

LEGISLATIVE ASSEMBLY

Read 1^o 16 October, 1968.

(Brought in by Mr. Reid (Box Hill) and Mr. Borthwick.)

A BILL

To consolidate and amend the Law relating to
Dividing and Vermin-proof Fences, and for other
purposes.

BE it enacted by the Queen's Most Excellent Majesty by and
with the advice and consent of the Legislative Council and
the Legislative Assembly of Victoria in this present Parliament
assembled and by the authority of the same as follows (that is
5 to say) :—

1. This Act may be cited as the *Fences Act* 1968 and shall
come into operation on a day to be fixed by proclamation of the
Governor in Council published in the *Government Gazette*, and
is divided into Parts as follows :—

Short title,
commencement
and division.

- 10 Part I.—Construction of Dividing Fences ss. 4–13.
Part II.—Maintenance and Repairs of Fences ss. 14–16.
Part III.—Special Provisions relating to Vermin-proof Fences
ss. 17–27.
15 Part IV.—Proceedings for the Recovery of Contributions
ss. 28–29.
Part V.—General Provisions ss. 30–33.
Part VI.—Amendments of the *Land Act* 1958 and the
Wire Netting Act 1958 ss. 34–37.

2. (1) The Acts mentioned in the Schedule to the extent
20 thereby expressed to be repealed are hereby repealed accordingly.

Repeal.
Schedule.

(2) Except as in this Act expressly or by necessary implication provided—

- (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under the repealed Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if the repealed Acts had not been so repealed ; 5
- (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any proclamation order decision power determination agreement award reference certificate proceeding charge notice liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under the repealed Acts before the commencement of this Act. 15

Interpretation.

Nos. 6249 s. 3,
6432 s. 2.

" Court of
petty
sessions."

" Dividing
fence."

" Municipality."

" Occupier."

3. In this Act, unless inconsistent with the context or subject-matter— 20

" Court of petty sessions " means a court of petty sessions constituted by a stipendiary magistrate sitting with or without a justice or justices.

" Dividing fence " means a fence separating the lands of different occupiers. 25

" Municipality " includes city town borough and shire.

" Occupier " includes any person who is—

in the actual occupation of or entitled as owner to occupy any land purchased from the Crown under contract of sale or alienated from the Crown by grant lease or licence ; and 30

the holder of a right to occupy a residence area in respect of land under the *Land Act* 1958 whether comprised in a gold mining or mineral lease or not— 35

but does not include—

(a) any person in the occupation of or entitled to occupy land under Part I. of the *Mines Act* 1958 ; or 40

(b) any person in the occupation of land held by yearly licence under any Act relating to the sale and occupation of Crown lands which has been in force or comes into force.

"To

“To repair” includes to trim keep and maintain a live fence. “To repair.”

PART I.—CONSTRUCTION OF DIVIDING FENCES.

4. (1) The occupiers of adjoining lands not divided by a fence sufficient for the purposes of both occupiers shall be liable to construct, or join in or contribute to the construction of, a dividing fence sufficient for the purposes of both occupiers between the adjoining lands in accordance with the following provisions :—

Liability of occupiers of adjoining lands to fence.

No. 6249 s. 5.

(a) In cases where land is occupied for agricultural or pastoral purposes, and the adjoining land is occupied for residential purposes—

(i) where the adjoining lands are not divided by any dividing fence, or are divided by a dividing fence which is of a kind sufficient only for the purposes of the occupier of the land occupied for agricultural or pastoral purposes and which is out of repair—the occupier of the land occupied for agricultural or pastoral purposes shall be liable to join in or contribute only to the extent of one-half of the cost of a dividing fence sufficient for the purposes for which he occupies the land, and the occupier of the adjoining land shall be liable to join in or contribute to the extent of the balance ;

(ii) where the adjoining lands are divided by a dividing fence which is sufficient only for the purposes of the occupier of the land occupied for agricultural or pastoral purposes and which is in repair—the occupier of the land adjoining the land used for agricultural or pastoral purposes shall be liable to construct the whole of the new dividing fence ;

(b) In other cases—the occupiers of the adjoining lands shall be liable to join in or contribute in such proportions as are agreed upon or, in the absence of agreement, are determined by a court of petty sessions under this Act.

