# BRITISH COLUMBIA.

ANNO TRICESIMO SECUNDO

# VICTORIÆ REGINÆ.

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No. 9.

## An Ordinance to provide for the Fencing of Land in British Columbia.

[1*st March*, 1869.]

Preamble.

WHEREAS it is expedient to provide for the proper Fencing of Lands in the Colony of British Columbia;

Be it enacted by the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, as follows:

Governor may divide Colony into Fence Districts.

I. It shall be lawful for the Governor, from time to time, for the purposes of this Ordinance, to divide the said Colony into Districts, to be called Fence Districts, and alter the same from time to time as occasion may appear to require.

Definition of a lawful Fence.

II. A lawful fence shall be at least four feet nine inches high throughout, above the general surface of the ground, and substantially constructed of either stone, brick, earth, wood, or iron, or partly of any one or more of these materials; and if made of horizontal bars, boards, or rails, of wood or iron, shall consist of such dimensions so as not to leave more than six inches between the several bars or rails respectively, up to the height of three feet from the surface of the ground, and for the remainder of the fence not more than twelve inches between the said bars or rails. Provided also that any natural boundary, which shall be sufficient to prevent the passage of cattle into inclosures, shall be treated as a lawful fence.

No action for trespass on Cattle straying into lands unprotected by lawful Fence.

III. In the event of Cattle straying into lands within a Fence District on the Mainland of British Columbia, and into lands within or without a Fence District in all other parts of the Colony, unprotected by a lawful Fence so defined to be lawful as aforesaid, no trespass shall be deemed to have been committed, and no action for trespass shall be maintainable therefor, any law to the contrary notwithstanding.

Cattle breaking into land enclosed by a lawful Fence, the owner liable for damages.

IV. If any Cattle shall break into any ground enclosed by a lawful fence, the owner of such animal shall be liable to the owner or occupier of the enclosed premises for all damages sustained by such trespass, and if the trespass shall be repeated by neglect of the owner of such animal he shall, for the second and every subsequent offence, be subject to double the damage of such trespass to the owner or occupier of the said premises. The owner or occupier of the premises may impound every such animal, and shall advertize the same, with a sufficient description thereof, or give a written notice to the owner, if known; and if any animal so trespassing shall not be claimed, and the damages paid, together with the keep of such animal, and the cost of advertising such notice, within ten days from the publication of such notice, or of the

Cattle may be impounded;

the delivery of the same to the owner of such animal if known, the owner or occupier of the premises shall be at liberty to sell the same by public auction, and repay himself out of the proceeds of such sale, all damages done, and expenses incurred for the keep, advertisement, and sale thereof; and the notice shall be given to the owner of every such animal, by advertisement or otherwise, within five days from the date of impounding, and if not so given no charge shall be made for the keep of such animal for more than five days.

and sold by Public Auction.

Magistrate may appoint Salesman.

V. That in case there be no Auctioneer within a convenient distance in any particular Fence District, it shall be lawful for the Stipendiary Magistrate, or other Justice of the Peace for the District, to appoint a Salesman for the purpose of selling Cattle impounded for trespass; but such Salesman shall not require an Auctioneer's Licence.

Disputes may be tried by Jury.

Power to Justice of the Peace to enforce decision.

VI. If any dispute shall arise under this Ordinance, the same shall be adjudicated upon by the Justice of the Peace for the District wherein the same occurred, with the option of either party to claim a Jury of five persons. The Justice of the Peace shall for the purposes of this Ordinance, have all the powers of a County Court Judge in this Colony, in summoning, and compelling attendance of witnesses and jurors, and awarding damages and costs, which damages and costs shall be recovered in the same manner as amounts due under judgments of the County Court.

How Fence Districts may be created.

VII. Except so far as otherwise provided by Section III., this Ordinance shall not be applicable to any District unless upon an application being made in writing to the Governor of the Colony of British Columbia, signed by at least two-thirds of the resident land owners or occupiers in such District requiring the same to be applied to such District, and the Governor's Proclamation of his assent thereto in the *Government Gazette* accordingly.

Interpretation Clause.

VIII. In the construction of this Ordinance the word "Governor" shall be held to mean the Governor of this Colony for the time being, or other the Officer administering the Government of this Colony for the time being; and whenever in this Ordinance in describing or referring to any Person or Party, matter or thing, any word importing the masculine gender or singular number is used, the same shall be understood to include and shall be applicable to several Persons and Parties as well as one Person or Party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided or there be something in the subject or context repugnant to such construction. The word "Cattle" shall extend to and include horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, sheep, lambs, goats, pigs, mules, jennets, and asses.

Short Title.

IX. This Ordinance may be cited for all purposes as "The Fence Ordinance, 1869."

*Passed the Legislative Council the 2nd day of February, A. D.* 1869.

CHARLES GOOD, *Clerk of the Council.*

WILLIAM A. G. YOUNG, *Presiding Member.*

*Assented to, on behalf of Her Majesty, this 1st day of March,* 1869.

FREDERICK SEYMOUR, *Governor.*

VICTORIA, B. C.:

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