ANNO QUINQUAGESIMO QUINTO ET QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.
A.D. 1892.

No. 559.

An Act to consolidate and amend the Law relating to Fences.

[Assented to, December 17th, 1892.]

BE it Enacted by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

1. This Act may be cited as “The Fences Act, 1892.”

2. (1) “The Fences Act, 1891,” is hereby repealed, but such repeal shall not affect—
   (a) The past operation of the said Act, nor anything done or suffered thereunder:
   (b) Any right, privilege, obligation, or liability acquired, accrued, or incurred under the said Act:
   (c) Any penalty or punishment incurred in respect of any offence committed against the said Act:
   (d) Any legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, or punishment as aforesaid:

And any such legal proceeding and remedy may be carried on and prosecuted as if this Act had not been passed.

(2) Every Act of Parliament in which the words “Fencing Act, 1865,” occur shall be read and construed as if the said words had been omitted therefrom, and the words “The Fences Act, 1892,” had been inserted in lieu thereof.

3. In
3. In the construction of this Act the following terms shall, unless inconsistent with the context or subject matter, have the several meanings set against them respectively, that is to say—

"Avail"—Any occupier shall be deemed to have availed himself of a fence within the meaning of this Act who shall use or occupy lands which abuts on such fence:

"Fence" or "dividing fence" shall mean a fence separating the lands of different occupiers, or any fence used or accepted by adjoining owners or occupiers as a boundary line between their respective holdings which—

(a) Is ordinarily capable of resisting the trespass of great cattle:

(b) Is ordinarily capable of resisting the trespass of sheep:

(c) Shall have been or shall be added to under section 5 hereof, so as to be capable of resisting the trespass of sheep:

(d) Is a vermin-proof fence: or

(e) Shall have been made rabbit or vermin proof under section 6 hereof.

"Occupier" shall include any person who is in the actual occupation of or entitled as owner to occupy any land alienated from or demised by the Crown by grant, agreement, or lease, or who hold lands under licence from the Crown; but shall not include or mean any person in the occupation of or entitled to occupy land held under the Crown by yearly licence under any Act relating to the sale and occupation of Crown lands heretofore or hereafter to be in force.

PART I.

CONSTRUCTION OF DIVIDING FENCES.

4. When any occupier has heretofore availed himself or shall hereafter avail himself of any dividing fence erected before the passing of this Act of which he is not the owner, or towards the cost of erecting which neither he nor any previous occupier shall have contributed under the provisions of this Act or any repealed Act, such occupier shall, within three months after demand upon him in writing, be liable to pay to the owner of such dividing fence one-half of the value thereof at the time of such demand: Provided that no occupier shall be liable in respect of the value of any fence which is sheep-proof only, or which shall have been made rabbit or vermin proof hereunder and is not ordinarily capable of resisting the trespass of great cattle, until he shall avail himself thereof by keeping or depasturing sheep upon the land abutting on such fence.

5. Whenever any dividing fence shall have been or shall hereafter be made by any of the adjoining occupiers capable of resisting the
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the trespass of sheep the other adjoining occupier, so soon as he shall keep and depasture sheep on the land abutting the said fence, shall, within three months after demand upon him in writing, be liable to pay to the occupier by whom such fence shall have been made capable of resisting the trespass of sheep as aforesaid, or to any succeeding occupier who shall be in occupation at the time when such demand shall be lawfully made, one-half part of the value (at the time at which the said adjoining occupier commences to depasture sheep) of any additions made to such fence for the purpose aforesaid.

6. The Commissioner of Crown Lands may, by notice in the Government Gazette, declare any district to be infested with rabbits or other vermin; and whenever any dividing fence within such infested district shall have been or shall hereafter be made rabbit or vermin proof by any of the adjoining occupiers, the other adjoining occupier shall, within three months after demand upon him in writing, be liable to pay to the occupier by whom such fence shall have been made rabbit or vermin proof, or to any succeeding occupier, one-half part of the then value at the time of demand of any additions made to such fence for the purpose aforesaid; but if the amount agreed by such occupiers, or found to be due by any Court of competent jurisdiction, shall exceed the sum of Twenty Pounds, the occupier liable shall pay the same within five years from the date when such demand was lawfully made, together with interest at the rate of Six Pounds per centum per annum.

