**FENCES BILL 1892**

**LEGISLATIVE COUNCIL, November 16, 1892, Page 1630**

Second reading.

The Hon.J. L. STIRLING said that the Fences Act passed the Council last year, but after it had been passed it was found that it did not convey the intention of those who passed it. It was an example of the necessity which he advocated of Bills before receiving the assent of His Excellency the Governor being submitted to the draftsman to see whether they expressed the wish of the Parliament. A Bill might come before the Council or another place in a proper form, and convey the ideas of those who instructed the draftsman and capable of interpretation of the Courts, but before passing both branches of the Legislature diverse amendments, the ideas of various minds, were inserted, and when the Bill passed it might not be in a form expressive of the wish of the legislators. The last Government had expressed themselves satisfied with the representations made to them, and thought that various alterations were necessary.

After the change of Government, the present Government thought that their hands were sufficiently full, and although they admitted the necessity for the alteration, they said they were unable to take it up, but if a private member took the matter up, they would support it. Therefore, he had introduced the Bill, believing it was far better when they had the facts of the last Bill before them to endeavour to make that Bill workable. He did not wish to cast any aspersions upon the legal members of the Government who passed the measure, because various alterations were made from the original Bill. In his Bill there was no important alteration of principle in any shape or form. It was merely making the wording of the previous Bill more explicit.

With regard to clause 1 they had merely altered the form and expression so as to render the meaning of the clause more readily grasped.

Clause 3 was the interpretation clause, and defined the various terms used in the Act. The old Act defined fences as meaning those which existed upon the actual boundaries between properties. In the northern country especially, fences had been erected upon convenient lines between adjoining properties and not on the exact boundary lines. Under the old Act those fences would have been precluded from the Act. Therefore, he had added the words"orany fence used or accepted by adjoining owners or occupiers as a boundary line between their respective holdings." In the old Act there were four definitions of fences, but no provision was made for the erection of a vermin-proof fence between two owners.

Under the provision of the Act it was necessary, where any fence was to be erected, to give three months' notice to put up a post-and-wire fence to resist great cattle, and if it were to be made vermin-proof fence another three months' notice had to be given. That delay might have sufficed for the old days, but in these days if a vermin-proof fence was necessary it had to be erected at once. Two owners desired to put up a vermin-proof fence between their respective holdings, but they found that they had to give six months' notice. To remove that notice he had added to the definition clause "Is a vermin-proof fence."

Clause 4 provided that occupiers availing themselves of existing dividing defences should pay half value, and to define who was the owner he had added the words "towards the cost of erecting which neither he nor any previous occupier shall have contributed under the provisions of the Act."

In clause 5 of the old Act there had been an important omission. There was a statement that payment should be made by the adjoining occupiers' fences made, and in the new Bill he had sought to make the occupier "who shall be in occupation at the time when such demand shall be lawfully made" pay the half value of the fence. That made it clear who was the responsible occupier.

Clause 6 of the old Act had a vague indefiniteness about it. It provided that" the adjoining occupier when land declared vermin infested to pay half coat of making fence vermin-proof." If, however, the owner did not pay the half-cost he could pay the interest, but according to the old Act a man liable for the payment might go on paying interest as long as he liked, and there was no provision as to when the principle was to be paid. The clause was introduced on behalf of the small owners so that they should not be saddled with heavy costs, but could pay interest. To provide a time when the capital should he paid, he intended to amend the Act to provide "but if the amount agreed by such occupiers or found to be due by any Court of competent jurisdiction shall exceed, the sum of £20the occupier liable shall pay the same within five years."

Clause 7 was amended so as to provide "that the liability of occupiers of adjoining lands to fence should be assessed" in manner provided by section8and 18of the Act.

Clause 8, whichdealt with service of notice to fence, had been amended so that the notice should include the "kind of fence proposed to be constructed." That was put in to protect the poor proprietor against the rich one so that a rich proprietor could not give notice of his intention to fence, put up a stone wall, and charge his neighbour half-cost.

In the latter part of clause 11 subsection 2 provided that "if such fence shall not be in any district infested with vermin," he had put in "declared to be." That would mean that the owner would only escape payment at the dictum of the Commissioner of Crown Lands. The old Act provided that the adjoining occupiers were liable to the cost of repairing fences when they were out of repair. That might mean that they would be repaired once, but he had put in "when and as often."

Clause 13 dealt with the procedure to compel contributions to the repair of dividing fence. It provided that in the case of a dividing fence had been destroyed in whole or part by fire or falling of trees the owners whose neglect caused such damage should repair the damage, but if the owner refused there was no provision for compelling him to do so, but he had added the words "or in default" the other occupier may repair or renew the same and demand and recover from the occupier so liable or in default the entire cost of such repair or renewal.

Clause 14 of the old Act had said that interest should be payable, but no time was mentioned when it should be paid. The interest might accumulate andnever be paid, so he had provided that it would be payable annually.

Clause 20 provided that owners of hedges were responsible for roots and branches, but nothing was said about seedlings, and as hedges often increased from seedlings he had put "seeds" in, and also provided that the adjoining occupier might enter upon his neighbour's land and remove the growth.

In clause 21 the words Special Magistrate [SM]were omitted. That had been done because cases that could be tried by two J.P.'s could be treated by S.M.'s, but the legal members assured him that it was better to insert S.M., and he proposed to do so.

Clause 22 was a new clause entirely. It was omitted in the old Bill, which did not contain any provision for the recovery of penalties.

In clause 25 it was proposed to refer to a Court of Law the question of sufficiency of service of notice and other legal matters, and also the necessity or not of a vermin-proof fence within the district. The amendments were not of sufficient importance to alarm hon. members, but were of sufficient importance to prove that the Bill would be quite operative in any cases to be tried by law. He hoped members would agree with him that no vital principle of the Act was infringed, and that they should have on their Statute-books a Bill that was workable and practicable. He moved the second reading.

On the motion of the Hon. J. WARREN the debate was adjourned till November 23.