adhered to. As he was prepared to accept the amendments of the hon. member for Geraldton, he would, with leave, withdraw the clauses standing in his name.

Leave given, and clauses withdrawn.

Mr. BROWN, in accordance with notice, moved, That the following new clause be added to the Bill, to stand as clause 2:—"It shall be lawful for the "Governor in Council from time to time "to proclaim and define one or more "area or areas of Waste Lands of the "Crown, within which no live or growing "sandalwood tree shall be cut or grubbed "up for the period to be named by the "Governor in such proclamation. And "from and after the proclamation of any "such area in the *Government Gazette*, if "any person shall cut or grub up any "live or growing sandalwood tree within "the limits of any such area during "the period set forth in such proclam-"ation, he shall be deemed to be in "the unlawful occupation of the Waste "Lands of the Crown within the meaning "of 'The Waste Lands Occupation Act, "'1872.'" The hon. member said they were told by the Attorney General the other day that there was no occasion to legislate for this purpose, as the Governor was already empowered to proclaim and define such areas, and to prevent the cutting within them of any sandalwood; but he (Mr. Brown) hoped that no objection would be made to the passing of this Bill, as it afforded the Government an indication of the desire of the House to legislate in this direction, and upon the principle here contemplated. If this Bill became law, it would be necessary to annul that portion of the Land Regulations prohibiting the cutting upon waste lands of the Crown of sandalwood less in diameter than six inches, and he would move an address to that effect on the following day.

The clause was then agreed to.

Mr. BROWN, in accordance with notice, moved, That the following new clause be added to the Bill, to stand as clause 3:—"Waste Lands of the Crown "shall not, for the purposes of this Act, "be considered to include lands held "under Special Occupation Leases or "Licenses."

The clause was agreed to without discussion.

Preamble and title agreed to, and Bill reported.

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

LEGISLATIVE COUNCIL,

Tuesday, 30th August, 1881.

Amendment of Land Regulations as regards cutting Sandalwood on Crown Lands—Fencing Bill, 1881: in committee—Distillation Act, Amendment Bill, 1881: first reading—Law and Parliamentary Library Act, Amendment Bill, 1881: first reading—Adjournment.

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

Prayers.

CUTTING SANDALWOOD ON CROWN LANDS.

Mr. BROWN, in accordance with notice, moved, "That an Humble Address "be presented to His Excellency the "Governor, praying that he will be "pleased to request Her Majesty's Secre-"tary of State to annul that portion of "the Land Regulations prohibiting the "cutting upon Waste Lands of the "Crown of sandalwood less in diameter "than six inches." The hon. member said, as the House had agreed to a Bill empowering the Governor to proclaim areas within which no sandalwood shall be cut for a given number of years, it would be necessary to annul that portion of the Land Regulations here referred to, as they were in antagonism with the principle of the Bill in question.

Mr. S. H. PARKER asked the hon. member to explain in what way the regulation prescribing the cutting of wood less than six inches in diameter was antagonistic to the measure which the House had agreed to the other day. He failed to see why the restriction as to the minimum size of the wood allowed to be cut should not remain in force, notwithstanding the adoption of the principle of prescribed areas.

MR. BROWN said the restriction as to the size of wood would practically put an end to the trade in the more Northern districts, as nearly all the matured wood at the North, and much of that in the Champion Bay district, was less in diameter than six inches.

The address was agreed to.

THE FENCING BILL, 1881.

On the motion to go into Committee for the consideration of the Bill to regulate the fencing of land,

MR. STEERE said he thought it would be well that he should, as the member in charge of the Bill, avail himself of this opportunity to make a few observations upon it, as amended in Select Committee, and especially with regard to the protest which the hon. member for Geraldton, who was on that Committee, had entered against one of the leading features of the measure, and which would really tend to make anyone who had not read the Bill imagine that they were about to perpetrate a very grave injustice, whereas, in point of fact, no injustice whatever would, in his opinion, be done if the principle referred to became law. The hon. member for Geraldton contended that it would be a very hard thing indeed if, by virtue of an "arbitrary enactment" like this, because A had erected a fence he should be empowered to call upon B to defray a share of the cost or value of the fence, although A would be the only person benefited by such fence. But he (Mr. Steere) did not think that A would be the sole person benefited. He considered that the value of the land of the adjoining proprietor would be very considerably enhanced by reason of A erecting a fence on its boundary. The hon. member for Geraldton went on to say that it would be establishing a mischievous and dangerous precedent if we were to enact this principle. Well, he really could not see what the hon. member was driving at, for the very same law which it was now sought to enact here had been in force in all the other Australian colonies for a great number of years. He found that a law exactly similar in principle had been passed in New South Wales as long ago as the reign of George IV., and the same principle was in operation there now. In Tasmania a similar enactment was passed in the year 1853, and there the provisions of the Act applied to leased lands as well as fee simple lands. The same law was still in operation there—showing clearly that, if it worked any grave injustice, it would never have been allowed to remain in force all these years. In Queensland a similar Act was passed in 1851, and it had never been amended since, while in Victoria a similar measure was enacted about the same time, but made applicable to lands held on lease as well as to alienated or fee simple lands. Under these circumstances, he did not think they need be under any great apprehension of establishing a dangerous and mischievous precedent if they passed this Bill into law, and that no grave injustice would be perpetrated if they followed the same course as had been adopted in all the other colonies. (Mr. BROWN: Question.) There was no question at all about it. He considered that if this Bill became law it would tend more than anything else almost to the development and prosperity of the Colony. Nothing had contributed more to the progress of settlement, and to the prosperity of the settlers in the neighboring colonies, than the practice there adopted of fencing in the lands. He had not visited those colonies himself, but from all he had heard and read of them, he thought he was quite justified in making that statement. Before proceeding any further, he would read to the House two letters which he had received with reference to the Bill from two of our leading merchants, who were largely interested in the prosperity of the small settler, and who he was sure would not countenance any legislation calculated to militate against the welfare of that class. (The hon. member then read letters he had received from Mr. J. H. Monger and Mr. W. Padbury, both of whom heartily approved of the principle of the measure.) These two letters, emanating from the sources referred to, he thought, spoke very highly indeed in favor of this proposed legislation, and he had been informed by another gentleman who had been in the habit of rendering much assistance to the small occupiers of land, that one of the first conditions he always insisted upon, before he helped them, was that they should fence in their land.

