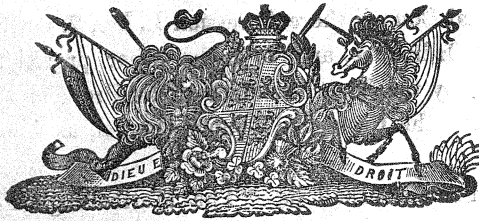


PROVINCE OF MARLBOROUGH.



FENCING ACT.

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

SESSION VII., No. 2.

ANALYSIS :

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16. If no beneficial occupier, the owner to be liable to contribute to making or repairing fence.
17. No greater sum than twenty shillings per chain to be recovered.
18. Sums recoverable in a summary way.
19. In cases where land acquired before passing of this act, and summons taken out, Justices shall direct what steps to be taken.
20. After eighteen months, case may be heard <i>ex parte</i>, provided steps required shall have been taken.
21. In case of land, after the passing of this act, if summons cannot be served, after reasonable diligence, case may be heard <i>ex parte</i>.
22. Owners or occupiers making dividing fences may make ditch or bank on adjoining land, but not to injure existing fence; proviso as to highways.
23. Covenants, etc., as to fencing between Landlords and Tenants not to be affected by this act.
24. Act not to affect any aboriginal natives.
25. Majority of electors may petition the Superintendent.
26. Definition of word "Owner."
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An ACT to make provision relative to Fencing, in the Province of Marlborough. Title.

WHEREAS an ordinance was passed by the Governor of New Zealand, Preamble.
with the advice and consent of the Legislative Council thereof, intitled "An Ordinance to encourage the Fencing of Land:" And whereas an ordinance

was passed by the Superintendent of the Province of Nelson, with the advice and consent of the Provincial Council thereof, Session I., No, 7, entitled "An Ordinance to repeal the Fencing Ordinance, and to make other provisions in lieu thereof." Be it therefore enacted by the Superintendent of the Province of Marlborough, with the advice and consent of the Provincial Council thereof, as follows:—

- Short Title. 1. The short title of this act shall be "The Marlborough Fencing Act, 1863."
- Repeal of Ordinances. 2. The said recited ordinances, so far as they regard the Province of Marlborough shall be, and the same are hereby repealed.
- Owners or occupiers liable. 3. Any person owning or occupying land, held by purchase or grant from the Crown, shall be liable to contribute towards the erection and repair of any dividing fence.
- Owner of land whereon fences are already erected, to pay half the value thereof to owner of adjoining land who erected same. 4. If any person shall heretofore have erected a substantial fence, dividing his land from the land adjoining thereto, the owner or occupier of the adjoining land, (being land held by purchase or grant from the Crown) shall be liable to pay, to the person who may have erected such dividing fence, or the owner of such land, the half of the present value of so much of such dividing fence as shall be available as a fence to such adjoining land.
- Owner of land to pay half the value of fence hereafter to be erected to owner of land adjoining, erecting the same. 5. If any person shall hereafter erect a fence, dividing his land from the adjoining land, (not being Waste Land of the Crown or a highway,) the owner, (whether owner at the time of erection of the fence, or thereafter become so,) or the occupier of the adjoining land, shall be liable to pay to the person who shall have erected such adjoining fence, or the then owner of such land, the half of the cost of so much of such dividing fence as shall be made available as a fence to such adjoining land.
- Owner of land on both sides of dividing fence, liable to costs of repairs in equal proportions. 6. When any dividing fence which has been, or shall hereafter be erected, shall be out of repair, the owners or occupiers of the land, on both sides thereof, shall be liable to the costs of repairing such fence, in equal proportions, and such owner or occupier respectively repairing the same shall be entitled to recover, from the other owner or occupier, one half of the costs thereof.
- Moiety of cost may be paid in five years by annual instalments with interest. 7. The owner or occupier of land, on either side of a dividing fence, erected thereon before the passing of this act, who shall be required to pay one moiety of the cost of the erection of such dividing fence, and every owner or occupier of land, who shall hereafter be liable for one moiety of the cost of any dividing fence, erected after the passing hereof, may pay such moiety, with interest thereon, at and after the rate of ten pounds per centum per annum, by five even and equal annual instalments; but, nevertheless, so that the said cost, and all interest thereon, shall be fully paid and satisfied within five years from the date of ascertaining the value of such dividing fence.
- Occupiers to be reimbursed half value of 8. Every occupier of land, who shall erect, or shall have erected, half of a dividing fence, or shall contribute, or shall have contributed, one half of the cost of the

Repealed 1866

Repealed 1866

erection thereof, shall be entitled, at the expiration of his tenancy, to receive from, and be paid by the then owner of such land, one half the then value of such dividing fence, which amount may be set off against the rent, or any other sum payable by such tenant to the owner: Provided always that in case any annual instalment as aforesaid, or any part or parts thereof, shall, at the expiration of any tenancy as aforesaid, remain due or unpaid; then and in such case every unpaid and accruing instalment or instalments shall be deducted from the then ascertained value of such moiety of dividing fence, and immediately thereupon the owner of any land, in respect of which there shall be any unpaid instalments, shall be and is hereby made liable for the same.

dividing fences at expiration of tenancy.

