

No. 41.

ORDINANCE No. 3 OF ISLAND COUNCIL OF RAROTONGA, forwarded by Resident Commissioner for Assent by His Excellency the Governor (August, 1903).

Rarotonga Council Ordinance No. 3.—An Ordinance to regulate the Erection and Repair of Dividing-fences on Lands in the Occupation of Europeans. (20th July, 1903.)

BE IT ENACTED by the Island Council of Rarotonga:—

1. The Short Title of this Ordinance is "The Fencing Ordinance, 1903."
2. Any one of the fences mentioned in Schedule A hereof shall be a sufficient fence within the meaning of this Ordinance.
3. Subject to the provisions of this Ordinance the European occupiers of contiguous lands not divided by a sufficient fence are liable to join in or contribute in equal proportions to the erection of a fence between such lands.
4. Where any European occupier of land shall have erected a sufficient fence, and any contiguous land shall, at the date of this Ordinance, or shall thereafter, be occupied by any European, such last-mentioned European shall be liable to pay to such first-mentioned European one-half of the value of such fence at the date of the service of the notice hereafter mentioned, or at the date of the erection of the fence, or at the date after the erection of the fence when the contiguous lands were both held by European occupiers.
5. Any European occupier desiring to compel any other European occupying contiguous lands to contribute towards the erection of a fence under this Ordinance must serve on him a notice to fence. Such notice shall be in the form or to the effect of Schedule B hereto, and shall specify the boundary to be fenced and the kind of fence proposed to be erected.
6. If the receiver of a notice to fence objects to any of the proposals therein contained, he may within fourteen days after the service of such notice serve on the giver a cross-notice specifying such objection and making counter-proposals to fence. Such cross-notice shall be in the form or to the effect of Schedule C hereto. If he fails to serve such cross-notice within the said period of fourteen days he shall be deemed to have agreed to the proposals contained in the notice served upon him.
7. Any European occupier desiring to compel the European occupant of any contiguous lands to pay one-half the value of any dividing-fence under the provisions of section four hereof must serve on such last-named European occupier a notice in the form or to the effect of Schedule D hereof.
8. If the receiver of such notice under the preceding section objects to the amount claimed as half of the value of the fence, or if he has any other objection to the matter, he may within fourteen days after the service of such notice serve on the giver a cross-notice in the form or to the effect of Schedule E, specifying the amount that he is willing to pay as half value of the fence, or specifying any other objection. If he fails to serve such cross-notice within the said period of fourteen days he shall be deemed to have agreed to the amount claimed in the notice served upon him.
9. If notices to fence have been duly served by both parties and the proposals therein do not correspond, or if a notice and cross-notice have been served, then (unless within fourteen days after the service of the last of the said notices the parties can agree) the question in dispute shall be determined by a Judge.
10. If any European owner shall desire to erect a dividing-fence of a description different from any fence mentioned in Schedule A hereto, he shall give notice as hereinbefore provided, and if the person served with such notice shall not within fourteen days of the service of such notice object in writing to the description of fence proposed to be erected, then the person giving such notice may proceed to erect such fence accordingly, and such fence shall be deemed to be a sufficient fence within the meaning of this Ordinance, and in case of objection made the question in difference shall be determined by a Judge.
11. If any European person becomes the occupier of any land separated from any contiguous land by a fence made by the European owner of such contiguous land such person shall be subject to the same liabilities in respect of such fence as his predecessor was subject to under the relinquished occupation.
12. Where a fence is made of posts and rails or wire or palings the posts of such fence shall be placed on the boundary-line, or as near thereto as shall be practicable.
13. When any fence is out of repair the European occupiers of the contiguous lands shall bear the cost of repairing such fence in equal proportions.
14. The occupier desiring to repair any fence may serve a notice upon the contiguous occupier requiring him to assist in repairing such fence, and if such occupier refuses or neglects so to do for the space of one week after the service of such notice such first-mentioned occupier may himself do the work and recover half the cost thereof from the occupier making default.
15. If a fence is damaged or destroyed by sudden accident or other cause and requires immediate repair, the occupier of the land on either side may repair the same without any notice, and, subject to the provisions of the next succeeding section, may recover half the cost thereof from the contiguous occupier.
16. If by reason of the neglect or default of any occupier any fence is damaged or destroyed, whether by stock, or fire, or the falling of a tree, or otherwise howsoever, such occupier shall be liable for the whole cost of repairing the fence so damaged or destroyed.
17. A Judge shall have jurisdiction to hear and determine all questions and disputes under this Ordinance, and all moneys recoverable under this Ordinance may be sued for and recovered in the High Court of the Cook Islands.