

1937

c 349 Line Fences Act

Ontario

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CHAPTER 349.

The Line Fences Act.

1.—(1) In this Act,—

Interpre-
tation.

(a) "Judge" shall mean judge of the county or district court;

"Judge."

(b) "Occupied lands" shall not include so much of a lot as is unenclosed, although a part of it is enclosed and in actual use and occupation.

"Occupied
lands."

(2) Where, within the meaning of section 3, there is a dispute between owners or occupants of lands situate in different local municipalities,—

(a) "Fence-viewers" shall mean two fence-viewers of the municipality in which is situate the land of the owner or occupant notified under clause *a* of section 3, and one fence-viewer of the municipality in which is situate the land of the person giving the notice except that in case of a disagreement within the meaning of clause *d* of that section "fence-viewers" shall mean fence-viewers from either or both municipalities;

"Fence-
viewers."

(b) "In which the land is situate" and "in which the land lies" shall mean in which is situate the land of the owner or occupant so notified under clause *a* of section 3.

"In which
the land is
situate";
"in which
the land
lies."

(3) The provisions of this Act *mutatis mutandis* shall apply to unoccupied land as well as to occupied land in any township in a county or district if the council of such township passes a by-law declaring that the provisions of this Act shall so apply, and if such a by-law is passed it shall be the duty of the clerk of the township to send forthwith a true copy of it to the Department of Municipal Affairs. R.S.O. 1927, c. 315, s. 1.

By-law
making Act
apply to
unoccupied
lands in
township.

2.—(1) Owners of adjoining occupied lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence they shall make and keep up and repair the same proportion of a fence to mark such boundary.

Duties of
owners of
adjoining
occupied
lands.

(2) Owners of unoccupied land which adjoins occupied land, upon such unoccupied land becoming occupied, shall be

Unoccupied
land.

liable to keep up and repair such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned. R.S.O. 1927, c. 315, s. 2.

Unopened road allowance.

(3) Where there is an unopened road allowance lying between occupied lands and not enclosed by a lawful fence, it shall be the duty of the fence-viewers, when called upon, to divide such road allowance equally between the owners of such occupied lands, and to require each owner to make, keep up and maintain a just proportion of fence to mark the division line, but nothing in this section shall in any way affect or interfere with the rights of the municipality in such road allowance or be deemed to confer any title therein upon such owners or either of them. 1931, c. 66, s. 1.

Disputes between owners, how to be settled.

3. Where an owner of land desires fence-viewers to view and arbitrate as to what portion of such fence each owner shall make, keep up and repair, or as to the condition of an existing line fence and as to repairs being done to the same;

Notice to owner or occupant of adjoining land.

(a) Either owner may notify (Form 1) the other owner or the occupant of the land of such other owner that he will, on a day named, not less than one week from the service of such notice, cause three fence-viewers of the locality to arbitrate in the premises;

Notice to fence-viewers.

(b) The owner so notifying shall also notify (Form 2) the fence-viewers not less than one week before their services are required;

What to contain.

(c) The notices in both cases shall be in writing signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and the notice to an owner may be served by leaving the same at the place of abode of such owner or occupant with some grown-up person residing thereat, or, in case of the land being untenanted, by leaving the notice with any agent of such owner;

When judge to appoint fence-viewers.

(d) An owner notified may, within the week, object to any or all the fence-viewers notified, and in case of disagreement the judge shall name the fence-viewers who are to arbitrate. R.S.O. 1927, c. 315, s. 3.

Duty and liability of occupants as to notifying owners.

4. An occupant who is not the owner so notified shall immediately notify the owner, and if he neglects so to do shall be liable for all damage caused to the owner by such neglect. R.S.O. 1927, c. 315, s. 4.

5. The fence-viewers shall examine the premises, and if required by either party shall hear evidence, and may examine the parties and their witnesses on oath. R.S.O. 1927, c. 315, s. 5.

Duties and powers of fence-viewers.

6.—(1) The fence-viewers shall make an award (Form 3), signed by any two of them respecting the matters in dispute and the award shall specify the locality, quantity, description and the lowest price of the fence awarded to be made and the time within which the work shall be done, and shall state by which of the parties or in what proportion the costs of the proceedings shall be paid.

Award of fence-viewers.
Contents.

(2) In making the award the fence-viewers shall have regard to the nature of the fences in use in the locality, the pecuniary circumstances of the parties and the suitability of the fence to the wants of each of them.

Character of fence.

