

2 ELIZ. II. No. 7, 1953. *Dividing Fences Act.*

## An Act Relating to the Construction and Repair of Dividing Fences between Certain Lands.

2 ELIZ. II.  
NO. 7.  
THE  
DIVIDING  
FENCES ACT  
OF 1953.

[ASSENTED TO 15TH OCTOBER, 1953.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

### PART I.—PRELIMINARY.

PART I.—  
PRELIMINARY  
Short title.

1. This Act may be cited as "*The Dividing Fences Act of 1953.*"

2. This Act is divided into Parts as follows:—

Parts of Act

PART I.—PRELIMINARY ;

PART II.—CONSTRUCTION OF DIVIDING FENCES ;

PART III.—REPAIR OF EXISTING DIVIDING FENCES ;

PART IV.—GENERAL.

3. \*"*The Fencing Act of 1861*" and †"*The Fencing Act of 1861 Extension Act of 1897*" (in this Act referred to as "the repealed Acts") are repealed :

Repeal of  
25 Vic. No.  
12 and  
61 Vic. No. 9.

Provided that, but without limiting the operation of ‡"*The Acts Shortening Acts*"—

- (a) Every order, judgment, notice, or other act of authority made, given, served, or done under the repealed Acts or as a result of the application by any enactment of the repealed Acts to any lands and in force at the coming into operation of this Act shall continue in force, but in the case of a notice subject to this Act, for the purposes for which it was made, given, served, or, as the case may be, done until it is lawfully revoked, quashed, or set aside and, where necessary, shall be deemed to have been made, given, served, or, as the case may be, done under the corresponding provisions of this Act or as a result of the application by that enactment of this Act to those lands, as the case may be ;

\* 25 V. No. 12.

† 61 V. No. 9.

‡ 31 V. No. 6 and amending Acts.

- (b) All moneys adjudged or ordered to be paid under or as a result of the application of the repealed Acts and not recovered at the coming into operation of this Act may be recovered and applied as if this Act had not come into operation ;
- (c) All actions and proceedings of whatever nature commenced or pending at the coming into operation of this Act under or as a result of the application of the repealed Acts may be carried on and prosecuted as if this Act had not come into operation, and no such action or proceeding shall abate or be discontinued or prejudicially affected by anything in this Act contained ;
- (d) When in any other Act reference is made to the repealed Acts, or to any provision thereof, it shall be taken, unless the context otherwise indicates or requires, that that reference is to this Act or, as the case requires, to the corresponding provision of this Act and that reference shall be read and construed accordingly.

Saving as to  
certain  
enactments.

4. (1.) Where immediately prior to the coming into operation of this Act any Act applied, with some modification or adaptation thereof, the repealed Acts to any lands, then such modification or adaptation shall continue to have force and effect in the application, after the coming into operation of this Act, of this Act to those lands.

Unalienated  
Crown  
lands.

(2.) Unless otherwise expressly provided by any other Act and except as in section twelve of this Act and as in subparagraph (c) of the definition of the term "owner" in section six of this Act provided, this Act shall not apply with respect to any unalienated Crown lands, nor shall the Crown nor any person or authority for the time being having the administration, management, or control of those Crown lands or in whom those Crown lands are for the time being vested be liable under this Act to join in or contribute to the construction or repair of any dividing fence between any of those lands and any other land.

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(3.) The provisions of this Act shall not prejudice or otherwise affect the provisions of \**The Water Acts, 1926 to 1942*” (including all orders, regulations, and by-laws made thereunder), and nothing in this Act shall be deemed to authorise or to confer any power to authorise the construction of any dividing fence on or across the bed, banks, or channels of any watercourse, lake, or spring within the meaning of those Acts, if an offence against such Acts would be thereby committed or caused to be committed, and every such dividing fence shall during its continuance be subject to those Acts.

Saving of  
“*The Water  
Acts, 1926 to  
1942*”, &c.

5. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement in relation to fencing made before or after the coming into operation of this Act between the owners of adjoining lands or between any landlord and tenant.

Act not to  
affect  
agreements.

6. (1.) In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say :—

Meaning of  
terms.

“*Adjoining lands*”—Includes lands separated by a watercourse, lake, or other natural or artificial feature of such a character as to be insufficient to prevent at all times the passage of stock and notwithstanding that the bed and banks of that watercourse, lake, or other feature may be the property of the Crown or vested in or under the control of The Commissioner of Irrigation and Water Supply or some other authority; and with respect to lands so separated and excepting other adjoining lands, the term “*common boundary*” includes the bed and banks of the watercourse, lake, or other feature by which those lands are separated;

Adjoining  
lands.

“*Dividing fence*”—A fence separating the adjoining lands of different owners, whether the adjoining lands are wholly or only partly separated thereby and whether the fence is on the line of or, in an appropriate case, on a line on the common boundary

Dividing  
fence.

\* 17 G. 5 No. 12 and amending Acts.

of the adjoining lands or on a line other than the line of or a line on the common boundary, or partly on any one of those lines and partly on the other or others ;

Fence.

“ Fence ”—A structure of posts and boards, palings, rails, galvanised iron, metal, or wire, or a wall, ditch, or embankment, or a combination of any of these, enclosing or bounding land, and includes any foundation, foundation wall, or support reasonably necessary for the support and maintenance of the fence, but does not include a wall which is part of a house or other building ;

Lease.

“ Lease ”—Includes an original or derivative lease or an under-lease or an agreement for a lease ;

Owner.

“ Owner ”—Includes every person who—

(a) Jointly or severally, whether at law or in equity—

(i.) Is entitled to land for any estate of freehold in possession ; or

(ii.) Is entitled to receive or is in receipt of the rents and profits of any such land, or if the land were let to a tenant would be entitled to receive such rents and profits, whether as beneficial owner, trustee, mortgagee in possession, or otherwise ; or

(b) At the time notice to fence is given by or to him pursuant to section eight of this Act, or at the time he makes application to a court of petty sessions under subsection one of section eleven of this Act or at the time a copy of an order made pursuant to the said section is, under subsection two of that section, served on him, or at the time notice is given by or to him pursuant to section sixteen of this Act, is the holder of a lease of any such land the unexpired term of which is not less than five years ; or

(c) At the time any notice, application, or copy of an order as specified in subparagraph (b) of this definition is given or made by, or given to or served on him, is the holder

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of a lease of any land or of any part of any land reserved or set apart for any public purpose within the meaning of \**“The Land Acts, 1910 to 1952,”* the unexpired term of which lease is not less than five years; or

(d) Is a successor in title to an owner as previously herein defined,

but, subject to paragraph (c) of this definition, does not include any trustees or other persons in whom any land is vested as a public reserve, public park, or for such other public purposes as may be prescribed, or any person who has the care, control, or management of any public reserve, public park or land used for such other public purposes as may be prescribed;

- “ Person ”—Includes a body corporate; Person.
- “ Prescribed ”—Prescribed by this Act; Prescribed.
- “ Registered surveyor ”—A surveyor within the meaning of †*“The Land Surveyors Acts, 1908 to 1916 ”*; Registered surveyor.
- “ This Act ”—This Act and all regulations made hereunder; This Act.
- “ Unalienated Crown land ”—Includes any land held by yearly license under any Act relating to the sale or occupation of land belonging to the Crown. Unalienated Crown land.

(2.) Any reference in this Act to any existing fence shall be taken to be a reference to an existing fence by whomsoever constructed, and whether constructed before or after the coming into operation of this Act. References to existing fence.

PART II.—CONSTRUCTION OF DIVIDING FENCES.

PART II.—  
CONSTRUCTION  
OF DIVIDING  
FENCES.

7. Subject to this Act the owners of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions, whether the adjoining lands are to be wholly or only partly separated thereby. Liability of owners of adjoining lands to fence.

