



ANNO SEXTO

GULIELMI IV. REGIS.

No. 1.

By His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies.

AN ACT to provide for the Erection of Boundary Fences.

WHEREAS it is expedient to provide for the erection of Boundary Fences in cases where it is reasonable that the expense should be defrayed proportionably by the several parties who are thereby benefitted—AND WHEREAS such a Provision would be in accordance with the generally expressed desire of Landholders in the interior and would also tend materially to the cultivation and improvement of the soil as well as the prevention of trespasses and of the crimes of sheep and cattle stealing—BE IT THEREFORE ENACTED by His Excellency Colonel GEORGE ARTHUR Lieutenant-Governor of this Island and its Dependencies with the advice of the Legislative Council that at any time after the passing of this Act it shall be lawful for the owner or tenant in possession of Land by notice in writing under his hand to require the owner of any Land adjoining to assist in erecting a proper and sufficient dividing fence along the boundary between such Lands or in repairing the existing dividing fence along such boundary in case one shall have been already there erected which notice shall or may be in the form or to the effect of the form contained in the Schedule to this Act marked A.

PREAMBLE.

Where dividing Fence required notice to be given.

II. AND BE IT ENACTED that in cases where the owner of any such Land as aforesaid is under legal disability or absent from the

Absence of owners, &c.

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Colony every such notice may be given either by or to (as the case may be) an agent or any other person who shall be in that behalf authorised for such owner and every person having the actual possession of Land whether as tenant or otherwise shall for the purpose of receiving any such notice be deemed an agent of the owner of such Land if in addition to the service of such notice upon any such last-mentioned person a copy thereof shall also be at the same time or within ten days next following published in the Hobart Town Gazette.

Appointment of Arbitrators.

III. AND BE IT ENACTED that within thirty days next after the receipt of any such notice as aforesaid the owner or in his default the person by whom the same shall have been so received or some other person on his behalf shall nominate some person as an Arbitrator to act jointly with the Arbitrator of the party giving such notice and shall inform him of the name of the person so nominated and also by writing at the same time delivered to him (under the hands of the Arbitrators so nominated) appoint a time and place for proceeding on the matter of the Arbitration and in default of such nomination or information or of such appointment of a time and place the Arbitrator named by the party giving such notice shall be the sole Arbitrator of and for both parties—AND the said two Arbitrators or sole Arbitrator (as the case may be) shall inquire into and determine the several matters hereinafter in that behalf mentioned—PROVIDED that before such two Arbitrators shall enter upon such inquiry they shall by writing under their hands appoint some third person as and to be the Umpire or person by whom alone the said matters shall be determined upon in case of any difference between them—PROVIDED ALSO that the time so appointed as aforesaid shall be not less than three days nor more than twenty days next after notice of such appointment given nor the place so appointed be more than five miles distant from the place where the proposed fence or fencing is required.

Proceedings thereon.

IV. AND BE IT ENACTED that if in any case (after notice of appointment of such time and place duly given as aforesaid) the Arbitrator of either party shall fail to attend such appointment or if (in case both Arbitrators attend) such Arbitrators shall not then duly appoint an Umpire or if (such Umpire being appointed) such Arbitrators or Umpire shall not duly make their or his Award or Umpirage between the parties such Award to be made within twenty days or such Umpirage within thirty days respectively next after the day of the date of such appointment or first attendance as aforesaid then or in either of those cases it shall be lawful for any Justice of the Peace at any time afterwards upon the application of either of the parties interested to inquire into and determine the matters in question and to make his Award

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accordingly and such Justice shall have power to Award such Costs for or towards defraying the expenses of the Award or otherwise attending the same to be paid by either party to the other not exceeding in any case in the whole the sum of ten pounds as such Justice shall think fit to order—PROVIDED that no such Justice shall be competent to act under this Section who shall be directly or indirectly interested in the matter or be in any manner directly or indirectly connected with the parties interested or either of them.

V. AND BE IT ENACTED that every Award or Umpirage under this Act shall or may be in the form or to the effect of the form contained in the Schedule to this Act marked B and shall be signed by the parties or party making the same in duplicate in the presence of not less than two witnesses who shall thereupon attest the same and the Arbitrator or Arbitrators Umpire or Justice (as the case may be) making any such Award or Umpirage shall have power to award and determine the several particulars next mentioned that is to say first—What proportion and what particular parts or part of the lines or line of fence or fencing proposed to be repaired or erected each of the adjoining owners shall be liable to erect or repair (as the case may be) having reference in such determination to the nature of the ground the relative situation of the parties and such other circumstances as may seem proper to be taken into consideration secondly—What kind of fence shall be erected (if no fence or no sufficient fence shall already exist) on the respective parts of the lines or line of fencing so determined on and thirdly—(whether there be any existing fence or not) Of what description of materials the fence or fencing in question shall be constructed and in what particular mode and within what time such fence or fencing respectively shall be repaired or constructed (as the case may be) by each owner respectively.