9. Any owner or occupier of land making beneficial use of a fence, between which fence and the land he owns or occupies, a road or a stream (insufficient for a boundary fence) intervenes, shall be liable to pay yearly, to the owner or the occupier of the land on which such fence has been erected, interest on one half the value of such fence, together with interest on one half the cost of the repairs at and after the rate of fifteen pounds per centum per annum, so long as the first said owner or occupier, or any subsequent owner or occupier of such land shall continue to make beneficial use of the said fence.

Owner or occupier liable whenever beneficial use is made of any fence.

10. No person who shall hereafter erect or repair a fence, shall be entitled to recover any sum in respect of the same, unless he shall have given to the person whom he seeks to charge, a notice in writing requiring him to assist in making or repairing the dividing fence between their respective lands, in equal proportions, and such person shall have refused or neglected for one month to commence making or repairing the same, or having commenced shall not have used reasonable diligence towards the completion thereof: Provided always that if any fence shall be destroyed or damaged, by accident or otherwise, the owner or occupier of the land on either side, may immediately repair the same without notice, and shall be entitled to recover from the owner or occupier of the land on the other side one half of the costs of such repair.

No person hereafter erecting a fence entitled to recover, unless person to be charged shall have neglected or refused to assist after notice.

11. Such notice may be served upon the person sought to be charged or his agent, or left at his last known place of residence in the Province of Marlborough, and if such person or agent, or the residence of such person or agent as aforesaid, after reasonable enquiry, cannot be ascertained, or such person shall be absent from the province, or shall have no residence or resident agent therein, then such notice may be published for the space of one month in some newspaper to be published in the Province of Marlborough.

How notice may be given.

12. Whereas it is expedient that all reasonable facilities should be given to owners and occupiers of land to fence in the same. It shall be lawful for the Superintendent, with the advice and consent of the Executive Council, to grant permission to any owner or occupier of land in the said district, to fence across any district road or bye-road which shall have been or may hereafter be laid out, provided always that whenever such road shall be fenced across, a good and substantial wooden or

Trunk districts and bye-roads may be fenced across, but gates to be placed thereto.

iron gate, of no less than ten feet in length, be placed thereon. It is further provided, that should any owner or occupier who shall have obtained permission to fence across any of the aforesaid lines of road, and shall have placed a gate thereon, neglect to keep the same in efficient and thorough working order, the Superintendent, or any duly appointed officer of a Road Board of the district, shall cause the necessary repairs or improvements to be made, and shall recover from the owners or party benefitted by the use of such gate, the costs thereof.

What persons deemed occupiers of adjoining lands.

13. Any person being in the occupation of lands on either side of a dividing fence, crossing any of the class of roads referred to in the foregoing section of this act, and on or to which dividing fence there shall be hung, placed, or suspended, a good and substantial wooden or iron gate, such person shall, for the purposes of this act, be deemed an occupier of adjoining lands, and shall be liable to contribute one half of the cost of such gate, and of keeping the same in repair.

Occupier of land liable in the first instance for making any fence.

14. If there shall be an occupier of land, he shall in all cases be the person who shall be liable to contribute, in the first instance, towards the making of any such fence.

Occupier to be liable in all cases to contribute to repairs.

15. The occupier shall in all cases be the person liable to contribute to the repairing of any fence.

If no occupier, the owner to be liable to contribute to making or repairing fence.

16. If there be no occupier, the owner of the land shall be the person liable to contribute to the making or repairing of any fence.

No greater sum than twenty shillings per chain to be recovered.

17. No greater sum shall be recovered under the provisions of this act in respect of making or repairing any fence than the sum of twenty shillings per chain.

Sums recoverable in a summary way.

18. The payment of any sum for which judgment has been given, may be made by annual instalments, bearing interest at the rate of ten pounds per centum per annum, and so that the same be satisfied within five years from the date of ascertaining the value of any such dividing fence, or of the cost of the erection of the same.

In cases where land acquired before passing of this act, and summons taken out, Justices shall direct what steps to be taken.

19. If any person who shall have taken out a summons to recover a sum of money under this act, from the owner of any land held by purchase or grant from the Crown, made before the passing hereof, shall prove to the satisfaction of the Resident Magistrate of the district, or any two or more Justices of the Peace, that after using reasonable diligence he has been unable, from the defendant's absence, or from any other cause, to serve him with such summons, such Resident Magistrate or Justices of the Peace, on application to him or them for that purpose, shall direct such steps to be taken, as to him or them may seem best adapted to inform the defendant,

through his agent or otherwise, of the nature of the proceedings pending against him.