(2) Save as otherwise expressly provided in this Part, the provisions of this Part shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act, and no contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Part, or to indemnify any person against any claims made under this Part.

This Part available despite agreements.

5. (1) Where

Where water-course is natural boundary, occupiers may agree on line of fence.

No. 6249 s. 6.

5. (1) Where a river creek or natural watercourse forms the boundary between adjoining lands but is not capable of resisting the trespass of cattle, the occupiers of the adjoining lands may agree upon such a line of fence on either side of the river creek or natural watercourse as will secure a fence from the action of floods. 5

(2) If the occupiers fail to agree upon a line of fence, either occupier may call in the nearest stipendiary magistrate or any justice whom the occupiers agree to select who shall—

- (a) determine the line of fence ; and 10
- (b) decide whether any compensation in the shape of an annual payment shall be paid to either of the occupiers in consideration of loss of occupation of land, and if any, the amount of the compensation.

(3) The stipendiary magistrate or justice shall be entitled to receive from the occupiers in equal proportions the actual cost of his travelling expenses (if any) incurred in visiting and inspecting the ground. 15

(4) The occupation of lands on either side of the line of fence shall not be deemed to be adverse possession, and shall not affect the title to or possession of any of the adjoining lands, except for the purposes of this Act. 20

Service of notice to fence.

No. 6249 s. 7.

6. Any person desiring to compel any other person to construct or join in or contribute to the construction of a dividing fence may serve on the other person a notice to fence which shall— 25

- (a) be in writing or in print, or partly in writing and partly in print ;
- (b) specify the boundary to be fenced ;
- (c) contain a proposal for fencing the boundary ; and
- (d) specify the kind of fence proposed to be constructed. 30

In default of agreement, court or arbitrator may decide.

No. 6249 s. 8.

7. (1) If within one month after the service of a notice to fence the person serving and the person served with the notice do not agree upon the construction of a fence, the kind of fence to be constructed, or the proportions in which they are to join in or contribute to the construction of the fence, a court of petty sessions on the complaint of either of them may make an order prescribing— 35

- (a) the kind of fence to be constructed ;
- (b) the portion of the fence to be constructed by each person, or the proportion of the cost of constructing the fence to be contributed by each person ; and 40
- (c) where such further order is necessary, the position of the fence.

(2) The

(2) The court may refer the determination of the matters to be prescribed by the order to the award of an arbitrator who shall be appointed by an order of the court.

(3) The arbitrator shall within the time stipulated in the order appointing him (if any) deliver his award to the clerk of the court.

(4) The award of the arbitrator shall have the same effect as, and be deemed to be, an order of the court.

(5) Where an arbitrator—

- (a) neglects or declines to act ;
- (b) becomes incapable of acting ; or
- (c) dies—

the court may appoint in his place another arbitrator who shall have the same powers and duties.

(6) In making the order or award, the court or arbitrator (as the case may be) shall be guided as to the kind of fence to be constructed by the kind of fence usually constructed in the place where it is proposed to construct the fence.

8. (1) Where—

- (a) the person serving and the person served with a notice agree concerning the construction of a fence, or in the absence of agreement an order of a court of petty sessions or an award of an arbitrator is made ; and
- (b) either person fails to perform his part of the agreement or to comply with the order or award within the time named in the agreement order or award or, where no time is named, within three months of the agreement order or award—

Where failure to carry out agreement, order or award, occupier may construct fence and recover contribution.
No. 6249 s. 9.

the other person may construct the whole fence in compliance with the agreement order or award and may recover the proportion of the cost agreed upon ordered or awarded before a court of petty sessions.

(2) No proceedings for the recovery of a proportion of the cost of construction of a fence shall fail on the ground that the fence was not constructed in compliance with an agreement order or award unless the agreement order or award was not complied with in a respect or to an extent which was material.