\* 1 G. 5 No. 15 and amending Acts.

† 8 E. 7 No. 3 and amending Acts.

Service of  
notice to  
fence.

8. Any owner desiring to compel an owner of adjoining land to join in or contribute to the construction of a dividing fence under this Act (including the demolition of an existing dividing fence and the erection of a new fence) may serve him with a notice in writing to fence (in this Act referred to as a "notice to fence") which shall—

- (a) Specify the common boundary the line of which is to be fenced, or, where on account of physical features it is impracticable to construct a fence wholly on the line of the common boundary of such lands or where the adjoining lands are separated by a watercourse, lake, or other natural or artificial feature insufficient to prevent at all times the passage of stock, the line upon which it is proposed to construct such fence and, if a part of the line of the common boundary is to be fenced, that part ;
- (b) Contain a proposal for fencing the same ; and
- (c) Specify the kind of fence proposed to be constructed.

Proceedings  
consequent  
on notice to  
fence.

9. (1.) If within one month after the service of any notice to fence the person serving the notice to fence and the person served with such notice do not agree as to the construction of the proposed fence, the line of the proposed fence, or the kind of that fence, a court of petty sessions having jurisdiction as in this Act provided may, upon application of either of such persons, make an order (in this Act referred to as an "order to fence") determining—

- (a) The kind of fence to be constructed ;
- (b) What portion thereof shall be constructed by each person, or, as determined on the merits, that the whole of the fence shall be constructed by the person specified or that one person shall pay a greater proportion of the cost of such construction than the other and the amount of that proportion ;
- (c) The time within which it shall be constructed ; and
- (d) If necessary, all or any of the following matters, namely—
  - (i.) The line upon which such fence is to be constructed ;

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- (ii.) The compensation in the shape of an annual payment to be paid to either of the owners of the adjoining lands in consideration of loss of occupation of any land ; and
- (iii.) Such further or other relief as that court considers just,

and, where the demolition of an existing dividing fence and the erection of a new fence in place thereof is in question, may make an order as aforesaid or an order (in this Act referred to as an "order to repair") determining that the existing dividing fence be repaired and, in addition, determining such other matters with respect to the repair of that fence as it thinks fit, including, but without limiting the generality of the foregoing, the period of time within which no further notice to fence with respect to that dividing fence shall, without the prior consent of a court of petty sessions having jurisdiction as in this Act provided, be served under this Act.

Moreover, in a case where the adjoining lands are wholly or partly separated by a watercourse, lake, or other natural or artificial feature (whether of the same kind or not), the court of petty sessions, after considering, where necessary, the sufficiency of that watercourse, lake, or other natural or artificial feature to prevent at all times the passage of stock, may by its order to fence determine that only a portion or portions, as specified therein, of the dividing fence shall be constructed as well as including in that order the things aforementioned.

(2.) Where there are two or more owners of the adjoining land then any such owner who has not been served with a notice to fence shall, upon application to the court of petty sessions, be entitled to join with the owner served with that notice as a party to the proceedings before that court.

(3.) Where it is agreed or an order to fence determines that the fence is to be constructed otherwise than wholly on the line of the common boundary of adjoining lands the occupation of lands on either side of such fence in pursuance or as a result of such agreement or order shall not be deemed adverse possession as against the owner or, in an appropriate case, the Crown, nor affect the title to or possession of the land save for the purposes of this Act.

(4.) In making any order under this section the court of petty sessions shall take into consideration the kind of fence usual in the locality where it is proposed to construct the fence and the purposes for which the adjoining lands are used.

Proceedings  
on failure to  
carry out  
agreement or  
order.

10. If the person serving the notice to fence and the person served with such notice agree with respect to the construction of the dividing fence, or if in default of such agreement an order to fence of a court of petty sessions is made with respect to that fence as aforesaid, and in either case any person bound by that agreement or order fails within the time named in that behalf in such agreement or order, or, if no such time is named, within three months after the date of such agreement or order, to perform his part of such agreement or to comply with such order then the other of the parties thereto may construct the whole fence as agreed upon or determined by the order, and may recover from the person in default half the cost of such construction by such other party, or, if the whole of the fence was by that agreement or order to be constructed by the person in default, the whole cost of such construction.

