



Republic of Namibia
Annotated Statutes

Fencing Proclamation 57 of 1921

(OG 78)

came into force on date of publication: 1 February 1922

as amended by

Fencing Proclamation Amendment Proclamation 13 of 1923 (OG 110)

came into force on date of publication: 1 June 1923

Fencing Proclamation Amendment Proclamation 18 of 1925 (OG 177)

came into force on date of publication: 15 October 1925

Fencing Proclamation Further Amendment Proclamation 28 of 1925 (OG 180)

came into force on date of publication: 1 December 1925

Fencing Law Amendment Ordinance 4 of 1928 (OG 279)

came into force on 1 July 1928 (section 7 of Ord. 4 of 1928)

Land Bank Proclamation 22 of 1935 (OG 639)

came into force on date of publication: 26 October 1935

Fencing Proclamation Amendment Proclamation 14 of 1950 (OG 1495)

came into force on date of publication: 15 April 1950

Fencing Amendment Proclamation 48 of 1950 (OG 1548)

came into force on date of publication: 15 September 1950

Fencing Amendment Ordinance 44 of 1952 (OG 1732)

came into force on date of publication: 5 December 1952

Fencing Proclamation Amendment Ordinance 21 of 1955 (OG 1925)

came into force on date of publication: 8 July 1955

Fencing Proclamation Amendment Ordinance 6 of 1958 (OG 2141)

deemed to have come into force on 11 April 1957 (section 2 of Ord. 6 of 1958)

Animal Diseases and Parasites Ordinance 14 of 1958 (OG 2150)

brought into force on 9 August 1958 by Proc. 44/1958 (OG 2158);

replaced by the Animal Diseases and Parasites Ordinance 34 of 1959,
which makes the same amendments to this Proclamation

Animal Diseases and Parasites Ordinance 34 of 1959 (OG 2199)

deemed to have come into force on 9 August 1958 (section 37 of Ord. 34 of 1959);

repeals Animal Diseases and Parasites Ordinance 14 of 1958

Fencing Proclamation Amendment Ordinance 23 of 1963 (OG 2493)

came into force on date of publication: 4 July 1963

Fencing Proclamation Amendment Ordinance 26 of 1965 (OG 2636)

came into force on date of publication: 21 July 1965

as supplemented by

Fencing Law Amendment Ordinance 4 of 1928 (OG 279)

came into force on 1 July 1928 (section 7 of Ord. 4 of 1928);

“to be read as one” with Proc. 57 of 1921 (section 7 of Ord. 4 of 1928)

Fencing Proclamation 57 of 1921

and as supplemented by

Fencing Proclamation Amendment Ordinance 6 of 1957 (OG 2072)

came into force on date of publication: 11 April 1957; “To amend the law concerning fencing by the extension of certain provisions of the Fencing Proclamation of 1921 (No. 57 of 1921) to jackal-proof fences and to make the erection of jackal-proof fences in certain areas compulsory”; as amended by the **Fencing Proclamation Amendment Ordinance 28 of 1959 (OG 2199)**, which is deemed to have come into force on 11 April 1957, in terms of section 2(2) of Ord. 28 of 1959

PROCLAMATION

BY HIS HONOUR UIJSBERT REITZ HOFMEYR, A COMPANION OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE,
ADMINISTRATOR OF SOUTH-WEST AFRICA

[This Proclamation has no long title.
The date of signature appears at the bottom of the Proclamation.]

ARRANGEMENT OF SECTIONS

[Only the chapters in this Proclamation have headings.]

PRELIMINARY

Chapter 1
DIVIDING FENCES, ADVANCES FOR ERECTION
THEREOF AND CONTRIBUTIONS TOWARDS
COST OF ERECTION

Chapter 2
[deleted]

Chapter 3
OFFENCES

Chapter 4
GENERAL AND MISCELLANEOUS

FIRST SCHEDULE
SECOND SCHEDULE

WHEREAS it is expedient that the erection and maintenance of dividing fences between adjoining properties should be regulated.

NOW THEREFORE under and by virtue of the powers in me vested, I do hereby proclaim, declare and make known as follows:

[Section 49(4)(b) of Proc. 22 of 1935 provides “Any reference in the Fencing Proclamation, 1921 (Proclamation No. 57 of 1921), to section *three* of the Dipping Tanks (Advances) Act, 1911 (Act of

Fencing Proclamation 57 of 1921

the Parliament of the Union of South Africa No. 20 of 1911), shall be deemed to be a reference to section *forty* of this Proclamation [Proc. 22 of 1935].” However, no references to the Dipping Tanks (Advances) Act remain in the Fencing Proclamation 57 of 1921.]

PRELIMINARY

1. So much of any law as is repugnant to or inconsistent with the provisions of this Proclamation shall be and is hereby repealed: Provided that when an owner of a holding adjoining such an area applies to have such holding included in the area, the Administrator may amend the aforesaid notice so as to include the holding of such owner within the boundaries of the area.

[Section 1 is amended by Ord. 6 of 1958 to add the proviso; a colon has accordingly been inserted.]