20. After the expiration of eighteen calendar months from the time of such application, if the defendant cannot be sooner served, the Resident Magistrate of the district, or any two or more Justices of the Peace, or other court of competent jurisdiction, shall proceed to hear the case *ex parte*, and if judgment be given for the complainant, shall allow current interest on the amount recovered from the date when the same was expended, together with such costs and expenses as he or they may deem reasonable: Provided always that the complainant shall first prove to the satisfaction of such Resident Magistrate or Justices of the Peace or other Court that he has taken all the steps which he shall have been directed to take as aforesaid for the purpose of informing the defendant of the nature of the proceeding pending against him.

After eighteen months case may be heard *ex parte*, provided steps required shall have been taken.

21. If any person who shall have taken out a summons to recover a sum of money under this act, from the owner or occupier of land held by virtue of a purchase or grant from the Crown, made after the passing of this act, shall prove to the satisfaction of the court in which such case is to be heard, that, after using reasonable diligence he has been unable, from the defendant's absence or from any other cause, to serve him with such summons, such court shall appoint a day for hearing the case *ex parte*, not being less than thirty days or more than sixty days from the time of such application, and may direct further steps to be taken in the meantime to inform the defendant, or his agent, or otherwise, of the proceedings pending against him.

In case of land after the passing of this act, if summons cannot be served after reasonable diligence, case may be heard *ex parte*.

22. It shall be lawful for the owner or occupier of land, not being within the limits of any town or village, in making a fence dividing his land from the land adjoining thereto, to make a ditch, not exceeding four feet in width, in such adjoining land, and to throw the soil taken therefrom upon his own land to form a bank, and if such owner or occupier making such dividing fence shall make the ditch upon his own land, it shall be lawful for him to make a bank, and erect posts and rails, upon such adjoining land: Provided always that it shall not be lawful for any person to destroy or injure any fence already made or growing: Provided also that no ditch shall be taken out of any highway or bank made thereon, unless the written consent of the Superintendent shall be first obtained for that purpose.

Owners or occupiers making dividing fences may make ditch or bank on adjoining lands, but not to injure existing fence; proviso as to highways.

23. Nothing in this act contained shall make void or affect any covenant, contract, or agreement relative to fencing subsisting at the time of passing hereof between any landlord or tenant.

Covenants, &c., as to fencing between landlords and tenants, not to be affected by this act.

24. Nothing in this act contained shall affect aboriginal natives, or any land owned by them.

Act not to affect any aboriginal natives.

Majority of electors may petition the Superintendent.

25. Whenever the majority of the electors resident within any district shall present a petition to the Superintendent, together with a plan of the boundaries of such district annexed thereto, requesting him to exempt such district from the operation of this act, it shall be lawful for the Superintendent, with the advice and consent of his Executive Council, to declare such district exempt: Provided that such petition and plan be presented within three months from the notification of the Governor's assent to this act: Provided also that the limits of any district shall be such as the Superintendent and his Executive Council shall fix and determine: And provided always that the Superintendent, with the advice and consent of his Executive Council, may at any subsequent period again bring this act into operation in such district, upon receiving a request to do so from a majority of the electors in such district.

Definition of the word "Owner."

26. The word "owner," throughout this act, shall be taken to include a tenant in fee simple, a tenant in tail, a tenant for life, a trustee having the legal estate, and a tenant for years, having not less than ten years to run at the time the question of ownership is necessary to be determined.

What a legal fence.

27. The word "fence," mentioned throughout this act, shall be taken to mean one of the fences specified in the schedule hereto annexed.

SCHEDULE.

A SUBSTANTIAL FENCE UNDER THIS ACT SHALL BE DEEMED TO MEAN ONE OF THE FOLLOWING DESCRIPTION OF FENCES:—

1. A stone or brick wall, four feet high, with a coping.
2. A paling fence of rails and hard wood posts; palings not less than four feet high.
3. A post and rail fence, the posts to be of hard wood, top of upper rail to be not less than four feet from the surface of the ground. The space between the top rail and the second rail not to exceed in the mean nine inches; the mean space between the other rails not to exceed six inches. A bank may be substituted for the lower two rails; provided always that such bank be well formed, and made up to within three inches of the lower rail.
4. A wire fence, with posts of hard wood or iron, well and substantially erected; the posts or standards to be not more than nine feet apart, top wire not to be lighter than No. 4, and not less than four feet from the surface of the ground; the other wires to be not lighter than No. 6. The space between the top and second wire not to exceed in the mean one foot, and the mean spaces between the other wires not to exceed six inches. A bank may be substituted for the lower wires; provided always that such bank be well formed and made up to within three inches of the lower wire; provided also that a wooden rail may be substituted for the top wire.
5. A hurdle fence, proof against cattle.
6. A live fence, proof against cattle; provided that such fence shall not consist of gorse, broom, or sweetbriar.

Passed the Provincial Council, Marlborough, this Twenty-ninth day of August, in the year of our Lord one thousand eight hundred and sixty-three.

W. D. H. BAILLIE,
Speaker.

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Reserved for the signification of the Governor's pleasure thereon.

THOMAS CARTER,  
Superintendent.

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I hereby assent to this Ordinance, this Twenty-fifth day of September, in the year of our Lord one thousand eight hundred and sixty-three.

G. GREY,
Governor.