LOWER RIVER BROUGHTON IRRIGATION TRUST BILL 1938

Legislative Assembly, 24 November 1938, pages 2668-71

Second reading

The Hon. M. McINTOSH (Albert—Minister of Local Government)—I regret having to bring this Bill down at such a late stage of the session.

The Hon. R. S. Richards—I am afraid it is too late to deal with it.

The Hon. M. McINTOSH—When I have explained the position to members I am sure they will understand the reasons for the delay. The Bill is introduced for the purpose of establishing a trust which will have the duty of controlling the water of the lower portion of the River Broughton. The area over which it is proposed to give the trust jurisdiction is an area of approximately 70,000 acres. The land in question is principally used for grazing, but some parts are used for cultivation, including market gardens. The River Broughton is subject to periodical floodings when large volumes of water escape to the sea. If some of these waters could be diverted it is considered that the lands which would be served by water from the river would be capable of intensive cultivation for such purposes as the growing of lucerne, market gardens, orchards, etc.

For some fifty years there have :been constant disputes in the district as to the rights of landholders to take water from the stream. Individual landholders have constructed works such as dams and channels; in some cases to the detriment of other landholders . All this has been productive of a considerable amount of discord amongst the settlers and in some instances has led to litigation. For a number of years various landholders have been urging the Government to take some action to divert the water which now passes down the river into the sea, and to impose some authority to control the diversion of water. The Government, however, has taken the view that this is more or less a local matter which should be handled by the people concerned. It was therefore suggested some time ago that the proper course to follow would be to introduce legislation setting up a trust on the lines of the Renmark Irrigation Trust, which would take control of the waters and be empowered to issue licences to divert water and also be empowered to carry out any necessary works for conserving the water. The Government appointed a departmental committee to inquire into the matter and the committee came to the conclusion that such a trust should be formed. In addition, various works for the purpose of the diversion of the water were examined and reported upon. The Government took the view that no scheme for the establishment of a trust should be proceeded with unless it was assured that a substantial number of the people concerned were favourable to the proposition. The Government committee, therefore, had a number of discussions with the landholders, and a committee of landholders was set up to deal with this question. After considerable discussions the Government put forward the proposal that legislation on the lines of the Bill would be prepared if at least a majority of the landholders representing at least three-quarters of the value of the property concerned were in favour of the formation of a trust. A petition was therefore circulated, together with a counter-petition, for the purpose of ascertaining the wishes of the landholders. The petition in favour of the proposal was signed by 80 settlers, three signed the counter-petition, and 25 failed to sign either document. The petitioners in favour of the proposal held land which, based on the land tax assessment value, represented 75 per cent, of the total land value of the district. It will thus be seen that the settlers concerned are generally in favour of the proposed legislation. The general scheme of the legislation was discussed with the landholders’ committee, and subsequent to it being drafted the Bill was submitted to the committee and in its present form has been approved by them.

The general scheme of the Bill follows that of the Renmark Irrigation Trust. Part II. establishes the trust and provides that the Governor by proclamation is to define the district of the trust. Part III. provides for the constitution of the trust, which is to consist of a chairman and six other members. There will be three wards in the district of the trust, and each ward will elect two members, one member for each ward retiring annually. The chairman will be elected by the other members of the trust and will hold office for two years. The first chairman and the first members of the trust will be appointed by the Governor, as it is obvious that the first trust must be appointed before the Bill can come into operation. It is provided that the chairman may be paid an honorarium by the trust, but the other members will receive no payment. Under the Bill the chairman need not be a ratepayer and it is thus competent for the other members of the trust to appoint as chairman any person whom they consider specially qualified for that position. Part IV. deals with the management of the trust. The trust is given power to appoint a secretary and other officers and servants. It is provided that four members will form a quorum of the trust, and the trust is given power to appoint committees. General provisions relating to the making of contracts, the compounding of debts and the banking of moneys are also included. The trust is given power, subject to the approval of the Minister, to make by-laws relating to the control of the works, the supply of water, and other necessary matters.

