



## No. 14.

## An Act respecting Boundary Fences and Water Courses.

[Assented to 19th May, 1876.]

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Except as is hereinafter provided, the Lieutenant-Governor in Council shall appoint in and for every Fence District not less than three persons to be fence viewers, who shall perform, exercise and have the duties and powers as hereinafter mentioned. Appointment of fence viewers in fence district.

2. In Municipalities the Council shall appoint not less than three persons to act as fence viewers within the boundaries of the Municipality. And in Municipalities.

3. Owners of adjoining 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 so make, keep up and repair the same proportion which is to mark such boundary, and when it is in the interest of owners of adjoining lands to open a ditch or water course, for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such parties shall open a just and fair proportion of such ditch or water course, according to their several interests. Construction and maintenance of boundary fences and ditches.

4. In case of dispute between owners respecting such proportion, the following proceedings shall be adopted: Disputes between owners how determined.

Either owner may notify the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three fence viewers of the locality to arbitrate in the premises. Such owners so notifying shall also notify the fence viewers, not less than one week before their services are required. 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 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 such lands being untenanted, by leaving such notice with any agent of such owner, and where the owner of unoccupied lands cannot be found, after reasonable diligence, or is absent from the Province, it shall be in the power of the Judge, hereinafter mentioned, to cause such owner to be notified by letter, mailed to his last known place of residence, and to proceed and to cause all subsequent proceedings to be taken in his absence, and all such proceedings shall be as valid as if the notification hereby required to be given to an occupant had been given to such owner:

The owners notified may, within the week, object to any or all of the fence viewers notified, and in case of disagreement the judge

hereinafter mentioned shall name the fence viewers who are to arbitrate.

Mode of procedure  
by fence viewers.

5. The fence viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer the oath or an affirmation as in courts of law; and according to the subject matter of the reference, shall decide the commencement or extent of the part of such fence, or shall divide or apportion the ditch or water course among the several parties, having due regard to the interests of each in the opening thereof.

Award of fence  
viewers.

6. The fence viewers shall make an award in writing, signed by any two of them, respecting the matters so in dispute. The award shall specify the locality, extent, description, and the lowest price of the fence, ditch, or water course, it orders to be made, and the time within which the work shall be done; and the award shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs; and in making such award, the fence viewers shall regard the nature of the fences or ditches in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitableness of the fence, ditch or water course ordered to the wants of each party; and where from the formation of the ground, by reason of streams or other cases, it is found impossible to locate the fence, ditch or water course upon the line between the parties, it shall be lawful for the fence viewers to locate the said fence, ditch or water course, either wholly or partially on the land of either of the said parties, where to them it may seem to be most convenient; but such location shall not in any way affect the title to the land. If necessary, the fence viewers may employ a land surveyor, and have the locality described by metes and bounds. Where it appears to the fence viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of a ditch or water course to make him liable to perform any part thereof, and at the same time that it is necessary for the other party that such ditch should be continued across such tract, they may award the same to be done at the expense of such other party, and after such award the last mentioned party may open the ditch or water course across the tract at his own expense without being a trespasser.

Award to be depos-  
ited in Supreme  
Court.

7. The award shall be deposited in the office of the Registrar of the Supreme Court. It is an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents; and notice of its being made shall be given to all parties interested.

Award how en-  
forced.

8. The award may be enforced as follows:—The person desiring to enforce it must serve upon the owner or occupant of the adjoining lands a notice in writing, or in case such owner do not reside in the District where such award was made, such service may be effected by advertisement inserted in the nearest newspaper of a notice requiring him to obey the award; and if the award is not obeyed within one month after the service of such notice, the person so desiring to enforce it may do the work which the award directs, and immediately recover its value and costs from the owner by action

in any County Court having jurisdiction in the locality: Provided always, that the judge of such County Court may, on application of of either party, extend the time for making such fence, ditch or water course to such time as he may think just.

9. The award is a lien and charge upon the lands in respect of which it is made, provided that it is registered in the office of the Registrar-General of Titles. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of the Acts respecting registration of deeds of lands.

Registration of  
award.

10. An occupant, not the owner of land notified in the manner above mentioned, must immediately notify the owner; if he neglect so to do, he is liable for all damage caused to the owner by such neglect.

Occupant of lands  
to notify owner.

11. The fence viewers are entitled to receive two dollars each for every day's work under this Act. Land surveyors and witnesses are entitled to the same compensation as if they were subpoenaed in any County Court.

Fees to be paid  
fence viewers, sur-  
veyors, and wit-  
nesses.

12. Any person dissatisfied with the award made may appeal therefrom to a Judge of the Supreme Court of British Columbia. For such appeal the proceedings shall be as follows:--The appellant shall serve upon the fence viewers, and all parties interested, a notice in writing of his intention to appeal, not less than one week from the time he has been notified of the award; such notice may be served as other notices mentioned in this Act. The appellant must also deliver a copy of such notice to the Registrar of the Supreme Court, which Registrar shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof. and, if he think fit, order such sum of money to be paid by the appellant to the said Registrar as shall be a sufficient indemnity against costs of the appeal, and the Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Registrar, who shall notify the fence viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act, and the Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error; he may examine parties and witnesses on oath, and, if he so please, may inspect the premises; he may order payment of costs by either party, and fix the amount, and his decision shall be final; and the award, as so altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

Appeal.

13. Any agreement between owners respecting such line fence, ditch or water course, in writing, may be filed or registered and enforced as if it were an award of fence viewers.

Agreement between  
owners respecting  
line fence, ditch, or  
water course.

14. The forms in the schedules are to guide the parties, being varied according to circumstances.

Forms.

15. This Act shall not apply to that portion of the Province situate to the North and East of the Cascade range of mountains.

Interpretation  
clause.

16. This Act may be cited in any proceeding or document as the "British Columbia Line Fences and Water Courses Act, 1876."

Short Title.

## SCHEDULE A.

*Notice to Opposite Party.*

Take notice, that Mr. , Mr. , and Mr. three fence viewers of this locality, will attend on the day of 18 , at the hour of , to view and arbitrate upon the line fence or water course in dispute between our properties, being

Dated this day of , 18 .  
A. B.,  
Owner of

To C. D.,  
Owner of

## SCHEDULE B.

*Notice to Fence Viewers.*

Take notice, that I require you to attend at on the day of , A. D. 18 , at o'clock, A. M., to view and arbitrate on the line fence or water course between my property and that of Mr. being

Dated this day of , 18 .  
A. B.  
Owner of

## SCHEDULE C.

*Award.*

We, the fence viewers of the locality, having been nominated to view and arbitrate upon the line fence between by [name and description of owner who notified] and [name and description of owner notified], which fence is to be made and maintained between [describe properties], and having examined the premises and duly acted according to the British Columbia Line Fences Act, do award as follows: That part of the said line which commences at and ends at [describe the points], shall be fenced and the fence maintained by the said , and that part thereof which commences at and ends at [describe the points], shall be fenced, and the fence maintained by the said . The fence shall be of the following description: [state the kind of fence, height, material, &c.,] 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 paid, if by both, in what proportion].

Dated this day of A. D., 18 .  
[Signatures of fence viewers].

## SCHEDULE TO AGREEMENT.

We, and , owners respectively of in the , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: [follow same form as in the award].

Dated this day of A. D., 18 .  
[Signatures of parties.]