Contents of
Award.

VI. AND BE IT ENACTED that the term "Award" used in this Act shall be invariably construed to extend to and include equally an "Umpirage" and the term "Arbitrators" to extend to and include equally any single "Arbitrator" or "Umpire," and as well the Arbitrators nominated by the parties as any such Justice as aforesaid except in cases where it is otherwise distinctly expressed or there is something in the context repugnant to such construction.

General Rule.

VII. AND BE IT ENACTED that in case either of the parties in respect of whose Land such award is made shall not comply with the Award within the time thereby limited then the other of such parties may construct or repair (as the case may be) the whole of the fence or line of fencing in question and the Arbitrators shall determine the sum

Provision for particular cases.

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of money which such last-mentioned party shall be entitled in that case to receive from the other party in respect of the particular part or parts of such fence or fencing for which the Award shall have made such non-complying party liable—AND the said Arbitrators shall have power according to the circumstances of the case or the condition of the parties respectively to allow a reasonable period of time for the payment of the sum of money so determined together with interest thereon in the meantime to commence from the time of the completion of the fencing in question and to determine the rate of such interest not exceeding in any case ten per cent. per annum and appoint the particular time or times on which the same together with the principal shall be payable.

Registration of
Award.

VIII. AND BE IT ENACTED that every award under this Act shall or may for the purposes next hereinafter mentioned be deemed an Instrument in Writing affecting Land within the meaning of the Act of this Island providing for the Registration of Deeds Wills and Instruments affecting real property and that a Memorial thereof may be accordingly entered and registered in the Office of the Registrar of Deeds in the manner by that Act directed—PROVIDED that such Memorial shall be delivered into the said Office for such Registration within twelve months after the making of the Award to which it relates and shall be signed by one of the parties to or affected by such Award in the presence of some credible witness who shall attest the same and by whom the same Memorial shall afterwards be verified by oath made before the said Registrar or some Commissioner of the Supreme Court or Justice of the Peace that such Memorial contains a true account of the several particulars therein set forth—AND PROVIDED ALSO that every such Memorial shall be intituled “Memorial of Award made pursuant to the Fencing Act” and shall contain the following particulars that is to say—The date of the Award and by whom made and who were or are the Owners or Parties thereby affected respectively and to what Lands in particular such Award relates and in what district or place the same respectively are situated and what is or are the particular fence or fences or line or lines of fencing awarded to be constructed or repaired by each such Owner or Party respectively and also (where the fencing in question shall be done or proposed to be done for either party by the other of such parties) the sum of money made payable under such Award in respect thereof and by whom in particular and to whom and when the same is so made payable.

Effect of Regis-
tration.

IX. AND BE IT ENACTED that from and after the time of any such Registration as aforesaid the Award so registered shall as to the Lands respectively to which the same relates have equal force and effect against any and every subsequent Owner thereof so as to render every

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such Owner liable to erect or (as the case may be) to uphold and keep in repair at all times the fence or fences on and along the same line or lines which the Owner originally affected by such Award was thereby made liable to erect or repair in respect of such Land—AND so also as that where any fence which the Owner of such Land for the time being shall be liable to erect or repair shall not be well and sufficiently erected repaired or upholden either such Owner or the Possessor for the time being of such Land shall be answerable in damages for any injury thereby occasioned and the person so injured may sue for and recover such Damages accordingly either against such Owner or such Possessor at his election and on the other hand no such Owner or Possessor shall be entitled to claim Damages or have redress by Law for or in respect of any loss or alleged injury which such neglect shall occasion or may at any time have occasioned to himself.

X. PROVIDED ALWAYS that nothing in the preceding Section shall be construed to alter or affect the actual liability as between themselves of the Owner or Tenant or other party in possession of such Land as aforesaid to the erection or repair of any such fence or fences under any Contract or Agreement made or to be made between them in respect of such erection or repairs but the defendant in any such Action as aforesaid shall or lawfully may in every case have his remedy over against his Landlord or Tenant or any other party (as the case may be) upon whom such actual liability whether exclusive or proportional may have been so imposed any thing in the said Section notwithstanding.

Respective liabilities of Owners and Tenants.

XI. PROVIDED ALSO that where at the time of the making of any such Award as aforesaid any Land in respect of which any boundary fence or fencing is required under the provisions of this Act to be repaired or erected shall be under lease for years of which not more than fourteen shall at the making of the Award be unexpired the Owner of such Land and not the Tenant shall be the party against whom such Award shall be made and upon whom the liability to repair or erect (as the case may be) any such fence or fencing shall thereby be imposed whether such Tenant shall have been the party requiring such reparation or erection or not—AND in every such case it shall be lawful for the Arbitrators at the request of the Owner and after notice and opportunity of a hearing given to the Tenant to award and determine whether any and what proportion of the expense of erecting or repairing such fence or fencing shall be contributed by such Tenant and in case any such contribution shall (by reason of the increased value or benefit [if any] to such Tenant accrued or to accrue thereby) be deemed fair and proper it shall be lawful for such Arbitrators to fix and determine a stated yearly sum in respect thereof to be payable by such Tenant quarterly

Lands under lease.

