**BRANDS ACT REPEAL BILL 1879**

**House of Assembly, 25 June 1879, pages 248-52**

Second reading

**Mr. WEST-ERSKINE,** in moving the second reading of this Bill, said he did not think that ever an Act had excited such a universal howl of indig­nation as the Act which he now sought to repeal. He said that without fear of contradiction, for they saw that in all parts of the colony the farmers, in the middle of the ploughing season, had left their homes to attend evening meetings on the subject, and from the furthest settled areas to Mount Gambier he had received letters and petitions asking him to move for the repeal of the Act. Some hardhearted member might move to amend the Act, but it so bristled with absurdities that it would take him a week merely to enumerate the particulars in which it would require to be amended. He wished to repeal the Act root and branch. He considered it a disgrace to the Statute-book for such an Act to be on it. (Mr, Coglin—"Is that in order?”)

The SPEAKER said the hon. member was in order in using any language in characterizing a Bill which he was moving to repeal.

Mr. WEST-ERSKINE knew he was always in order. (Laughter.) He was not one who paid much attention to popular clamour; but he had studied the Bill for months past, and from what he could gather there was a unanimous feeling among the public that the Act should not remain on the Statute-book. Was there any general agitation for its passing? He said no. If ever an Act was quietly slipped into Parliament, it was this; and he believed some who were instrumental in bringing it about would support him in seeking to repeal it, because they saw the great difficulty and obstruction in dealing with stock which it necessarily brought about. He ventured to say that a very dangerous practice was being introduced into the colony. He had always supposed that when the Governor assented to a Bill it *ipso facto* became law, and must be carried out in its integrity; but what was the use of solemnly passing an Act if on the caprice of any member it could be suspended? (Hear, hear.) He believed that the Commissioner of Crown Lands had acted from very good motives, but it was not the first time since this Government had been in office that this thing had been done. He was not sure that he would be in

order----

The SPEAKER—Then the hon. member had better keep in order. (A laugh.)

Mr. WEST-ERSKlNE said he referred to Nock’s Act, which had been suspended by the Minister of the department who administered the law, and he could mention other cases; but it was introducing a most dangerous and unconstitutional practice, and he hoped we would never have an instance of it again . The waybill clause in the Act which he sought to repeal was utterly unsuitable within the limits of Corporations and District Councils. (Mr. Henning – “No.”). If a man stole sheep or cattle or horses, surely he would not have any scruples in forging a waybill. In fact, the system was so unworkable that the Commissioner of Crown Lands had told his offices not to enforce the clause except under special circumstances, and not within the limits of five miles.

He thought that ought in itself to be a sufficiently strong argument in favour of its abolition. The provisions for scorching, branding, and scarring cattle all over were those which had caused righteous indignation to be felt. Cruelty to animals had been legislated against, and yet twenty brands had to be put on a beast either by the original owner or those who subsequently bought it. If hon. members had their hides singed off they would call out very soon—(laughter)—and he did not see why cattle should not have the benefit of the protection which nature gave them against the cold in winter and the heat in summer. Very frequently an eye or a horn was knocked off, or a beast was lamed in the branding yard, and in branding fat cattle they got bruised and the meat was damaged; and he put it to anybody who knew anything about the matter whether he would brand a lot of cattle which were in high condition. Then the number of brands to be employed. Each consisted of one letter and two numerals; he would call them three letters. They began on the near shoulder, the near side, the near rump, and then on the off shoulder, off side, and off rump, so that there were six brands consisting of three letters each, or eighteen in all. Every time a beast got into a pound and was sold out of it the keeper had to put on three more letters. It would require a sort of Rosetta stone to interpret the hieroglyphics of the brands which appeared in the *Gazette.*  The only use that could be made of these three letters was that the farmers would be able to teach their children the alphabet without injury to their small eyes as they went along with their bullocks and plough. (Laughter.) Then, he asked, where were they to get the leather for their boots—from kangaroos, wallabies, or crocodiles? Every one must know that the price of a skin was not improved by the number of brands on it. He might be told that it was not compulsory for him to brand, but he had some little regard for his property . Did not the Commissioner of Crown Lands brand his pocket handkerchiefs? (The Commis­sioner of Crown Lands—"No.”) Perhaps the hon. gentleman had no occasion for them— (laughter)—but at all events he branded his. He had some regard for his property, and it was an absurdity to say that he was not compelled to brand his cattle, but if he branded he had to use the Government brand which might be assigned him of three letters. It was well known that brands such as DD, C half-circle, and many others had a distinct commercial value, and the owner probably got a higher price if he branded his horses with those brands in Calcutta or other established markets. But under this Act the owner was deprived of these brands. He was aware that by paying a £2 regulation fee he might adopt a character in addition to the brand the Government might assign him, but that would make four more characters which he would have to put on himself. It might be for years and it might be for ever — (laughter) — before the reputation acquired for particular horses in the Indian markets could be regained, because people there would not know that the brands had been altered. And in almost all cases the fees were absurdly high, almost prohibitory, and he was sure that small farmers, what with led rust, pleuro, dry seasons, and fluke, and also the fact that no money was to be allowed to be in circulation in the colony until after December 31—(laughier)—would all find money scarce, and it would be difficult for them if they wished to comply with the Act. In England there was a plethora of money, and Canada and other colonies had got money on very easy terms