Cases where  
owner or  
whereabouts  
of owner are  
not known.

11. (1.) Where the owner of any land satisfies a court of petty sessions having jurisdiction as in this Act provided that he has made reasonable inquiries and has been unable to find any owner or ascertain the whereabouts of any owner of adjoining land for the purpose of serving notice to fence as required by section eight of this Act, the court of petty sessions may proceed *ex parte* to make an order to fence authorising such firstmentioned owner to construct a dividing fence of the kind specified in such order upon the line specified therein.

(2.) Any person who constructs a dividing fence in compliance with such order may, if afterwards he ascertains the whereabouts of an owner of the adjoining land (being an owner at the time of the construction of the fence), serve such owner with a copy of the order to fence, and shall, after the expiration of one month from the date of service thereof, be entitled to recover—

(a) (If that copy of the order to fence is served during the period of one year commenced on the day on which the construction of the fence was completed) one-half the original cost of the dividing fence ; or



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(b) (If that copy of the order to fence is served after such period of one year but during the continuance of the fence) one-half the value of the dividing fence at the said date of service or one-half the original cost of the dividing fence, whichever is the lesser amount.

(3.) If the person so served deems the order to fence made inequitable, a court of petty sessions having jurisdiction as in this Act provided may, on his application made within one month after service of the copy of the order, relieve the complainant from the whole or any portion of the sum claimed and may order that the position of the fence be altered on such terms as it may think fit.

12. (1.) Where the owner of land has constructed a dividing fence separating his land from adjoining land which, at the time of the construction of the fence, was unalienated Crown land, and thereafter that land shall have been alienated by the Crown, then the person owning such firstmentioned land when that adjoining land shall have been so alienated may, subject to the provisions of any Act which modifies the application of this Act to that adjoining land, recover from the holder thereof from the Crown pursuant to that alienation one-half the value of the dividing fence at the date when such land was so alienated from the Crown or one-half the original cost of the dividing fence, whichever is the lesser amount.

When half the value or cost of an existing dividing fence may be recovered from the owner of adjoining land upon its alienation from the Crown.

(2.) The amount which may be recovered under subparagraph (b) of subsection two of section eleven of this Act or subsection one of this section as the value of the dividing fence shall have reference to the actual value and state of the dividing fence at the time prescribed by the subsection in question.

13. (1.) Where the owners of adjoining lands do not agree as to the accurate position of the common boundary line between their respective lands upon which a dividing fence is desired to be constructed, either one may give notice to the other of his intention to have the common boundary line defined by a registered surveyor.

Proceedings for defining boundary line by registered surveyor.

(2.) The owner to whom notice is given shall, within seven days after the service of the notice—

(a) If satisfied of the accurate position of the common boundary line, define the same by pegs ; or

(b) Employ a registered surveyor to define the common boundary line,

and in either case shall notify the adjoining owner in writing of what he has done.

(3.) If within one month from the service of the notice provided for in subsection one of this section the owner to whom the notice was given has failed to have the common boundary line defined by a registered surveyor, then the owner who gave such notice may (notwithstanding that the owner to whom the notice was given has defined the common boundary by pegs) have the common boundary line defined by a registered surveyor.

(4.) If the common boundary line when defined by a registered surveyor is ascertained to be in the same position as defined by any pegs placed there by the owner receiving the notice given in pursuance of subsection one of this section, such owner shall be entitled to recover any costs of the survey incurred by him from the owner giving such notice, but in all other cases where a registered surveyor has been employed by either such owner all reasonable expenses incurred shall be paid in equal shares by the adjoining owners.

### PART III.—REPAIR OF EXISTING DIVIDING FENCES.

Failure to  
carry out  
an order  
to repair.

