

THE DIVIDING FENCES ACT

ARRANGEMENT OF SECTIONS

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THE DIVIDING FENCES ACT

Cap. 101.

[22nd May, 1888.]

1. This Act may be cited as the Dividing Fences Act. Short title.

2. Nothing in this Act shall be deemed to apply to a case where land adjoins uncultivated and untenanted land being the property of the Crown, or vested in the Commissioner of Lands for any public purpose, or any public road. Classes of land to which this Act does not apply.

3. In this Act— Interpretation.
 - “dividing fence” means any fence which separates any holding from any other, and shall be deemed synonymous with the term “line fence”;
 - “fence” includes wall, bank and hedge;
 - “occupier” includes the owner of any land whether in possession by himself or by any person for him.

4. Every occupier of land shall, as between himself and the occupier of the adjoining land, be liable to bear one-half of the expense of erecting and maintaining a sufficient dividing fence to separate their respective holdings. How expenses of dividing fences to be apportioned.

5. A fence shall be deemed “sufficient” for the purpose of this Act when it is high enough, strong enough and close enough, to prevent ordinary animals, other than pigs and goats, of the kind kept on the one holding from trespassing on to the other. When a fence is sufficient.

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Power of occupier of land to require his neighbour to agree as to making a dividing fence between them.

6.—(1) Whenever there shall be no dividing fence between two holdings, or the existing fence is from want of repair or other cause insufficient, it shall be lawful for the occupier of either holding, by notice in writing, to call on the occupier of the other to come to an agreement in writing with him as to the kind of fence to be erected, or the kind of repairs or work to be done to make such fence sufficient, and as to the mode in which the work is to be carried out.

(2) If the parties come to such an agreement, and either party shall nevertheless fail to do anything which by the said agreement he has agreed to do, the other party having done what he had agreed to do, or so much thereof as he has not been prevented from doing by the default of the other party, may do for the other party what such other party has failed to do, and on the completion of the work shall be entitled to recover from such party a sum equivalent to what he has spent on the work in excess of one-half of the cost of the whole work.

(3) If the parties shall fail, within fourteen days of the giving of such notice as aforesaid, to come to such agreement as aforesaid, it shall be lawful for the party giving the notice to erect or repair (as the case may be) the whole of such fence, and on the completion of the work he shall be entitled to recover from the other party one-half of the cost of the work so done.

(4) Any money to be recovered under this section may be sued for as money paid by the plaintiff at the request of the defendant.

(5) Nothing in this section shall apply where there is *bona fide* any dispute between the parties as to the true boundary line between their respective holdings.

7.—(1) Where the holdings are separated or bounded by a river, gully or watercourse, and it is impracticable to construct and maintain a suitable dividing fence on the actual boundary, if the parties cannot agree as to the line on which the fence is to be erected it shall be lawful for either party to lodge a plaint in the Resident Magistrate's Court, alleging the necessity for a dividing fence, and the inability of the parties to agree on the line on which such fence is to be erected, and thereupon a summons shall issue to the other party; and if the defendant shall not on a day to be named in such summons, show cause to the contrary, then, on proof of the respective occupation of the plaintiff and defendant, and of the necessity for a dividing fence, and of the failure to come to an agreement as aforesaid, and of the service of the summons if the defendant shall not appear thereto, the Resident Magistrate shall hear evidence, and determine the line on which the dividing fence shall be erected.

As to cases where the boundary between two holdings is a river, gully or water-course.

(2) Court fees shall be payable in any such case as in the case of a disputed boundary, and shall be deemed to be part of the cost of the fence.

(3) Any decision of the Resident Magistrate under this section shall not alter or affect the actual boundary, of either holding otherwise than for the purposes of this Act.

8. If, in any action brought under section 6 it shall appear to the Court that the plaintiff has erected a fence of an unreasonably costly character, or that he has paid an excessive sum for the fence erected, or for the repairs required to be done, the Court shall determine what would have been the cost of a reasonably proper fence, or what should properly have been the cost of the fence erected or of the repairs required to be done, and he shall award the plaintiff a sum equivalent to the defendant's half of the cost aforesaid after deducting therefrom the value of the work done by the defendant, if any.

Cases of excessive expenditure.

Power to Resident Magistrate to refer matter to Surveyor.