9. (1) When the occupier of any land is absent from Victoria or cannot be found or any land is unoccupied, the occupier of any adjoining land may—

- (a) insert in a newspaper circulating in the neighbourhood of the land a notice addressed to the occupier describing him as the occupier of the land requiring him to contribute to the construction of a dividing fence ; or

If occupier cannot be found other occupier may give notice to fence, and recover when land occupied.
No. 6249 s. 10.
No. 6550 s. 2.

(b) where

- (b) where the case allows, send such a notice by registered post to the occupier of the land at his address as shown in the rate book of the municipality within whose district the land is situated.

(2) The occupier of the adjoining land may then proceed *ex parte* to obtain from a court of petty sessions or an arbitrator appointed by the court an order or award (as hereinbefore provided in the case of persons not agreeing as to the construction of a fence, the kind of fence to be constructed, or the proportions in which they are to join in or contribute to the construction of a fence)—

- (a) authorizing the construction of a fence sufficient for the purposes of both occupiers ;

- (b) specifying the kind of fence to be constructed ;

- (c) specifying what proportion of the cost of constructing the fence is to be contributed by each occupier ; and

- (d) specifying the position of the fence.

(3) The occupier of the adjoining land may construct a fence in compliance with the order or award.

(4) If during the continuance of the fence any person occupies the land, the occupier of the adjoining land may within one month thereafter serve any person who if the fence was not in existence would be liable to contribute to the construction of a dividing fence with a copy of the order or award.

(5) The occupier of the adjoining land shall after the expiration of one month from the date of such service be entitled to recover the same proportion of the existing value of the fence as was originally ordered or awarded against the occupier of the land in relation to the cost of its construction.

(6) No proceedings for the recovery of a proportion of the value of the fence shall fail on the ground that the fence was not constructed in compliance with the order or award unless the order or award was not complied with in a respect or to an extent which was material.

(7) If in the opinion of any person liable to contribute to the construction of the fence the order or award made *ex parte* is inequitable, he may make a complaint within one month after the service of the order or award in a court of petty sessions.

(8) The court may—

- (a) relieve the complainant from the whole or any portion of the sum claimed as the value of the fence ; or

- (b) order that the line of the fence be altered on such terms as are just.

10. (1) Where

10. (1) Where any fence is constructed under the provisions of this Act dividing any lands held by any person as tenant of any landlord from any adjoining lands, the cost thereof as between such landlord and tenant shall subject to sub-section (4) be payable in the proportions following :—

Apportionment
of cost of
fencing
between
landlord and
tenant.

No. 6249 s. 11.

- (a) Where the interest of the tenant at the time of the construction of the fence is less than for a term of three years, the whole cost shall be payable by the landlord ;
- 10 (b) Where the interest of the tenant is for a term of three years and less than for a term of six years, three-fourths of such cost shall be payable by the landlord and one-fourth of the cost by the tenant ;
- 15 (c) Where the interest of the tenant is for a term of six years and less than for a term of twelve years, one-half of the cost shall be payable by the landlord and one-half by the tenant ;
- 20 (d) Where the interest of the tenant is for a term of twelve years or upwards, the whole of the cost shall be payable by the tenant.

(2) If either the landlord or the tenant pays under the provisions of this Act more than his proper proportion of the cost, he may recover the excess before a court of petty sessions from his landlord or tenant (as the case may be) and any tenant may set off any sum recoverable by him under this section against any rent payable to his landlord.

(3) Where a tenant is served with a notice order award or certificate under this Act relating to the construction of a fence, he shall within fourteen days serve a copy of the notice order award or certificate on his landlord.

(4) Where the tenant fails to serve a notice order award or certificate on his landlord within fourteen days of being served with it, the whole cost of the construction of the fence shall be payable by the tenant.

35 11. Any tenant having a right to purchase any land occupied by him at a fixed rate shall on the completion of the purchase pay to his landlord, in augmentation of and as part of the purchase money, any sum paid by such landlord under the last preceding section, together with interest on the same at the rate of eight
40 per centum per annum.

Tenant having
a right to
purchase to
pay owner sum
paid by him
and interest
when purchase
completed.

