

FENCING ORDINANCE, 1912.⁽¹⁾

No. 31 of 1912.

An Ordinance to regulate the Fencing of Land in the Territory of Papua.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Fencing Ordinance*, 1912.⁽¹⁾ Short title.

It shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.⁽¹⁾

2. *The Fencing Act of 1861* 25 Vic. No. 12 (Queensland adopted) is repealed. Repeal.

3.—(1.) In this Ordinance unless the context otherwise indicates or requires— Interpretation.

“cross fence” means a fence duly erected across the common boundary under the provisions of this Ordinance. Cross fence.

“land” or “lands” means any land alienated from or demised by the Crown by grant agreement or land held under licence from the Crown; but shall not include land held under the Crown by yearly licence under any Ordinance relating to land nor any unalienated or undemised lands of the Crown nor any land owned by natives.

(2.) Where lands of different owners or occupiers adjoin a watercourse or other natural feature of such a character as to be insufficient to prevent the passage of stock and are separated as to any parts of each by such watercourse or other natural feature as aforesaid such lands shall in relation to each other be called “neighbouring” lands and the owner or occupier of each of such lands shall in relation to the owner or occupier of the other be called the “neighbouring” owner and occupier respectively. Q. 61 Vic. No. 9, s. 1.
Neighbouring lands.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	7.5.1913 (Papua Govt. Gaz. of 7.5.1913)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

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Common
boundary.

That portion of such watercourse or other natural feature as aforesaid which forms the common boundary of lands adjoining the same on opposite sides thereof shall be called the "common boundary" of such lands.

Half the value
of existing fence
to be paid for
by adjoining
proprietors.

Q. 25 Vic. No.
12, s. 2.

4. It shall be lawful for the owner of any land who shall before the passing of this Ordinance have erected a fence dividing such land from the land adjoining thereto his successors in title or assigns to demand and recover of and from the owner or occupier of such adjoining land half the value of such dividing fence.

Occupier of
adjoining land
to assist in
making dividing
fence.

Q. 61 Vic. No. 9,
s. 3.

5.—(1.) The owner of any land not separated by a dividing fence from any adjoining land may serve a notice as hereinafter mentioned upon the occupier or if there be no occupier then upon the owner of such adjoining land or his attorney or agent requiring him to assist in or contribute to the erection of a dividing fence in equal proportions; and if such occupier or owner or his attorney or agent shall refuse or neglect for the space of three months from the service of such notice to assist in or contribute to the making of such fence or having commenced shall not use due diligence in completing the same it shall be lawful for the person serving such notice as aforesaid to make and complete such fence and to demand and receive from such other occupier or owner half the cost thereof.

Dividing
fence between
neighbouring
lands.

(2.) In the case of neighbouring lands the owner of lands on one side of the common boundary may require the neighbouring owner or occupier to join him in separating their respective lands by a fence erected along the common boundary for the common advantage of such lands wholly on one side or partly on one side and partly on the other side of such common boundary and by the necessary cross fences and every such fence and such cross fence or cross fences shall together be deemed to be a dividing fence within the meaning and for the purposes of the provisions of this Ordinance.

Settlement of
disputes
concerning
water.

(3.) In the event of any dispute arising between the owners or occupiers of neighbouring lands with respect to a fair division of the water contained in any watercourse lagoon or waterhole forming part of the common boundary upon which common boundary a dividing fence has been or is about to be erected such dispute shall be decided by the nearest Court of Petty Sessions in the manner provided by the fifteenth section of this Ordinance.

Extension of
provisions of
Ordinance.

(4.) All the provisions of this Ordinance hereinafter contained relating to adjoining lands and the owners and occupiers thereof shall be extended to neighbouring lands and the owners and occupiers thereof respectively as far as the same can be so extended.

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6. The owner of land who shall have made or who shall hereafter make a fence dividing such land from adjoining unalienated or undemised land of the Crown may demand and recover from the owner or occupier of such Crown land when alienated or demised within a period of six months after such alienation or demise half the value of such dividing fence.

Half the expense of dividing fence may be recovered from the purchaser of Crown land.
Q. 25 Vic. No. 12, s. 4.

7. When any dividing fence made or to be made shall be out of repair or become insufficient the occupiers of land on either side thereof shall be liable to the costs of repairing such fence in equal proportions.

Adjoining occupiers to keep dividing fence in repair.
Q. *Ib.* s. 5.

8. The occupier of any land separated from any adjoining land by a dividing fence may serve a notice as hereinafter mentioned upon the occupier and if there be no occupier then upon the owner of such adjoining land requiring him to assist in or contribute to the repairing of such dividing fence in equal proportions. And if such occupier or owner shall refuse or neglect for the space of three months after the service of such notice to assist in or contribute to the repairing of such dividing fence it shall be lawful for such occupier to repair such fence and to demand and recover of and from such other occupier or owner half the cost thereof:

Occupiers to keep dividing fence in repair.
Q. *Ib.* s. 6.

Provided that if any dividing fence or any portion thereof shall be destroyed by accident the occupier of land on either side may immediately repair the same without any notice and shall be entitled to recover half the expense of so doing from the occupier or owner of the adjoining land:

Provided always that in case such dividing fence shall have been destroyed by fire or by the falling of any tree or trees the owner or occupier through whose neglect such fire shall have originated or such tree or trees shall have fallen shall be the party bound to repair the entire of the fence so damaged as aforesaid.

