

LEGISLATIVE COUNCIL,

Thursday, 11th August, 1881.

Personal Explanation—Message (No. 13): Papers connected with the Beaver Arbitration Case—Fencing Bill: referred to a Select Committee—Appropriation Bill (Supplementary), 1881: second reading—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

PRAYERS.

PERSONAL EXPLANATION.

MR. STONE rose to make a personal explanation. An opinion seemed to be prevalent among some hon. members that, whenever a nominee member of the Council initiated any matter, or expressed an opinion in that House upon any question, he was inspired or directed, in some way, by His Excellency the Governor. Speaking for himself—and he believed he might venture to do so on behalf of the other nominee members—he begged to state, as regards whatever he had said or done in the Council, that, he had been neither inspired, directed, or controlled, directly or indirectly, by the Governor, or any member of the Government, but had in each particular case acted entirely on his own responsibility, and from a sense of what was right, his desire being equally with other hon. members to do what he conceived to be his duty, as a member of that House, irrespective of the opinions of Government or people. He was sorry he should have found it necessary to make such an explanation.

MESSAGE (No. 13): PAPERS CONNECTED WITH THE BEAVER ARBITRATION CASE.

THE SPEAKER announced the receipt of the following Message from His Excellency the Governor:

"In compliance with the request contained in your Address No. 7, of the 2nd instant, the Governor forwards herewith certain papers connected with the Beaver Arbitration case, including the submission to arbitration and the award of His Honor the Arbitrator. These papers are forwarded in original, and the Governor therefore requests

"that at the close of the Session they may be returned.

"Government House, Perth, 10th August, 1881."

FENCING BILL.

MR. STEERE, in moving the second reading of a Bill to consolidate and amend the law relating to the erection and upholding of fences dividing lands belonging to different owners, said, that, so far as he was aware, there was nothing original in the Bill. Its provisions were such as were to be found in similar enactments in force in the other colonies, with the addition of a few clauses introduced from Acts already existing in this Colony—introduced for the purpose of consolidating the law relating to the subject. Before proceeding any further, he ought to say that his acknowledgments were greatly due to the hon. the Attorney General for the valuable assistance which he had rendered in compiling the various clauses of the Bill, which he (Mr. Steere) believed would prove a very beneficial measure. He had brought in the Bill, he might say, at the request of a great many people, and especially settlers in the Eastern Districts, who were of opinion that nothing would tend so much to develop the agricultural and pastoral resources of those districts as a good Fencing Act. In this respect, it would do more, probably, than any suggestions which might emanate from the Commission recently appointed to report upon the question of the further settlement and development of the natural resources of the districts in question. In the first place, the Bill proposed to repeal all the existing Acts relating to fencing land, and to carry out a principle which he hoped to see before long brought into operation with regard to other enactments—namely, to consolidate in one comprehensive measure the whole of the various statutes relating to one and the same subject, so that, when magistrates are called upon to adjudicate upon questions of legislation relating to any particular matter, they may find the law on the subject concentrated, as it were, within the four corners of one Act, instead of, as at present, having, in many instances, to refer to half a dozen different enactments. The fundamental

principle proposed to be introduced by this Bill, with regard to requiring the owner of adjoining lands to share the expense of fencing, was not a novel one; it merely extended to country lands a principle already existing with regard to town and suburban lands, the owners of which were at present compelled to do what it was here proposed to compel the owners of land in other parts of the Colony to do. There was, however, one novel principle introduced into the Bill. He alluded to the provisions of the 10th clause, which provided the apportionment of the cost of fencing as between landlord and tenant. Under this clause a tenant could be called upon by the owner or occupier of adjoining land to join in the erection of a fence, and the cost of erection would be shared between them, the amount to be paid by the tenant being dependant upon the unexpired term of his lease, or his interest in the land. For instance, in case the unexpired interest of a tenant should be over one year and less than for a term of four years, the landlord would be required to pay three-fourths of the cost of the fence, and the tenant the remaining fourth. If the unexpired term was over four years and under twelve, it was proposed that the expense should be equally shared between the landlord and tenant. In the event of a tenancy having twelve years and upwards to run, the whole cost of constructing the fence would fall upon the tenant, and, on the other hand, if the unexpired interest of the tenant should not be more than one year, the whole cost would be payable by the landlord. This clause had been adopted from the Victorian Act, and the principle involved appeared to him a very fair one, for, in many cases, a tenant derived greater benefit from the erection of a fence than the landlord himself did. He was quite aware there might be some difference of opinion as to the term of years regulating the apportionment of the cost, as provided in the clause as it now stood, and he would be quite willing to listen to any suggestion or modification in that respect, so long as the principle was accepted,—and he felt sure that the principle was one in which almost every hon. member would concur. The Bill was not intended to apply to unalienated Crown Lands, except as to the