Under these circumstances, he thought that, instead of "establishing a mischievous and dangerous precedent" by passing this Bill, they would be conferring a great benefit upon the small holders, who would be able to obtain larger advances upon their lands, as the value of them increased by their being fenced. The Select Committee to whom the Bill had been referred had made little or no alteration in the principle of the Bill, but several verbal amendments had been prepared in order to make the meaning and intention more clear. There was one alteration, however, which had been made by the Committee to which it would be as well that he should refer. It would be in the recollection of hon. members that, when he moved the second reading of the Bill, he stated that provision was made in it under which, in the event of a person who had erected a fence failing to obtain a contribution from the owner of the adjoining land, notwithstanding that he had been adjudged to pay his moiety of the cost of the fence, the amount owing in this respect should remain a charge upon the land, bearing a certain rate of interest until it was paid, instead of the land being sold for the payment of such costs as had been incurred. The Select Committee, after carefully considering the matter, thought it would be better, in the event of the money not being paid, to empower the party who had erected the fence to cause the land of his defaulting neighbor to be sold for the payment of the costs, unless the amount owing were paid within three years after the court had adjudged the money to be paid. Should hon. members, when in Committee on the Bill, wish to extend the period of grace from three years to five years, or any other reasonable time, he should offer no opposition. With these few remarks he now moved, "That the House should re-"solve itself into a Committee of the "whole, for the purpose of considering "the Bill in detail."

Mr. BROWN said he had not the slightest intention of opposing the motion,—indeed, he thought the Bill contained many provisions which would be of great value to the settlers of the Colony, and he was not at all surprised at two gentlemen of Messrs. Monger and Padbury's known experience having written of the measure in terms of approval. At the same time, he took the liberty of doubting whether either of them understood the whole of its provisions when they read the Bill—indeed he doubted whether they ever had read it at all—certainly they could not have had an opportunity of reading the Bill as amended in Select Committee. He thought it would be scarcely too much to say that no one, outside the Select Committee itself, had done that. As had been stated by the hon. member for the Swan, he (Mr. Brown) himself had objected, and strongly objected to one principle contained in the Bill, and for reasons which were altogether different from those stated by the hon. member for the Swan. The hon. member said that in his (Mr. Brown's) protest he had stated that a fence put up by another person bounding the land of a neighbor would be of no value in the world to the owner of the adjoining land. But that was scarcely what his protest stated. What he did say was this: "The feature "of the Bill which proposes to enable A, "by virtue of an arbitrary enactment, to "'demand and recover' from B sums of "money, to the use of A, in consideration "of fences erected by A at his own free "will and for his own purposes—regard-"less of the question whether such fences "are used by, or of service to B—in "my opinion aims at the perpetration "of a grave injustice, and one which "if passed into law will establish a "mischievous and dangerous precedent "in the annals of Western Australian "legislation. In lieu of this, I would "recommend as fair and reasonable that "so soon as persons make use, for the "ordinary purposes of a fence, of fences "erected by their neighbors, they should "be compelled to pay half the value of the "fences so made use of, and half the cost "of keeping them in repair." That (continued the hon. member) was what he had stated in his protest, attached to the report, and what he had then stated he now maintained. He had never denied that similar enactments were in force in the other colonies: but he certainly did not consider it at all advisable we should adopt the principle that because the other colonies had passed any particular law, that simple fact alone should be regarded as an argument in favor of

our adopting the same law in this country. The hon. member for Swan stated that in some of the other Australian colonies a similar enactment had been passed somewhere about the year One. He might add that a measure of the same nature had been enacted in this Colony as early as 1834, dealing, however, only with town lands. He believed that before a single acre of land was alienated in the townships of this Colony that law came into operation, and it distinctly provided that all lands purchased within town areas should be purchased upon certain conditions, namely, that the proprietor of the adjoining land should be bound to contribute a moiety of the cost of fencing the boundary line. Persons who had bought land after the passing of that Ordinance had bought it with their eyes open. They knew the disabilities which they incurred in purchasing it, and, therefore, it had been no injustice in their case that they should be compelled to defray one half the cost of erecting their neighbor's fence. Exactly the same thing occurred in the other colonies. Years ago, when land was about to be first alienated from the Crown to any great extent, it appeared that a measure somewhat of a similar character had been passed in those colonies, and everybody who had purchased land there, had purchased it with their eyes open, and with a full knowledge of the existence of such a law. Therefore, he did not think that the circumstances existing in those colonies were in any way analogous to the circumstances existing here—except as regards town allotments—and consequently the argument put forward by the hon. member for the Swan did not meet the objection which he had raised to the principle proposed to be introduced in the 4th clause of the Bill now before the House, and which, in his protest, he had characterised as a grave injustice, and one which if passed into law would establish a mischievous and dangerous precedent. What this clause proposed to do is this: because he, or Mr. Padbury, or Mr. Monger, or any other large owner of land, had, of his own free will and accord, and to suit his own purposes, chosen to erect a fence, he should, in the event of the Bill becoming law, be able to demand from the owner of the adjoining fee simple land one half the value of such fence, whether it was of any service to his neighbor or not. He looked upon that—it was no use mincing the matter—he looked upon that as robbery, and he did not approve of that honorable House legalising robbery in any way. Again, the lands in the other colonies were exceedingly rich, whereas ours, on the whole, were not rich. We had patches of good land here, it was true; but these patches were surrounded by an immense quantity of poor land, a great deal of which—even land alienated from the Crown—was not worth fencing. The mere fact of a man possessing land in this Colony was no proof that he was other than a poor man; indeed, many holders of fee simple land here were poor men. But in the other colonies, the mere possession of land, in any quantity, was a proof of wealth. Land in most of the neighboring colonies, and particularly in Victoria, was of very large value—proportionately with the cost of fencing, very valuable indeed. But in this Colony there were many lands, he firmly believed, held in fee simple which if placed in the market to-morrow would not realise the cost of fencing them. So that the two cases were in no way analogous. He did not think it at all likely that the majority of hon. members in that House would agree to the 4th section of the Bill, as it now stood, seeing that it was retrospective in its operation; but he was afraid that some hon. members might consider it would be desirable to have this principle apply to lands which may hereafter be fenced, or purchased. Personally, however, he strongly objected even to that, but he much more strongly objected to the proposal to make the clause retrospective in its application. With this exception, he thought the Bill would prove a very valuable measure, and confer a great benefit upon the Colony at large.