No. 6249 s. 12.

12. (1) Where

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

No. 6249 s. 13.

12. (1) Where any person has constructed on the boundary of his land a dividing fence sufficient for the purposes for which he occupies the land and the land adjoining is unalienated Crown land, the occupier of the land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the then actual value of the dividing fence.

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(2) The value of the fence shall be ascertained as soon as practicable after the adjoining land has become so occupied and in default of agreement between the parties the value may on the complaint of either of them be determined by a court of petty sessions.

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(3) Any sum recoverable under this section may be recovered in a court of petty sessions.

Power to construct a fence upon a road.

No. 6249 ss. 14, 15.

13. (1) If the occupier of any land bounded by a road within a municipality desires to plant a live fence on the common boundary of his land and the road and for that purpose to construct a temporary fence upon such road he shall give notice in writing of his desire to the council of the municipality describing the proposed fence and its proposed position.

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(2) Any court of petty sessions, within one month after the service of any notice on the council of any municipality under sub-section (1), on the complaint of and good and sufficient cause shown by such municipality, may order the occupier serving such notice not to proceed with the construction of the temporary fence.

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(3) If within one month after the service of such notice the occupier is not served with an order of a court of petty sessions prohibiting the construction of the temporary fence, the occupier may at any time not exceeding six months after the service of the notice proceed to construct the temporary fence in compliance with the following conditions :—

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(a) No part of the temporary fence shall be more than six feet distant from the nearest point on the boundary of his land ; and

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(b) The width of the road available for traffic after the construction of the temporary fence shall not in any place where the road is reduced by the construction of the temporary fence be less than thirty feet.

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(4) If the occupier after the construction of the temporary fence forthwith proceeds to plant a live fence on the boundary of his land and the road, and afterwards constantly and with all

proper

proper diligence protects it from injury, he may maintain the temporary fence on the road for a period not exceeding four years, or such longer period as the council of the municipality in writing allows, until the live fence becomes a fence sufficient for the purposes of the occupier.

PART II.—MAINTENANCE AND REPAIRS OF FENCES.

14. Where a dividing fence which is of a kind sufficient for the purposes of both the occupiers of lands separated by the dividing fence is out of repair, the occupiers shall be liable to repair, or join in or contribute to the repair of, the dividing fence in accordance with the following provisions :—

Adjoining occupiers to keep fences in repair.
No. 6249
ss. 16, 17.

(a) Where the dividing fence has been destroyed or damaged by fire or by the falling of a tree through the neglect of an occupier—the occupier shall be liable to repair the entire fence or the damaged portion of it (as the case may be) ;

(b) In any other case—each occupier shall be liable to join in or contribute to the repairing of the fence in such proportions as shall be agreed upon or, in default of agreement, determined by a court of petty sessions under this Part.

15. (1) Where an occupier of land desires the occupier of adjoining lands to repair, or join in or contribute to the repairing of, a dividing fence, he may serve a notice on the occupier of the adjoining lands requiring him to repair, or join in or contribute to the cost of the repairing of, the fence (as the case may be).

Procedure for compelling repairs, or contribution to repairs.
No. 6249 s. 17.

(2) If the occupier served with the notice refuses or neglects to repair or join in or contribute to the cost of repairing the fence (as the case may be) for the space of one week after service of the notice, the occupier serving the notice may repair the fence and demand and recover from the occupier of the adjoining lands the cost of repairing the fence or the proportion of the cost of repairing the fence which is agreed upon or in default of agreement, determined by a court of petty sessions under this Part.

(3) Notwithstanding anything to the contrary in sub-sections (1) and (2), if a dividing fence or any portion of a dividing fence is destroyed by accident either occupier may immediately repair the fence without any notice, and demand and recover from the other occupier the proportion of the cost of repairing the fence which is agreed upon, or in default of agreement, determined by a court of petty sessions under this Part.

16. Where

In default of agreement, court may determine contributions.