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or otherwise during the continuance of his lease as or by way of rent under such lease.

Disputed boundaries.

XII. AND BE IT ENACTED that if in any case it shall appear to the Arbitrators that any boundary line between the lands of the respective parties is unascertained or in dispute so that no Award can satisfactorily be made until such line be determined it shall be lawful for such Arbitrators with the assistance of some Justice of the Peace before deciding upon the other matters of the Award to inquire into and fix and determine such boundary line and for that purpose to examine witnesses upon oath (which such Arbitrators and Justice are hereby empowered to administer) and take such other lawful steps for that purpose as they may deem expedient and upon the settlement by such Arbitrators and Justice or any two of them of such disputed line or boundary to set out and mark and distinguish the same accordingly upon the ground and until such boundary line shall have been so settled it shall be lawful for such Arbitrators to postpone the making of any Award under this Act from time to time at their discretion.

Boundaries to be described.

XIII. AND BE IT ENACTED that a description of every boundary line so fixed and set out or distinguished as aforesaid shall be inserted in or annexed to the Award of such Arbitrators and be authenticated by their Signatures and the Signature of such Justice thereto in the presence of and attested by one of the witnesses to such Award and from thenceforth the line or lines so described shall for the purposes of this Act as against the several parties to the said Award and all persons thereafter representing or claiming title under them or either of them be deemed and taken to be in fact the boundary or boundaries of and between such lands respectively.

Boundary lines.

XIV. AND BE IT ENACTED that if at any time afterwards the Lieutenant-Governor for the time being shall signify at the foot of such description as aforesaid his approval of the same then from and after Registration of the Award in manner aforesaid the line or lines so described as aforesaid shall as against the said several parties and persons be deemed and taken conclusively to be the boundary or boundaries of and between such lands to and for all intents and purposes whatsoever.

Term "owner."

XV. AND BE IT ENACTED that every person beneficially entitled to land or to have a grant thereof whether legally or equitably and whether as Mortgager or Mortgagee Tenant in fee or for life or as Tenant for years only (if for a term exceeding fourteen years unexpired at the time of the giving of any such notice under this Act as first

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aforesaid) which said person shall at the time of the making of the Award be by himself his Agents or Tenants in the actual possession of such land shall for the purposes of this Act be deemed the Owner of such Land.

XVI. AND BE IT ENACTED that the term "fence" and the term "fencing" used in this Act shall be understood to mean or apply to any sufficient kind of enclosure whatsoever whether by wall hedge logs posts and rails or otherwise—PROVIDED that the Arbitrators shall not in any case have power to award the erection of any wall or of any fence of the description usually called a "brush" fence except by the express consent of both the parties to such Award. The term "fence."

XVII. AND BE IT ENACTED that in all cases where any fence or fencing shall under this Act be awarded to be erected the same shall be erected on the Land of the party upon whom the liability to erect such fence or fencing shall have been imposed but as near to the boundary line between the adjoining properties as shall be practicable and every fence awarded under this Act to be erected or repaired shall be deemed to be the property of the person made liable to such erection or repairs so as to enable him and all persons from time to time claiming under him continually to uphold the same and to obtain redress by Action or otherwise for any injury at any time done thereto. Property in fences.

XVIII. AND BE IT ENACTED that in all cases where a question shall arise whether any such award as aforesaid was in fact made or if so was duly made according to the provisions of this Act it shall (as against the several parties thereto and as against every person representing or claiming title under them or either of them) be sufficient for the person on whom the proof of the affirmative shall lie to produce one of the originals or counterparts of such Award or any instrument purporting in fact to be such Award and to be made under this Act and to bear the Signatures of any such Arbitrators and of two persons as witnesses thereto without proving any such signature or adducing any other proof whatever or (instead of producing any such original or counterpart) to produce or cause to be produced from the Office of the Registrar of Deeds the Memorial of such Award or any Writing purporting in fact to be the Memorial of an Award substantially corresponding with the one alleged together with the usual Certificate of the Registrar as to the receipt of such Memorial without proving any Signature to such Memorial or Certificate or adducing any other proof whatever. Proof of Award.

XIX. PROVIDED ALWAYS that no such proof as aforesaid shall Proviso.

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be received other than as primâ facie proof only and that nothing in the preceding Section shall extend to prevent any such Award from being at any time within seven years after the date thereof impeached and invalidated by the opposite party by his showing the same not to have been in accordance with the Provisions of this Act but to be contrary to the true intent and meaning thereof yet so nevertheless as that no Award under this Act shall be in any case set aside where no injustice shall appear to have been done and that no defect in matter of form only shall be regarded.

