**PASTORAL ACT FURTHER AMENDMENT BILL 1925**

**House of Assembly,, 10 December 1925, pages 2134-7**

Second reading

**The COMMISSIONER of CROWN LANDS (Hon. T. Butterfield)—**This Bill is rendered necessary in consequence of the judgment by Mr. Justice Angas Parsons in the dispute between the Yandama and the Mundi Mundi pastoral companies. That judgment completely upset the ideas that pastoralists had held since the inception of the industry concerning their rights under the Pastoral Act of travelling stock, and this Bill is designed to clarify the position as far as possible and give pastoralists the right they have always believed to be theirs. In the past it has been thought that the position as regards travelling stock has been adequately met by the provisions of section 94 of the Pastoral Act, 1904, and section 20 of the Stock Diseases Act, 1888. The pastoralists have considered that these sections gave them the right to travel stock subject to compliance with the conditions set out in the sections. The recent case of Mundi Mundi Pastoral Company Limited v. the Yandama Pastoral Company, which was taken through both the Supreme Court and the High Court, decided, however, that these sections, contrary to the general opinion of pastoralists, conferred no right to travel stock through ordinary pastoral country. Clauses 6 and 9 of the Bill, therefore, amend the Pastoral Act, 1904, and the Stock Diseases Act, 1888, so that the position as regards travelling stock may be definitely set out. It is obvious that if the pastoral industry is to flourish, rights to travel stock under all reasonable circumstances must be given to lessees. Consequently these clauses attempt to set up some form of code under which the rights may be exercised. Members who live in the metropolitan area probably do not realise that in the pastoral country there are no surveyed roads, and pastoralists have always believed that the Pastoral Act gave them the right to travel their stock by the most direct route to market, or from where they obtained them to their run, through leases held by other owners.

Mr. McMillan—There is such a thing as travelling for feed.

The COMMISSIONER of CROWN LANDS —Under the Pastoral Act provision was made in regard to feed. Limitations were set and the pastoralists abided by them from the beginning until the case I have mentioned was tried. Pastoralists generally observed the conditions, and, if they did not, were subject to the penalties prescribed by the Act. Then of course there was a common law right as well. It was insinuated by Mr. McMillan that there are people who contravene the Act dealing with travelling stock for the purpose of getting feed. I don’t think there has been any dispute in regard to that. The common law of the country provides against it and it could have been overcome without this amendment but for the judgment of Mr. Justice Angas Parsons, which completely upset the ideas of pastoralists with regard to travelling stock. Clause 6 deals with the crossing of runs by sheep and cattle. In this context “run” means lands leased pursuant to the Pastoral Act, 1904. Clause 9 refers to the travelling of stock over all other lands outside hundreds which is leased from the Crown other than pursuant to the provisions of the Pastoral Act, 1904, and to Crown lands within hundreds other than travelling stock reserves. It thus follows that the two clauses taken jointly will cover all leased land outside hundreds and Crown lands within hundreds except travelling stock reserves. In all other materials the two clauses are similar in principle, and consequently an explanation of clause 6 will also cover the provisions of clause 9. The rights given by clause 6 to enter and cross any run with sheep and cattle are given subject to the observance of various conditions. Notice in writing of intention to cross is to be given to the lessee, overseer or manager of the run