Part V. deals with the control of the River Broughton and it is this part that contains the most important powers given to the trust. The ownership of all water in the River Broughton which is within the district of the trust is, under clause 46, vested in the trust. The trust is given power to construct works for the purpose of diverting and regulating the control of the waters vested in it. Various works have been considered by the Government and the committee for the purpose of the diversion of these waters, the estimates varying according to the magnitude of the works proposed. The question whether or not any such works will be carried out will be a matter entirely for the trust and any works will have to be carried out by means of funds raised by the trust. The Government will not be involved in any expense.

Clause 49 provides that no person is to take any of the water vested in the trust unless the trust grants him a licence so to do. Clause 50 gives the trust power to regulate the control of the flow of the waters of the River Broughton over the lands adjacent thereto. This power is one of the most important-in the Bill. As before mentioned, one of the main reasons for the introduction of this Bill is the present unsatisfactory position between the settlers as to their rights to take water. At present any dispute must, if pressed to an extreme, be taken to the courts. The effect of these provisions will be that the trust appointed from the landholders will have power to decide these matters. Clauses 53 to 70 are similar to provisions in the South-Eastern Drainage Act. They enable a petition to be presented to the trust by landholders requesting that any work for promoting or regulating the flow of water indicated in the petition be constructed. After requisite notices have been given and opportunities for objections have been given, the trust, if satisfied that the work will be to the benefit of a substantial number of the. petitioners, may carry out the work. The cost of the work so constructed is to be apportioned amongst the landholders concerned. The method of apportionment gives ample opportunity to the land­holders concerned to see that their interests are properly conserved.

Part VI. deals with assessments and rates. The trust will have power to carry out general works for the conservation of the waters of the River Broughton, and will, of course, incur administrative expenses in carrying out the licensing provisions. These expenses will have to be met by a rate on the ratepayers of the district. The trust will, therefore, make an assessment of the land in the district, but the ratable value of any land will, in relation to that land, be the assessed amount of the increased fee simple value of the land, which increase has accrued from all the works (not being works constructed on the petition of landholders under Part V.) constructed by the trust prior to the making of the assessment. It follows, therefore, that a rate will only be imposed upon land the value of which is increased by reason of works carried out by the trust. The guiding principle was experiences gained in rating South-East lands. General provisions relating to the making of assessments are contained in the Bill. These provisions are substantially the same as those in the Local Government Act and the Renmark Irrigation Trust Act and give the usual right of appeal to ratepayers who are not satisfied with the assessment Clause 86 gives the trust power to declare rates for the purpose of defraying the cost of the construction of any works carried out by the trust pursuant to the Bill, in paying interest on or repaying the capital of any loan raised by the trust, or paying the costs of administration. Until the first assessment is made, it is provided that the trust may fix the rate at an amount either per acre or per block, or to be calculated in any other manner which the trust may think just. After an assessment has been made, the rate is to be of an amount fixed by the trust for each pound of the ratable value of the land assessed. General provisions relating to the giving of notices and the liability of persons to pay rates are included.

Clause 95 incorporates in the Bill the provisions of Part XIV. of the Local Government Act. The effect is to provide that when rates are in arrears for five years the trust will have the same powers as a council to sell the land. In Part XIV. of the Local Government Act elaborate provisions are made for giving notices to protect the interests of the ratepayers and of other persons having an interest in the land. Part VII. authorizes the trust to raise loans for defraying any of the general costs of the Bill. The loans are to be raised by debenture and, if any sum of £500 or more is to be borrowed, a poll may be demanded by one-twentieth, or more of the ratepayers. We have safeguarded in every possible way the interests of the people concerned. The draft of the Bill has been presented to the ratepayers and as framed meets with their approval. Part VIII. deals with meetings, elections and polls. These provisions are substantially the same as those provided for in the Local Government Act and do not require any special comment. Part IX. contains a number of miscellaneous provisions. Clause 144 provides that, if pursuant to any Act, the Government impounds any waters of the River Broughton or any other river, no person shall have a right to compensation by reason of anything done under the Bill or by reason of any works constructed under the Bill. It was made plain to the landholders that, in the future, it may be necessary for the Government to impound some of the waters now in the River Broughton or in some of the rivers which flow into the River Broughton, and that in such circumstances no person should have any right of compensation other than the' right he would have had if the Bill had not been passed. This condition was accepted by the settlers and consequently this clause is included in the Bill. I draw Mr. Lacey’s attention particularly to that provision. The purpose of this Bill, speaking generally, is to enable a trust to be constituted from the landholders within the district in question who will then be able to administer their own affairs. The Government will take no direct part in the control of the trust nor undertake any financial responsibility, but the trust will, as does the Renmark Irrigation Trust, conduct its own business and, it is hoped, put an end to the continual disputes relating to water rights which now occur in the district. It is a rather unusual type of Bill and possibly you, Mr. Speaker, will rule, and rightly so, that it is a hybrid Bill, in which case it will have to be referred to a Select Committee. As every possible safeguard has been taken to ensure that it meets with the approbation' of the people concerned, and as the State is not involved, I hope that if it is referred to a Select Committee it will be expedited and passed this session. I move the second reading.