7. The occupier of any land not heretofore separated from any adjoining lands by any dividing fence shall, in manner provided by sections 8 and 18 of this Act, require the occupier of such adjoining land to join in or contribute in an equal proportion to the cost of construction of a dividing fence between their respective lands; and so soon as the occupier of such adjoining lands shall avail himself of any such dividing fence he shall be liable to pay to the occupier by whom such fence was erected, or to any succeeding occupier, half the value of the fence at the time when such adjoining occupier first availed himself of such fence.

8. Any occupier desiring to compel any adjoining occupier to join in or contribute to the construction of a dividing fence shall, in manner provided in section 18 hereof, serve on such adjoining occupier a notice to fence, which shall specify the boundary to be fenced and the kind of fence proposed to be constructed.

9. If within three months after the service of any such notice to fence the occupier serving and the occupier served with such notice do not agree as to the construction and kind of fence to be erected, the occupier serving such notice may construct the whole fence, and may recover half the cost of constructing the same from the adjoining occupier in any Court of competent jurisdiction.

10. Any
10. Any person erecting a dividing fence shall be entitled to clear all scrub for a width not exceeding six feet on each side along the length of such fence, and the cost of such clearing shall be deemed to be a part of the cost of such fence.

11. If the occupier of any land bounded by a road shall have erected a fence on the boundary of his land and such road, and any other occupier shall adopt any means whereby his land is in any way enclosed by such fence (or if he shall avail himself of such fence or render the same of beneficial use to himself) such last-mentioned occupier shall be liable to pay to the occupier 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 Seven Pounds per centum per annum for so long as he shall continue to avail himself of such fence, or render the same of beneficial use to himself, and shall also so long as aforesaid be further liable for half the costs of the repairs of such fence.

(1) If the person who shall adopt any means by which such fence shall be rendered of beneficial use to himself shall not depasture sheep on any land adjoining such fence or road he shall be liable to pay interest only on so much of the cost of the fence as was expended to make the same capable of resisting the tresspass of great cattle:

(2) If such fence shall not be in any district declared to be infested with vermin, such person shall not be liable to pay the interest on so much of the cost expended to make such fence rabbit or vermin proof.

PART II.

MAINTENANCE AND REPAIRS OF FENCES.

12. When and as often as any dividing fence made or to be made shall be out of repair or become insufficient, the occupiers of land on either side thereof shall be liable to the cost of repairing such fence in equal proportions.

13. The occupier of any land separated from any adjoining land by a dividing fence may, in manner provided by section 18 hereof, serve a notice upon the occupier of such adjoining land requiring him to assist in repairing or renewing such fence; and if such last-mentioned occupier shall neglect, for the space of fourteen days after the service of such notice, to assist in repairing or renewing such fence, it shall be lawful for such first-mentioned occupier to repair or renew such fence and to demand and recover of and from such other occupier half the cost of repairing or renewing the same: Provided that if any dividing fence, or any portion thereof, shall be destroyed by accident, the occupier of the land on either side may immediately repair or renew the same without any notice to the other occupier, and shall be entitled to recover half the expense of
so doing from the occupier of the adjoining land: Provided always that in case such dividing fence shall have been destroyed in whole or in part by fire or by the falling of any tree or trees, the occupier through whose neglect (if any) such fire shall have originated or caused injury to the fence, or such tree or trees shall have fallen, shall be the party bound to repair or renew the entire of the fence so damaged as aforesaid; and in default the other occupier may repair or renew the same and demand and recover from the occupier so liable and in default the entire cost of such repair or renewal: Provided also, if any dividing fence shall have been erected partly by one occupier and partly by another, each occupier shall pay the cost of repairing the part so erected by him.

PART III.

GENERAL PROVISIONS.

