

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 1, ADMINISTRATION, 1911.—DATED 20th DECEMBER, 1911

Preamble.

WHEREAS the Fencing Act, 1883 (Act No. 30 of 1883) of the Cape of Good Hope is in force *mutatis mutandis* in the Bechuanaland Protectorate;

And whereas it is expedient that the Provisions of Part I. of the said Act should be declared to be in operation in that part of the southern district of the Bechuanaland Protectorate known as "the Lobatsi Block";

And whereas the powers conferred by section *four* of the said Act on the Governor of the Cape of Good Hope are exercisable under the said Act as in force in the Bechuanaland Protectorate by the High Commissioner;

Now, therefore, under and by virtue of the powers in me vested under section *four* of the said Act as in force in the Bechuanaland Protectorate, I do hereby declare, proclaim and make known as follows:—

Part I of the Fencing Act of the Cape Colony applied to the Lobatsi Block.

1. From and after the date of the taking effect of this Proclamation, the provisions of Part I of the Fencing Act, 1883 (Act No. 30 of 1883) of the Cape of Good Hope shall be in operation *mutatis mutandis* within the limits of that portion of the southern district of the Bechuanaland Protectorate, known as the Lobatsi Block, the boundaries of which are described in the schedule to Proclamation No. 4 of 1905, dated the 7th day of February, 1905.

Commencement of Proclamation.

2. This Proclamation shall have force and take effect from the date of its publication in the *Gazette*.

SCHEDULE.

(Act No. 30 of 1883).

PART I.—PROVISIONS APPLICABLE TO PROCLAIMED DIVISIONS.

4. The provisions of this part of this Act shall be in operation in such divisions or field-cornetcies as the Governor shall by proclamation prescribe; and from a date to be by such proclamation fixed and appointed.¹

5. [Inapplicable.]

¹ Applied to Gaberones Block by Proclamation No. 1 Administration 1912, to Hildavale by Proclamation No. 2 Administration 1912, to Tuli Block by Proclamation No. 3 Administration 1913 and to Traquair, Forest Hill and Crocodile Pools by Proclamation No. 1 Administration 1914.

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6. The occupiers 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 such proportions as may be agreed upon between them, or in default of agreement in the proportions to be settled by arbitration.

7. Any person desiring any other person to contribute to the construction of a dividing fence under the provisions of this Act may serve on such person a notice in writing to fence, which shall specify the boundary to be fenced, and the kind of fence proposed to be constructed, and shall contain a proposal for fencing the same. If within three months after the service of any notice to fence, the person serving and the person served with such notice do not agree as to the kind of fence to be erected and the position thereof, and what proportion of the expense of constructing the same is to be contributed by them respectively, any of such matters as to which there shall be no agreement, shall be settled by arbitration. In making any award, the arbitrator or arbitrators shall be guided as to which kind of fence such arbitrator or arbitrators shall order or award to be constructed by the kind of fence, if any, usually constructed in the place where it is proposed to erect such fence.

8. If the person serving and the person served with such notice agree as to the matters aforesaid relating to the construction of such fence, or if, in default of such agreement, an arbitrator or arbitrators is or are appointed and make an award, and in either case either of such persons fail within the time named in that behalf in such agreement or award, or, if no such time be named, within six months after the date of such agreement or award, to perform his part of such agreement or to comply with such award, then the other of such persons may construct the whole fence as agreed upon or prescribed by such agreement or award, and may recover such part of the cost of constructing the same as may have to be contributed by the other of such persons in any Court of competent jurisdiction.

9. If any person shall be called upon under this Act to join in or contribute to the construction of any dividing fence, and such person shall be unable or unwilling, sooner or otherwise, to pay the amount or any part thereof which he shall be or become liable to pay, and shall, within one month after the amount which he is liable to pay shall have been fixed, give notice to the person calling upon him to join or contribute as aforesaid, that he desires to pay such amount by instalments as hereafter mentioned, the amount payable by such person, or such part thereof as he shall not be willing to pay sooner or otherwise as aforesaid, together with interest thereon at the rate of six *per centum* per annum, shall be paid by such person by equal yearly instalments, such instalments to be so calculated and fixed that the said capital sum and interest shall be wholly paid off in a period of fifteen years from the date which he shall have given such notice as aforesaid, as more particularly shown in the first schedule; provided that notwithstanding such notice, and the payment of any instalment as aforesaid, it shall be lawful for any such person at any time during the said fifteen years, to pay the value at that time of the unpaid instalments in one sum, as shown in the second schedule.

10. When the occupier of any land is absent from the Colony or cannot be found or any land is unoccupied, the occupier of any adjoining land shall insert in the *Gazette*, and in a newspaper (if any) published or circulating in the district in which such land is situated, at least once a month during six consecutive months, a notice addressed to the occupier of such land, describing him as the occupier of such land, requiring him to contribute to the construction of a fence and may then proceed *ex parte* to obtain from the Resident Magistrate of the district an order authorising the construction of such fence, and specifying the kind of fence to be constructed, and the position thereof, and may construct a fence in compliance with such order; and if afterwards during the continuance of such fence, any person shall go into occupation of such adjoining land, he may, within one month thereafter, serve any person who, if such fence were not in existence would be

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liable to contribute to the construction of a fence in place thereof, with a copy of such order, and shall, after the expiration of one month from the date of such service, be entitled to recover one-half the then value of such fence; but if such order so made *ex parte* be deemed by such person to be inequitable, he may require the matter in question to be settled by arbitration.

11. When 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, such tenants shall pay yearly during the continuance of his lease, the interest, calculated at six *per cent.* per annum, upon one-half of the cost of such construction: provided, however, that no tenant whose unexpired term of lease does not exceed one year shall be liable to pay any such interest.

12. 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 and as part of the purchase-money, any sum paid by such landlord under the last preceding section, together with any interest upon such sum as the tenant shall not previously have paid to his landlord.

13. 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 cost of repairing such fence, in the same proportion that the occupiers contributed, or were liable to contribute, towards the cost of constructing the same.

14. The occupier of any land separated from any adjoining land by a dividing fence may serve a notice upon the occupier of such adjoining land, requiring him to assist in repairing such fence, and if such occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, it shall be lawful for such first-mentioned occupier to repair such fence and to demand and recover of and from such occupier his portion of the cost of repairing the same, as provided for construction: 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 notice, and shall be entitled to recover his proportion of the expense as above provided for from the occupier of the adjoining land: provided that in case such dividing fence shall have been destroyed by fire, or the falling of any tree, or by the trespass of any cattle, the occupier through whose neglect (if any) such fire shall have originated, or have caused injury to the fence, or such tree shall have fallen, or such cattle shall have caused such injury, shall be liable to repair the entire of the fence so damaged as aforesaid.

15. All moneys recoverable under this Act, in respect of the construction or repairing of any fence by any person serving any notice to fence or repair, or under any *ex parte* order or award, may be recoverable from any person liable to contribute to the cost of constructing or repairing such fence who is served with notice to fence or repair, or with such *ex parte* order or award, or any person who may come in and defend under the provisions of this Act any proceedings consequent on such notice, or the service of such order or award; and all such moneys recoverable by any person served with such notice may be recovered from the person serving the same, or any person liable to contribute to the construction or repair of such fence as tenant of whom the person serving such notice may hold the lands bounded by such fence.

16. Nothing in this part of this Act contained shall be deemed to affect any substantial fence already erected at the time of the coming into operation of this Act.