16. Where a fence is repaired under this Part, and the occupiers of the land separated by the dividing fence do not agree upon the proportions which they are to be liable to contribute to the cost of repairing the fence, a court of petty sessions may on the complaint of either of them make an order prescribing the proportions in which they are to be liable to contribute to the cost of repairs. 5

PART III.—SPECIAL PROVISIONS RELATING TO VERMIN-PROOF FENCES.

Definition of "vermin-proof fence".

No. 6249 s. 18.

17. In this Part "vermin-proof fence" means a fence of one of the following kinds:— 10

(a) A wire net fence four feet ten inches in height consisting of wire netting constructed in accordance with the following provisions—

(i) the lower portion of the netting shall be not less than three feet in width and of a mesh not exceeding one inch and five-eighths, shall be six inches in the ground or shall have six inches thereof properly secured to the surface of the ground, and shall be two feet six inches above the ground ; 15 20

(ii) above such wire netting shall be placed other wire netting not less than two feet in width and of a mesh not exceeding four inches ;

(iii) the whole of such wire netting shall be attached by wire or staples to substantial posts stakes or iron standards, which posts stakes or iron standards shall be at least six feet nine inches in height, placed one foot ten inches in the ground, and not more than ten feet apart ; 25 30

(iv) four inches above the netting there shall be a barbed wire stapled to each post stake or standard and drawn through straining posts eight feet in length of which three feet shall be in the ground (which straining posts shall be not more than five chains apart) ; 35

(b) A wire net fence three feet four inches in height made of wire netting which shall— 40

(i) not be less than three feet six inches in width ;

(ii) be

(ii) be of a mesh not exceeding one inch and five eighths ;

(iii) be six inches in the ground or shall have six inches thereof properly secured to the surface of the ground ; and

(iv) be attached by a wire or staples to substantial posts stakes or iron standards with a barbed wire extending from one post stake or standard to another and placed four inches above the netting ;

(c) A post and rail or paling fence of substantial material firmly erected not less than three feet six inches in height—

(i) having three wires tightly stretched or two wires and top rail in either case with posts or standards of iron or durable wood not more than twelve feet apart ;

(ii) having galvanized wire netting not less than three feet six inches wide number seventeen gauge and not larger than a one and a half inch mesh firmly affixed thereto, and sunken in the ground not less than six inches ;

(d) A post and rail or paling or wire fence or portion or portions of a fence of any of the descriptions in sub-paragraphs (i) (ii) and (iii) of this paragraph to which is firmly affixed galvanized wire netting not less than three feet six inches wide and number seventeen gauge and not larger than a one and a half inch mesh sunken into the ground not less than six inches—

(i) a post and rail fence at least three feet six inches in height of substantial material firmly erected with no greater distance between the rails or the bottom rail and the ground than one foot unless there is a wire inserted between the rails and the posts not more than nine feet apart ;

(ii) a substantial paling or picket fence at least three feet six inches in height with no greater distance between the palings or pickets than four inches ;

(iii) a substantial

(iii) a substantial wire fence at least three feet six inches in height having wires tightly stretched with no greater distance between each of the three lowest wires or the bottom wire and the ground than six inches and the posts or standards or binding wires of which are not more than eleven feet from each other with straining posts not more than four hundred yards apart ; 5

(e) Any fence proclaimed by Order of the Governor in Council under section 23 of the *Wire Netting Act* 1958, or any corresponding previous enactment to be a vermin-proof fence or rabbit-proof fence ; but no fence so proclaimed shall for the purposes of this Act be a vermin-proof fence beyond the limits of the part or portion of Victoria (if any) specified in such Order. 15

Power to Governor in Council to proclaim vermin-proof fence.
No. 6249 s. 19.

18. The Governor in Council may by Order proclaim any fence described in such Order to be a vermin-proof fence within the meaning of this Part either throughout Victoria or within any portion thereof specified in such Order and may at any time revoke any Order made under this section or paragraph (e) of the last preceding section or any corresponding previous enactment. 20

Liability respecting vermin-proof dividing fence.
No. 6249 s. 20.
No. 7228 s. 7.