9. In any action brought under section 7 in a Resident Magistrate's Court, the Resident Magistrate shall have the same power of referring the matters in controversy for report as in an action in respect of disputed boundary brought under the Judicature (Resident Magistrates) Act; and when the Resident Magistrate has made such a reference all the provisions of the said Act applicable to such a reference if made in an action brought under the said Act shall apply to the same.

Consequences of damage to dividing fence by an occupier of an adjoining holding.

10. Where any damage shall have been done to a dividing fence which is "sufficient", within the meaning of section 5, by any animal which is suffered to be on the land bounded by such dividing fence by the occupier thereof, or by fire which has originated from the negligence of the occupier of one holding bounded by such fence, such occupier shall bear the entire cost of repairing and reinstating such fence, and until the same shall have been repaired and reinstated shall not impound any animals trespassing on his land, the property of the adjoining occupier whose holding was separated from that of the first named occupier by the fence damaged or destroyed, and shall not be entitled to any compensation for damage sustained by him by any such trespass, and if he refuse, or for an unreasonable time neglect, to repair and reinstate such fence, the adjoining owner may do the necessary work on his behalf, and recover the cost of it against him as money paid at his request.

Remedies of tenant and landlord as between themselves in respect of moneys exacted for fencing purposes.

11. Where the occupier of land is not the owner thereof, and is not, as between himself and the owner, bound by the terms of his tenancy to bear the expense of erecting or repairing the fence dividing such land from the adjoining land, he shall, on being obliged to defray any such expense under the provisions of this Act, be entitled to recover the same from his landlord as money paid at his request, or to deduct the same from his rent as the same falls due:

Provided that in any case in which, as between himself and his tenant, the landlord is not bound to erect or repair any dividing fence, and is nevertheless, under the provisions of this Act, put to expense in erecting or repairing the same, the tenant shall, in addition to the rent otherwise payable during his tenancy, pay a further rent equivalent to ten *per centum* per annum on the amount paid by the landlord:

Provided that where a tenant has paid any money which under the provisions of this section he is entitled to deduct from his rent he shall be entitled to remain in possession of his holding until such money shall have been paid, or until he shall have repaid himself by deductions as aforesaid:

Provided always that no tenant shall have any rights against his landlord under the provisions of this section unless he has given his landlord, or the person representing such landlord, timely notice of any notice received by him under the provisions of this Act.

12. Nothing in this Act contained shall be deemed to create a liability on a tenant, as between himself and his landlord, by reason of this Act, at his cost, on a requisition under this Act, to make or maintain a dividing fence; and in any proceeding to recover from a tenant his proportion of such cost he may, by notice to his landlord of such proceeding being taken, bring such landlord before the Court, and the Court shall require such landlord, if not appearing, to be summoned to appear, and on the hearing of the case the Court shall, on being satisfied that there is no liability on the tenant under his contract with his landlord to erect or maintain such fence, adjudicate the case as if the landlord were the sole defendant in such proceedings, whether he has appeared or made default in appearing.

Power to tenant to give notice to landlord of any requisition under this Act, and procedure thereon.

Powers, etc., in favour of occupiers, etc., making or repairing dividing fences.

13. In the making, repairing or otherwise making sufficient, any dividing fence it shall be lawful for the occupier doing such work, his servants or agents, to cut down and remove any trees or parts of trees, and to remove the roots of trees if necessary, if such trees or parts of trees or roots affect or tend to affect such fence. And no compensation or allowance shall be made in respect thereof to the owners of such trees, or for trespass on the land in felling or cutting such trees, or removing such roots.

Disabilities of occupiers refusing or neglecting to agree in making a dividing fence.

14. The occupier of any land who has received a notice calling on him to come to an agreement under this Act to erect or repair a dividing fence, and has failed within fourteen days of the giving of such notice to come to such agreement, shall not, during such time as would be sufficient to enable the occupier giving such notice to erect or repair the fence, and while such last mentioned occupier is proceeding with due diligence with the erection or repair of such fence, impound any animals trespassing on his land, the property of the adjoining owner who gave such notice as aforesaid, or under his care and control, and shall not be entitled to any compensation for damage sustained by him by any such trespass.

Service of notice when land is vacant and the residence of the owner is unknown.

15. Where the possession of land is vacant, and the residence of the owner is not known, service of any notice required under this Act shall be deemed to be sufficient if affixed to some conspicuous part of the unoccupied land.