



FENCING ORDINANCE, 1867.

IN THE THIRTIETH YEAR OF THE REIGN OF HER MAJESTY
QUEEN VICTORIA.

SESSION XXIII, No. 246.

ANALYSIS.

<p>Title. Preamble. 1. Short Title. 2. Repeal of Ordinances. 3. Fences described in the Schedule to be deemed a sufficient fence. 4. Notice must be given to fence. 5. Notice how given Notice how proved. 6. If parties cannot agree matters to be settled by two Justices. 7. Fence shall then be made. 8. If default made by one party other may fence and recover one half of actual cost.</p>	<p>9. Occupier may recover from owner. In certain cases occupier not to recover. Existing agreements. 10. Half of dividing fence may be on adjoining land. Posts may be placed on boundary line. 11. Owner or occupier of land to keep road clear of young gorse plants. 12. A boundary fence may be made of thorns and the adjoining proprietor shall be liable for the half of the value of it. 13. Half the cost of repairing fence to be paid by adjoining owner or occupier. 14. Not a sheep fence. Shall be made a sheep fence. 15. Limitation of amount to be recovered. Schedules A, B and C.</p>
--	---

AN ORDINANCE to Consolidate and Amend the Laws relative to Fences. Title.
[27th May, 1867.]

WHEREAS it is expedient to consolidate and amend the Laws now in force Preamble.
in the Province of Otago relative to the Fencing of Land :

BE IT THEREFORE ENACTED by the Superintendent of the Province of Otago with the advice and consent of the Provincial Council thereof as follows :—

I. This Ordinance may be cited and referred to as the “Fencing Ordinance 1867.” Short Title.

II. Except as hereinafter mentioned the Ordinances in Schedule A Repeal of Ordinances
hereto annexed shall be and the same are hereby repealed : Where before the coming into operation of this Ordinance any notices have been given or any liability incurred under any of the Ordinances mentioned in the said Schedule or any matter or thing done before the coming into operation of this Ordinance 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every such action suit or other proceeding shall be prosecuted continued and defended as if such Ordinances were not repealed.

III. In the construction of this Ordinance the term “sufficient fence” Fences described in
shall be taken to include all fences of the description in Schedule B hereto the Schedule to be
annexed : Provided always that no person shall be entitled to erect any deemed a sufficient
such fence as is described in Clauses Nos. 1 and 14 of Schedule B within fence
the limits of a town and that the fence described in the said Clause No. 14

shall only be a sufficient fence in the case of a dividing fence between the lands comprised in a pastoral lease and any adjoining land : And provided also that where a sufficient fence has already been erected under the provisions of the Ordinances 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 Ordinance.

Notice must be given to fence.

IV. Before any person shall erect or make a sufficient fence dividing his land from land adjoining thereto such person is hereby required to give to the occupier or if there be no occupier to the owner of such adjoining land or if the owner be absent from the Province or Colony then by delivering the same to or leaving the same at the residence or place of business of his known Agent resident in the Province a notice in writing in the form or to the effect of that contained in Schedule C hereunto annexed of such persons intention to erect or make such sufficient fence : And if such person shall erect such 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 : Provided also that in the event of any adjoining Lands being Crown Lands at the time of the erection of any fence within the meaning of this Ordinance the purchaser occupier or Crown lessee of such adjoining lands shall not later than six calendar months after the time of his becoming the purchaser occupier or lessee upon notice being given as aforesaid pay to the owner occupier or Crown lessee who has erected the fence one half of the then value of such fence.

Notice how given.

V. Every such notice may be served upon such 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 Province 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 Province then it shall be sufficient to insert such notice at least three consecutive times in the *Government Gazette* of the Province : Provided always that the burden of proving the due service or publication of every such notice shall rest with the giver of the notice.

Notice how proved.

If parties cannot agree matters to be settled by two Justices.

VI. If within two months 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 or agree as to the value of any fence already erected as provided for in Clause IV such matters or any of them as may be in difference shall be settled by a Resident Magistrate or two or more Justices of the Peace sitting in open Court.

Fence shall then be made.

VII. When such matters shall have been settled either by agreement between the parties or by a Resident Magistrate or two or more Justices as aforesaid a fence shall be made by the persons or one of them of the description and in the manner so agreed upon or decided but if no agreement shall be entered into between the parties and neither of them shall within the said period of two months apply to a Resident Magistrate or two or more Justices to decide upon the description of fence to be made the person giving such notice may proceed to erect a sufficient fence within the meaning of this Ordinance and the owner or occupier of such adjoining land to whom such notice shall have been given shall be liable for and shall pay to such person or any other in his right within six months after a demand made upon him personally or at his dwelling-place if within the Province or upon or at the residence of his known Agent if absent from the Province or by intimation in the *Provincial Government Gazette* unless he earlier avails himself of the fence in which case he shall be liable for and shall pay within one month from the time of so availing himself of it one-half of the original value of such fence as divides the said several properties.