19. (1) Notwithstanding anything in this Act, where any adjoining lands are not divided by a vermin-proof fence and the Minister of Lands on consideration of a recommendation or report by any officer of the Department of Crown Lands and Survey made after a personal inspection by such officer certifies in writing that a vermin-proof fence is necessary, each of the occupiers of the adjoining lands shall subject to sub-sections (2) and (3) be liable to contribute in equal proportions— 25

(a) towards constructing a vermin-proof fence between such lands ; or

(b) towards making vermin-proof any fence previously constructed between such lands ; or 35

(c) towards maintaining and repairing any vermin-proof fence previously constructed between such lands.

(2) A copy of the certificate shall be served on each occupier personally or by post.

(3) Any person who feels aggrieved by the certificate of the Minister may within fourteen days of being served with a copy of the certificate lodge with the Minister a statement of his objections thereto and the Minister upon consideration of the objections may cancel or confirm the certificate. 40

(4) This

(4) This section shall not apply to Crown lands or any land vested in the Railway Construction Board or the Victorian Railways Commissioners or in any "Authority" as defined in section 3 of the *Water Act* 1958.

- 5 20. (1) Where a person desires to compel any other person to contribute to the construction of a dividing fence and desires that such fence shall be a vermin-proof fence he shall in the notice to be served on the person pursuant to section 6 distinctly specify the kind of vermin-proof fence proposed to be constructed.
- 10 (2) Where such notice distinctly specifies the kind of vermin-proof fence proposed to be constructed the power of the court or of any arbitrator to prescribe or award the kind of fence to be constructed shall be limited to prescribing or awarding the particular kind of vermin-proof fence to be constructed.
- 15 21. For the purposes of this Part the making of any dividing fence vermin-proof shall be deemed to be the construction of a vermin-proof fence, and all the provisions of this Act enabling any person to compel any other person to contribute to the construction of a vermin-proof fence shall equally apply to
- 20 compelling persons to contribute to the making of any fence so constructed vermin-proof and such provisions with such substitutions as may be necessary for such purpose shall be read and construed accordingly.
- 25 22. Notwithstanding anything to the contrary in this Act, where any person has (whether before or after the commencement of this Act) constructed on the boundary of his land a fence of any of the kinds specified in paragraphs (c) and (d) of section 17 but having wire netting the mesh of which is larger than one and a half inch and not larger than one and five-eighths inch the occupier of any adjoining land shall not be entitled to compel any such person to contribute towards constructing a vermin-proof fence of another kind in place of such fence or on the ground merely of the size of the mesh to contribute towards making such fence vermin-proof.
- 35 23. (1) Where any person constructs on the boundary of his land a vermin-proof fence and the land immediately adjoining is unalienated Crown land, the occupier of the land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the then actual value of the vermin-proof fence forming the dividing fence.

Notice to fence to specify proposed kind of vermin-proof fence.

No. 6249 s. 21.

Only a vermin-proof fence is to be erected when specified in notice.

Making a fence vermin-proof to be deemed constructing a vermin-proof fence.

No. 6249 s. 22.

No contribution in case of certain kinds of fence.

No. 6249 s. 23.

Persons who enclose land before lands adjoining have been granted shall be authorized to recover from future occupier one-half of the actual value of the vermin-proof fence.

No. 6249 s. 24.

(2) The

(2) The value of the fence shall be ascertained as soon as practicable after the adjoining land has become so occupied and in default of agreement between the parties the value may on the complaint of either of them be determined by a court of petty sessions.

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(3) In ascertaining or determining for the purposes of this section the value of any fence containing wire netting, there shall be deducted from the value of the fence any proportion of the value of the wire netting which is attributable to assistance provided under the *Wire Netting Act* 1958.

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(4) Any sum recoverable under this section may be recovered before a court of petty sessions.

Proportion of
cost of
vermin-proof
fence a charge
on land
until paid.
No. 6249 s. 25.

24. (1) If any person served with a notice requiring him to contribute towards the construction of a vermin-proof fence or the making of any dividing fence vermin-proof proves to the satisfaction of a court of petty sessions upon the hearing of a complaint under section 7 that he is unable to contribute his proportion of the cost of such construction or of the work of making the fence already constructed vermin-proof the court may make an order that the person giving such notice shall be at liberty to construct the whole of the fence or do the whole of the work.