2. In this Proclamation unless inconsistent with the context:-

“contributions” shall mean contributions by an owner in accordance with this Proclamation, towards the cost of dividing fences, and “contribute” shall be construed accordingly;

“cost” shall, in respect of the erection or alteration or repair of any fence, include any cost of or incidental to such erection, alteration, or repair, including the cost of transport of materials:

“department” shall mean the Administration of South-West Africa acting through any officer delegated thereto by the Administrator;

“dividing fence” shall mean, in relation to a holding, a fence erected on or as near as possible to any boundary thereof and separating that holding from another holding, including any necessary gate in such fence and having not less than five strands of well galvanized wire, with straining-posts not more than 500 yards apart, and iron standards (these shall weigh not less than 12 pounds avoirdupois each) or hard-wood poles (these shall be at least 4 inches in diameter at the thin end and be planted not less than 2 feet deep in the ground) at not more than 10, 15, or 20 yards apart, with not less than two, three or four droppers (if hard-wood droppers are used these shall be at least 1½ inches in diameter at the thin end) between them respectively;

[definition of “dividing fence” amended by Proc. 18 of 1925, Proc. 28 of 1925 and Proc. 14 of 1950]

“holding” shall mean -

- (a) any area of land held by any person under separate grant, deed of transfer or certificate of title, or under separate paragraph of any grant, deed of transfer or certificate of title; or
- (b) any area of land held under lease or allotment from the Administrator, with an option to purchase such area or portion thereof, provided the instrument of lease or allotment is registered in the Deeds Registry, or

[The comma at the end of paragraph (b) should be a semicolon.]

- (c) Any area of land the dominium whereof is vested in the Administrator in terms of the Townships Ordinance, 1928 (Ordinance No. 11 of 1928) and over which a Village Management Board has control in terms of the Village Management Boards Ordinance, 1937 (Ordinance No. 16 of 1937),

Fencing Proclamation 57 of 1921

but shall not include any erf, stand or lot or any block of erven, stands or lots situate within a municipality, village or township, unless such erf, stand, lot or block is at least three hectares in extent and unless farming operations are carried on thereon;

[The definition of “holding” is substituted by Proc. 18 of 1925 and amended by Proc. 48 of 1950 and by Ord. 6 of 1958.

Ord. 6 of 1958 includes the following statement, but it is not clear if this statement is intended to be added to section 2, or if it is rather an explanatory note pertaining to the amendments made by Ord. 6 of 1958:

“The word “area” in this section shall mean:-

- (i) any district or ward as described in sub-sections (3) and (4) of section 5 of the Proclamation, or
- (ii) one or more soil conservation districts or portions thereof, irrespective of whether such soil conservation districts or portions thereof are situated within one or more districts or wards.”]

“imprisonment” shall, in relation to an offence, mean imprisonment with or without hard labour as the court which passes sentence for the offence directs;

“owner” shall mean -

- (a) in respect of a holding described in paragraph (a) of the definition of “holding” the person registered in the Deeds Office as the owner; and
- (b) in respect of a holding described in paragraph (b) of the said definition the person registered as the holder of the lease, or allotment; and
- (c) in respect of a holding described in paragraph (c) of the said definition the Village Management Board constituted for such holding;

and in respect of a holding described in paragraphs (a) and (b) of the said definition, shall include the legal representative of an owner who has died, become insolvent, is a minor or of unsound mind or is otherwise under disability, and if the owner be a company in liquidation shall include also the liquidator thereof;

[definition of “owner” amended by Proc. 48 of 1950]

“repair” shall, in relation to any fence or ditch or any part thereof, include trimming, cutting, or in any other manner whatever, putting and maintaining the same in good order.

[The full stop at the end of this definition should be a semicolon now that it is no longer the last item in the list.]

“jackalproof fence” means a fence of steel wire and wire netting erected on, or as near as possible to, the boundary between two holdings in accordance with the following directions -

- (i) the straining posts to be no further than five hundred yards apart;
- (ii) the standards to be iron, hard-wood or treated wood (four inches in diameter at the thin end), planted at least two feet deep in the ground except when hard rock is encountered when a depth of twelve inches will be sufficient;
- (iii) two, three or four droppers to be used according as the standards are respectively ten, fifteen or twenty yards apart;
- (iv) the droppers to be at least one and a half inches thick at the thin end;

Fencing Proclamation 57 of 1921

- (v) at least three steel strands to be strung – one at the top, one in the middle and one at the bottom – to support the wire netting;
- (vi) the width of the wire netting to be at least four feet – three and a half feet to be perpendicular and six inches buried underground or folded over and packed down with stones;
- (vii) two strands of steel (or barbed) wire three or four inches apart to be strung above the wire netting;
- (viii) the wire netting to be three or three and a half inches in mesh:

Provided that where the fence is erected in any area known as sandveld the wire netting shall be dug between twelve and eighteen inches straight down into the ground wherever the sand allows it, and shall extend at least two and a half feet above the ground and shall have above it four steel or barbed wire strands not more than four inches apart so that the total height of the fence will be at least four feet.

[The definition of “jackalproof fence” is inserted by Ord. 21 of 1955 “at the end” of section 2, even though this is not the correct alphabetical order, and amended by Proc. 23 of 1963 and by Ord. 26 of 1965. The full stop at the end of paragraph (viii) has been changed to a colon to accord with the addition of the proviso by Proc. 23 of 1963.]

Chapter 1
DIVIDING FENCES, ADVANCES FOR ERECTION
THEREOF AND CONTRIBUTIONS TOWARDS
COST OF ERECTION

3.