Award to operate
as a charge or lien
on the Land.

XX. AND BE IT ENACTED that in all cases where an Award made under this Act shall have been duly Registered as aforesaid the same and every Provision therein shall as to the Lands to which the same relates have the force and effect of a Judgment at law so as to operate as a charge or lien thereon in the hands of every owner thereof present or future.

Hobart Town and
Launceston.

XXI. AND BE IT ENACTED that no Award shall be made or proceeding be had under this Act in respect of any Land situated within the limits of Hobart Town or Launceston as such limits are or may be defined under the Provisions of the Act passed for regulating the Police within those Towns.

GEORGE ARTHUR.

Passed the Legislative Council this sixth
day of July one thousand eight hun-
dred and thirty-five.

ADAM TURNBULL, *Clerk of the Council.*

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SCHEDULE A.

IN pursuance of the Act to provide for the erection of Boundary Fences I hereby give notice to C. D. as the Owner of the Land next adjoining mine situate at [place] in the district of [district mentioned in the books of the Survey Office] within the Police District of [mention the District] that I require him to assist in [repairing the dividing fence or] erecting a proper and sufficient dividing fence between our respective properties and for that purpose to nominate an Arbitrator on his behalf to decide pursuant to the said Act jointly with Mr. W. H. K. the Arbitrator named by me how and when and in what proportions the same shall be effected between us. Dated [place] the day of

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SCHEDULE B.

WE A. B. and C. D. being duly nominated under the Act of this Island passed to provide for the erection of Boundary Fences to act as Arbitrators* between E. F. of [place] and G. H. of [place] respecting the erection of dividing fences between their respective properties situate in the [District or Districts or Parish or Parishes] of R. [or R. and S.] do make our Award in the premises as follows that is to say We Award—First that the particular part [or parts] of the Fencing between the said properties for the erection and repair of which the said A. B. and the Owner of the property held by him shall be liable shall be [here describe the same by reference to distances and to marks on the ground or otherwise or “as shewn by the plan in the margin” or “the plan hereto annexed”] and the particular part [or parts] of the fencing between the said properties for the erection and repair of which the said C. D. and the Owner of the property held by him shall be liable shall be [here describe the same in like manner]. Secondly—We award that [here if any Award be on this head specify the kind of fence or fences]. Thirdly—We award that the fencing for which the said A. B.’s property is so made liable shall be constructed [or repaired] by the said A. B. [or if he be not the Owner say by “H. K. the Owner thereof”] within weeks [or months] from this date and shall be [specify mode in which and description of materials with which the fencing is to be done] and the fencing for which the said C. D.’s property is so made

* Where the Award is made by one Arbitrator only or by the Umpire or by a Justice of the Peace under Section IV. this form will require adaptation accordingly.

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liable [*proceed in like manner as to C. D.'s fencing*]. Fourthly—We award that in case the said A. B.'s fencing as aforesaid shall be done by the said C. D. as by the said Fencing Act is provided then the said C. D. shall be entitled to receive from the said A. B. [*or H. K.*] for such fencing the sum of £ to be repaid to the said C. D. together with interest thereon at the rate of pounds per centum per annum within months [*or years*] next after the time of the completion of such fencing such interest to be payable by equal proportions on every [*specify the periods for its payment*] And in case the said C. D.'s fencing shall be done by the said A. B. then the said A. B. shall be entitled [*provide in like manner for this case*]. Dated this day of 18

[*Attested by two Witnesses.*] [*Signatures of Arbitrators Umpire or Justice.*]

[*Where any Contribution from a Tenant is awarded add as follows*]—

AND WHEREAS the property owned by the said A. B. [*or C. D.*] is under lease to L. M. for a term of which years or thereabouts are now unexpired—We award that the said L. M. shall in respect of the fencing hereby awarded pay to the said A. B. [*or C. D.*] during the continuance of the said term the yearly sum of £ by equal proportions on the [*specify the days of payment*].

N.B.—Every Award must be signed in duplicate.

[*Where any Boundary Line has been disputed and been settled under the Provision in Section XII annex to the Award a Memorandum as follows*]—

Memorandum.—The Boundaries [*or Boundary*] between the properties of A. B. and C. D. having been in dispute We the undersigned by virtue of the Provision for that purpose in the Act passed to provide for the erection of Boundary Fences have enquired into and fixed and set out the same and a description of the Boundary line [*or lines*] so fixed and set out by us is as follows [*or is contained in the following plan*]. Dated this day of 18

[*Attested by one of the Witnesses to the Award*].

[*Signature of Justice of the Peace and of the Arbitrators or Umpire*].