14. In any case where any occupier shall be liable to pay interest on the half cost of a dividing fence such interest shall be payable annually, and shall be recoverable in like manner as the half cost dividing fence is recoverable.

15. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement made or hereafter to be made relative to fencing between landlord and tenant or occupiers of adjoining land.

16. Every person engaged in constructing or repairing a fence under this Act, his agents, and servants, may, with or without horses, cattle, carts, or carriages, at all reasonable times during such construction or repairing, enter upon the lands adjoining such fence and do thereon such acts, matters, and things, except the cutting and felling of timber, as are necessary or reasonably required to carry into effect the construction or repairing of such fence.

17. 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.

18. Any notice or demand to be given or made under this Act may be in writing or in print, or partly in writing and partly in print, and signed by the person giving or making the same, or by his attorney or agent, and may be served on any person resident upon the land, or if there be no such person then such notice or demand may be served on the occupier or occupiers, or one of them, either personally or by leaving the same at or by forwarding the same through the post office in an envelope addressed to him or them at his or their usual or last known place of abode or business in the province, and if there shall be no such occupier residing in the province the service of such notice may be dispensed with.

19. No.
19. No greater sum shall be recovered from any person under this Act for the cost of constructing, repairing, renewing, or making sheep-proof or rabbit or vermin proof any fence than the amount which would be payable if such fence had been an ordinary fence of its kind and had been constructed, repaired, renewed, or made sheep-proof or rabbit or vermin proof for the price usually paid in the district or locality for constructing, repairing, renewing, or making sheep-proof or rabbit or vermin proof such a fence at the time when such sum first became payable, and no occupier shall be liable to contribute except in respect of so much of any fence as is erected on the boundary or the accepted or reputed boundary of his land.

20. Any occupier who shall suffer the layers, roots, branches, or seedlings of any briar, furze, or prickly pear hedge, or other live fence upon his land to grow upon or over the land of any adjoining occupier so as to injure such adjoining occupier's land, shall, within three months after being thereof required in writing under the hand of such adjoining occupier, remove such layers, roots, branches or seedlings, and, in default thereof, shall be liable to a penalty not exceeding Two Pounds; and after such default such adjoining occupier may remove such growth, and, on summary proceedings before two Justices, may recover from the occupier making such default the expenses reasonably incurred in such removal.

21. Any Special Magistrate or two Justices of the Peace not interested in the matter at issue shall have jurisdiction in manner provided by Act No. 6 of 1850, "The Justices Procedure Amendment Act, 1883-4," or of any other Act for the time being in force relating to the duties of Justices of the Peace with respect to summary convictions and orders to hear and determine any claim between adjoining occupiers for contribution, provided such claim shall not exceed Twenty Pounds, and any adjudication or order may be enforced as in such Act or Acts is or shall be provided.

22. All proceedings for recovery of any penalty by this Act imposed shall be taken and determined in a summary way by two Justices of the Peace under the provisions of Act No. 6 of 1850, "The Justices Procedure Amendment Act, 1883-4," or of any other Act for the time being in force relating to the duties of Justices of the Peace with respect to summary convictions and orders.

23. In any case or proceeding under this Act any Court of competent jurisdiction may make an order or enter a verdict for the person claiming contribution, notwithstanding any demand or notice provided for by this Act may not have been made or given, either wholly or in part, if the Court shall be satisfied that the person entitled thereto waived such demand or notice.

24. A judgment order or conviction duly made under this Act may be pleaded in bar of any suit, action, or information which shall
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shall be commenced, instituted, or prosecuted for the same cause or
offence in any other Court.

25. In every case or proceeding under this Act where any
dispute shall arise as to the sufficiency of, or as to the service of any
notice or demand, or waiver of notice or demand, or as to the
sufficiency of any fence, or whether (except within a district which
has been declared by the Commissioner of Crown Lands to be
infested with rabbits or other vermin) it was necessary to erect any
rabbit or other vermin proof fence, such question or dispute shall be
determined by the Court.

In the name and on behalf of Her Majesty, I hereby assent to
this Bill.

KINTORE, Governor.