**IMPOUNDING ACT AMENDMENT BILL 1926**

**House of Assembly, 17 August 1926, pages 402-3**

Second reading

The Attorney-General, having obtained leave, introduced a Bill for an Act to amend the Impounding Acts, 1920 to 1925, and for other purposes. Bill read a first time.

Second reading.

**The ATTORNEY-GENERAL (Hon. W. J. Denny)—**Section 46 of the Impounding Act, 1920, imposes penalties payable by the owner of any cattle which are found straying or at large, or tethered or depastured in any street or public place in any town or township. This section has been the subject of many requests from local governing bodies who contend that under the present law it is impossible for them to adequately cope with the nuisance of stray­ing cattle on the roads. At the present time the scope of this section is limited to streets and public places in any town or township, and it is submitted that this restriction is unnecessary and burdensome especially in the more thickly populated areas such as the portions of the metropolitan area which are not actually within a town or township. The Local Government Association has made a request to the Government that this limitation be removed, and consequently that is done by this Bill. Section 46 is re-enacted by clause 2, and provides that if cattle are found straying, or at large, or tethered,. or depastured, in any street or public place (whether in any township or not) the owner thereof is to be liable to a penalty of £2. In addition subclause (2) provides that in any proceedings for an offence against the section the allegation in the complaint that any person is the owner of the cattle in respect of which the complaint is made shall be deemed proved in the absence of proof to the contrary. This provision is intended to obviate the difficulty which councils now encounter in giving proof of the ownership 0f cattle found straying in this manner. In proceedings under this section it is necessary for the prosecution to give strict proof of the fact of ownership, and in very many cases this is impossible, although the council’s officials may have the strongest suspicions that the person charged is actually the owner. Under the subclause this difficulty will be removed, and the onus of disproving ownership will be, to all intents and purposes, placed upon the defendant. Although generally it is a very proper principle that the prosecution should prove its case, it is an extremely difficult thing in the matter of straying cattle, which do a great deal of damage, not only in the metropolitan area, but elsewhere, it often being almost impossible to prove ownership. The cattle generally decline to give the names of their owners, and the owners themselves lie back and do not claim the cattle until after the case is over. In eases like that wemay safely say that the onus of proof should be on the person charged, as it is highly improbable that an official of any local governing body would lay an information against a person unless he was practically certain that the cattle belonged to that person. The same principle occurs in many other Acts of Parliament where it was felt in the public interest that the onus of proof should be placed on the defendant. The provision will, I think, have a beneficial effect in many places. Take, for instance, the Anzac Highway, where young trees are being planted, and Colonel Light Gardens, where an enormous number of trees have been planted. Cattle are permitted to wander about where the owners think there is any grazing available. Some people do not hesitate to turn their cattle out on the roads for the purpose of picking up feed. That occurs in practically all parts of the metropolitan area, and young trees are consequently damaged. I think members will agree that it is a very advisable provision, and I believe that all the local governing bodies without exception have asked for it. Of course, if the defendant is improperly charged he will have no difficulty in disproving ownership, and, in that event, would in all probability be granted costs as against the prosecution. However, I think it would very rarely happen that the wrong person would be charged. Consequent upon the new enactment contained in clause 2, section 3, of the Impounding Act Amendment Act, 1923, and section 4 of the Impounding Act Amendment Act, 1925, become unnecessary, and are therefore repealed by clause 3. I move the second reading.

Mr. McLACHLAN secured the adjournment of the debate until August 18.