14. Where an order to repair is made by a court of petty sessions under subsection one of section nine of this Act and any person bound by that order fails within the time named in that behalf in such order, or, if no such time is named, within three months after the date of such order, to comply with such order, then the owner of the land separated by the dividing fence the subject of the order from the land of the person in default may repair the whole fence as determined by the order, and may recover from the person in default half the cost of such repair by such owner, or, if the whole of such repair was by that order required to be carried out by the person in default, the whole of the cost of such repair.

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FENCES.

**15.** Subject to this Act whenever any existing dividing fence is out of repair the owners of land on either side thereof shall be liable to join in or contribute to the repair of such fence in equal proportions.

Liability of adjoining owners to repair.

**16.** (1.) The owner of any land separated from adjoining land by an existing dividing fence may serve a notice in writing (in this Act referred to as a "notice to repair") upon an owner of the adjoining land requiring him to assist in repairing such fence.

Procedure to compel contribution.

(2.) Where the person served with the notice to repair does not within one month after such service assist the person serving the notice in repairing the dividing fence the subject of the notice, it shall be lawful for the person serving the notice to repair the fence and demand and recover from the person on whom the notice has been served one-half of the cost of repairing the same:

Provided that—

- (a) If any dividing fence has been constructed partly by one owner and partly by another owner, each shall bear the cost of repairing the part so constructed by him but without prejudice to the right of the other owner to repair that part under the foregoing provisions of this section and to recover the cost thereof;
- (b) If any dividing fence or any portion thereof is damaged or destroyed by flood, fire, lightning, storm, tempest, or accident, the owner of the land on either side may immediately repair the same without any notice to repair to the other owner and shall be entitled to recover half the cost of so doing from the owner of the adjoining land;
- (c) If any dividing fence has been damaged or destroyed by the withdrawal of any support reasonably necessary for its support and maintenance had by the fence, or by any act of an owner of any of the adjoining lands separated by that fence, or by fire or by the falling of any tree or trees, the owner of the land whereon that support is withdrawn, or by whose act the fence has been damaged or destroyed, or through whose neglect the fire

originated or caused injury to the fence or the tree or trees fell, as the case may be, shall be bound to repair the fence so damaged or destroyed as aforesaid; and in default the adjoining owner may repair the same and demand and recover from the owner so liable and in default the whole of the cost of such repair;

- (d) If within fourteen days after service of the notice to repair the person served with the notice serves on the person serving that notice a notice to fence under section eight of this Act with respect to that dividing fence, then the repair of such fence shall abide the decision of a court of petty sessions having jurisdiction as in this Act provided upon application of either of such persons made at any time after the service of the notice to fence, and the provisions of subsection one of section nine of this Act and all other relevant provisions hereof, with all necessary adaptations thereof, shall apply with respect to that application and any order made thereupon (it being hereby declared that the court of petty sessions hearing and determining that application may make an order to repair or, as it thinks fit, an order to fence thereon).

Liability of  
person using  
fence on  
further  
side of road.

**17.** If the owner of any land bounded by a road constructs a sufficient fence on the boundary of his land and the said road and any other owner of any land afterwards adopts any means whereby his land is in any way enclosed by the said fence, or afterwards avails himself of the said fence or renders the same of beneficial use to himself, the lastmentioned owner shall, so long as his land is so enclosed or he avails himself of the said fence or makes beneficial use thereof, be liable to join in or contribute to the repair of such part of the fence as encloses his land or is availed or made beneficial use of by him in equal proportions, and the provisions of this Act shall apply accordingly as if that fence were a dividing fence and the lands adjoining lands.

In this section "owner" includes any person who at the time of the construction of a fence referred to in this section or who at the time of adopting any means as

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aforesaid of availing himself of the fence or rendering the same of beneficial use to himself is the holder of a lease the unexpired term of which is not less than five years.

