



## FENCING ORDINANCE 1872.

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

SESSION XXX. No. 366.

### ANALYSIS :

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| <p>Title.<br/>Preamble.<br/>1. Short Title.<br/>2. Repeal of Ordinances.<br/>3. Fences described in the Schedule to be deemed a sufficient fence.<br/>4. Notice must be given to fence.<br/>5. Notice how given. Notice how proved.<br/>6. If parties cannot agree fence may be made.<br/>7. If default made by one party other may fence and recover one half of actual cost.</p> | <p>8. Occupier may recover from owner. In certain cases occupier not to recover. Existing agreement.<br/>9. Half of dividing fence may be on adjoining land. Posts may be placed on boundary line.<br/>10. Owner or occupier of land to keep road clear of young gorse plants.<br/>11. A boundary fence may be made of thorns and the adjoining proprietor shall be liable for half of the value of it.<br/>12. Half the cost of repairing fence to be paid by adjoining owner or occupier.<br/>13. Not a sheep fence. Shall be made a sheep fence.<br/>14. Limitation of amount to be recovered.<br/>Schedules A B and C.</p> |
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AN ORDINANCE to Consolidate and Amend the laws relative to *Fences*. Title.  
[31ST MAY, 1872.]

**W**HEREAS it is expedient to consolidate and amend the Laws now in Preamble.  
force 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 :—

1. This Ordinance may be cited and referred to as the “Fencing Short Title.  
Ordinance 1872.”

2. 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hereto annexed shall be and the same are hereby repealed : Where before  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continued and defended as if such Ordinances were not repealed.

3. In the construction of this Ordinance and any other Ordinance in Fences described in  
force in any part of the Province of Otago the term “sufficient fence” or the Schedule to be  
“substantial fence” shall be taken to include all fences of the description deemed a sufficient  
fence.

in Schedule B hereto annexed : Provided always that no person shall be entitled to erect any such fence as is described in Clauses Nos. 1 and 14 and 17 of Schedule B within the limits of a town and that the fence described in the said Clauses Nos. 14 and 17 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.

4. 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 person's 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.

5. 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 fence may be made.

6. 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 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 three 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.

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

7. 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 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 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.

8. 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 agreement.

9. 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 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 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.

10. 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 district road board shall on the complaint 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 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.

11. 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.

12. 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 the cost of so cutting trimming cleansing or repairing such fence.

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

Not a sheep fence.

13. 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 cost of such construction.

Shall be made a sheep fence.

Limitation of amount to be recovered.

14. No greater sum shall be recovered under the provisions 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.

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#### SCHEDULE A.

Fencing Ordinance 1855, No. 21A.

Fencing Ordinance 1856, No. 2.

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

Fencing Ordinance 1867, Amendment Ordinance 1871, No. 346.

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#### 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 three 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 eight 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 wires the posts to be not more than eight 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 six wires with posts not more than eight 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 where the posts are nine feet apart 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 but if the posts be not more than seven feet apart the rails when sawn may be five superficial inches.

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 brier 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 briers.

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.

15. A bank of sods two feet high with ditch on each side two feet six inches wide two feet deep and not more than six inches wide at the bottom five standards or posts to the chain six feet long with two wire braces between each bored for four wires above the bank strainers to be erected not more than six chains apart if of wood not less than seven feet six inches long and not less than seven inches in diameter and sunk to a depth not less than three feet in the ground if of iron eight feet long and sunk to a depth of not less than three feet in the ground if of stone seven feet six inches long twelve inches in diameter and sunk not less than three feet in the ground strainers to be securely stayed. An additional three wires may be substituted instead of the bank before mentioned the other provisions to remain the same.

16. Sod wall bank or dyke two feet six inches high with a base of three feet and ditches on each side two feet nine inches wide by two feet deep posts six feet long sunk two feet in the ground and placed not more than twenty feet apart having three wires iron standards six feet long one inch and quarter broad and quarter inch thick may be used when posts or standards are placed at more than nine feet apart the wires to be tied or interlaced with wire every seven feet.

17. A fence formed with iron or wooden standards iron or wooden strainers and wire standards if of iron to be not less than five feet long one and quarter inch broad and quarter inch thick if of wood four by two inches and placed not more than twenty feet apart when placed more than nine feet apart the wires to be tied or laced with wire not more than seven feet apart not less than six strainers to be used to the mile strainers to be six feet six inches long not less than six wires to be used the lower to be placed at a distance not greater than seven inches from the ground and the three lower wires being not more than six inches apart on an average top-wire to be not smaller than number seven.

18. Gorse hedge at least four feet high and eighteen inches thick kept properly trimmed at least once every year.

19. A bank or dyke not less than five feet high substantially formed with turf on both sides and not less than three feet six inches broad at the base and not less than one foot two inches in breadth at the top.

### 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 \_\_\_\_\_ 18 ) 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.

DUNEDIN, NEW ZEALAND :