The notice must specify—*(a)* the number of such sheep or cattle and by whom they are owned; (b) their starting point and proposed destination, and whether they are or are not only travelling for feed; (c) the points (which shall be by gates where the run is fenced), and dates on which it is proposed to enter and leave the run; and (*d*) the person in whose charge the sheep or cattle will be. Paragraph IV. of subclause (1) is important. The paragraph provides that if there is a stock route through the run leading to the destination of the stock the person in charge of the stock is to follow that stock route. If there is no such stock route he is to follow the directions of the lessee, overseer or manager of the run as to the line of travel, which shall be practicable, in which the run is to be crossed. If no such directions be given, and there is no such stock route through the run the person in charge of the stock must cross the run from the point of entry to the point of leaving the run by the most direct practicable line of travel. The subclause further provides that the stock are to be travelled at least five miles a day, and if they are only travelling for feed the owner or person in charge is liable for a small fee to the lessee of the run for every day on which the stock remain on the run. Subclause (2) provides that if there is a stock route leading to their destination then the sheep or cattle are to be travelled by the most direct practicable line of travel from their starting point to the nearest point on the nearest stock route leading to their destination. This provision is intended to secure that so far as possible stock shall be travelled over stock routes. The subclause further provides that in getting to the stock route the stock are to be travelled as far as possible on the run from which they are starting. That is to say, stock must leave a run as far as practical at a point which is nearest to a stock route and not at any point upon which the owner may decide and travel through somebody else’s run unnecessarily in regard to their destination. As far as practicable they must travel through their own run . A leasee may have a run on which it is not practicable to travel his own sheep on his own country. In summer, for example, it would be essential to have water and if there were no water on his own country it would be impracticable to travel by the nearest practicable route unless there was water to give his sheep a drink. It has already been provided that the points of entry and leaving a ran are to be by gates where the run is fenced. Subclause (4) therefore imposes an obligation on the lessee of every run that is fenced to provide a. gate at every point where any of his fences cross a stock route, and, in addition, to provide at least one gate in every 10 miles of the fence. The Mundi Mundi case opened up to inside lessees particularly the opportunity to object to stock crossing their runs. I know of instances where owners of land on inside country have fenced across a track which has been followed by stock for many years, and prevented outside owners from entering upon their runs unless they take the responsibility of breaking the fence. In one instance which occurred quite recently, and in regard to which legal action is pending, the owner fenced his country on what was claimed to be a recognised stock route. A person who wanted to bring stock down cut the fence and travelled his stock through, as he alleges he would have lost his stock had he not done so. In this amendment of the Pastoral Act it is compulsory to have gates on recognised stock routes, and for a lessee who fences his run to have a gate at least in every 10 miles of total length. That does not necessarily mean, of course, that gates shall be not less than 10 miles apart, but shall be so provided that there will be at least one gate in every 10 miles of fence. Manifestly it would be absurd if a gate were so fixed at one point in crossing a run, and if there was a travelling stock route at 12 miles to have to place a gate at the 10-mile point. It is compulsory that the owner shall erect a gate for every 10 miles of fence. Subclause (5) defines “stock route.” The routes shown in red on the plan attached to the Bill are declared to be stock routes. The Governor is further given power to make proclamation constituting further stock routes or cancelling or altering existing stock routes. Subclause (6) provides penalties for contraventions of the provisions of the section. Clause 8 sets out a simple form of notice which may be given of the intention to cross a run with stock. It will not be obligatory for owners of stock to use this form. Any other form will suffice if it contains all the requisite information. As before mentioned, the amendments made by clause 9 are similar in principle to those made by clause 6. Clause 10, however, provides that the lessee, overseer, or manager of a run, will have all the powers given under the Stock Diseases Act1888, to detain diseased stock passing over the run. Clause 11 sets out a form of notice similar to the one set out in clause 8. The remaining clauses make various administrative amend­ments to the Pastoral Act, 1904. At the present time section 8 of the Pastoral Act pro­vides that one member of the Pastoral Board is to be a person other than a civil servant. Clause 2 removes this restriction. Section 47 of the Pastoral Act, 1904, provides that every lease is to be in the form contained in the Third Schedule, subject to any modifications or additions stated in the notice offering the lands for leasing. Clause 3 inserts after the word “modifications” the words “alterations and omissions” It- will thus be competent for the Commissioner to offer land upon such variations of the conditions set out in the schedule as he thinks fit.

Mr. McLachlan—What is the idea for providing that one member of the board is to be a person other than a civil servant?