MR. SHENTON would be very sorry indeed, as a member of that House, to join in passing the 4th clause of the Bill, as at present worded, for he felt that in doing so they would be legalising one of the grossest acts of injustice ever perpetrated by the Legislature since it was established. He looked upon the clause in question simply as a measure to enable some of our rich landowners to recover

the value of their fences from the poor and struggling agriculturist. As to comparing our circumstances with those of the other colonies, there was a great difference in every way between them, and laws which might be applicable and just enough in the neighboring colonies might be ill adapted and very unjust in their operation here. There, they had large and compact tracts of rich and valuable land, whereas our good land was in small widely-scattered blocks, bounded on all sides by inferior land; and there was nothing to prevent a large owner, in the event of this clause becoming law, to pick out the best of the land and fence it, and then compel the poor man, located on the outskirt of it, to pay his share of the cost of fencing this rich man's land. As to the opinion expressed in the letters read by the hon. member for the Swan, with regard to the great benefit which such a measure would confer upon the small holder, he thought the hon. member had forgotten to mention one thing, and that was this: when Mr. Padbury and Mr. Monger, in rendering assistance to the small farmer, made it a condition that he should fence his land, they simply did it in order to protect themselves, just as much as to benefit the small occupier, because by fencing the land they increased its value as a security. (The Attorney General: Hear, hear.) He acknowledged that fencing enhanced the value of the land, but when gentlemen made it a condition upon which any assistance, in the shape of advances, shall be given—although they might by so doing be conferring some benefit upon the poor man—he thought their first consideration was—Number 1. No doubt fencing, as a general rule, must be regarded as a good thing for the Colony, where the holders of land could afford it; but it was a very different thing when they proposed to compel a man to contribute towards the cost of his neighbor's fence, when he could not afford to erect one of his own.

Mr. STONE said, although he did not propose to offer any opposition to the motion for going into Committee on the Bill—for he considered that it contained much useful legislation—still he reserved to himself the right to propose some important amendments in the clause referred to, when in Committee. He objected most strongly to that clause as it now stood, in consequence of its proposed retrospective operation. It was well known to all hon. members—at any rate to members of the legal profession—that it was not only a doctrine of English law but also a principle of general jurisprudence, that a statute should not operate retrospectively; and he could not conceive any statute that, in its retrospective operation, would act more harshly in this respect than the clause referred to, dealing as it did with property. The result of this clause, if carried into effect, would really be as stated by the hon. member for Toodyay—it would simply benefit a few—or rather a good many—wealthy landowners, who had already erected their fences, and would now be able to obtain from their poorer neighbors a contribution toward the cost of those fences. He did not believe it would be the means of adding one link of extra fencing upon the lands of the Colony. He thought if our settlers made up their minds that fencing would be an advantage to them, they would have resort to it, as they had in the past, without waiting until they could obtain a contribution towards the cost from their neighbour. They had not as yet, at any rate, seen that the law as it stands at present operated in any contrary direction, for fencing had been going on to a very considerable extent, without the application of any stimulus such as was contemplated in this clause. He could quite understand that in the other colonies alluded to, where they passed a law of this nature in the early days of settlement, such a law would not necessarily operate unjustly or harshly—certainly not so harshly as if passed after settlement had extended over many years, as was the case here at the present time. Had we imported this principle into our legislation fifty years ago, it would not have operated very unjustly, even if made retrospective, as very little land had then been alienated; and he had no doubt that, when a similar Act was passed in New South Wales and Queensland, very little fencing had been done in those colonies at that time. He questioned very much whether the Legislatures of the other colonies would be able to get such an Act passed in these days, and make it retrospective.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) would be sorry to go into Committee on this Bill without saying a few words, and principally for the reason that he was somewhat interested in the history of the Bill, having been honored with some intercourse with the hon. member for Swan during its preparation. So far as he could see, the only principle of the Bill that did not altogether recommend itself to the House was that embodied in the 4th clause, with respect to compulsory fencing by adjoining proprietors. He could quite understand that a good many hon. members of the House would be inclined to concur with those who had already spoken against this principle, when they stated it was not fair that it should have a retrospective effect; but he did not think many hon. members would be inclined to go further than that. They possibly might say it should not be made retrospective in its operation, but he thought, if they seriously considered the subject, they would recognise the desirability of its having a prospective effect. So far as he had understood the hon. member for Geraldton, the hon. member objected to the principle *in toto*, both retrospectively and prospectively; and the hon. member seemed to have been supported to a certain extent by the hon. member for Toodyay, whose remarks he had listened to with great attention. But he had been astonished at the arguments put forward by that hon. member. He reminded him of a character of whom they read in Holy Writ—Balaam. The hon. member was called upon to curse the Bill, and, lo! he turned round and blessed it entirely. The hon. member's arguments were altogether in accord with the arguments adduced by the hon. member for Swan in support of the clause—namely, that this principle of compulsory fencing will enhance the value of the land. Was it not upon that very principle that the hon. member for Swan based his Bill? [Mr. BROWN: No.] The hon. member said, no. Perhaps the hon. member would say there was no principle at all involved in the Bill. He ventured to say that the one object which, all along, had guided the hon. member for the Swan in preparing this measure had been the fact that, by the adoption of this principle of compulsory fencing, the value of our land would be enhanced; and the arguments of the hon. member for Toodyay really supported that contention. He did not think, when hon. members had seriously considered the question, they would object to the principle of this objectionable clause so far as concerned its prospective effects, though possibly strong arguments might exist—he did not mean to say such was not the case—considering the relative value of land here and in the other colonies—against the retrospective action of the clause. He himself regarded the Bill as a measure fraught with good results to the Colony, though he did not bind himself at present to support it, and especially the 4th clause, in its entirety.