## PART IV.—GENERAL.

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18. (1.) An application under subsection one of section nine or subsection one of section eleven of this Act for an order to fence, or under paragraph (d) of the proviso to subsection two of section sixteen of this Act for an order to fence or, as the case may be, repair may be made to a court of petty sessions held at a place appointed for holding courts of petty sessions within any petty sessions district within or within twenty miles of the boundary of which the dividing fence or any part of the dividing fence in question is or is proposed to be constructed and that court shall have jurisdiction to hear and determine that application.

Jurisdiction  
of courts of  
petty  
sessions.

(2.) An application for an order under subsection three of section eleven of this Act or, where an order to repair with respect to any dividing fence is made under this Act, an application as required by this Act for the consent of the court of petty sessions to the service under this Act with respect to that fence of a notice to fence, shall be made to a court of petty sessions held at the place at which that order to fence, or, as the case may be, repair was made or, if the appointment of that place as a place for holding courts of petty sessions is meanwhile cancelled, to a court of petty sessions held at a place appointed for holding courts of petty sessions within any petty sessions district within or within twenty miles of the boundary of which the dividing fence or any part of the dividing fence in question is situated, which court shall have jurisdiction to hear and determine that application.

(3.) In or for the purpose of any proceedings under this Act (not being proceedings for the recovery of any moneys which any person is in pursuance of this Act required or liable to pay)—

Powers of  
courts of  
petty  
sessions, &c.

(a) The application shall be commenced by complaint made by the applicant in person or by his counsel or solicitor or other person authorised in that behalf to a justice of the peace who, in every case other than an application under subsection one of section

eleven of this Act, shall issue his summons directed to the other party to those proceedings ;

- (b) A court of petty sessions having jurisdiction as in subsections one and two of this section provided—
- (i.) Shall, subject to this Act, have and may exercise all the ordinary powers of justices of the peace in petty sessions ;
  - (ii.) May dismiss the application before it as justice may require or make such order thereon as is prescribed ;
  - (iii.) May take the best means of informing itself upon the merits of the case ;
  - (iv.) May, in the case of the making of any order or the dismissing of any application under this Act, in its discretion order the payment by such parties of such costs as to it seems just and reasonable.

Any decision of a court of petty sessions having jurisdiction as in this Act provided shall be final and conclusive.

Application  
of 50 Vic.  
No. 17 and  
amending  
Acts.

(4.) Subject to this Act, \**“The Justices Acts, 1886 to 1949”* (except the provisions of those Acts relating to appeals from the decisions of justices), shall apply, as far as practicable and with all necessary adaptations thereof, to the constitution, practice, and procedure of a court of petty sessions hearing and determining any application under this Act, and with respect to the service of summonses, the making of orders, and the payment and recovery of costs ordered to be paid and the transfer of jurisdiction as to enforcement of costs.

Recovery of  
money  
payable.

19. (1.) Any moneys (other than costs ordered to be paid in any proceedings specified in subsection three of section eighteen of this Act) which any person is in pursuance of this Act required or liable to pay may be sued for and recovered in any court of competent jurisdiction.

(2.) In any proceedings for the recovery of moneys as aforesaid the certificate of a clerk of petty sessions at the place at which the court of petty sessions which

\* 50 V. No. 17 and amending Acts.

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made any order under this Act was held as to the making and contents of that order shall be evidence of the matters set forth therein.

20. (1.) Where, under the provisions of this Act, any fence is constructed or repaired which divides any freehold lands held by any person as tenant of any landlord from any adjoining lands, the contribution payable in respect thereof as between such landlord and tenant shall, unless otherwise agreed upon, be payable in the proportions following:—

Apportionment of contribution between owner and lessee.

- (a) In case the interest of the tenant at the time of the construction or repair of the fence is less than for a term of five years, the whole contribution shall be payable by the landlord ;
- (b) In case the interest of the tenant at such time is for a term of five years or more and less than for a term of seven years, three-fourths of the contribution shall be payable by the landlord and one-fourth of the contribution by the tenant ;
- (c) In case the interest of the tenant at such time is for a term of seven years or more and less than for a term of twelve years, one-half of the contribution shall be payable by the landlord and one-half by the tenant ;
- (d) In case the interest of the tenant at such time is for a term of twelve years or upwards, the whole of the contribution shall be payable by the tenant.