[section 3 amended by Proc. 13 of 1923 and repealed by Act 22 of 1935]

4. If any owner has, under this Proclamation or another law or otherwise, lawfully erected a dividing fence on the boundary lines of his holding in an area in which contributions towards the cost thereof are not obligatory and the owner of an adjoining holding adopts means whereby such a fence is rendered of beneficial use to himself either owner may, in default of agreement, demand that an assessment be made of the value to each owner of the fence, regard being had to the extent to which and the time at which the beneficial use is being or has been made. Such value shall be determined as a dispute in accordance with the provisions of the Second Schedule to this Proclamation, and thereupon it shall be obligatory upon the owner who has made beneficial use of the fence to contribute towards the cost of such fence in accordance with such assessment.

5. (1) Subject to the provisions of this section, contributions towards the cost of a dividing fence shall be obligatory in any area in which such contributions are declared obligatory by the Administrator by notice in the Gazette and contributions when so declared obligatory in any area shall be made as from a date to be by the said notice fixed.

(2) The Administrator shall declare contributions to be obligatory in any area or part of such area wherein a District Council has jurisdiction if such District Council has transmitted to the Secretary for South-West Africa -

- (a) a certified copy of a resolution passed by it recommending that such contributions be so declared obligatory; and

Fencing Proclamation 57 of 1921

- (b) proof that the resolution was passed at an ordinary meeting of the council after the expiration of such notice of intention to propose the resolution as is required by the standing rules of procedure of the council relating to notice of resolutions; and
- (c) proof that the said notice of intention and the terms of the proposed resolution has been published in the newspapers in which notices of the council are usually published and at least one month prior to the date when the resolution was first moved.

(3) Whenever in any district no district council has jurisdiction but the district is divided into wards the Administrator shall declare contributions to be obligatory in any ward of that district if the magistrate thereof has transmitted to the Secretary for South-West Africa -

- (a) a resolution passed as hereinafter provided recommending that the said provisions be declared in force in the said ward; and
- (b) proof that -
 - (i) the resolution was passed at a meeting convened upon a written request signed by not less than twelve owners of holdings in the ward; and
 - (ii) one month's notice of such meeting was given by advertisement in one or more newspapers circulating in the ward; and
 - (iii) the said magistrate presided at such meeting and the said resolution was duly put to the meeting and carried by a majority of the owners present or represented thereat: Provided that not more than one vote shall be recorded in respect of any one holding.

It shall be lawful for the Administrator for purposes of this sub-section by notice in the Gazette to divide any district into wards.

[subsection (3) amended by Proc. 18 of 1925]

(4) Whenever any district in which no District Council has jurisdiction is not divided into wards, the Administrator shall declare contributions to be obligatory throughout the whole district if the magistrate thereof transmit to the Secretary for South-West Africa a resolution passed at a meeting convened and held by him therein in manner, as nearly as possible, described in sub-section (3).

6. (1) Every owner who intends to erect a dividing fence upon his holding may, if he desires that the owner of an adjoining holding shall contribute to the cost of such fence, transmit to that owner written notice dated and in the form as nearly as possible set out in the First Schedule to this Proclamation, of such his intention, and when he transmits such notice he shall attach thereto the specification of the dividing fence which he desires to erect, together with a statement of the estimated cost thereof and the proportion of such cost which he requires such owner to contribute.

(2) If the last mentioned owner fail, within a period of one month after the date when the said notice was transmitted, to lodge with the owner who transmitted the notice an objection thereto, the latter may forthwith proceed with the erection of the dividing fence.

(3) If an owner to whom the said notice has been transmitted lodge an objection within the said period and state herein that he desires to erect a dividing fence of a different type and

Fencing Proclamation 57 of 1921

transmit with the objection a specification of the type of fence he desires to erect, either owner may, in default of agreement between them, claim that the matter shall be determined as a dispute in accordance with the provisions of the Second Schedule to this Proclamation.

(4) The provisions of this section shall apply *mutatis mutandis* in respect of a dividing fence existing at the date as from which contributions become obligatory by notice under section *five* provided the the fence is in good order.

[Subsection (4) is amended by Ord. 4 of 1928. The word "the" is repeated in the phrase "provided the fence is in good order"; the phrase in question may have been intended to be "provided that the fence is in good order".]

(5) If an owner has created a dividing fence without complying with the provisions of sub-section (1) of this section and the owner of an adjoining holding adopts means whereby such a fence is rendered of beneficial use to himself, the provisions of section *four* of this Proclamation shall, *mutatis mutandis*, apply.

[subsection (5) inserted by Proc. 18 of 1925]

7. If the whereabouts of any owner be unknown or if he be absent from the Territory of South-West Africa, the notice mentioned in the last preceding section shall be deemed to be duly given -

- (a) when it is given to a person generally or specially authorised by him to be his representative; or (if there be no such authorised representative known to the person required to give the notice),
- (b) when it has been published once in the Gazette and three times in a newspaper if any circulating in the district wherein the holding is situate:

Provided that in the case described in paragraph (b) a period of three months shall be substituted for the period of one month prescribed by the last preceding section as the period within which objections shall be lodged or the terms of the notice shall be complied with.

The cost of publication described in paragraph (b) shall be added to the contribution towards the cost of the fence required to be made by the owner whose whereabouts is unknown or who is absent from the Territory of South-West Africa.

8. Whenever a holding in an area in respect of which a notice is in force under section *five* adjoins a holding situated in another area in respect of which such a notice is not in force, the owner of the last-mentioned holding shall be liable to contribute towards the cost of the dividing fence between the two holdings, only if he adopts means whereby the fence is rendered of beneficial use to himself.