The Hon. R. S. RICHARDS secured the adjournment of the debate.

LOWER RIVER BROUGHTON IRRIGATION TRUST BILL 1938

Legislative Assembly, 29 November 1938, pages 2703-2706

Adjourned debate on second reading.

(Continued from November 24. Page 2671)

The Hon. R. S. RICHARDS (Wallaroo— Leader of the Opposition)—The Bill was intro­duced on Thursday last as an important measure. During the second reading speech by the Minister I said by way of interjection that I thought it had been introduced too late in the session for the subject matter to be given the consideration it warranted. This is a Bill which can be dismissed, as far as the second reading debate is concerned, in a very short time. Like other Government measures, it bears the stamp of indefiniteness. It is true that it provides for the control of the flood waters of the River Broughton, but, on the score of the additional expense that will be involved by the operation of the trust, the Bill is silent. The-very complexity of the Bill is, however, its most serious objection. How the Government could expect members to consider such a measure in. the short time now at their disposal is beyond comprehension. Did the Government anticipate a rapid second reading debate on a Bill of 145 clauses without so much as a word, for instance, on the probable results of the imposition of a trust on the occupiers of the land concerned? What opportunity will members really have to approve the principle embodied? They are faced with the alternative of seeing the second reading passed without their having even an opportunity of taking part in the debate.

The subject matter of the Bill is connected with the rights to divert, use, and impound the waters of a river, and this is a very contentious matter. It is a question that is bristling with difficulties, and it is not one that can be solved with one stroke of the pen. It is a question which needs the most careful consideration, and it is more than obvious that this is not the time when such a measure can be given that careful consideration. Any other Bill of this length which did not propose to make such far-reaching changes in the matter of rights accruing to occupiers of land along a river would have been inappropriately introduced at this time, and particularly ill-timed is this latest attempt on the part of the Government to avail itself of an arrogant use of its power. I cannot see that there is the slightest- hope of passing the Bill this session if it is to receive proper consideration. Perhaps the Government can offer a reason for introducing it so late in the session. To my mind it is too important to be rushed through during the dying hours of the session. The Bill must of necessity be referred to a Select Committee; that is, if the second reading is approved.

The Hon. M. McIntosh—It cannot be rushed through, then.

The Hon. R. S. RICHARDS—Last week it was proposed to end the session on Friday next, yet the Minister introduced the measure last Thursday, expected the second reading debate to be concluded, the measure referred to a Select Committee to make exhaustive inquiries, and its report to be presented in time to pass the Bill before next Friday.

The Hon. M. McIntosh—The member for Port Pirie wants it rushed through.

The Hon. R. S. RICHARDS—He might, and that further indicates the freedom of action on this side. It proves that -the Minister is kite-flying when he says there is no such freedom on this side. I am not prepared to give any kind .of promise, either to support the Bill or to oppose it, until I feel more confident about the position in the district itself and about the effects calculated to follow the institution of a trust to administer the affairs of the landowners as far as they are concerned with the flood waters of the River Broughton.