(2.) In case either such landlord or such tenant pays more than his proper proportion of such contribution he may recover the excess from his tenant or landlord and any tenant may set off any sum recoverable by him under this section against any rent payable to his landlord.

(3.) Where the provisions of this Act are, by virtue of any enactment including this Act, applied to any lands leased from the Crown, then the term "landlord" in this section shall not include the Crown.

The term "landlord" in this section shall not include the trustees of any land reserved or set apart for public purposes.

Position of  
person with  
option to  
purchase.

**21.** Where any land in respect of which a contribution has been paid by the owner towards the construction or repair of a dividing fence is at the time of such payment subject to an option to purchase then in the event of the option to purchase being exercised the purchaser shall on completion of the purchase pay to such owner the amount of the contribution paid by such owner.

Power to  
enter  
adjoining  
land.

**22.** Every person engaged in constructing or repairing a fence under this Act and his agents and servants may, at all reasonable times during the construction or repairing, enter upon the lands adjoining the fence 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.

Notices.

**23.** (1.) Any notice under this Act may be served on any person—

- (a) By delivering the same to such person personally ; or
- (b) By delivering the notice at the usual or last known place of abode or business of such person and leaving the same with some person apparently above the age of fourteen years resident or employed thereat ; or
- (c) By forwarding the same by post in a prepaid registered letter addressed to such person at his usual or last known place of abode or business in which case that notice shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

(2.) Proof by affidavit or orally that the notice has been served in accordance with this section shall be conclusive evidence of service.

(3.) For the purpose of this section a justice of the peace is hereby authorised to take and receive an affidavit whether any matter to which the affidavit relates is or is not pending in any court.

(4.) The description of any land, fence, line, or boundary in any notice under this Act need not particularly define the land, fence, line, or boundary



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provided that it allows no reasonable doubt as to what land, fence, line, or boundary is referred to therein, or if it is proved that the person served with the notice knew that land, fence, line, or boundary.

(5.) Where with respect to the adjoining land there are two or more joint-owners and the person desiring to serve any notice under this Act is unable to serve every such owner with that notice by reason of—

- (a) Some of those owners ; or
- (b) The whereabouts of some of those owners,

after his making reasonable inquiries being unknown to him, then service on such of those owners as under the circumstances he may reasonably be expected to serve shall for the purposes of this Act be deemed to be service of the notice on all such owners.

(6.) Where a court of petty sessions makes with respect to any existing dividing fence an order to repair then—

- (a) During the period of time as determined for the purpose by that order ; or
- (b) If no such period of time is so determined, during the period of twelve months from the date when that order to repair was made,

any notice to fence with respect to that dividing fence served under this Act, without the prior consent of a court of petty sessions having jurisdiction as in this Act provided, shall be of no force or effect, anything to the contrary in this Act notwithstanding.

**24.** (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, as may be necessary or convenient for the administration of this Act, or that may be necessary or expedient to carry out the objects and purposes of this Act or to give effect to this Act. Regulations.

(2.) Every regulation made under this Act shall—

- (a) Be published in the *Gazette* ;
- (b) Upon its publication in the *Gazette* be judicially noticed and such publication shall be conclusive evidence of the matters contained therein ;

- (c) Take effect from the date of such publication unless a later date is specified therein for its commencement when in such event it shall take effect from that later date ; and
- (d) Be laid before Parliament within fourteen sitting days after such publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3.) If Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after any such regulation has been laid before Parliament disallowing such regulation or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further regulation.

(4.) In this section the term “ sitting days ” means days upon which Parliament actually sits for the despatch of business.

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## FIRMS, REGISTRATION OF.

*See* MERCANTILE LAW.