Chapter 2

[Chapter 2, comprising sections 9-17, deleted by Ord. 14 of 1958 and by Ord. 34 of 1959]

Chapter 3

OFFENCES

Fencing Proclamation 57 of 1921

18. Any person who -

- (a) opens and leaves open or unfastened; or
- (b) finding open on passing through, neglects to shut and fasten,

a gate in any fence shall be liable on conviction in the case of a first offence, to a fine not exceeding ten pounds, or, in default of payment, to imprisonment for a period not exceeding fourteen days, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds or, in default of payment, to imprisonment for a period not exceeding one month or to such period of imprisonment without the option of a line.

[A fine not exceeding ten pounds is equivalent to a fine not exceeding N\$20; a fine not exceeding twenty pounds is equivalent to a fine not exceeding N\$40.]

19. Any person who climbs over or through a fence or gate without permission of the owner or lessee of the land upon which such fence is situate shall be liable on conviction to a fine not exceeding ten pounds, or in default of payment, to imprisonment for a period not exceeding fourteen days.

[A fine not exceeding ten pounds is equivalent to a fine not exceeding N\$20.]

20. Any person who wilfully injures or removes any fence, gate, or other appliance or contrivance forming part or serving the purpose thereof, shall be liable on conviction to a fine not exceeding seventy-five pounds, or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

[A fine not exceeding seventy-five pounds is equivalent to a fine not exceeding N\$150.]

21. (1) Any person who inadvertently or accidentally injures any fence or gate situate upon a holding or on a public road within a holding, shall forthwith repair the same, and in the event of his being unable to do so he shall forthwith report the injury and inability to repair to the owner of the holding and deposit or give security for such sum as may be reasonably sufficient to cover the cost of the repair, and the owner shall thereupon on request give such person an acknowledgment of the sum deposited or secured.

(2) If any person fail to comply with the requirements of this section he shall be liable to a fine not exceeding ten pounds or, in default of payment, to imprisonment for a period not exceeding fourteen days.

[A fine not exceeding ten pounds is equivalent to a fine not exceeding N\$20.]

22. Any person who, having injured a fence or gate, or having climbed over or through a fence or gate without permission, fails, on request by the owner or lessee of the land on which it is situate or by some person authorised thereto by such owner or lessee, to give his correct name and address, shall be liable on conviction to a fine not exceeding twenty pounds, or, in default of payment, to imprisonment for a period not exceeding one month.

[A fine not exceeding twenty pounds is equivalent to a fine not exceeding N\$40.]

23. Any person who wilfully fails to comply with, or who contravenes any provision of this Proclamation in respect whereof no penalty is expressly provided shall be liable on conviction to a fine not exceeding twenty pounds or, in default of payment, to imprisonment for a period not exceeding one month.

[A fine not exceeding twenty pounds is equivalent to a fine not exceeding N\$40.]

Chapter 4

GENERAL AND MISCELLANEOUS

24. (1) An owner shall have the right to fence his holding or to contribute towards the costs of erecting a dividing fence between such holding and any adjoining holding notwithstanding that such first mentioned holding is subject to a servitude of grazing or a servitude of watering live stock thereon in favour of any other owner or person whomsoever, provided that reasonable means of ingress and egress be allowed to the live stock of the servitude holder through suitable and sufficient gates, and in default of agreement between the owner and the servitude holder as to the suitability or sufficiency of the gates, either of them may claim that the matter shall be determined as a dispute in accordance with the provisions of the Second Schedule to this Proclamation.

(2) The holder of a servitude of grazing as in sub-section (1) described shall be liable to pay to the owner of the holding a fair share of the costs of erection, maintenance, and repair of the fence proportionate to his interest in the grazing rights over the holding, and the default of agreement between the owner and servitude holder as to their respective shares in the grazing rights either of them may claim that the matter shall be determined as a dispute in accordance with the provisions of the Second Schedule to this Proclamation.

25. Whenever, under this Proclamation, two owners are unable to agree -

- (a) as to the specifications of any dividing fence proposed to be erected or altered; or
- (b) as to the assessment to be made of the value of any owner of any dividing fence; or
- (c) as to the use which an owner is making of a dividing fence and whether such use is beneficial use and if so the extent to which the beneficial use is being made; or
- (d) as to any other matter in respect of which a dispute has arisen between the two owners,

the provisions set out in the Second Schedule to this Proclamation shall apply.

26. (1) Whenever any person is convicted by a magistrate's court of a contravention of section *twenty* or *twenty-one* of this Proclamation and it appears that such person has by that offence caused damage to the owner or occupier of a holding, the court may, at the written request of such owner or occupier as the case may be, but in the presence of the convicted person, enquire summarily and without pleadings into the amount of damage so caused.

(2) Upon proof of such amount the court may give judgment therefor in favour of such owner or occupier, as the case may be, and against the convicted person, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it has been given a civil action duly instituted before such court: Provided that judgment shall not be given under this section for a sum exceeding fifty pounds.

[A sum of fifty pounds is equivalent to a sum of N\$100.]

27. If any fence crosses a recognised public road the owner concerned shall allow an opening of not less than fifteen feet across such road and shall erect and maintain in good order a gate made of iron or wood, or an iron or wooden frame spanned with wire, placed as near as

Fencing Proclamation 57 of 1921

possible at right angles to the road and properly fixed by means of hinges or pivots to the posts erected for the purpose, so as to facilitate the opening and closing of the gate:

Provided that in an area wherein a road authority exists such authority shall define the types and width of gates which may be erected over any road:

Provided further that nothing in this section contained shall apply in any area wherein any road authority lawfully prohibits the erection of gates across recognised public roads.

