

Fences.

No. XII.

FENCES.

An Act to regulate the dividing Fences of adjoining Lands. [2nd August, 1828.]

Preamble.

Owners of land may require persons possessing the adjoining lands to assist in making and repairing the dividing fences.

WHEREAS it is expedient to make provision for the erecting and upholding of Fences dividing Lands adjoining and abutting on other Lands Be it enacted by His Excellency the Governor of New South Wales by and with the advice of the Legislative Council That from and after the passing of this Act it shall and may be lawful for the owner or owners of lands adjoining or abutting upon any other lands and having no sufficient dividing fence to require by writing under his her or their hand or hands the owner or owners person or persons legally possessed of and holding any adjoining lands (excepting such lands as shall be held of the Crown by temporary occupation only) his her or their agents respectively to assist in equal proportions to make or repair any or all the dividing fences between such lands respectively and in case the owner or owners of such adjoining lands or person or persons legally possessed of and holding the same or his her or their agent shall refuse or shall neglect to assist or fail to use due diligence in the making or repairing such dividing fences for the space of six months after the receiving of such requisition or notice (or shall not give to the owner of such adjoining land from whom he shall have 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 it shall and may be lawful for the owner or owners of such adjoining lands who shall have given such requisition or notice as aforesaid and who shall have completed his her or their share of such dividing fence to engage and contract with any person or persons to complete and execute or repair such dividing fence and it shall be lawful for such person or persons so giving notice as aforesaid and his her or their servants or the person or persons contracting to execute complete or repair such fencing and his her or their servants respectively to cut upon the farm or lands of the person or persons so neglecting or refusing as aforesaid all such indigenous timber or other indigenous trees (excepting such as shall have been planted or preserved for ornament) and materials as shall be necessary for executing and completing or repairing such fencing and enclosing as aforesaid and such owner or owners contractor or contractors his her or their servants respectively shall not be answerable or chargeable for any act of trespass which he she or they respectively may have committed on such adjoining lands for the purpose of cutting and carrying away any such indigenous timber as aforesaid and 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 it shall be lawful for the person or persons authorized to make and repair such dividing fences or the person or persons with whom he she or they shall so contract to procure and purchase the materials necessary for the executing and completing or repairing of such fencing and all sums of money which shall or may be so expended or laid out under the provisions of this Act shall be recoverable as for money laid out for the benefit of the owner or owners of such lands.

Persons who shall enclose their lands before the lands adjoining have been granted shall be authorized to recover from any future proprietor one half of the actual value of the dividing fence.

2. And be it further enacted That if any person or persons shall from and after the passing of this Act enclose his her or their lands before the lands immediately adjoining as aforesaid shall have been duly granted by the Crown or otherwise held as private property the owner or owners of lands so enclosed shall be authorized to claim and recover from the person or persons who shall afterwards become
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the proprietor or proprietors 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 and such value shall be ascertained immediately or as soon as may be after such adjoining land shall have 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 shall be 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 Provided always that in case such two persons so mutually chosen as aforesaid shall not agree in the amount of the sum to be paid for one-half of the value of such dividing fence within the space of one calendar month next after such reference shall be made to them then and in such case the same shall be referred to the determination of such indifferent person as the said arbitrators by any writing under their hands shall nominate and appoint as umpire in the case and the decision of such umpire shall be conclusive Provided also that in case either of the parties in difference shall neglect or refuse for the space of one calendar month after notice in writing given by the other party for that purpose to join in the appointment of such arbitrators as aforesaid it shall and may be lawful for the arbitrator to be chosen by the party giving such notice to 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.

3. Provided always and be it further enacted That in all cases where there shall be natural boundaries between adjoining land or where any dispute or difference shall arise 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 and in every such case 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.

Cases of dispute to be referred to arbitration.