The SPEAKER said the hon. member was hardly in order. He did not see what his remarks had to do with the Brands Act.

Mr. WEST-ERSKINE said he would not go out of order, for he saw that the Speaker was watching him closely; but it was not always easy to see a connection, the result of which would be seen in a moment—(laughter)—and he should keep quite in order.

The SPEAKER—Then the hon. member should speak in the way I direct him.

Mr WEST-ERSKINE – I I am to speak as the Speaker directs me it is of no use my being here. I come here as an independent member. I consider I am speaking strictly in order.

The SPEAKER – The hon. Member was not discussing the Brands Bill when he spoke about money in Canada and other places.

Mr. WEST-ERSKINE was going to prove that there was no money here.

Mr. BRAY asked if the hon. member would not be in order in showing the difficulty the farmers would have in paying the fees.

The SPEAKER—The hon. member must know that he was not in order.

Mr. WEST-ERSKINE—I respectfully say I do not know that I was out of order.

The SPEAKER—Having been informed, the hon. member will have the kindness in future to confine his observations to the subject before the House.

Mr. WEST-ERSKINE had been very often in the House of Commons, and it was a practice there that when a member was speaking some little latitude was allowed him. He knew that it took some little time for an article to be imported here, but perhaps in a little time it would be imported, and members would not be pulled up and thrown off the thread of their argument in the most arbitrary way without any cause. The Speaker called on the House to support him on various occasions; but this was an occasion when a member should have the support of his fellow-members. He had great respect for the Chair, and so he would not go on with what he was referring to, out of personal consideration to the Speaker, not that he admitted that he was wrong. (Laughter.) He was pointing out that if cattle had to be branded with eighteen or twenty brands the old saying, “There’s nothing like leather” would soon cease to be a proverb. Legislation of late had been in the direction of promoting mixed farming, to allow farmers to keep stock as well as grow wheat; and when they considered that we had a vast territory of nearly a million square miles, and yet had to send to Victoria and New South Wales for our beef and mutton, every effort should be made by Parliament to encourage rather than discourage grazing; but the small stockholders would be altogether snuffed out if this Act was allowed to be carried out. He hoped this Bill would not be made a peg for any party grievance, and that there would be no allusion to the squatters or the small farming interest. He believed the repeal of the Act was a great question to the small farmer, but he was also supported by many squatters outside the House. He had carefully considered the Act, but it was so full of absurdities from one end to the other that there was nothing for it but to bring in the Bill now before the House, which, while it possessed the merit of very unusual brevity, would, he believed, be of at least as much service as many lengthier measures that had been passed. He held in his hand a letter from a gentleman who was well-known to most hon. members, who, referring to the power possessed by Inspectors to drive away stock improperly branded, asked, “ What was to be done with the stock after they were driven away ? Was the Inspector to keep on driving them until the Act was repealed?” (Laughter.) His friend further said that “ all the clauses in the Act required a lawyer to interpret them.” It was of little use to attempt to alter the Act now; the better way was to repeal it altogether. Like the countryman’s gun, it required a new lock, stock, and barrel to make it of any use. He would move the second reading of the Bill.

The COMMISSIONER of CROWN LANDS (Hon. T. Playford) said the hon. mover claimed to have carefully considered the Brands Act, but nothing had fallen from the hon. member to show that he understood it even if he had read it. (Laughter.) He had said it would take him till to-morrow morning to point out the defects of the Act, but he had done very little to show what the defects were. The hon. member had called him to task for suspending the operation of the law with regard to waybills, and had said that such a course was unconstitutional. In reply he would only say that as a Minister of the Crown he should never shrink from the responsibility involved in suspending the operation of any details in a measure which might prove in practice to be unworkable, and he would then come before the House and state frankly what he had done. (Hear, hear. Mr. Bray—“How would you remedy such defects?”) He would bring in a Bill to remedy any defects that were discovered in the actual working of the law as soon as sufficient time had elapsed to show in what way the existing measure could be improved. (Hear, Hear). The hon. Member for Encounter Bay had made a great point of the commercial value of certain brands.

