

Dividing Fences.

Act No. 63, 1902.

An Act to consolidate enactments relating to the DIVIDING FENCES.
Dividing Fences of adjoining lands. [4th
September, 1902.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Dividing Fences Act, 1902." Short title.

2. The Act Ninth George the Fourth number twelve is hereby Repeal.
repealed.

3. (1) The owner of lands adjoining or abutting upon any other lands, and having no sufficient dividing fence, may require by writing under his hand the owner or person legally possessed of and holding any adjoining lands (excepting such lands as are held of the Crown by temporary occupation only) or his agent to assist in equal proportions to make or repair any or all the dividing fences between such lands respectively. Making and repairing the dividing fences. 9 Geo. IV No. 12, s. 1.

(2) In case the owner of such adjoining lands or person legally possessed of and holding the same or his agent refuses or neglects to assist or fails to use due diligence in the making or repairing such dividing fences for six months after the receiving of such requisition or notice, or does not give to the owner of such adjoining land from whom he has received such requisition or notice a sufficient and reasonable excuse for not having assisted in carrying such fencing or enclosure into effect, then and in either such case the owner of such adjoining lands who has given such requisition or notice as aforesaid, and who has completed his share of such dividing fence, may engage and contract with any person to complete and execute or repair such dividing fence, and such person so giving notice as aforesaid and his servants or the person contracting to execute, complete, or repair such fencing and his servants respectively may cut upon the farm or lands of the person so neglecting or refusing as aforesaid all such indigenous timber or other indigenous trees, excepting such as have been planted or preserved for ornament, and materials as are necessary for executing and completing or repairing such fencing and enclosing as aforesaid; and such owner or contractor or his servants respectively shall not be answerable or chargeable for any act of trespass which he or they respectively may have committed on such adjoining lands for the purpose of cutting and carrying away any such indigenous timber as aforesaid.

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(3) In case a sufficient quantity of the materials necessary for the executing and completing or repairing of such fencing cannot be obtained upon such adjoining lands, the person authorised to make or repair such dividing fences, or the person with whom he so contracts may procure and purchase the materials necessary for the executing and completing or repairing of such fencing, and all sums of money which are so expended or laid out under the provisions of this Act shall be recoverable as money laid out for the benefit of the owner of such lands.

Contribution to cost
of dividing fence.
9 Geo. IV No. 12, s. 2.

4. (1) If any person encloses his lands before the lands immediately adjoining as aforesaid have been duly granted by the Crown or otherwise held as private property, the owner of lands so enclosed may claim and recover from the person who afterwards becomes the proprietor of such adjoining lands one-half of the actual value of the wall, hedge, or fence forming the dividing line or fence between the said adjoining lands.

(2) Such value shall be ascertained immediately or as soon as may be after such adjoining land has been granted by the Crown or otherwise held as private property as aforesaid by the arbitration of two persons to be mutually chosen by the parties, and the amount which is awarded under such arbitration as one-half of the value of such dividing fence shall be recoverable by due course of law if not paid within twelve months after the date of the award.

(3) In case such arbitrators do not agree as to the amount of the sum to be paid for one-half of the value of such dividing fence within one month next after such reference is made to them, then the same shall be referred to the determination of an umpire appointed by them by writing under their hands, and the decision of such umpire shall be conclusive.

(4) In case either of the parties neglects or refuses for one month after notice in writing given by the other party for that purpose to join in the appointment of such arbitrators as aforesaid, the arbitrator chosen by the party giving such notice may make an award *ex parte* which shall be binding and conclusive in like manner as if the party so neglecting or refusing had chosen an arbitrator who had actually joined and made an award therein.

Arbitration.
Ibid. s. 3.

5. In all cases where there are natural boundaries between adjoining lands, or where any dispute or difference arises between the respective owners or persons legally possessed of such adjoining lands as to the necessity or sufficiency of any dividing fence as aforesaid, then the same shall be referred to arbitration in like manner, and shall be subject to the like award and final decision as hereinbefore provided and directed with respect to the value of dividing lines or fences as aforesaid.