(3) Where, from the formation of the ground by reason of streams or other causes, it is, in the opinion of the fence-viewers, impracticable to locate the fence upon the line between the lands of the parties, they may locate it either wholly or partly on the land of either of the parties where it seems to be most convenient, but such location shall not in any way affect the title to the land.

Location of fence.

(4) The fence-viewers may employ an Ontario land surveyor and have the locality described by metes and bounds. R.S.O. 1927, c. 315, s. 6.

Employment of surveyor.

7. The award shall be deposited in the office of the clerk of the municipality in which the land of the owner who initiated the proceedings is situate, and may be proved by a copy certified by the clerk, and notice in writing of its being made shall be given by the clerk to all parties interested. R.S.O. 1927, c. 315, s. 7.

Deposit of award.
Award may be evidence.
Notification of award.

8. The judge may, on application of either party, extend the time for making the fence as he may deem just. R.S.O. 1927, c. 315, s. 8.

Extending time for making fence.

9.—(1) The party desiring to enforce the award shall serve upon the owner or occupant of the adjoining land a notice in writing requiring him to obey the award, and if it is not obeyed within one month after service of the notice may do the work which the award directs, and may immediately take proceedings to recover its value and the costs from the owner by action in the division court of any division in which any part of the land affected by the award is situate.

Award, how enforced.

Collection of debt and costs as taxes.

(2) Instead of requiring execution to be issued upon the judgment so recovered the party entitled to enforce the same may obtain a certificate from the clerk of the division court of the amount due for debt and costs in respect of such judgment, and shall be entitled, upon lodging the same with the clerk of the municipality, to have the amount so certified placed upon the collector's roll, and the same may be collected in the same manner as taxes are collected, and shall until so collected or otherwise paid be a charge upon the land liable for the payment thereof, and in such case execution shall not thereafter issue on such judgment. R.S.O. 1927, c. 315, s. 9.

Award to be a charge on land, if registered.

10.—(1) The award may be registered in the proper registry or land titles office and when registered shall be a charge upon the land affected by it.

How registered.

(2) Registration may be by deposit of a duplicate of the award or of a copy, verified by affidavit, together with an affidavit of the execution of the award. R.S.O. 1927, c. 315, s. 10.

Appeals.

11.—(1) Any person dissatisfied with the award may appeal therefrom to the judge.

Notice of appeal.

(2) The appellant shall, within one week from the time when he was notified of the award, serve upon the fence-viewers and all parties interested a notice in writing of his intention to appeal, and the notice may be served as other notices mentioned in this Act.

To clerk.

(3) The appellant shall also deliver a copy of the notice to the clerk of the division court of the division in which the land lies, and the clerk shall immediately notify the judge of such appeal and the judge shall fix a time and place for the hearing of the appeal and shall communicate the same to the clerk, and, if he thinks fit, may order such sum of money to be paid by the appellant to the clerk as will be a sufficient indemnity against the costs of the appeal.

Notice of hearing.

(4) The clerk shall notify the fence-viewers and all parties interested of the time and place of hearing, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of judge.

(5) The judge shall hear and determine the appeal and may set aside, alter or affirm the award, or correct any error therein, and may examine the parties and their witnesses on oath, and may inspect the premises and may order payment of costs by either party and fix the amount of such costs.

(6) The decision of the judge shall be final and the award, as altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. Decision of judge to be final.

(7) The practice and procedure on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the division court. Procedure.

(8) Where the award affects land in two or more counties or districts the appeal may be to the judge of the county or district court of the county or district in which any part of the land is situate. R.S.O. 1927, c. 315, s. 11. Where land in different counties.

12.—(1) Each fence-viewer shall be entitled to \$2 or such larger amount, not exceeding \$5, as the council may by by-law fix for every day's work under this Act, and an Ontario land surveyor and a witness shall be entitled to the same compensation as if subpoenaed in a division court. Fees to fence-viewers, surveyors and witnesses.

(2) The corporation of the municipality shall, at the expiration of the time for appeal or after appeal as the case may be, pay to the fence-viewers their fees, and shall, unless the same be forthwith repaid by the person adjudged to pay the same, place the amount upon the collector's roll as a charge against such person, and the same may be collected in the same manner as municipal taxes. R.S.O. 1927, c. 315, s. 12. Payment of fence-viewers' fees.

13.—(1) If the judge inspects the premises or hears the appeal at a place other than the county or district town he shall be entitled to be paid the actual expenses incurred by him and, in the order setting aside, altering or affirming the award, shall fix the amount of such expenses and name the person by whom the same shall be paid. Judge's expenses.