MR. MARMION said the hon. and learned gentleman who had just sat down, in twitting the hon. member for Toodyay with having argued in favor of the Bill rather than against it, had assumed that what the hon. member for Swan expected to result from the Bill becoming law would really happen. The hon. member had read letters received from two gentlemen interested in the welfare of the small landowners, and also instanced the opinion of another gentleman in business in Perth, who said —what? That they would be much more ready to advance money to assist people who fenced their lands, than to those who did not do so. [The ATTORNEY GENERAL: Because fencing enhanced the value of the land.] But the principle upon which the hon. members for Geraldton and for Toodyay argued was this, —would these gentlemen, these disinterested friends of the small occupiers, advance the money to enable these men to fence their land in the first instance? If they were not prepared to do so, what position did they place these men in,— especially if the clause were made retrospective? They would place them in this position: They would induce them to go to the expense of fencing their land, and, when they sought their assistance to enable them to defray the cost, they would, by withholding it from them until their land was fenced, compel them to sacrifice the land, and place it in the market for sale. He thought that was the position which the hon. members

for Geraldton and for Toodyay intended to take up. With regard to the proposal to make this clause retrospective in its operation, that certainly appeared to him an unfair proposition, for the reasons which had already been assigned, and it was his intention to oppose the clause as it now stood. He had not heard any hon. member yet suggesting what alteration should be made in the clause so as to secure for it the support of those who were now opposed to it, and at the same time carry out the intention of the framers of the Bill; but it appeared to him that a way out of the difficulty would be to apply the same principle to this clause as was introduced into the 14th clause (dealing with parties using a dividing fence erected on waste lands of the Crown), namely, compel them to pay one-half the value of such fence, if they made use of it,—and not, as was here proposed, whether they utilised it or not.

Mr. BURT thought the hon. member for Fremantle would have furnished the House with very valuable information if he had gone a little further, and explained what he would call "utilising" a fence. He thought that was a question which would puzzle the hon. member to answer. He took it for granted that the hon. member was cognizant of the law as it stood at present with regard to dividing fences, and that a man can compel his neighbor to pay one-half the cost of a boundary fence if he utilised it, and enclosed his own land. But he took it that one of the objects which the hon. member for the Swan aimed at in this Bill was to preclude parties utilising their neighbor's fences without at the same time enclosing their own lands, and thereby evading the operation of the law. There were many known instances in which the fences of various landowners formed almost an enclosed paddock for a man having his location in the centre, and who, although he had contributed nothing towards the erection of the fences which all but enclosed his land, obtained the benefit of them, but, as he had not completely fenced in the land, they could not make him contribute towards the fences which his neighbors had erected. It was cases such as these which, he thought, had induced the hon. member for the Swan to direct his attention to this subject and to bring forward the present Bill. Viewed in that light, he thought the Bill was one that would commend itself to the favor of hon. members. The hon. member for Geraldton was scarcely fair towards the argument of the hon. member for the Swan, with regard to the same law having been enacted in the neighboring colonies. The hon. member said the cases were not analogous—that in those colonies the law to this effect had been introduced in the early days of settlement, whereas it was only proposed to put it in operation in this Colony now. But the hon. member overlooked the fact that the hon. member for the Swan had pointed out that, although the law had been put in force in those colonies very many years ago, it had never since been altered—showing clearly that it was still considered a just and beneficial law. As a matter of fact, the law as it stood at this day in Tasmania and Victoria not only applied to fee simple land—to which class of land it was proposed to limit the application of this clause—but also extended to leasehold lands, whereas here it was not proposed in any way to deal with land held under pastoral leases or licenses. So that, in reality, the law as it stood in those colonies was much more severe than it was proposed to make it here. It should also be borne in mind that the description of fence in respect of which a man could demand a contribution from his neighbor was not to be any description of fence, of a costly character, but simply an ordinary three-railed fence. No judgment was to be given for a larger sum than the moiety of the cost of that sort of fence, and the amount to be paid must have reference to the actual value of such fence, so that it would not be competent for a man to call upon his neighbor to pay half the cost of some fancy expensive fence, and thereby crush him. The hon. member for Geraldton said because the other colonies had legislated in this direction that was no reason why we should follow suit. But the hon. member, when another Bill in which he took a very great interest was under discussion (the Deceased Wife's Sister Bill), laid great stress upon the fact that a similar measure had been adopted in the other colonies; so that, when it suited