VIII. If either party shall neglect or fail for the space of one month to perform his part of any such agreement which may be so made or to obey any part of any decision of any such Resident Magistrate or Justices which should be obeyed by him, 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 decided as aforesaid or may at his discretion make any other sufficient fence within the meaning of this Ordinance and may immediately thereupon or at any time thereafter recover from the defaulting party one-half of the actual cost of making such fence together with a sum of five pounds for his costs of suit over and above the ordinary fees of Court.

If default made by one party other may fence and recover one half of actual cost.

IX. Any occupier shall be entitled at the expiration of the time for which he shall hold the land fenced under this Ordinance to recover from the owner thereof the half of the then value of any fence made under this Ordinance: Provided that where the occupancy is for a term of which less than two years shall be unexpired at the time of the making of the fence it shall not be lawful for the occupier of any land to recover from the owner thereof the value of any such fence unless he shall previously to the making thereof have received notice from an adjoining occupier to make such fence or unless he shall have obtained the consent in writing of the owner of such land to the making thereof: Provided always that nothing herein contained shall make void or affect any covenant or agreement relative to fencing which shall be now subsisting or shall be hereafter entered into between adjoining occupiers or owners or between landlord and tenant under any lease or by implication of law or otherwise.

Occupier may recover from owner.

In certain cases occupier not to recover.

Existing agreements.

X. The owner or occupier of any land in the Province of Otago not being within the limits of any town may in making a fence of the description No. 1 of Schedule B dividing his land from the land thereto adjoining make a ditch on such adjoining land and use the soil taken therefrom towards the making of a bank and he may also place the half of 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 broom may have been planted and kept in good and 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 the description No. 2 of Schedule B the posts of such fence shall be placed on the boundary line.

Half of dividing fence may be on adjoining land.

Posts may be placed on boundary line.

XI. The owner or occupier of any land fenced with a gorse fence running along any road shall be held liable to keep the road in front of the said fence clear of young gorse plants and should he fail to do so the General Road Board shall on the complaint of the Road Board of the district in which such road is or of any two proprietors or occupiers of land within the said district cause the work to be done at the expense of the owner or occupier of the said land the amount to be recovered in a summary way: Provided always that the General Road Board shall give one calendar month's previous notice in writing to the owner or occupier of such land.

Owner or occupier of land to keep road clear of young gorse plants.

XII. It is hereby specially provided that where a proprietor tenant or occupier shall plant a hedge of white thorns on the boundary between his own lands and those of an adjoining proprietor tenant or occupier he may make fences sufficient for their protection and one of such fences may be placed on the adjoining land: Provided always that no adjoining proprietor tenant or occupier shall be liable to pay as his half of the value of such hedge and protecting fences a greater sum than thirty shillings per chain for it and them: Provided also that where a boundary fence has been erected for three years any person may elect to plant a hedge of white thorns on such boundary the adjoining proprietor tenant or occupier shall in like manner be liable to pay as half his half of the value of such hedge and protecting fences a sum not exceeding fifteen shillings per chain.

A boundary fence may be made of thorns and the adjoining proprietor shall be liable for the half of the value of it.

Half the cost of repairing fence to be paid by adjoining owner or occupier.

XIII. When any sufficient dividing fence shall require cutting trimming cleansing or repairs or shall become insufficient the same shall be cut trimmed cleansed and repaired at the joint expense of the owner and occupier of the adjoining land and any owner or occupier of land adjoining such fence (having given notice in writing to the other owner or occupier of the land divided by such fence or to his or her agent in the said Province) may on refusal or neglect of such last-mentioned person for the space of one month to contribute one-half of such expense cause the same to be cut trimmed cleansed or repaired and made a sufficient fence and shall thereupon be entitled to recover from such adjoining owner or occupier one-half of the cost of so cutting trimming cleansing or repairing such fence: Provided always that the party making such repairs shall be bound to prove to the satisfaction of the Resident Magistrate or Justices before whom any action is brought for the expense of such repairs that the sum expended and sought to be recovered was necessarily and properly expended.

Not a sheep fence.

Shall be made a sheep fence.

XIV. It is hereby specially provided that Clause 5 of Schedule B hereto annexed is only applicable as a fence under this Ordinance where both proprietors or occupiers do not keep sheep but should any proprietor or occupier after such fence shall have been erected elect to keep sheep the fence shall be constructed as provided for in Clause 6 of Schedule B hereto annexed and the adjoining proprietor or occupier shall after having received one month's notice in writing of the fence having been so constructed pay one-half of the costs of such construction.

