

Brown v. Langham LR 3 PC 45-8.

4-543

No. 311 of '84, Sched 2
— 321 — Sec. 40
444-88, S. 167, 16
478-90, S. 31



Repeal 538 d
'91, S. 2

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

A.D. 1865-6.

No. 6.

An Act to repeal an Ordinance, No. 10 of 1846, "To encourage the Fencing of Land," and to make other provisions in lieu thereof.

[Assented to, 16th March, 1866.]

WHEREAS it is expedient to repeal an Ordinance, No. 10 of 1846, "To encourage the Fencing of Land," and to make other provisions in lieu thereof—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. An Ordinance, No. 10 of 1846, "To encourage the Fencing of Land," is hereby repealed, save so far as may be necessary to support any proceeding taken thereunder before the passing hereof.

2. This Act may be cited for all purposes, as the "Fencing Act, 1865."

3. In the construction of this Act, the following terms shall, unless inconsistent with the context or subject matter, have the respective meanings hereafter assigned to them respectively, that is to say—

"Owner of a dividing fence," shall mean the person who, irrespective of this Act, by act of parties, is liable to keep such fence in repair; and if none, then the person who would be primarily damnified, if such fence were destroyed:

"Fence,"

No. 478 No. 90, S. 31.

Fencing Act.—1865-6.

“Fence,” shall mean any fence ordinarily capable of resisting the trespass of great cattle :

“Party fence,” shall mean any fence which has been jointly erected by the owners or occupiers of adjoining lands, to divide such lands, or towards the erection of which such owners or occupiers have contributed, or towards the cost of erecting which either owner or occupier has contributed under the provisions of this Act or of the Ordinance hereby repealed :

“Part-occupier,” shall mean the person in actual occupation, or if none, then the owner, of the land adjoining or abutting on any party fence :

“Avail,” any occupier of land shall be deemed to have availed himself of a fence within the meaning of this Act, who shall, in the occupation of such land, erect or use any other fence which abuts on such first-mentioned fence, or make such first-mentioned fence in any way a portion of the means whereby such land is in any way enclosed, whether such occupier shall have completed any enclosure of the said land, or not.

No. 478 No. 90, S. 31.

No. 4444 No. 1888, S. 168.

Occupiers availing themselves of dividing fence to pay half value.

4. When any occupier of land has heretofore availed himself, or shall hereafter avail himself, of any fence, not being a party fence, dividing such land from the land adjoining, the occupier in possession shall, upon demand, be liable to pay to the owner of such dividing fence one-half part of the value at the time of such demand of so much of such fence as shall abut upon the land so occupied as aforesaid.

Part-occupiers to keep party fence in repair, or pay half costs of same.

5. Whenever any party fence shall become defective or out of repair, or shall be totally destroyed, either part-occupier may give to the other part-occupier notice of his intention to repair or reinstate the same, and require the other part-occupier to bear his proportion of such repair or reinstatement, and may, if such other part-occupier shall refuse or neglect, for the term of seven days, to contribute to the repairing or reinstating of such party fence, cause the same to be repaired or reinstated, and the part-occupier so neglecting or refusing shall, upon demand, be liable to pay to the part-occupier by whom such repairs or reinstatements were effected one-half part of the costs of such reparation or reinstatement.

Part-occupiers depasturing sheep to pay half cost of making fence capable of resisting trespass of sheep.

6. Whenever any party fence, capable only of resisting the trespass of great cattle, shall have been made by either of the part-occupiers capable of resisting the trespass of sheep also, the other part-occupier, so soon as he shall keep and depasture sheep on the land adjoining the said fence, shall be liable to pay to the part-occupier by whom such fence shall have been made capable of resisting the trespass of sheep as aforesaid, or to any succeeding part-occupier, one-half part of the value (at the time he shall commence

Fencing Act.—1865-6.

commence to depasture sheep as aforesaid) of any additions made to such fence for the purpose aforesaid.

7. No action shall be brought, under the provisions hereof, to recover any sum of money for the value of any fence to be hereafter erected, unless, (previous to the erection of such fence,) the person proposing to erect the same shall have given to the occupier of the adjoining land, if such land shall be then occupied, notice in writing, requiring him to contribute rateably towards such erection; and such occupier shall have refused or neglected for one calendar month so to contribute; or (in case any such fence shall have been heretofore erected) or the adjoining land shall be unoccupied at the time of the erection of any such fence to be hereafter erected; unless the owner of such fence shall have made a demand in writing upon the occupier, if any, of the adjoining land, requiring payment within one calendar month of one-half of the value of such fence.

Action not to be brought to recover value of dividing fence, unless notice given or demand made.

computed from when? In passing of this Act?

8. All notices required to be given by this Act shall be in writing, and signed by the person giving notice, or by his attorney or agent, and may be delivered either personally to the party to whom the same are directed or at his last known place of abode.

Notice how to be served.

9. No greater sum shall be recovered from any person under this Act for the cost of erecting, repairing, or reinstating any fence than the amount which would be payable if such fence had been an ordinary fence, and had been erected for the price usually paid in the district for erecting such a fence at the time when such sum first became payable.

Maximum rates to be recoverable for fences.

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.