the hon. member to use that argument, he did not hesitate to have resort to it, but, when it did not suit his purpose to do so, he would have nothing to do with it. The hon. member blew hot and blew cold with regard to this argument. When it is a Marriage Bill that is wanted, the legislation adopted by the other colonies is worthy of imitation, but when a Fencing Bill is put forward based upon legislation in force in the neighboring colonies, the fact of such legislation being in operation there is no reason why we should adopt it here. Really the hon. member was somewhat inconsistent. It had been said that land here was of very little value compared with land in the other colonies, and that the mere fact of a man being the possessor of freehold property here did not necessarily imply that he was anything but a very poor man. That might be so. But why was it that such was the case? Simply because people here did not fence their land, and so enhance its value, as our neighbors had done. This Bill proposed to compel them to do so. We sought, in fact, to thrust a benefit down their throat. If land was worth anything at all, it was worth fencing, and, if fenced, it was worth a great deal more; so that, in reality, the result of the adoption of this compulsory principle would be to enhance the value of our land, in like manner as the lands in the neighboring colonies had been enhanced in value. A great deal of fault had been found with the retrospective character of the 4th clause, but he thought if hon. members came to consider the subject carefully they would find that, unless it was made retrospective, it would operate very unfairly. People who had already done what this Bill sought to compel them to do—fenced their land—would receive no benefit whatever from the clause, and would be placed at a serious disadvantage compared with people who, after the passing of this Bill, and acting, so to speak, under compulsion, were forced to fence, and who would get the benefit of the clause. If the principle of fencing was a good one, surely those who had already, of their own free will and accord, acted upon it were entitled to as much consideration as those who would hereafter be compelled to adopt it. Under these circumstances, he thought it was absolutely impossible, in justice to those who had already gone to the expense of fencing their lands, to do away with the retrospective effect of this clause. As to the argument put forward by the hon. member for Geraldton—that purchasers of land in the other colonies, where such a law had been in operation for years past, had purchased it with a full knowledge of the conditions imposed by the law, as regards fencing, but that here, as the purchasers of land never contemplated that they would be called upon to contribute towards the cost of the erection of their neighbors' dividing fences, the principle now proposed to be carried out was an unjust one—that was an argument which, carried to its logical sequence, would land them in this absurdity—that the conditions upon which land was sold, or the tenure upon which land was held, should never be altered. The same argument, if it had any force at all, would have equal weight against a land tax, or against any increase in rates or assessments. And, on the other hand, the same principle would operate with as much force against any modification or relaxation of the conditions upon which land was now held. He hoped the day was not far distant when a land tax would be resorted to in this Colony as a source of revenue; but would it for a moment be contended, as an argument against the imposition of such a tax, that the owners of land when they purchased it never contemplated that they should be called upon to pay such a tax? Owners of land and of property, here as well as elsewhere, had certain responsibilities cast upon them, and he thought it was a very small matter indeed to require them either to utilise the land themselves or to let others do so.

The motion for going into Committee on the Bill was then agreed to.

IN COMMITTEE.

MR. BURT proposed that the original Bill be abandoned, and that the Committee should deal, clause by clause, with the Bill as amended by the Select Committee, and re-printed. This would save a great deal of time, and unnecessary clerical labour.

THE CHAIRMAN OF COMMITTEES said that course had been adopted before, but it was altogether irregular,

for the Bill as amended in Select Committee was not the Bill introduced in the first instance into the House. He would suggest, however, as a way out of the difficulty that some hon. member should move to strike out all the clauses in the original Bill in which any amendments had been introduced by the Select Committee, and move to insert the amended clauses in lieu thereof, as they appeared in the re-printed Bill.

This course was adopted.

Clause 1.—"Repeal of Acts:"

Agreed to.

On the motion of Mr. STEERE, clauses 2 to 7 were struck out, and, on the motion of Mr. BURT the remaining clauses of the original Bill (8 to 22) were also expunged.

Clause 2 of the reprinted Bill ("Interpretation of Terms") was then read, and agreed to without discussion, as was also clause 3 ("Short Title").

Clause 4.—"It shall be lawful for the "owner of any land upon which, before "the passing of this Act there shall have "been erected a fence dividing such land "from land adjoining thereto, or his "heirs or assigns, to demand and recover "of and from the owner or occupier of "such adjoining land half the value of "such dividing fence, and, in the event "of the occupier paying the same, he "may demand and recover such half-"value from the owner:"

The COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said he rose to support the clause in the interests of a very large section of the community, and to urge upon the Committee the necessity of not interfering with its retrospective operation. The class to whom he alluded were the holders of special occupation leases and licenses, of which class at the end of last year there were no less than 916, occupying in the aggregate an area of 108,411 acres of land, and whose number by this time had increased to about 1,000, holding no less than 120,000 acres. Hon. members were aware that one of the principal conditions upon which the holders of these leases and licenses may obtain the fee simple of their land is, that they shall fence it, and, unless this clause were made retrospective, much hardship would be inflicted on many of these men, for this reason: these licenses commenced to be issued in 1872, and, next year, after ten years occupation, a considerable number of the holders will have become entitled to the fee simple of their land, having fulfilled the required condition as to fencing, and they would get no benefit from this clause, unless it was made retrospective in its action, although they had an equitable claim upon the occupier who might come in afterwards, upon the adjoining land.

Mr. MARMION failed to see that any particular injustice would be perpetrated as regards this section of the community. They knew perfectly well, when they took the land, the conditions upon which they leased it,—one of which was that they should fence it at their own cost. It was never contemplated that they should ever be able to call upon anybody else to defray one-half the expense of erection, and consequently he failed to see what hardship this clause would inflict upon them if it were made retrospective.

Mr. STEERE said attempts had been made, in the course of the discussion on the motion for going into Committee, to show that the clause was made retrospective in the interests of the large owners, but he maintained, on the contrary, that the class who would derive most benefit from it would be the small occupiers, and especially the holders of special occupation leases. Land was continually being taken up in these agricultural areas, and the licensees or lessees who had fenced their land would derive no benefit at all from this clause unless it were made retrospective. He might say that, as a rule, he disliked retrospective legislation, but seeing that the same principle was in force in the neighboring colonies, and that it had been in operation there for so many years, he thought we might venture to introduce the same principle here. The hon. member Mr. Stone said that if a clause of this nature were sought to be introduced by the Legislatures of the other colonies now, he did not think it would be carried. But he would remind the hon. member that, as recently as the year 1873, the same provision had been re-enacted in the Victorian Act, and if it had been found to operate injuriously against the poorer class of land holders in that colony, where they had universal suff-

rage, they might depend upon it the clause would never have been re-enacted, or allowed to remain on the statute book.