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(2) Upon the construction or work being completed the proportion of the cost for which the person serving the notice is liable shall become and until paid be and remain a charge upon the land, and the owner of the land until he pays the amount of such proportion shall pay annually to the person so constructing the fence or doing such work interest upon such amount at the rate of six per centum per annum.

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(3) If default is made in respect to any such annual payment of interest the payment may be enforced at any time by the person entitled to receive the interest in a summary way before a court of petty sessions or by action in any court of competent jurisdiction.

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(4) Every mortgagee or lienee of or over any land shall be at liberty when any sum has pursuant to this Act become a charge upon such land to pay the amount of such charge, and such payment when so made shall be deemed a part of the principal sum secured by such mortgage or lien respectively and be subject to the provisions powers and trusts thereof.

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(5) When

- (5) When any order is made by a court of petty sessions under this section the amount which any person is liable to contribute as his proportion of the cost of constructing a vermin-proof fence or of making vermin-proof any fence previously constructed, may
 5 be determined by such court at the time of making such order, or if not then determined it may on the complaint of either party or of the owner for the time being be determined by a court of petty sessions at any time subsequent to the construction of such fence or the doing of such work.
- (6) If the complaint is not the complaint of the owner for the time being the court may direct that the owner be made a party to and served with a copy of the complaint and may adjourn the hearing to enable the owner to appear.
25. The provisions of Part II. of this Act shall apply to the
 15 maintenance and repairs of fences constructed or made vermin-proof under the provisions of this Part or any corresponding previous enactment.
26. Every person who wilfully destroys or breaks down or injures or removes any vermin-proof fence belonging to another
 20 person or any portion thereof, or cuts, detaches or removes any netting forming part thereof shall in addition to paying the amount of the injury done be liable on conviction before a court of petty sessions—
- (a) for a first offence to a penalty of not less than \$20 nor more than \$200 ;
- (b) for a second of subsequent offence to imprisonment with or without hard labour for a term of not less than three nor more than twelve months.
27. (1) Every person who, on any land within twelve yards
 30 from any vermin-proof fence, or on any road sets or uses any snare, trap, engine or contrivance for the taking of hares or rabbits shall be liable on conviction before a court of petty sessions—
- (a) for a first offence to a penalty of not less than \$10 nor more than \$50 ;
- (b) for a second or subsequent offence to a penalty of not less than \$10 nor more than \$100.
- (2) In the case of any such land (other than a road) the foregoing provisions of this section shall not apply to—
- (a) the owner or occupier of any such land or any person acting under his written authority ; or
- 40 (b) any inspector acting under the authority of the *Vermin and Noxious Weeds Act 1958.*

Determination
of amount.

Provisions
extended to
this Part.
No. 6249 s. 26.

Penalty for
destroying, &c.,
vermin-proof
fence.
No. 6249 s. 27.

Penalty for
setting traps
for hares or
rabbits within
twelve yards
of vermin-proof
fence.
No. 6249 s. 28.
No. 6961 s. 2.

Exemption
from the
provisions of
this section.

PART IV.—PROCEEDINGS FOR THE RECOVERY OF CONTRIBUTIONS.

From whom
moneys
recoverable.
No. 6249 s. 29.

28. (1) Where any person serves a notice to fence or repair or a copy of an *ex parte* order or award the person serving the notice may recover all moneys recoverable under this Act in respect of the construction or repairing of the fence from—

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(a) any person who is liable to contribute to the cost of constructing or repairing the fence who is served with notice to fence or repair or the *ex parte* order or award ; or

(b) any person who comes in and defends under the provisions of this Act any proceedings consequent upon the notice or the service of the order or award.

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(2) If any moneys are recoverable by the person served with notice he may recover them from the person serving the notice or any person liable to contribute to the construction or repair of the fence as tenant of whom the person serving the notice holds the lands bounded by the fence.

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Proceedings to
be before
court of petty
sessions.