Now, he would point out that in the absence of the Brands Act the brands could possess no commercial value at-all. (Hear, hear.) Again, the hon. member said the fees were too high. Was £1 too much for a farmer to pay for the registration and permanent use of a particular brand? To say so was really to libel the farming community of this colony. (Hear, hear.) Those who raised objections to the Act really forgot that similar measures were in successful operation in New South Wales and Queensland. (Mr. Boss—“ The conditions are not analogous.”) The conditions were similar, except that in the other colonies there were not so many small farmers as here. In Queensland the Act had been in operation since 1872. In the New South Wales Act there were some admitted defects, which would no doubt be remedied before long. It was absurd that breeders of stock should not be permitted to register a brand, whilst manufacturers of patent medicines and tobacco could register brands such as he had seen only the other day—an eagle soaring in the heavens in company with a female. (Laughter). It would be a great pity to repeal the Act, which, as hon. members knew, was only passed after the most careful deliberation, and with the unanimous consent of the House, with the exception of the hon. members for Kapunda and Wooroora. In the Council also great caution was exercised, and a Select Committee was actually appointed so that the outside public might express their views fully. The provisions as regards the branding of stock would come into operation on November 1, and were proclaimed on May 1. Mr. Angas then waited on him to secure the registration of a well-known brand, to which he attached great commercial value; and after deliberation in Cabinet it was decided that the Act would not allow the registration of the brand in question. He pointed out to Mr. Angas that in Queensland, where people were allowed by the law of 1872 to use their old brands alongside the new ones for two years, not a single person availed himself of the privilege; but Mr. Angas informed him that if he could not otherwise secure his object he would take steps to get the Act either altered or repealed. Mr. Angas went to England before any definite reply could be given, but directly his agents knew that they could not get the particular brand which Mr. Angas sought to register, there commenced the agitation of which they had seen something in the daily papers, where a letter had appeared, written, as he had reason to believe, by a gentleman whom he had just seen sitting under the gallery of the House. He held in his hand a letter which had been addressed by Mr. W. J. Brook, the Secretary to the Brands Committee, to Chairmen of District Councils. In that letter the writer stated that “there is no doubt that legislation was required to enable us to obtain a brand which when registered should be the exclusive property of the owner,” and so on; and in the form of memorial attached to that letter there were the following provisions stipulated:— "1. That an owner of stock may register any brand, provided that it is distinct from that of another, and that such brand shall be evidence of ownership. 2. That registration for brands shall be received up to a date to be fixed by proclamation. 3. That in apportioning brands preference shall be given to the applicant who applies for his old brand. 4. That it shall be compulsory to brand in the selected positions, or as near thereto as possible. 5.That figures may be used under the owner’s brand for herd-book purposes, or to denote age. 6.That earmarks and tattoo-marks shall be registered on application, and when registered shall be the exclusive property of the applicant. 7.That it shall be illegal to cut oft the top of the ear by a straight cut for cattle no earmark to exceed one inch in depth or width; and for sheep half an inch. 8. That it shall be lawful to ear-brand cattle at sales as is now customary. 9. That the same brand shall be allotted to each person for his sheep, cattle, and horses. 10. That it shall not be compulsory to brand stock. 11, That sufficiently high penalties be made to ensure this Act being carried out.” With regard to those points, taking them in order, he would say—No. 1. Is already done. 2. Registration of brands is fixed. 3. Twenty men cannot have the same old brand. Why give the preference to one out of twenty. 4. Would spoil the advantage of rebranding. 5. Already done: provided for. 6. Earmarks noted. He had seen tattoo marks made with Indian ink, but he felt that they had not sufficient information as to the working of the tattooing process to warrant its adoption at present. 7. Provided for. 8. Not unlawful at present. 9. Could not be done except under tattoo-mark system. 10. Is not compulsory. 11. Provided for by moderate as well as high penalties. The hon. member for Encounter Bay had complained that the penalties were too high, but as a matter of fact, though the penalty went as high as £50, it was at the discretion of the Magistrate to inflict any lower penalty he thought proper. The expenses incurred up to date were—For printing, type, advertising, stationery, and furni­ture sufficient to carry on the Brands Act for three year 8, £270; clerical expenses, £26; making a total of £300. Fees received to date £584. There had been 355 applicants for horse and cattle brands, 234 for sheep brands, or 609 in all. From information which he possessed relative to the working of the Act in Queensland, he gathered that so far from horses being branded all over in the way suggested by the hon. mover, very few horses had more than the breeders’ brands—(Hear, hear)—but of course the owners of the horses must preserve their receipts. On the point as to the brand being *prima facie* evidence of ownership, he would say that Mr. Gordon, the Inspector for Queensland, said that the burden of proof was there thrown by the Act on the holder of the horse - he must prove that he came by it honestly. That was the proper course to pursue in any case. (Hear, hear) Some people had objected to the position of the brand being fixed by the Act; but the course laid down was in his opinion clear and sensible. The breeder of stock could place his brand where he liked, but the buyer must put the brand he desired to affix in position No. 2, and thus the brand last imprinted on the animal was shown at a glance. (Hear, hear.) He believed that a great deal of the agitation which had been got up outside the House was done by people who really did not know the Act they were criticising—(hear, hear)—and if the Act continued to be enforced for two years not a single person would come forward to ask for its repeal, or if he did, then those who had had brands registered under the Act would certainly object to any alteration. If the motion now before the House were carried he thought it would be only fair that the House should appoint a Select Committee to enquire into the whole subject, and then they would see how little real foundation there was for the agitation that had been raised.