The COMMISSIONER, of CROWN LANDS— The interests of the pastoral industry rest particularly on men being on the board who are fully cognisant with the Pastoral Act, and who have had experience of land administration. Under present conditions it is compulsory that some person outside the Lands Department shall be a member of the board. The department consider it advisable that a man specifically trained and with knowledge of the department as well as the pastoral industry should be a proper person to put on the board. Clause 4 repeals section 50 which provides that no covenants or conditions shall be inserted in any lease except such as authorised by law. This provision is to a large extent in conflict with the provisions of section 47 which allows for the modification of the covenants or conditions to be inserted in any lease, and consequently it has been thought desirable to repeal section 50. Section 65 of the Pastoral Act, 1904, among cither things gives power to the Commissioner to pay to an outgoing lessee the amount of the value of the improvements on the run being surrendered by the lessee. It sometimes happens that these payments are made out of general revenue. Section 67 provides that any moneys received by the Commissioner for improvements are to be paid to the credit of the Loan Fund. It thus follows that where improvements have been paid for by the Commissioner under section 65 out of general revenue, as the law stands at present any payments received by the Commissioner for these improvements must be paid into the Loan Fund. Clause 5 alters this position and provides that in any such case the monies received by way of repayment are to be paid to general revenue. This refers particularly to pastoral leases which have become Crown lands when a hundred is proclaimed, and cannot be offered as pastoral lands. At- present the lessee has to be paid for the improvements and the amount received is paid into the loan fund. The judgment of Mr. Justice Angas Parsons has given me a considerable amount of thought and worry. I have consulted with the Stockowners' Association and any other officers or bodies competent to advise on the matter, and this amendment of the Act in connection with the judgment mentioned has been the result of collaboration with the interests involved. We have tried to arrive at amendments which will settle the decision in regard to travelling stock in the future on a satisfactory basis. It would be impossible for the Government to survey travelling stock routes for every lease in the State. There are travelling stock routes in the country which has been served from the beginning of the .State until now without roads. We wish to have the rights of the Crown lessees reinserted in such a way that they shall not be ambiguous, but acceptable to everyone without demur, and shall not be made the subject of litigation, as has occurred. If that is not done the lot of the pastoralists will be a most unhappy one. Having consulted the persons most interested and most competent to advise, as well as the officers of the department, who have an equal competency, I have no hesitation in commending the Bill, and believe it will be accepted by both Houses. I move the second reading.

Mr. McLACHLAN secured the adjournment of the debate until December 11.

**PASTORAL ACT FURTHER AMENDMENT BILL 1925**

**Legislative Assembly, 11 December 1925 pages 2141-3**

(Adjourned debate on second reading. Continued from December 10. Page 2137.)

Mr. McLACHLAN—The Bill has been introduced principally to get over the trouble consequent upon the judgment in the recent lawsuit between the Yandama and Mundi Mundi Pastoral Companies. It is absolutely necessary that something should be done by the Government to facilitate pastoralists in getting their stock to market. It is the primary object of the measure to permit of stock routes whereby pastoralists can pass through, adjoining properties after giving notice when they are going and details as to the number of stock, and so on. There are one or two matters in the Bill which need alteration, but they are slight. While the Minister has been giving that question particular attention, he also proposes to make one or two other alterations in the Pastoral Act of 1904. We had a Pastoral Bill before us in 1922. Members will remember that on that occasion there was some discussion regarding the Pastoral Board which consists of three members. Section 8 of the original Act, which constituted the board, reads:—

The Governor shall appoint a board, consisting of the Surveyor-General and two other members (one not being a civil servant) to deal with pastoral lands, and to exercise and discharge the powers and duties hereinafter mentioned, to be called “The Pastoral Board.”

At that time I saw no reason why one of the members of the board should not be exempt from being a civil servant. Although the majority of this House did not agree with me, a reference to “Hansard” will show that those members who knew the outside country did, and I think the present Commissioner of Crown Lands was in accord with me. The Bill left here with the clause unaltered, but when it reached another place it was attacked by men like Mr. Cowan, Mr. Duncan, Mr. John Lewis, and others, who thoroughly understood the situation. They were agreed that it would be rather a good thing to have one member of the board who was not a civil servant. They moved, therefore, that one member of the board should be the nominee of the Stock Owners ’ Association. When the Bill was returned to the Assembly the amendment was disagreed with, and rightly so, because we did not think any outside body should have the right, to nominate a man to a board of this description. Eventually the Bill went through in its original form. The measure we have before us to-day is again seeking to alter the proviso. As then, I see no reason why one of these men should not be outside the Civil Service. I can understand the argument that there are only three men on the board and that, therefore, two civil servants could overrule the outside man every time. Departmental men, however, very often get departmental ideas, and, if there is an outside man on the board, who thoroughly understands and knows pastoral country, he might bring to the deliberations of the board a, knowledge which may be very helpful. The Minister would be well advised to leave the Act as it is. Clause 3 seeks to amend section 47 of the principal Act, which reads:—

Every, lease shall be in a form containing the covenants, exceptions, reservations, and provisions mentioned in the third schedule to this Act, subject to any modifications or additions stated in the notice offering the lands for leasing; and every lease shall be prepared by the Commissioner and executed in such: manner as may be prescribed.