28. Whenever under this Proclamation it is necessary to determine in respect of the fencing of public outspans the ownership thereof, the owner shall -

- (a) where the outspan is within the area of jurisdiction of a local authority, be deemed to be that local authority;
- (b) where the outspan is within the area of jurisdiction of a district council, be deemed to be that district council; and
- (c) where the outspan is within an area in which no local authority or district council exercises jurisdiction, be deemed to be the Administration of South-West Africa.

29. Any person erecting any fence whatever on land covered with bush may clear the bush for a distance not exceeding five feet on each side of such fence and may remove any tree standing in the immediate line of such fence, and the cost of such clearing shall be deemed to be part of the cost of erecting the fence.

30. Where any holding fenced under this Proclamation is held under lease the owner shall be entitled during the term of the lease to receive from the lessee, as from the date when such holding become so fenced, a payment of six per cent per annum on any sum which such owner has paid in respect of the fence. The owner shall have the same rights in respect of recovering any such payment as he has in law to recover rent due to him from the lessee, and the lessee shall have the right to determine the lease, unless the owner's liability to contribute towards the cost of the fence arose from any act of the lessee.

31. (1) If between two or more holdings a dividing line is formed by a watercourse or a river (not being of such nature as to form a natural barrier for stock) or range of hills, outcrops of solid rock or kopjes, along which it is impracticable or inexpedient to erect a fence, the owners concerned may agree upon a fair give-and-take line as a dividing line to be fenced in accordance with this Proclamation or in default of such agreement, any such owner may claim that the matter may be determined as a dispute in accordance with the provisions of the Second Schedule to this Proclamation.

(2) Any give-and-take line so agreed or determined shall be deemed to be the boundary line for the purposes of this Proclamation, but shall not otherwise affect the titles to any such holdings.

32. If any dividing fence whatever be out of repair the owner of each holding separated by the fence shall be liable for the cost of the repair to the extent to which under this Proclamation he would be liable to contribute to the cost of such fence; and either owner may serve upon the other owner a notice requiring him within a period of one week to assist in repairing such fence; and if such other owner fail to comply with the terms of such notice the owner who has served the said notice may himself repair it and recover from the other owner the proportion of the cost of repair due from him.

Fencing Proclamation 57 of 1921

33. Any owner of a holding separated by a dividing fence shall have the right at any time so to alter the fence as to make it a fence of a superior type: Provided that the owner of the adjoining holding separated by the fence shall not be liable to contribute to the alteration unless or until he derives beneficial use from the type of fence as altered. The provisions of the next succeeding section shall apply *mutatis mutandis* as if the alteration were an erection or repair of the fence.

34. Any person erecting or repairing any dividing fence whatever, whether erected under this Proclamation or otherwise, shall for himself, his servants, implements, materials, animals and vehicles have at all times access to any property for the purpose of carrying out the work reasonably required for the erection or repair:

Provided that nothing in this section contained shall be construed as authorising the entry, without the consent of the occupant, upon land under cultivation or on a garden, plantation, or pleasure ground, or the cutting down, lopping, or injury of any fruit tree, ornamental trees, or shrubs.

34bis. If the owner of a holding erects jackalproof fencing he shall be entitled to fold the lower six inches of the fencing over on his neighbour's side and to pack it down with stones, to obtain the material needed for the folding over and packing down from his neighbour's land, and to convey such material by means of a vehicle.

[section 34bis inserted by Ord. 21 of 1955]

35. For the purpose of inspection, valuation, or survey, or of carrying out any of the provisions of this Proclamation, any person authorised by the department or any person appointed or nominated to determine a dispute in accordance with the Second Schedule to this Proclamation may enter upon any land and value, measure, survey, take grades and levels, fell trees, cut fences, and do all other acts necessary, for such purposes:

Provided that all damage caused by the exercise of the powers of this section shall, as far as possible, be repaired, and so far as the repair of damage is not possible the value thereof shall be paid to the owner, and shall, in default of agreement, be determined as a dispute in accordance with the provisions of the said Second Schedule.

36. If any fence erected, or to be erected, on land over which a telegraph line is constructed, render or would render it impossible or inconvenient for the Director of Posts and Telegraphs to obtain access to that land for the purpose of carrying out any of the functions of the Branch controlled by him, the said Director may, at the expense of the said Branch, erect and maintain gates in that fence and shall provide therefor duplicate keys, one of which shall be handed over to the owner or occupier of the land. It shall be the duty of every person intending to erect any such fence to give six weeks' notice in writing to the Director of Posts and Telegraphs of his intention.

[A new section 36 is inserted by Proc. 18 of 1925, with the original section 36 and all subsequent sections re-numbered accordingly.]

37. If any civil proceedings be taken under this Proclamation against a lessee for which the owner would ultimately incur any liability, the lessor may intervene and defend such proceedings, and any defence which is available to the lessee shall be available to the owner in addition to any other available defence.

38. The magistrate's court of the district in which the defendant in any civil proceedings under this Proclamation resides shall have jurisdiction to entertain such proceedings and give judgment for the amount claimed, notwithstanding that the proceedings or amount claimed is under the law relating to magistrates' courts, outside the ordinary jurisdiction of such courts.

Fencing Proclamation 57 of 1921

39. No owner or occupier of a holding shall be held liable in damages in respect of an injury caused to any person or to any property by such person or property coming in contact with any fence: Provided that the injury has not been occasioned by the negligence of such owner or occupier in erecting, altering, maintaining or repairing the fence.