One aspect mentioned by the Minister when introducing the Bill was that it resembled the Act to control the irrigation scheme of the River Murray. Insofar as it deals with a river and the water it contains or brings down, the Bill can be said to resemble the Act referred to, but by no stretch of imagination can it be said to resemble it any further. The creation of a controlling body for the irrigation of the lands adjacent to the River Murray was something that was to administer the affairs of a large number of landholders—in fact, very large compared with the number of people affected by the River Broughton. Yet, the same machinery is to be created to deal with the rights of a few people as for that large number. Incidentally, it may be pointed out, the conditions of settlement are entirely different along the two rivers. The point that I wish to make is that the trust will have a certain minimum amount of expenditure to face, and that expenditure will be made from funds raised at the expense of the landholders of the district. It is likely that the expenses of the trust will be considerable, and that the individual contribution of the landholders will be correspondingly large. Has the Government any idea of the amount that will be involved in this direction? Do the landholders know how much they are likely to be called upon to pay, and what are the privileges that the Bill proposes to confer upon them? To these questions the answer, I think, would be vague. Yet, we are asked to consider a Bill for the creation of this trust, not knowing what is involved, and not knowing whether the occupiers of the adjacent land are aware of the implications.

Mr. Lyons;—They are.

The Hon. R. S. RICHARDS—I do not think so. This House is not aware of the implica­tions. We have been told that all the landholders were circularised and the majority expressed themselves in favour of the proposals now included in the Bill. It is extremely doubtful, however, whether those landholders really agreed to the provisions that have been actually drafted. Then, some were against the proposal, while some did not intimate their attitude on the matter. Can we be sure that the proposal, even in general, meets with the wishes of the persons concerned in this matter? The fact that a considerable number gave no answer to the inquiry addressed to them does not mean that they approve. Silence does not necessarily give consent. Nor does their attitude, whatever it is, indicate that they do not care about the contemplated alteration. They may be under the impression that the Government cannot make such drastic changes, and the law on the rights of landowners along a river is so intricate that they may be right in thinking that they cannot be disturbed in the enjoyment of the rights they have possessed for a long time.

The Hon M. McIntosh—Seventy-five per cent, of the residents petitioned for it. That is a fair majority.

The Hon. R. S. RICHARDS-—I have referred to some of the doubts that rise in my mind when I contemplate this measure. The provision of compulsory reference to a Select Committee was never more expedient than in this case. It will be possible, if the Bill passes the second reading, for those interested to come forward and voice their objections to the scheme. It is just as well that there is such a provision for the reference of such Bills to a Select Committee, otherwise we would have a Government bringing down a Bill like this and in this manner at the end of a session to force it through without giving members an opportunity to discuss the question fully and without giving them the opportunity of reading the Report of a committee which has heard the expert and interested evidence on the subject. The Minister says that 75 per cent, of the people have agreed to the proposal. Obviously 25 per cent, are either silent or have expressed hostility to the scheme. I doubt very much whether the machinery portions of the Bill are understood by the 75 per cent, of residents who petitioned.

Mr. Lyons—They understand it.

The Hon. R. S. RICHARDS—I want to get the views of the settlers themselves, and that is why the Bill should be referred to a Select Committee. Mr. Lyons has for a long time asked questions about this problem.

It is not a new one. When I was in office I received a large number of photographs and letters, some of which were complimentary and some otherwise, concerning this matter, but that does not absolve the Government from any charge of undue haste in the dying stages of a session. The subject is too important to be rushed through. It would be unnecessary for me to take the Bill in detail and dissect it thoroughly at this stage, but it is necessary for me to advert to one or two points in the Bill. I have already mentioned the fact that the trust is likely to entail a considerable amount of expense and that the landholder may be called upon to pay dearly for the privileges that the Bill proposes to bestow upon him or remove from him, as the ease may be. It is not merely a matter of amount of expenditure that the Bill contemplates the trust will undertake, although the indefinite nature of the works to be constructed and the functions of the trust itself are in themselves an objection to the proposal. The Bill empowers the trust to raise moneys by loan, not only for constructional works, but also for the administration of the scheme. The company will raise money by loan to cover administrative expenses. That, plus the capital cost, falls back on to the landowners. It is a most extraordinary principle, and I doubt whether that provision has been fully explained to them. Does the Government propose to capitalize the expenses of administration during some indefinite period? Clause 97 provides:—

 The trust may,borrow money for the following purposes:—(a) for defraying any of the general administrative costs of the trust incurred before rates are collected under this Act.