The Hon. J. CARR asked the Clerk of the House to read a petition from the district he represented.

The Clerk read the petition, which was adverse to the Brands Act.

The Hon. J. CARR said he would support the Bill introduced by the hon. member for Encounter Bay, for the reason assigned in the petition just read, viz., that the Bill passed last session would facilitate theft and in many cases legalize it. There were many stockholders who did not keep a great amount of stock who would not comply with the provisions of the Act by branding with two letters and one figure, and any dishonest person might take their stock and brand them, and this would have to be accepted as *prima facie* evidence of their ownership. The Bill was not carefully considered last session. It was passed principally on the authority of the Commissioner of Crown Lands. It was thought by many hon. members that its provisions were intended principally to apply to pastoral lessees, and that it had reference to pastoral districts. Hon. members now found that they were mistaken, and they should comply with the generally expressed wish of the country by undoing that which they passed under a misapprehension.

Mr. ROUNSEVELL moved the adjournment of the debate.

The motion was declared negatived.

Mr. ROUNSEVELL called for a division:—

Majority of 2 for the Noes.

Mr. ROSS said he would support the second reading of the Bill, because he thought the Bill passed last session was impracticable and unworkable. The Commissioner of Crown Lands had laid great stress on the fact that the Act was identical with one that had been in force in Queensland for several years past; but he seemed to overlook the circumstance that the conditions of Queensland and South Australia were not similar—Queensland being essentially a squatting community. The Commissioner also laid stress on the fact that the measure was passed without any real opposition, but he would point out that that arose from the fact that at the close of last session hon. members felt that it was very little use offering any opposition to any measures introduced by the Government. (Mr. Playford—“The Bill was introduced in the first part of the session.”) It was felt by many hon. members that it would be a better plan to allow the Bill to become law, and let those more deeply interested in it speak out respecting it. With the Ministry the matter was a theory, but farmers and dealers in stock generally disapproved of the Act. He defied any member of the Ministry to name a dealer who approved of the Act. On all sides the Act was universally condemned — (Mr. Playford — “ No”) — and surely the dealers in stock were the best judges as to whether it suited their purpose or not. He would go so far as to say that if the Act remained on the Statute-book it would seriously affect the value of stock sold in the market. It would reduce the price of sheep at least 10 per cent., because of the difficulties and labour in the way. (Laughter. Mr. Playford—“You are proving too much.”) He dealt in sheep in a small way, and he could say that the Act would be an unmitigated nuisance to him. One of the arguments in favour of the measure was that it would prevent theft. On that point he could refer hon. members to a letter from Mr. Dodd which had appeared in a public print, in which he said that during the years he had been dealing in stock he had never lost an animal that could not be accounted for. Speaking personally, he knew that he only lost sheep through their being destroyed by dogs, and he believed the Bill brought forward by the hon. member for Wooroora that day would do more to protect dealers than the Brands Act. The Act would be cumbersome, and it would lead to great annoyances, and possibly to a great deal of loss. If a man did not brand his stock he would not be able to claim it, because the evidence of ownership was lost to him.

On the motion of Mr. BRIGHT, the debate was adjourned to Wednesday, July 2.