40. Nothing in this Proclamation contained shall be construed as affecting any act done or right acquired prior to the commencement of this Proclamation under any contract, covenant, or agreement made between any lessor and lessee, or between the owners of adjoining holdings relative to dividing fences.

41. No right conferred nor any obligation or duty imposed by this Proclamation on an owner or lessee shall, if the Administration of South-West Africa or the Railway Administration, (by which expression is meant the authority for the control and management of the railways, ports and harbours of the Union of South Africa as established under the South Africa Act 1909 of the Union Parliament or any amendment thereof) be the owner or lessee of a holding, whether by registration or otherwise, belong to or be binding upon them respectively.

42. This Proclamation may be cited for all purposes as the "Fencing Proclamation 1921", and shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

GOD SAVE THE KING.

Given under my hand and seal at Swakopmund this 1st day of December, 1921.

GIJS. R. HOFMEYR,
Administrator.

FIRST SCHEDULE

To
Owner
Agent for the owner of farm
Address.....

Notice of intention to fence

Take notice in terms of section six of the Fencing Proclamation 1921, that I desire to have a fence erected along the boundary line of my farm
No. and your farm
No. The work will be commenced on or about the day of 19
in accordance with the specification hereunder appended, and I request that you will inform me whether it is your intention to contribute either labour or material, or both, towards this fencing.

If no reply or objection to the proposed specification reaches me within one month after the date of this notice the work will be proceeded with in the usual manner.

Date (Signature)
Owner
Agent for

Fencing Proclamation 57 of 1921

SPECIFICATION

- (1) Height of fence feet inches;
- (2) No. of wires: barbed,
No. of wires: plain,
- (3) Distance apart of wires in inches from ground
upwards.
- (4) Nature of straining posts.
- (5) Distance apart of straining posts, yards.
- (6) Nature of standards,
(i.e.) Stone poles, iron standards, lbs, wooden
posts (minimum diameter in inches) etc.
- (7) Distance apart of standards, yards.
- (8) Nature of droppers.
- (9) Distance apart of droppers, feet.
- (10) No. of gates single.
No. of gates double.
- (11) Remarks: If necessary further explaining construction
of fence, etc.
- (12) Length of proposed fence, yards.
- (13) Estimated cost, including erection, £

Owner
Agent for

SECOND SCHEDULE

(1) Each owner who is a party to the dispute may serve on the other owner a notice in writing stating that he desires the matter in dispute to be determined by a board appointed in accordance with and having the powers set out in this Schedule.

(2) The board shall consist of three members, not being related to any of the parties, appointed as in this Schedule provided, unless the two owners mutually agree that one person shall determine the matter and further agree as to who that one person shall be. That person shall have all the powers by this Schedule conferred upon the board.

(3) In default of such agreement each such owner shall, within fourteen days after the date of the notice aforesaid, nominate one person as a member of the board and shall transmit to the other owner the name and address of the person so nominated.

(4) If after the expiry of the said period of fourteen days either owner has made default in complying with paragraph (3) the other owner may request -

- (a) the magistrate of the district in which the two holdings are situate; or if the holdings are situate in different districts,
- (b) the magistrate whose seat of magistracy is nearest to the place which would be the central point of the provided dividing fence

to appoint forthwith a member of the board to act in place of the person who should have been appointed by the defaulting owner. The said magistrate shall forthwith comply with that request.

Fencing Proclamation 57 of 1921

(5) Notice of appointment shall forthwith be transmitted by the appointing owner or appointing magistrate (as the case may be) to each member appointed as aforesaid, and the two members so appointed shall, within fourteen days after the date of such notice of appointment, nominate a third person to be a member of the board.

(6) If at the expiry of the last-mentioned period of fourteen days the said two members have made default in agreeing upon a third member, the magistrate aforesaid shall, at the request of either owner, appoint a third member. Notice of the appointment shall forthwith be transmitted to the third member by one or other of the appointing owners or by the appointing magistrate (as the case may be).

(7) The board shall proceed to determine the matter in dispute as soon as possible after the third member has received his notice of appointment.

(8) The third member shall be chairman of the board and shall summon all meetings of the board

[There is no full stop at the end of this sentence; no words appear to have been omitted.]

(9) The board shall have power to summon and hear witnesses, to administer oaths to witnesses, to call for the production of papers and documents and to enter upon and inspect either holding or any adjacent holding for the purpose of determining the matter in dispute.

(10) The decision of the majority of the board shall be the decision of the board and shall be binding upon both owners.

(11) (1) The board shall have power to award to either owner as against the other owner the costs of, and incidental to, the determination of the matter, including the remuneration of and reasonable expenditure by the board.

(2) The Administrator shall from time to time fix the daily remuneration payable to a member of the board.

[Section 11 of the Second Schedule is substituted by Ord. 44 of 1952, which erroneously numbers it as "11." instead of "(11)". This error has been corrected here to avoid confusion. The paragraphs within the provision should be numbered as (a) and (b) instead of (1) and (2); alternatively, the items in the Second Schedule should all be numbered with section numbers without brackets.]

(12) Any decision of the board, including any decision as to costs, may be enforced in the same manner and by the same persons as a judgment or order of the magistrate's court of the district is enforced.

(13) For the purposes of carrying out any of the powers of the board and for the purpose also of allowances to witnesses the law for the time being in force relating to magistrates' courts shall, save where other special provision is made in this Schedule, *mutatis mutandis* apply.