That section, as it is, gives the Minister the right to make any modifications or additions stated in the notice. I take it that that; means that any part of the lease may be altered slightly to meet required or existing conditions. This Bill proposes to alter the section to read, “subject to any modifications, alterations, omissions, or additions stated in the notice.” That is giving very wide powers to any Minister, and it is practically leaving it to the Minister to add to a lease anything lie may think fit. It is a mistake to give that power. It would be quite all right if it were in the hands of a man who knew the pastoral country like the Commissioner of Crown Lands, who is as well acquainted with it as any member of the House. There is no doubt that there are times when a hard and fast, rule cannot be applied in laying down the conditions of a lease. There may be certain things which require alteration to make a lease workable, but all that is necessary is contained in the section at present, in the words “subject to any modifications.” I shall move, therefore, that the section remain as it is. If my amendment be carried it will naturally follow that section 50, which reads, “No covenants or conditions shall be inserted in any lease, except such as are authorised by law, ’ *’* shall remain. Therefore I shall vote- against clause 4. Clause 5 is with reference to the money paid .by .the Government for improvements and that sort of thing. It seems that in the past when the Government paid, the money they did it out of revenue and when it came back it went into Loan Fund. That is not right, and the money should be returned to revenue. So far as the conditions regarding stock routes are concerned, the Bill will fill a most apparent want, and will be much appreciated by pastoralists generally. I support the second reading, and in Committee will attempt to amend the Bill on the 'lines I indicated.

Mr. MOSELEY—-I can only follow somewhat on the lines of Mr. McLachlan. I shall not support clause 3, as I consider that no Bill should be brought down to give such wide powers to the Minister. We would never know what the alterations or omissions were, and members are entitled to that information. Section 50 of the original Act states that no covenants or conditions shall be inserted in any lease except such as are authorised by law. The section might well remain. Why should we have something which is not authorised by law? Therefore I shall vote against clause 4. I do not know why it is proposed to make any alteration to section 67. The money advanced in the first place came from the loan fund.

Mr. Butler—This is where it comes from revenue.

Mr. MOSELEY—In that case I have no great objection to it. I presume the Minister will see that any alteration made will not interfere with the present lessees, because the leases have been taken up and their provisions carried out in good faith. To make any alterations now would be unfair and unjust.

The COMMISSIONER of CROWN LANDS (Hon. T. Butterfield)—There is no intention to interfere with any of the existing leases. It is a question of alterations which may be necessary in the preparation of leases in future. There are good grounds for believing that modifications are necessary. For instance, in regard to fences. At present we cannot grant loans for fencing until we get an alteration of the Act to allow a man to commit a trespass. Then it is held by many lessees to-day that an alteration should be made in regard to some of the stocking conditions. Sheep do infinitely less damage than cattle, and it may be necessary to have a modification giving the right in some cases to graze only sheep. Members who have been over northern areas must have viewed with alarm the damage that has been done to the country that is carrying cattle. The overhead bush on that country has been completely destroyed for miles around where there is water, and country, where formerly there used to be good feed for stock, is now desert. It is essential in the interests of the pastoral industry that this should be prevented. At Oodnadatta, on country where no cattle have been stocked, there is beautiful overhead bush, but where cattle have been running there is nothing left. All the bush around the water has been completely destroyed. It follows that those areas are of little value. Some power should be given to the Pastoral Board to come to an agreement on that question with intending lessees. That, however, only relates to the preparation of new leases. It cannot effect leases that are in existence.

Mr. McLachlan—But every lease now in existence will naturally peter out as time goes on.

The COMMISSIONER of CROWN LANDS -—The honorable member knows the immense damage that has been done on many parts of our pastoral areas through the stocking of cattle. There should be some modification. The board would not be foolish enough to insist on stocking sheep where it was impossible to do so. I think it is generally admitted that the Pastoral Board has been reasonable in the past. They are always subject to Parliament, and if they did anything to injure a lessee I am sure that the matter would be brought before Parliament and the lessee would secure redress. Parliament should protect the pastoral country, and I propose, with the concurrence of the Premier, to appoint a Commission composed of men who understand the pastoral industry to inquire and report on the whole position. We know that those areas are valuable because of the drought-resisting bush, but once that bush is destroyed the only asset the country has is destroyed. There is no danger whatever of any conditions being put in leases that are impossible of fulfilment, and the only desire the Pastoral Board would have would be to conserve the best interests of the country.

Bill read a second time.