**FENCES ACT AMENDMENT BILL 1926**

**House of Assembly, 7 December 1926, pages 2140-1**

Second reading

The Standing Orders were suspended, and the Attorney-General, having obtained leave, intro­duced a Bill for an Act to amend the Fences Act of 1924.

Bill read a first time.

Second reading.

**The ATTORNEY-GENERAL (Hon. W. J. Denny)—**This is a very short Bill with a very useful object, otherwise we should not have bothered with it at this stage of the session. It has been felt that owing to a legal oversight or technicality some doubt has arisen as to the liability of persons who take advantage of a fence which has been erected by a person in subdividing the block.

Mr. McLachlan—There was not too much doubt.

The ATTORNEY-GENERAL—I think it was arguable. That is always very satisfactory from a lawyer’s point of view, but I think it could have been contended that there was a liability. However, we do not look at it from the lawyer’s aspect, but rather from the point of view of the general community. In this Bill we propose to clear up any doubt. Under the provisions of the Fences Act, 1892 (which was repealed by the Fence Act, 1924) an occupier of land who wished to erect a dividing fence was required to give to the occupier of the adjoining land notice of his intention to fence if he desired to compel the adjoining occupier to contribute to the cost thereof. If notice were given, however, the adjoining occupier only became liable to pay his contribution when he availed himself of the fence and his liability was restricted to half the value of the fence at the time when he first availed himself of the fence. Under the Fences Act, 1924, an occupier who desires to erect a dividing fence is required to give notice to the adjoining occupier of his intention to fence, setting out the type of fence proposed tobe erected. If the adjoining occupier fails to agree to the proposition the first occupier may lay a complaint in a court of summary jurisdiction which will decide on the type offence to beerected. In the cases both of agreement between the occupiers and ofan order of acourt **t**he cost of erecting the fence is borneequally by the occupiers. It therefore follows that under both the 1892 and 1924 Acts notice to fence is a necessary ingredient before the obligation to contribute arises. Under the 1892 Act, however, the adjoining owner’s liability did not arise until he availed himself of the dividing fence while under the 1924 Act the liability arises as soon the fence is erected. In a case where an occupier erects a fence on the boundary of his land and the adjoining land is vacant land not used for any purpose it may sometimes be difficult for the erecting occupier to ascertain the identity of the adjoining occupier. This Bill therefore inserts new provisions in the 1924 Act in order to provide for such a case. If he so desires, the erecting occupier may give the necessary notice and avail himself of the existing provisions of the 1924 Act and recover half the full cost of the dividing fence from the adjoining occupier. This Bill, however, gives an additional right to the erecting occupier in anycase where the land is situated in a township and the adjoining land is not used in connection with the occupation of any building. In such a case the erecting occupier may erect the fence without, giving notice to the adjoining occupier and may, at any time after the adjoining land is used in connection with the occupation of any building, give notice to the adjoining occupier to contribute to the cost of the fence. The adjoining occupier will then be called on to pay to the erecting occupier one-half of the value of the dividing fence at the time notice is given as before mentioned. The adjoining owner will, of course, only be required to contribute to the cost of a “sufficient fence” -within the meaning of the 1924 Act. I move the second reading.

Mr. BUTLER—All members agree that this Bill will make the position clearer in regard to the payment to a landowner who has erected a dividing fence. I am sure the Bill will be approved by all, and I support the second reading.

Bill read a second time and taken through the remaining stages.