(14) Any costs awarded by the board may be taxed on the request of the owner against whom the award was made, by the clerk of the magistrates' court of the district, in accordance with the law in force therein, relating to magistrates' courts

[There is no full stop at the end of this sentence; no words appear to have been omitted.]

Fencing Law Amendment Ordinance 4 of 1928

(OG 279)

came into force on 1 July 1928 (section 7 of Ord. 4 of 1928)

ORDINANCE

To amend the law relating to the erection of dividing fences between adjoining properties.

(Assented to 1st June, 1928)

(Afrikaans text signed by the Administrator)

ARRANGEMENT OF SECTIONS

1. Interpretation of terms
2. Amendment of section *six* of Proclamation No. 57 of 1921
3. Transfer of obligations to pay and rights to claim contributions towards cost of dividing fences
4. Persons acquiring holdings from Administration of Mandated Territory or from Railway Administration to be liable to contribute to cost of dividing fences existing thereon
5. How contributions in certain cases to be calculated
6. Not more than half cost of a dividing fence to be recoverable
7. Short title and date of commencement of Ordinance

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

Interpretation of terms

1. (1) In this Ordinance -

“the principal law” means the Fencing Proclamation, 1921 (Proclamation No. 57 of 1921), as amended by the Fencing Proclamation Amendment Proclamation, 1923 (Proclamation No. 13 of 1923), the Fencing Proclamation Amendment Proclamation, 1925 (Proclamation No. 18 of 1925), and the Fencing Proclamation Further Amendment Proclamation, 1925 (Proclamation No. 28 of 1925);

“prior owner” means -

- (a) if the transferor is an executor or a *curator bonis* or a trustee or assignee under the law relating to insolvency, or a liquidator of a company, the person or company whose property such transferor is administering; or
- (b) if a transfer is passed in execution of the judgment of a competent court, the judgment debtor; or

Fencing Proclamation 57 of 1921

- (c) in the case of cession of the lease of the area of land comprising a holding such as is described in paragraph (b) of the definition of “holding” contained in section *two* of the principal law, the cedent; or
- (d) in the case of cancellation of the lease or allotment of the area of land comprising a holding such as is described in the said paragraph, the lessee or the person to whom the holding was allotted (in this case the Administration shall be deemed to be the transferee of the holding); or
- (e) in all other cases the transferor.

(2) Any expression to which in the principal law a meaning has been assigned has, when used in this Ordinance, the same meaning.

Amendment of section six of Proclamation No. 57 of 1921

2. Section *six* of the principal law is hereby amended by the deletion of the words “at the commencement of this Proclamation or” and the words “in either case” occurring in sub-section (4) of that section.

Transfer of obligations to pay and rights to claim contributions towards cost of dividing fences

3. (1) Whenever a holding is transferred, every obligation of the prior owner in respect of the cost of any dividing fence between such holding and any other holding, imposed upon such prior owner in terms of the principal law, read with this Ordinance, shall be deemed to be transferred to the transferee, and the prior owner shall thereupon cease to be bound by any such obligation.

(2) Whenever a holding is transferred, every right of the prior owner to claim a contribution towards the cost of a dividing fence between such holding and any other holding conferred upon him in terms of the principal law, read with this Ordinance, shall be deemed to be transferred to the transferee, and the prior owner shall thereupon cease to be invested with any such right.

(3) The transfer of an obligation or of a right in terms of sub-section (1) or sub-section (2) shall not affect the validity of any obligation or any right collateral thereto, and any such collateral obligation or right shall in all respects be deemed to apply to and subsist in respect of the obligation or right transferred.

(4) The provisions of this section shall not apply in respect of a transfer made pursuant to any contract entered into prior to the commencement of this Ordinance.

(5) A holding shall, for the purposes of this section be deemed to be transferred if, in the case of a holding such as is described in paragraph (a) of the definition of “holding” contained in section *two* of the principal law, the land comprising the holding is transferred in the Deeds Registry, or if, in the case of a holding such as is described in paragraph (b) of the said definition, a cession of the lease or allotment of the area of land comprising the holding is registered in the Deeds Registry, or the lease or allotment is cancelled in the Deeds Registry.

(6) Notwithstanding anything in section *forty-one* of the principal law contained, the obligation referred to in sub-section (1), or the right referred to in sub-section (2), as the case may be, shall, whenever a holding is transferred to the Administration of the Mandated Territory of South West Africa or the Railway Administration, as defined in the said section, be

Fencing Proclamation 57 of 1921

transferred from the prior owner to, and be binding upon or vest in the Administration of the said Mandated Territory or the Railway Administration, as the case may be:

Provided that where a lease or allotment of the area of land comprised in a holding such as is described in paragraph (b) of the definition of "holding" contained in section *two* of the principal law has been cancelled in the Deeds Registry, and that area of land is re-allotted or re-let, with an option to purchase such area, and the instrument of lease or allotment is registered in the Deeds Registry, the obligation referred to in sub-section (1) or the right referred to in sub-section (2) transferred to the Administration of the Mandated Territory of South West Africa in terms of this section shall be deemed to be transferred to and to be binding upon the person in whose favour the instrument of lease or allotment is so registered, and thereupon the provisions of this section shall apply.

