, and not larger than 1½in. mesh.

*New.*

3. Any of the fences as described in Schedule A, or that may be mutually agreed upon, or presently existing, to which shall be attached galvanised wire-netting firmly affixed to wires, and securely fastened to the ground, or sunken therein not less than 6in.; such wire-netting to be not less than a total of 42in. wide, 16 gauge, and not larger than 1½in. mesh.

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

#### SCHEDULE C.

##### 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 [or rabbit-proof 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.

#### SCHEDULE D.

##### ACTS AND PROVINCIAL ORDINANCE REPEALED.

###### *Acts of the Assembly.*

- 1881, No. 28.—The Fencing Act, 1881.
- 1882, No. 64.—The Fencing Act 1881 Amendment Act, 1882.
- 1888, No. 27.—The Fencing Act 1881 Amendment Act, 1888.
- 1890, No. 17.—The Rabbit Nuisance Act, 1890. *In part, namely, the definition in section two of "Rabbit-proof fence."*
- 1891, No. 43.—The Rabbit Nuisance Act 1890 Amendment Act, 1891. *In part, namely, section two.*
- 1893, No. 30.—The Fencing Act 1881 Amendment Act, 1893.

###### *Provincial Ordinance of Auckland.*

Sess. XXIX., No. 24.—The Fencing Acts Suspension Act, 1874.

###### *Provincial Act of Wellington.*

Sess. XXII., No. 9.—The Fencing Act, 1872.