MR. BURT pointed out that, unless this clause were made retrospective, the special leaseholder who had fulfilled the conditions of his lease would actually be worse off, as regards deriving any benefit from this Bill, than the man who had been too negligent to carry out the conditions of his occupancy, and who had done nothing at all to enhance the value of the land by fencing; for, whereas the former would not be able to demand or recover any contribution in respect of the value of the fences which he had erected, the latter would.

MR. STONE, in order to test the feeling of the Committee on the subject, moved an amendment upon the clause as it stood, to the effect that it should have a retrospective effect.

MR. STEERE pointed out that, as regards any dividing fence to be erected hereafter, provision was made in the next clause for that; and the hon. member might as well move to strike out the present clause altogether as move to amend it as proposed.

The amendment was thereupon withdrawn.

MR. BROWN said, as regards the holders of special occupation leases, it would be in the recollection of the House that the present Land Regulations were framed, in a great measure, with a view to grant special privileges to this class. They were allowed to take up their land on deferred payments, extending over ten years, and granted other privileges, on the express condition that they would fence their land. But he would ask whether the majority of these license holders had in any way attempted to carry out the condition (as to fencing) under which they had obtained the land? He had no hesitation in replying that they had not. He could have understood the appeal of the Commissioner of Crown Lands in favor of this class, if it could be shown that they had fulfilled, or attempted to fulfil, the condition of their leases as regards fencing their land. The hon. gentleman said there were about a thousand of these special occupation holders in the Colony, but—he did not know whether the hon. gentleman himself was aware of it; if he was not, he (Mr. Brown) was—certainly not more than fifty per cent. had attempted to fence their holdings. His belief was that not eighty out of every hundred of them had done so; nor had they the slightest intention of doing it. They held on their lands now simply for the purpose of having some kind of a homestead, and not for the purpose, generally speaking, of agriculture. And the general impression amongst them was, that they might go on holding their land in this way until the end of their lease, without putting up a stick of fencing, and that when their lease expired they would still be able to hold their land in the future as in the past. He did not think this clause would have any effect upon this class, in the way of inducing them to fence. To his mind, nothing could be fairer than the existing law as regards a dividing fence. That law provided that as soon as a man used his neighbor's fence, for the ordinary purpose of a fence, he must pay one-half the cost thereof, and contribute in the same proportion towards keeping it in repair. He failed to see what more was required.

MR. STEERE would like to know what law at present in existence compelled the owner of fee simple land, beyond the boundary of a township, to contribute anything towards the erection or maintenance of his neighbor's fence? He was not aware of any such law at present in operation.

MR. BROWN believed that under the 36th Victoria, No. 9, any person making use of a fence belonging to another person, by adopting it for the purpose of enclosing his own land, would be bound to pay to the owner of the adjoining land half the value of that fence. That was what he called a reasonable law, and one which ought to be continued.

MR. STONE pointed out that in many cases people could really not afford to pay half the cost of erecting a fence which they did not require, and that these people when they became possessed of their land never contemplated that they should have had to bear such an expenditure. The land in respect of which they might be called upon to contribute towards a dividing fence might be utterly worthless—it might be poison land, and consequently of no value to them at all. Surely it was very hard

that, notwithstanding this fact, if the owner of the adjoining land (which might happen to be very good land) had thought it advisable to fence it, the owner of the poison land on the other side of the fence should be called upon to contribute one half of the cost of erecting such fence.

Mr. MARMION said if the object of this 4th clause was to encourage fencing he failed to see how they were going to promote that object one iota by making it retrospective, and to apply to fences already in existence. There might be some ground for believing that it might have that tendency in the future, but the fact of making it retrospective could in no way tend to encourage fencing.

Mr. RANDELL felt inclined to vote for the retention of the clause, although he was free to confess that at first sight he had regarded it as one that would inflict considerable hardship upon many a struggling and deserving settler. But this impression had been removed entirely by the arguments he had heard in Committee and outside, and he now regarded the measure as one fraught with very beneficial results to the country generally, and he thought it would be a pity to take from it any provision that was of value. He considered this clause one of the most important and beneficial in the whole Bill, and, if it were struck out, he hardly saw what use the Bill would be at all. He felt convinced that the good results which would accrue from the adoption of the principle here contemplated would far more than counterbalance any hardship which it might inflict, in exceptional cases.

Mr. S. H. PARKER said if they were going to legislate to meet every exceptional case, he was afraid they would make very bad laws indeed. The clause, as it stood, was one which he could not support. Whatever might be said in favor of its operation as regards the future, he certainly could not see the justice of making it retrospective. It appeared to him it could hardly be fair to call upon a man now to contribute half the cost of the erection of a fence, which had been used by another person for twenty or thirty years.

The COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said the contribution to be paid in respect of a fence would be in accordance with its present value, and not with its value twenty years ago.

Mr. S. H. PARKER said the clause did not in any way provide for that. The fence might be one which the person who had erected it had been using since the foundation of the Colony, and might consist of a post and single rail.

The ATTORNEY GENERAL (Hon. A. C. Onslow): Or it may be an extremely valuable fence, and altogether beyond what the circumstances of the Colony required.

Mr. BURT thought provision was made for this in the 20th clause, which provided that, in all cases where contribution shall be required for any existing fence, the amount to be recovered shall have reference to the actual value and state of any such fence at the time such sum is sought to be recovered, and not to the original cost of the fence. The same clause provided that, as regards country and suburban land, in no case could an amount be recovered beyond the fair and usual price charged for the erection of a three-railed fence.