Limitation of amount to be recovered.

XV. No greater sum shall be recovered under the provisions of Clause VII. of this Ordinance in respect of the making of any fence than the sum of thirty shillings per chain in country districts and forty shillings per chain in the towns of the Province of Otago for the half cost of any fence.

SCHEDULE A.

Fencing Ordinance, 1855, No. 21A.

Fencing Ordinance, 1856, No. 2.

Fencing Ordinance, 1856, Amendment Ordinance, 1865, No. 216.

SCHEDULE B.

1. A bank or dyke not less than four feet six inches high, substantially formed, with turf on both sides, on a base not less than four feet six inches broad, and having a ditch not less than three feet wide and two feet deep on each side of such bank.

2. For swampy land, a ditch not less than six feet wide and two feet deep, with bank not less than three feet high, with posts not less than four feet high from the surface of the ground and more than nine 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 four feet six inches high from the surface of the ground, nor more than nine feet apart where rails are used, nor more than seven feet apart where wires are used, the posts being inserted into the ground not less than two feet.

3. A bank or dyke not less than two feet six inches high, substantially formed with turf on both sides, on a base not less than three feet broad, and a ditch not less than two feet six inches wide and two feet deep on each side of such bank, with posts not less than four feet six inches high from the surface of the ground, and not more than nine feet apart, with not less than two rails or four wires, and in the case of a three feet bank, three wires.

4. A bank or dyke not less than two feet six inches high, with a ditch not less than three feet wide and two feet six inches deep, with posts not less than four feet six inches high from the surface of the ground, nor more than nine feet apart, inserted not less than two feet into the ground, with three rails or with four wires, the posts to be not more than seven feet apart.

5. A fence of posts and four rails, the posts to be not less than five feet high from the surface of the ground, and not more than nine feet apart, inserted not less than two feet into the ground, the upper rail to be not less than four feet six inches from the ground, or with posts as already described and five wires, or four wires and a top rail.

6. A fence of posts and four rails and two wires, the posts to be not less than four feet six inches from the surface of the ground, and not more than nine feet apart, inserted not less than two feet into the ground, the upper rail to be not less than four feet three inches from the surface of the ground.

7. A fence of posts and seven wires with posts not more than seven feet apart, inserted not less than two feet into the ground, the upper wire to be not less than four feet three inches from the ground.

8. Any paling fence, four feet three 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 four inches of opening betwixt each perpendicular piece of timber.

9. The posts for all post and rail fences shall contain not less than fifteen superficial inches to the foot, if sawn or split, or eighteen superficial inches to the foot if round posts be used.

10. The posts for all post and wire fences shall contain not less than eight superficial inches to the foot, if sawn or split, or twelve superficial inches to the foot if round posts be used. Straining posts for wire fences shall contain not less than eighteen superficial inches to the foot, and shall be inserted into the ground not less than three feet, and not more than five chains apart.

11. The rails for all fences shall contain not less than six superficial inches to the foot if sawn or split, nor less than nine superficial inches to the foot if round rails be used.

12. The rails to be either firmly morticed into the posts or double-nailed, and the wires either passed through the posts or firmly fixed with staples.

13. A stone or brick wall, or dry stone dyke, or thick set thorn or briar hedge, not less than four and a half feet high, or where deficient of that height, if surmounted by a paling or wire fence such as is above described, to the height of four feet three inches, and the lower rail or wire of which being not higher than the top of the growing thorns or briars.

14. Any fence formed of iron or wooden standards, and straining posts with iron or wooden rails. The standards not less than four feet long, and if composed of iron material, one and a quarter inches broad by a quarter of an inch in thickness; if composed of wood, three inches by two inches or six square inches in thickness, to be placed at a distance not greater than ten feet apart. The *straining* posts not less than six feet long, and if composed of iron weighing not less than one hundred pounds, including iron stay and iron base; if composed of wood not less than five inches square or twenty-five cubic inches in thickness, to be placed not less than six straining posts to the mile; the wires not less than five in number, and of a gauge not lower than number eight in thickness; the lowest wire to be placed at a distance not greater than seven inches from the ground, the top wire not less than two feet six inches from the ground, the four lower wires not more than five inches apart. The rails, if composed of wood, to be placed at intervals not greater than those composed of wire.

SCHEDULE C.

(NOTICE TO MAKE FENCE.)

To _____ Occupier (or Owner or Crown Lessee or Agent as the case may be)
of (describing adjoining land)

TAKE NOTICE that I desire that the boundary or separating fence between (describing the lands) be made immediately (on or before the _____ day of _____ 186) and that such fence shall be a (here describe the fence)

Dated this _____

_____ day of _____ 18
A. B. Occupier (or Owner or Crown Lessee or Agent) of, &c.