provisions contained in the existing Acts, which it was proposed to repeal, and the provisions of which were embodied in the new clause which appeared in his name on the Notice Paper, so as to embrace within this one Bill every provision relating to the law of fencing. He hoped the same course would be adopted next Session with regard to our various Trespass Acts. The 17th clause of the Bill, would, he thought, prove a very valuable section. It provided that, if any dispute or difference should occur between the owners or occupiers of any adjoining lands, as to the sufficiency or otherwise of any river or other natural boundary instead of a fence, or as to what portion of a fence should be erected or repaired by each owner, or as to the necessity for any dividing fence to be repaired; or if a question should arise as to whether due diligence had been used to complete the erection or repair of any fence after it had been commenced, or as to the description and sufficiency of any fence—in any such dispute, it was provided that the parties should appeal to any two justices in petty sessions, whose decision would be final. This would certainly afford a cheap and expeditious mode of settling disputes arising under the Act, and for that reason ought to commend itself to the favorable consideration of the House. The definition of what shall constitute a “sufficient” fence, within the meaning of the Bill, was the same as the definition in the existing Act, namely, “any substantial fence reasonably deemed sufficient to resist the trespass of great and small stock, including sheep, but not including goats and pigs.” The 19th clause provided that in no case shall judgment be given which will involve an expense in the erection of any fence exceeding (in the case of country and suburban lots) the fair and usual price charged for the erection of a three-railed fence; or (in the case of town allotments) a four railed or paling fence. The 21st clause had been imported into the Bill from the Victorian Act, and he thought it would prove a very valuable one. It provided that when a river, or any natural water-course, formed the boundary of contiguous lands, but was not capable of resisting the trespass of cattle, it should be competent for the

occupants of the adjoining lands to agree mutually on such a line of fence, on either side of the water-course, as would secure the fence from the action of floods; and provision was made for compensating the owner of the land on whose property such fence was erected, in the event of its causing any loss to him as regards the occupation of the land. Provision was also made so that the owner of the land should not lose possession of it, by reason of the erection of such fence. The only remaining clause in the Bill requiring any comment on his part was the next and final clause, which introduced a new principle with regard to recovery of any sums of money adjudged by the court of petty sessions to be paid for erecting or repairing a fence, by reason of the default of either of the parties concerned. Under the present Act, a person could recover the costs awarded to him by distraining and selling the goods and chattels of the defaulter; but in this Bill it was proposed that the money should remain a charge on the land of the party making default, bearing interest at the rate of eight per cent. per annum. It would be for hon. members to say which of these two modes of recovering was more in accordance with their wishes; he need hardly say that, having introduced the latter into the Bill, he preferred it to the present mode of recovering. These were the main provisions of the Bill, the second reading of which, with these few explanatory remarks, he now begged to move.

The motion was agreed to without discussion.

MR. STEERE moved, That the Bill be considered in Committee of the whole House next day.

MR. VENN moved, as an amendment, That it be referred to a Select Committee, consisting of Mr. Steere, Mr. Brown, the Commissioner of Crown Lands, Mr. Burt, Mr. Grant, and the mover. He did so for this reason: he had looked through the Bill in its entirety, and it struck him that possibly there would be very considerable amendments to be introduced in it before it was rendered acceptable to the House, and he thought these amendments were more likely to be considered by a Select Committee than they would be in Com-

mittee of the whole House. The 10th clause was one which, in his opinion, would require considerable modification, and also the 21st, which was a very important one. He therefore hoped the House would agree to refer the Bill, in the first instance, to a Select Committee.

MR. BROWN supported the motion to refer the Bill to a Select Committee. It might be said there was no sufficient reason why the Bill should not be amended in Committee of the whole House, and probably that was true; but it would be necessary that hon. members should pursue a different course to that usually adopted with regard to amendments moved in Committee, and to give notice beforehand of the precise amendments which they proposed to bring forward, otherwise the discussion on the Bill would be interminable. He noticed that the Bill dealt with freehold property alone, or almost entirely so, and although he himself would not be inclined, at present, to extend many of its provisions to leasehold lands, for reasons which he would not then give, still he knew there were hon. members in that House, and people outside, who were of opinion that provisions similar to those embodied in the present Bill ought to be applied to leasehold as well as freehold lands. That was another question which might occupy the attention of the Select Committee.

The motion to refer the Bill to a Select Committee was then agreed to.

APPROPRIATION BILL (SUPPLEMENTARY), 1881.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) moved, The second reading of a Bill to provide for the payment of certain additional and unforeseen expenses in the year 1881, over and above the Estimates for that year.

Motion agreed to, and Bill read a second time.

The House adjourned at one o'clock, p.m.