Persons acquiring holdings from Administration of Mandated Territory or from Railway Administration to be liable to contribute to cost of dividing fences existing thereon

4. Whenever the owner of a holding has erected a dividing fence separating that holding from adjoining land belonging to the Administration of the Mandated Territory of South West Africa or the Railway Administration, as defined in section *forty-one* of the principal law, and such adjoining land thereafter becomes a holding, as defined in section *two* of the principal law, held by a person other than the Administration of the said Mandated Territory or the said Railway Administration, the provisions of section *six* of the principal law shall apply *mutatis mutandis* in respect of such dividing fence, provided the fence is in good order.

How contributions in certain cases to be calculated

5. Whenever the owner of a holding becomes liable under the provisions of section *four* of the principal law, or of sub-section (4) of section *six* of the principal law, as amended by section *two* of this Ordinance, or of sub-section (5) of section *six* of the principal law, or of section *four* of this Ordinance, to contribute towards the cost of a dividing fence separating his holding from an adjoining holding, such contribution shall be calculated upon the value of the fence at the date when he so becomes liable.

Not more than half cost of a dividing fence to be recoverable

6. Nothing in the principal law or this Ordinance contained shall be construed as giving to the owner of a holding who has erected a dividing fence separating his holding from any other holding, or to the successor or successors in title of such owner, or to both such owner or his successor or successors in title, the right to recover in the aggregate more than one-half of the cost of the fence.

Short title and date of commencement of Ordinance

7. This Ordinance, which shall be read as one with the principal law, may be cited for all purposes as the Fencing Law Amendment Ordinance, 1928, and shall come into operation on the first day of July, 1928.

Fencing Proclamation Amendment Ordinance 6 of 1957

(OG 2072)

came into force on date of publication: 11 April 1957

as amended by

Fencing Proclamation Amendment Ordinance 28 of 1959 (OG 2199)

deemed to have come into operation on 11 April 1957 (section 2 of Ord. 28 of 1959)

ORDINANCE

To amend the law concerning fencing by the extension of certain provisions of the Fencing Proclamation of 1921 (No. 57 of 1921) to jackal-proof fences and to make the erection of jackal-proof fences in certain areas compulsory.

(Assented to 9th April, 1957)

(English text signed by the Administrator)

ARRANGEMENT OF SECTIONS

[The provisions in this Ordinance have no headings.]

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

1. (1) Subject to the provisions of this section contributions towards the cost of -
 - (a) converting a dividing fence into a jackal-proof fence; or
 - (b) erecting a jackal-proof fence as a dividing fence -

shall be obligatory in any area in which such contributions are declared obligatory by the Administrator by notice in the *Official Gazette*, and contributions when so declared obligatory in any area shall be made as from a date to be by the said notice fixed.

(2) No such notice shall be issued in respect of any area unless such area is an area wherein contributions towards the cost of a dividing fence are obligatory In terms of section *five* of the Fencing Proclamation 1921, hereinafter called the Proclamation.

(3) Such notice may be issued by the Administrator, if he deems it expedient, whenever there has been transmitted to the Secretary of South West Africa under the circumstances described in sub-section (3) and (4) of section *five* of the Proclamation, a resolution

Fencing Proclamation 57 of 1921

recommending that such contributions be declared obligatory; and thereupon sections *one, two, four, five, six, seven, eight, twenty-four, twenty-five, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-four bis, thirty-five, thirty-seven* and *forty* of the Proclamation and the whole of Ordinance 4 of 1928 shall *mutatis mutandis* apply in respect of any such jackal-proof fence in the same manner *as* those provisions apply to dividing fences.

[subsection (3) amended by Ord. 28 of 1959]

(4) Notwithstanding anything to the contrary in any other law contained the Administrator may for the purposes of this Ordinance interpret the word “ward” mentioned in sub-sections (3) and (4) of section *five* of the Proclamation, as including any soil conservation district proclaimed as such in terms of section *ten* of the Soil Conservation Ordinance, 1952, (Ordinance 28 of 1952), in which case the procedure set out in section *five* of the Proclamation shall not be followed but the Administrator may, if the Soil Conservation Board established by section *three* of the said Soil Conservation Ordinance by resolution recommends that such contributions be declared obligatory in any soil conservation district, in which more than 75% of the holdings within such area are already fenced with jackal-proof fences, declare such soil conservation district, by notice in the *Official Gazette*, to be an area in which contributions towards the cost of jackal-proof fencing in terms of sub-section (1) of section *one* hereof shall be obligatory as from a date to be by the said notice fixed, and thereupon the sections of the Proclamation mentioned in sub-section (3) hereof shall *mutatis mutandis* apply in respect of any such jackal-proof fence in the same manner as those provisions apply to dividing fences.

[The Soil Conservation Ordinance 28 of 1952 has been replaced by the Soil Conservation Act 76 of 1969.]

(5) Whenever the holding of an owner is within an area in which contributions towards the costs of jackal-proof fencing have been declared by the Administrator by notice in the *Official Gazette* to be obligatory, and such holding is separated from an adjoining holding outside such area by a dividing fence, contributions towards the cost of converting the dividing fence into a jackal-proof fence shall be obligatory on the owner of the adjoining holding.

(6) Whenever the holding of any owner is outside any area in which jackal-proof fencing is obligatory and such owner erects jackal-proof fencing on his holding or portion thereof it shall not be obligatory on the owner of an adjoining holding which is separated from the first mentioned holding by a dividing fence to pay any contribution towards the cost of the erection of the said jackal-proof fence unless and until he derives beneficial use from such jackal-proof fence.

2. This Ordinance shall be called the Fencing Proclamation Amendment Ordinance 1957.