9. The occupier of the adjoining land shall be the person liable in the first instance to contribute to the erection of a dividing fence but it shall be lawful for such occupier to deduct all expenses incurred in erecting the same from any rent due or thereafter to become due from such occupier to the owner of such land but the occupier shall in all cases be the person liable to contribute to the erection or repairs of any dividing fence and when such adjoining land is not in the occupation of any person the owner of such land shall be the person liable to contribute as aforesaid.

Persons liable for contribution for fencing and repair.
Q. *Ib.* s. 7.

10. Nothing in this Ordinance contained shall be deemed or taken to affect any covenant contract or agreement made or here-

Ordinance not to interfere with existing agreements.
Q. *Ib.* s. 8.

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after to be made relative to fencing between any landlord or tenant.

Ordinance not to apply to unalienated Crown lands.
Q. 25 Vic. No. 12, s. 9.

11. Neither the Crown nor any public officer who may by virtue of his office however styled have the management or control of any lands of the Crown shall be liable under the authority of this Ordinance to make any contribution towards the erection or repair of any boundary or other fence between the land of any owner or occupier and any public land.

How notice is to be given.
Q. *Ib.* s. 11.

12. Where any notice is required by this Ordinance to be given it shall be in writing and shall be served personally on the person to whom it is addressed or his attorney or agent or left with some adult person at his or her last known place of residence except when any owner shall be unknown or shall be absent from the Territory without any known attorney or agent then in either of such cases the notice shall be inserted once a week for two consecutive weeks in some newspaper published nearest to the land referred to and the production of such newspaper containing such notice shall be proof of the due service of such notice.

Agreements as to fencing to be registered with the clerk of petty sessions, and may be given in evidence.
Q. *Ib.* s. 11.

13. The owners or occupiers of any adjoining lands may agree between themselves as to what portion or part each shall erect and keep in repair or keep in repair only or erect only; and all such agreements shall be in writing and shall be witnessed by the clerk of the nearest Court of Petty Sessions a copy of which agreement shall be lodged in the office of such Petty Sessions and certified by such clerk as being a true copy which copy may be given in evidence upon any case arising in regard to the land and fence referred to therein; and every provision of this Ordinance shall equally apply to any such dividing fence so far as they can be made applicable excepting that when any owner erects or repairs under the provisions of this Ordinance any portion of the dividing fence which under any such agreement the owner of the land adjoining should have erected or repaired the whole amount of the cost thereof instead of half shall be recovered from the owner or occupier failing or neglecting to erect or repair such dividing fence according to the provisions of this Ordinance.

Mode of recovering cost of fencing.
Q. *Ib.* s. 10.

14. All sums of money recoverable under this Ordinance may be sued for and recovered in a summary manner before any two or more justices of the peace.

Points upon which justices may decide.
Q. *Ib.* s. 13.

15. If any dispute or difference shall occur between the owners or occupiers of any adjoining lands respecting the following matters namely—

- (1) the sufficiency or otherwise of any river or other natural boundary instead of a fence;

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- (2) what portion of any fence shall be erected or repaired by each owner;
- (3) the necessity for any dividing fence to be repaired;
- (4) whether due diligence has been used to complete the erection or repair of any fence after it has been commenced;
- (5) the description and sufficiency of any fence erected or to be erected;
- (6) the sufficiency or otherwise of any excuse for not using due diligence in the completion of the erection of any fence or repairs after having commenced the same—

it shall be competent for either party to apply to the Court of Petty Sessions nearest to the place where the fence in question exists or is about to be erected and two or more of the justices usually attending such Petty Sessions shall inquire into the matter thus brought before them and may summon witnesses and examine them upon oath or by view or otherwise take the best means of informing themselves upon the merits of the case at issue and shall give judgment thereon with or without costs to either party as they may see fit and the decision of such justices shall be final and conclusive.

Justices to have power to inquire into the matter in dispute—their decision to be final.

16. In no case shall a judgment be given under any of the provisions of this Ordinance which will involve an expense in the erection of any fence exceeding in the case of country and suburban lots the fair and usual price charged for the erection of a three-railed fence and in town allotments a four-railed or paling fence; and in all cases where contribution shall be required for any existing fence the amount to be recovered shall have reference to the actual value and state of any such fence at the time such sum is sought to be recovered and not to the original cost of such fence.

No judgment to be given for a larger sum than the cost of a three-railed fence in country, or four-railed or paling-fence in town.

Q. 25 Vic.
No. 12, s. 14.

17. All sums of money adjudged by any Court of Petty Sessions to be paid by any party pursuant to this Ordinance for erecting or repairing any fence if not paid within one calendar month after such adjudication may be recovered in a warrant (as in Schedule to this Ordinance annexed) signed by the said magistrates directed to any constable or Small Debts Court Bailiff to levy the same by distress and sale of the goods and chattels of said party so ordered to pay said sum of money together with all costs and charges attending the same.

Money adjudged if not paid within one month may be levied by distress and sale of goods. Schedule.

Q. 15. s. 15.

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SCHEDULE.

In the Court of Petty Sessions at

WHEREAS a sum of _____ was on the _____ day of _____
adjudged by us to be paid by _____ to
_____ towards the cost of a fence dividing their respective lands:
And whereas the said sum of money has not been paid pursuant to our said
adjudication: We do hereby order and direct that if the said sum of _____
be not paid forthwith that the same be levied by distress and
sale of goods and chattels of the said _____ together with the
costs and charges of said distress and sale.

Given under our hands and seals this _____ day of _____ .