**FENCES ACT AMENDMENT BILL 1903**

**Legislative Councl,3 September 1903, pages 199-100**

Second reading

The ATTORNEY-GENERAL, in moving the second reading of the Bill, said it was introduced as the result of a judgment of Mr. Commissioner Russell, who discovered that section 4 of the Act of 1892 was badly and unfortunately worded, in that it applied only to the fences erected before the passing of the Act of 1892. (Mr. Warren—“What about section 7.”) Section 7 would not apply to a vermin or rabbit-proof fence. He had not studied the bearing of section 7 on the Bill, but the matter had been thoroughly thrashed out before the court, and it was held that cases in which contribution could be claimed were limited to fences put up before the passing of the Act of 1892. Section 7 ap­plied only to a fence in contemplation, not one actually erected. It applied only to land which “had not heretofore been sepa­rated from adjoining lands.” Sections 7 and 8 of the Act of 1892 did not apply to fences put up since 1892. It was manifestly unfair if the owner of land put up a boun­dary fence that when the owner of the land on the other side came to use his land he should not pay half of the cost of its erec­tion. The primary object of the Bill was to prevent .that injustice. (Mr. Duncan—“How can he prove whether his predecessor paid for half the fence.”) There would always be some difficulty about that. The proof would lie upon the man who made the claim. (Mr. Duncan—“That would be just as difficult.”) On that point the balance would be even. The man who made the claim would have to make proof. That was the primary object for the introduction of the Bill, but other sections had been in­troduced on the suggestion of a number of landholders. Clauses 3, 4, 5, and 6 clearly explained themselves. Clause 3 read— “When adjoining occupiers cannot agree as to the accurate position of the boundary line between their respective holdings on which either of such occupiers desire that a fence shall be erected, either one may give notice to the other of them of his inten­tion to have such boundary line defined by a licensed surveyor.” The position at pre­sent was that in the case of two adjoining owners with no fence between them, one of them might want to erect a fence, but did not know where the boundary was. If he erected it he might put it on the other man’s land, or on the other hand he might erect it within his own boundary, and thereby deprive himself of some of his land. It was only fair that some machinery should be provided by which a fair settle­ment could be arrived at in such cases. One owner might require a fence, but the other might refuse to come to an agreement as to the boundary, as he did not want the fence. The clauses provided that in that case the occupier who desired a fence should give notice of such desire to the adjoining owner. Then the man to whom notice had been given had to do either one of two things. He had either to define the boun­dary line by pegs, or employ a licensed sur­veyor to define the boundary line. If he did neither then the other man could have the boundary line surveyed at their joint expense. He did not know of any better scheme for the settlement of such a difficulty. If the boundary line when surveyed was found to be in the same position as defined by any pegs placed there by the occupier receiving the first notice, then the man who pegged it would not be under any expense of survey. The other man had to bear the cost. (Mr. Lucas— “Would it compel a man to accept the boundary defined by the surveyor as being right?”) The man who put up the fence on the surveyor’s line would take the risk. Of course, the decision of the surveyor would not affect the title to the land in any way. They would have to fight that out in the courts of law. The provisions would meet the difficulty, where one man would not say where the boundary line was, and the other could not put up the fence, as he might be trespassing on the adjoining owner’8 land, or might be fencing off some of his own land. It was only fair in such cases that the boundary line should be de­fined. There were members present who had spent thousands of pounds in fencing, and knew the difficulties that did occur a great deal better than he did, and he was quite prepared to consider any suggestions they might make. (Mr. Howe—“Three sur­veys might be made, and each one dif­ferent.”) If the surveyor was wrong it would not affect the title to the land. (Mr. Howe—“Supposing three surveyors were employed, on which of their decisions would the fence be erected?”) It was not likely there would be that difficulty. He thought the Bill was a practical solution of the diffi­culties now existing, but he would be glad to hear criticisms from those more acquain­ted with the subject.

On the motion of the Hon. J. J. DUN­CAN, the debate was adjourned until Tuesday next.

**FENCES BILL 1903**

**House of Assembly, 6 October 1903, page 515**

Second reading

**The TREASURER**, in moving the second reading of the Bill, said it had gone through the Legislative Council. The necessity for, the Bill was shown by a decision of Mr. Commissioner Russell in a case where one owner of land endeavoured to recover from the adjoining owner half the value of the fence which divided the properties. In 1892 there was a mistake made in clause 4 of that Act, which read as follows:—“When any occupier has heretofore availed himself or shall hereafter avail himself of any dividing fence erected before the passing of this Act,’' In the particular case the fence had been erected after that day, so no claim for compensation could be recovered. They purposed to insert in this Bill “whether erected before or after the passing of this *Act.”* That would put the position dearly and enable those who spent money on any division fence to recover half the value from the adjoining owner. In that clause is said “provided also that the provisions of this section 12 shall not repeal section 12 of the Vermin District Act, 1900.” That provision provided that where a vermin- proof fence was erected that the adjoining owner should not be liable as fair as that Act was concerned unless the whole of his land was enclosed. It had been pointed out to him by Mr. McKenzie that this pro­viso was much too sweeping. This vermin-proof fencing was actually a dog-proof fence, and if the proviso was inserted for the inside districts, where farmers only used netting to keep out rabbits, a cantankerous neighbour might leave four or five chains of land open and refuse to share the cost of the subdivision fence. He in­tended to ask them to agree to the following:—“And provided also that the pro­visions of such section 12 shall apply only to a vermin-proof fence, as defined in section 3 of the said Act.” As far as the rest of the Bill was concerned, the clauses were to make it easy for the adjoining owners, without much expense, to define the boundaries between their different sections. These clauses were carefully con­sidered in another place by the Hons. J. J. Duncan and J. Warren, and they were very clear. They were accepted by the Attorney-General as a simple way to get over a difficulty.

Carried.