Mr. S. H. PARKER said that would not do away with the injustice of making a man pay for a fence which was of no use to him at all, but which might be of the utmost service to the man who erected it.

Mr. VENN expressed himself in favor of the clause as it stood, and, if they expected to derive the full advantages which the Bill was calculated to produce, it must be retained in the Bill. The whole question had been thrashed out by the Select Committee, and he thought they had heard enough that evening to convince them that the Bill without this clause would prove of very little benefit. Indeed, he felt so strongly on the subject that, if the clause now before the Committee were not passed, the whole Bill might as well be thrown out.

The ATTORNEY GENERAL (Hon. A. C. Onslow) said it seemed to him to be generally admitted that the erection of a fence was a substantial benefit to the owner of the adjoining land. (Mr. Brown: No.) That was a premise which he ventured to say was accepted by every hon. member in the House except the hon. member for Geraldton,—and possibly the hon. member for Fre-

mantle (Mr. Marmion),—who, together, constituted a glorious minority of two, on that point. He could not recede from the position that a majority of the House considered that the erection of a fence was a substantial benefit to a neighbor, and, that being the case, he failed to see any injustice in making that benefit act retrospectively. It might be said that the owner never contemplated that he should be recompensed for conferring the benefit upon his neighbor; but, if the benefit which that neighbor received was real and substantial, the person conferring it was entitled to receive his reward, whether he ever contemplated it or not, when he erected the fence.

MR. MARMION said the hon. and learned gentleman who had just sat down said he could not conceive a case in which a fence would not be an advantage to a man's neighbor. He was afraid the hon. and learned gentleman did not know much about Western Australian farming. He would inform the hon. gentleman of a case in which the erection of a fence by another might prove a great hardship to a man. For instance, a "cockatoo" farmer who had been in the habit of allowing his cattle to trespass on his neighbor's run would not consider that his neighbor conferred any benefit upon him, if he so fenced his run as to prevent the cattle of the aforesaid cockatoo farmer to enter upon it.

The clause was then put, and the Committee divided with the following result:

Ayes	...	...	9
Noes	...	...	9

AYES.	NOES.
Lord Gifford	Mr. Hamersley
The Hon. A. C. Onslow	Mr. Higham
The Hon. M. Fraser	Sir L. S. Leake
Mr. Burges	Mr. Marmion
Mr. Burt	Mr. S. H. Parker
Mr. Grant	Mr. S. S. Parker
Mr. Randell	Mr. Shenton
Mr. Venn	Mr. Stone
Mr. Steere *(Teller.)*	Mr. Brown *(Teller.)*

The numbers being equal,

THE CHAIRMAN OF COMMITTEES gave his casting vote with the Ayes, and the clause was consequently ordered to stand part of the Bill.

Clauses 5, 6, and 7 were agreed to *sub silentio*.

Clause 8.—"The occupier of any land "separated from any adjoining land by "a dividing fence may serve a notice, as "hereinafter mentioned, upon the occupier, and if there be no occupier then "upon the owner of such adjoining land, "requiring him to assist in or contribute "to the repairing of such dividing fence "in equal proportions; and if such "occupier or owner shall refuse or neglect, "for the space of three months after the "service of such notice, to assist in or "contribute to the repairing of such "dividing fence, it shall be lawful for "such occupier to repair such fence, and "to demand and recover of and from "such other occupier or owner half the "cost thereof; Provided that if any "dividing fence or any portion thereof "shall be destroyed by accident, the "occupier of land on either side may "immediately repair the same without "any notice, and shall be entitled to "recover half the expense of so doing "from the occupier or owner of the "adjoining land; Provided, always, that "in case such dividing fence shall have "been destroyed by fire, the owner or "occupier through whose neglect such "fire shall have originated shall be the "party bound to repair at his own cost "the entire of the fence so damaged as "aforesaid:"

MR. MARMION thought the proviso was very vague, and that it would give rise to no end of trouble. Who was to prove through whose neglect a fire had originated? He considered the proviso a blot upon the whole clause, and one that was certain to lead to endless dispute and legislation. He would therefore move, as an amendment, that the words "fire shall have originated," be struck out, and the words "destruction by fire shall have taken place" be inserted in lieu thereof.

MR. BURGES said it could be easily proved through whose neglect a fire originated—whether on the part of the owner or occupier on one side of a dividing fence, or the owner or occupier on the other side—for it could be easily proved from which side the fire came, and consequently where it originated.

MR. BURT pointed out that unless it could be proved through whose neglect a fire had been caused, the proviso would remain inoperative.

The amendment proposed by Mr. MARMION was adopted, and the clause as amended agreed to.

Clause 9.—Dividing fence to be kept clear by both parties mutually:

Agreed to without discussion.

Clause 10.—Apportionment of cost of fencing as between landlord and tenant:

Agreed to *sub silentio*.

Clause 11.—The occupier of the adjoining land shall be the person liable in the first instance to contribute to the erection of a dividing fence:

Mr. STONE said he found that in the Queensland Act provision was made, in the event of the adjoining land not being in the occupation of any person, that the owner of such land shall be the person liable to contribute; and he thought it would be as well to introduce the same provision into the present Bill.

Mr. BURT said the same provision was made in the original Bill, but it had been struck out by the Select Committee. A similar provision, however, existed in the 5th clause—"if there be no occupier, then upon the owner."

The ATTORNEY GENERAL (Hon. A. C. Onslow): But the question is, if the unfortunate occupier has to pay, how is he to recover from the owner?

Mr. BURT pointed out that the 10th clause provided for the apportionment of costs as between the owner and occupier, or, in other words, between landlord and tenant.

The clause was then agreed to.

Clauses 12 to 18 were agreed to without opposition.