(2) The judge shall be paid by the corporation of the municipality the amount so fixed, and the same shall be collected in the same manner as is provided in respect to the fence-viewer's fees. R.S.O. 1927, c. 315, s. 13. Municipality to pay expenses and collect amount.

14. Any agreement in writing (Form 4) between owners respecting a line fence may be filed or registered and enforced as if it was an award of fence-viewers. R.S.O. 1927, c. 315, s. 14. Enforcement of agreements.

15.—(1) The owner of the whole or part of a line fence which forms part of the fence enclosing the occupied or improved land of another person shall not take down or remove any part of such fence, Certain fences removable on notice.

- (a) without giving at least six months' previous notice of his intention to the owner or occupant of such adjacent enclosure unless such last mentioned owner or occupant, after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum determined as provided by section 6; or
- (b) if such owner or occupant will pay to the owner of such fence or part thereof such sum as the fence-viewers may award to be paid therefor under section 6.

Other provisions of Act to apply.

(2) The provisions of this Act for determining disputes between the owners of adjoining occupied lands, the manner of enforcing awards and appeals therefrom and the forms and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. R.S.O. 1927, c. 315, s. 15.

Where tree thrown down across a line fence.

16.—(1) If any tree is thrown down by accident or otherwise across a line fence, or in any way in and upon the land adjoining that upon which such tree stood, causing damage to the crop upon such land or to such fence, the owner or occupant of the land on which such tree stood shall remove the same forthwith, and also forthwith repair the fence and otherwise make good any damage caused by the falling of the tree.

When injured party may remove tree.

(2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the tree the injured person may remove the same in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of such tree from the person liable to pay it.

Right of entry.

(3) For the purpose of such removal the owner of the tree may enter into and upon such adjoining land doing no unnecessary spoil or waste.

Fence-viewers to decide disputes.

(4) All questions arising under this section shall be adjusted by three fence-viewers of the municipality, the decision of any two of whom shall be binding upon the parties. R.S.O. 1927, c. 315, s. 16.

(NOTE.—For the powers of municipalities to pass by-laws regulating division fences, see *The Municipal Act, Rev. Stat. c. 266, s. 405, par. 28.*)

FORM 1.

(Section 3.)

NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. _____, Mr. _____, and Mr. _____, three fence-viewers of this locality, will attend on the _____ day of _____, 19____, at the hour of _____, to view and arbitrate upon the line fence in dispute between our lands, being lots (or parts of lots) *one* and *two* in the concession of the township of _____ in the county of _____.

Dated the _____ day of _____, 19____, A.B.,
Owner of lot 1.

To C.D.,
Owner of lot 2.

R.S.O. 1927, c. 315, Form 1.

FORM 2.

(Section 3.)

NOTICE TO FENCE-VIEWERS.

Take notice that I require you to attend at _____ on the _____ day of _____, 19____, at _____ o'clock a.m., to view and arbitrate on the line fence between my land and that of Mr. _____, being lots (or parts of lots) Nos. *one* and *two* in the concession of the township of _____ in the county of _____.

Dated the _____ day of _____, 19____, A.B.,
Owner of lot 1.

To
Fence-viewers.

R.S.O. 1927, c. 315, Form 2.

FORM 3.

(Section 6.)

AWARD.

We, the fence-viewers of _____ (*name of the locality*), having been nominated to view and arbitrate upon the line fence between _____ of (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe land*), and having examined the land and duly acted according to *The Line Fences Act*, award as follows: That part of the line which commences at _____ and ends at (*describe the points*) shall be fenced, and the fence maintained by _____ and that part thereof which commences at _____ and ends at _____ (*describe the points*) shall be fenced, and the fence maintained by _____ The fence shall be of the following description (*state the kind of fence, height, material, etc.*), and shall cost at least _____ per rod. The work shall be commenced within _____ days, and completed within _____ days from this date, and the costs shall be paid by (*state by whom to be paid; if by both, in what proportion*).

Dated the _____ day of _____, 19 _____
(Signatures of fence-viewers.)

Witnesses:

R.S.O. 1927, c. 315, Form 3.

FORM 4.

(Section 14.)

AGREEMENT.

We _____ and _____ owners respectively of lots (*or parts of lots*) *one* and *two* in the _____ concession of the township of _____, in the county of _____, do agree that the line fence which divides our lands shall be made and maintained by us as follows: (*follow the same form as award.*)

Dated the _____ day of _____, 19 _____
(Signatures of Parties.)

R.S.O. 1927, c. 315, Form 4.