Is this necessary or wise? Is the trust going to create a permanent debt, the interest on which will remain a burden on the landholders whom the trust is to serve, or is this loan to be liquidated from the rates that it is proposed to levy on them? The administrative costs, according to the Bill, will go on forever. If the trust mates these payments so low that it will not receive sufficient to meet those costs, it can borrow. It appears that these things have been glossed over. On principle, administration costs should be paid out of revenue and not out of capital, and although it is customary for companies to capitalize preliminary ex­penses, which are not perfectly analogous with the administration expenses here contemplated, those preliminary expenses are written off over a period of years out of profits. The Bill makes no mention of the procedure to be followed for the liquidation of the administration costs incurred before rates are collected, but in my opinion there should be some provision. Loans to be raised for definitely developmental works will be heavy enough without having the capitalized administrative costs as an additional weight to carry. As the Bill will go to a Select Committee I shall not deal with its 145 clauses seriatim. The measure is most important and it is unfortunate that it has been introduced into this stage of the session as it does not allow members sufficient time to consider the clauses and their effects. The Government cannot be congratulated on the manner in which it has been introduced.

Mr. LYONS (Rocky River)—I have much pleasure in supporting the Bill and desire to reply to some of the Leader of the Opposition's criticism. The landowners concerned are intimately acquainted with the contents of the Bill and it is because they have been given such an intimate knowledge of its contents that it has been delayed until this late stage of the session. Had the Government not been willing to communicate with the landowners concerned and have matters discussed from every angle the Bill could have been introduced months ago.

It was much more essential that the landowners concerned should know what they were doing on this matter than that Parliament should know. The Bill will have little effect upon the taxpayers of the State, any expenses in the formation of the trust and its operations being borne by the landholders concerned. Several meetings touching on the question have been held. During the course of years there have been several instances of disagreement between various landholders. At one meeting I attended the chairman of the district council of Pirie was warned off certain property. The chairman of another council was also warned off, but the Speaker and myself were invited on to it. There has been so much feeling on this question that It is a wonder a tragedy has not occurred. Mr. Richards said he had received photographs and letters about this question when he was a Minister of the Crown, but I remind him that for a long time the flooding of this land, and the wastage of huge volumes of water have been a sore point amongst landholders in the district. They feel that the time is over-ripe when the waters of this river, South Australia’s longest, should be controlled and the land placed under irrigation.

Mr. Richards mentioned the River Murray and the Renmark Irrigation Trust. The proposed trust will be based on lines similar to the Renmark Irrigation Trust, which has been able to meet all its obligations . Far from being a drag on the taxpayers it has proved a worthy organization and has benefited both the State and the landowners concerned. The Bill before members will enable intense cultivation to take place on 70,000 acres, which will be flooded, and although the rating will present a problem, it is not insuperable. Circumstances compel an investigation by a Select Committee and I hope its deliberations will be expedited and that the Bill will be pushed through this session. I say “pushed” because it is essential it should be passed this session. To my know ledge landowners in the area are most anxious to undertake the building of locks, channels, and embankments. The cost of the work involved is estimated at £5,000, and provision is made in the Bill, if any sum in excess of £500 is needed, for the holding of a poll of ratepayers under the Local Government Act. I see no reason for delay in the passage of the measure.

Bill read a second time

The Hon. M. McINTOSH (Albert—Commissioner of Crown Lands) moved that the Bill be referred to a Select Committee, pursuant to Joint Standing Order No. 2, comprising Messrs. O’Halloran, Stephens, Lyons, and Dunn, and the mover, with power to send for persons, papers, and other matters relative to the Bill, and to report on Tuesday, December 6.

Motion carried.