Clause 19 (original Bill)—Definition of sufficient fence—was ordered to be incorporated with the Interpretation Clause (2).

Clauses 20 to 23—agreed to without discussion.

Clause 24.—"If the amount of order "and costs shall not be paid on or before "the expiration of three years from the "date of registration thereof, together "with all interest due thereon, the party "expending the same may, after two "months notice in the *Government Gazette*, require any licensed auctioneer to "sell the land charged with such costs:"

Mr. RANDELL thought the time within which payment should be made after registration (three years) might work a hardship in some cases, and, if there was no objection, he should like to see the time extended to five years.

Mr. STEERE said he had no objection to that being done. There was no desire on the part of the promoters of the Bill to inflict any unnecessary hardship upon any owner or occupier of land.

Mr. RANDELL thereupon moved, That the word "three" be struck out, and the word "five" inserted in lieu thereof.

This was agreed to without opposition, and the clause as amended was adopted.

Clauses 25, 26, and 27 (of reprinted Bill) were agreed to *sub silentio*.

Mr. BURGES moved, That the following new clause be added to the Bill:—"If any holder of a Pastoral Lease "shall heretofore have erected, or shall "erect, a good sheep-proof boundary "fence between the land leased by him "and the Pastoral Lease held by any "other person, and if the holder of such "lease shall refuse to join in erecting "such fence, or shall not make use of "such fence by fencing off from it, yet "if he shall depasture his sheep or cattle "alongside such fence he shall be held "liable to pay one-fourth of the value of "such fence at such time as this Act "comes into force." The hon. member said there were fifty miles of fencing on pastoral lands for every mile erected on any other class of land, and he failed to see why the principle of the Bill should not be extended to lands held under a pastoral lease.

The clause, however, met with no support and elicited no discussion. The motion was therefore rejected.

Mr. STEERE then moved the following new clause, standing in his name on the Notice Paper: "If any person shall "purchase any land, or take up or hold "any land under Special Occupation "Lease or License, within the boundaries "of any land held under a Pastoral "Lease or License which shall have been "enclosed by a sufficient fence, and the "value of such fence thereby becomes "deteriorated by reason of the land, or "any portion thereof, within such fence, "being purchased or taken up or held "under Special Occupation Lease or "License, the purchaser of such land, or "the person taking up or holding a "Special Occupation Lease or License "thereof, shall pay to the lessee or "licensee of the land on which such "fence as aforesaid has been erected, "such amount of compensation as may

"be determined on by one person to be "appointed by the purchaser and one by "the lessee or licensee. Any difference "of opinion between such persons to be "determined by an umpire to be ap- "pointed by themselves, or in case they "shall not agree in such appointment, by "the Government Resident, or Resident "or Police Magistrate of the district in "which the land is situated, on which "such fence as aforesaid shall have been "erected."

The clause was agreed to without discussion, and the Bill reported as having passed though Committee, with amendments.

DISTILLATION ACT AMENDMENT BILL, 1881.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) moved, The first reading of a Bill to amend "The Distillation Act."

Motion agreed to; Bill read a first time, and second reading fixed for Thursday, 1st September.

LAW AND PARLIAMENTARY LIBRARY ACT, AMENDMENT BILL, 1881.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) moved, The first reading of a Bill to amend "The Law and Parliamentary Library Act, 1873."

Motion agreed to; Bill read a first time, and second reading fixed for Thursday, 1st September.

The House adjourned at a quarter past eleven o'clock, p.m.

LEGISLATIVE COUNCIL,

Wednesday, 31st August, 1881.

Telegraph Office Hours—Immigration in connection with the contract for the Eastern Railway Extension—Mail Service to Southern Districts—Goods Shed at City Railway Station—Diseases in Vines Bill, 1881: recommitted—Reply to Message (No. 18) *re* Control over Loan Monies—Estimates: further considered in committee—Sandalwood Bill: third reading—Fencing Bill: further consideration of, in committee—Adjournment.

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

PRAYERS.

TELEGRAPH OFFICE HOURS.

MR. MARMION, in accordance with notice, asked the Colonial Secretary, "Whether it is the intention of the "Government to make the alteration in "the working office hours of the operators "in the various Telegraph Offices of the "Colony, in accordance with the sugges- "tion of the Departmental Commission; "and if so, at what date"? The hon. member said that, as far back as 1877, shortly before the Eucla Telegraph Line was opened, he put the following question to the then Acting Colonial Secretary: "Whether it is the intention of the Gov- "ernment, upon the opening of the Eucla "Telegraph Line, to assimilate the system "of working Western Australian Tele- "graphs with that of the other colonies, "more particularly with regard to office "hours, and tariff of charges upon inter- "colonial messages?" The reply he received to that question was "Yes as far as possible." A long time had elapsed since then, but no alteration had yet been made in the working hours at the Telegraph offices in this Colony, to the very great inconvenience of the public, and more particularly of the mercantile portion of the community. He thought it was a great mistake, and frequently a source of much annoyance and inconvenience, that our telegraph offices should be closed from 8 a.m. to 10 a.m., and again in the evening from 4 p.m. to 7 p.m., thus shutting out all means of communication during what he might call the best part of the day for telegraphic intercourse, and thereby causing a considerable loss to the revenue. The Departmental Commission, in reporting upon our telegraph system, said: "The Superinten- "dent of Telegraphs has suggested an "alteration in the hours of the Head "Telegraph Office"—that, he presumed, was a misprint; it would be useless altering the hours at the Head Office alone, and no doubt the intention was to do so at the principal offices—"which "will be an advantage to the public, and "also lead to a slight decrease in the ex- "penditure of the Department. The "hours at present in use are from 7 a.m. "to 8 a.m., from 10 a.m. to 4 p.m., and "from 7 p.m. to 8 p.m. The hours which "have been suggested, and which we "recommend, are from 9 a.m. to 6 p.m., "without intermission. We think that