No. 6249 s. 30.
No. 6432 s. 2.

29. (1) All proceedings for orders and for the recovery of sums of money shall be before a court of petty sessions.

(2) Every complaint under this Act shall be heard summarily at a court of petty sessions sitting near to the locality of the fence to which the same relates.

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(3) The costs of every complaint shall be in the discretion of the court but where a court appoints an arbitrator the court may if it thinks fit refer the costs of the reference to the award of the arbitrator.

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PART V.—GENERAL PROVISIONS.

Act not to
interfere with
agreements.

No. 6249 s. 31.

30. Except as is in this Act provided, nothing in this Act 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 between occupiers of adjoining land.

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Act not to
apply to
unalienated
Crown lands.
No. 6249 s. 32.
No. 7228 s. 7.

31. This Act except as is in sections 12 and 23 otherwise provided shall not apply to any unalienated Crown lands ; nor shall the Crown the Governor the Minister of Lands the Minister of Public Works nor any public officer appointed by the Governor or by the Governor in Council for the administration management or control of the Crown lands or public works or who by virtue of his office however styled has any such management or control be liable under this Act to make any contribution towards the construction or repairing of any dividing fence between the land of any occupier and any Crown land.

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32. Every

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

Persons constructing fences can enter upon adjoining lands.
No. 6249 s. 33.

33. Any landlord may come in and defend any proceeding under this Act against his tenant in consequence of which the landlord may ultimately incur any liability, and any defence which the tenant might set up shall be available to the landlord.

Power of landlord to come in and defend proceeding against his tenant under this Act.
No. 6249 s. 34.

PART VI.—AMENDMENTS OF THE LAND ACT 1958 AND THE WIRE NETTING ACT 1958.

34. In sections 3 and 274 of the *Land Act* 1958 for the interpretation of "Fence" there shall be substituted the following interpretation :—

Amendment of No. 6284 ss. 3, 274.

"Fence" means a fence of one of the following kinds :—

(a) A post and rail fence at least three feet six inches in height of substantial material firmly erected with no greater distance between the rails or the bottom rail and the ground than one foot unless there is a wire (which may be wholly or partly barbed wire) inserted between the rails and the posts not more than nine feet apart ;

(b) A substantial paling or picket fence at least three feet six inches in height with no greater distance between the palings or pickets than four inches ;

(c) A substantial wire fence at least three feet six inches in height having wires (which may be wholly or partly barbed wires) tightly stretched with no greater distance between each of the three lowest wires or the bottom wire and the ground than six inches and the posts or standards or binding wires of which are not more than eleven feet from each other with straining posts not more than four hundred yards apart ;

(d) A natural

- (d) A natural stream ditch or watercourse not less than seven feet broad at the top and four feet broad at the bottom and not less than three feet six inches deep with a stream of water running in it and with a bank with a slope of not more than one in three or any fence or combination of the above-mentioned fences on either side thereof being not more than eighteen inches from the edge of the ditch and the top not being less than two feet above the level of the ground.' 5 10

Amendment
of No. 6284
s. 224.

35. In section 224 of the *Land Act* 1958 for the expression "section six of the *Fences Act* 1958" there shall be substituted the expression "section 5 of the *Fences Act* 1968".

Amendment
of No. 6284
ss. 404, 406.

36. In sub-section (2) of section 404, and in sub-section (2) of section 406 of the *Land Act* 1958 for the expression— 15

"sufficient fence within the meaning of the *Fences Act* 1958"

there shall be substituted the following expression :—

"fence of either of the kinds described in paragraphs (b) and (c) of the interpretation of "Fence" in section 3". 20

Amendment
of No. 6417,
s. 23.

37. Sub-section (2) of section 23 of the *Wire Netting Act* 1958 shall be repealed.

Section 2.

SCHEDULE.

Number of Act.	Title of Act.	Extent of Repeal.
6249	<i>Fences Act</i> 1958	The whole
6432	<i>Fences (Amendment) Act</i> 1958	The whole
6550	<i>Fences (Amendment) Act</i> 1959	The whole