**SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL 1935**

**House of Assembly, 12 September 1935, pages 620-5**

Second reading

Having obtained leave, the Commissioner of Crown Lands introduced a Bill for an Act to amend the South-Eastern Drainage Acts, 1931 and 1933: Bill read a first time. The Minister then moved that the Standing Orders be so far suspended as to enable him-to move the second reading without delay. Carried.

Second reading.

**The Hon. M. McINTOSH (Albert—Commissioner of Crown Lands**)—-The main purpose for the introduction of this Bill is to provide for the amendment of section 98 of the South- Eastern Drainage Act, 1931, as amended in 1933. That section deals with the apportionment between landholders of the cost of the scheme drains in the South-East and in order to place before members the full, significance of the proposed amendment it will be necessary for me to trace the history of the whole negotiations and of previous Acts.

Under the South-Eastern Drainage Scheme Act, 1908, authority was given for the execution of certain drainage works for part of the South-East. These works have become known as scheme drains. Under the 1908 Act it was provided that the cost of- the work was not to exceed £300,000. In 1917 this provision was amended and authority was given for the expenditure of £450,000. The work was carried out at a cost to the Government of approximately £440,000. Under the original legislation, the landholders concerned were required to repay to the Government one-half of the cost of the undertaking. After the completion of the work dissatisfaction was expressed among landholders as to the amount to-be repaid by them. I-need not here enter into details of the various negotiations that took place, but in 1926 the South-Eastern Drainage Act was passed which provided that the one-half of the cost to be provided by the landholders was fixed definitely at £180,000 or a reduction of £40,000 to the landholders, with a proviso that, if the Irrigation and Drainage Commission, which at that time administered the Act, was of opinion that the total value of the benefit received by the lands in the drainage district was less than £150,000 then the total half cost to be paid by the landholders was to be fixed at the amount-of benefit, plus certain interest charges. The South-Eastern Drainage Act, 1931, which is the Act which now deals with South-Eastern drainage, in turn provided that the landholders were to be relieved of this fixed obligation and were to make payments to the Government on the basis of the value of the benefit (irrespective of cost) accruing from the construction of the scheme drains to the lands in the drainage district.

It was provided by section 91 of this Act that if the amount of benefit assessed by the South-Eastern Drainage Board was less than £150,000, the: amount to be repaid was the Board’s' assessment. In other words, the original liability was fixed at one-half of £440,000, viz., £220,000, reduced to £180,000, subsequently again reduced to £150,000, and again altered so that if the amount of benefit was fixed at less than £150,000 the lesser amount would apply. This £150,000 thus became the maximum, as, if the assessment of the benefit -was over. £150,000, the limit to be paid was £150,000. Subsequent sections provided that, when the- amount to be paid had been ascertained, it was to be apportioned among landholders, and section 99 provided for payment of interest at 4 per cent, from July 1, 1917, to the first day of July following the publication of the notice of the amount due by the landholders. The South-Eastern Drainage Board thereupon proceeded to make an assessment of the benefit as laid down in the 1931 Act and ultimately assessed the benefit at £140,989. Under the Act an appeal was given to the landholders to the Board against this assessment and, after hearing the appeals, the Board reduced the assessment to £99,179. This assessment, although a further stage in reducing the original liability from £220,000 to £99,179, did not satisfy the landholders and in June and August, 1932, deputations waited upon the Hon. J. Jelley, who was the Minister administering the South-Eastern Drainage Act during the regime of the Hill Government. As a result of these deputations, and of various discussions held by the Minister with the Parliamentary representatives for the South-East, Mr. Jelley on October 28, 1932, forwarded a letter to the South-Eastern Drainage League through the members for the district in which it was, inter alia, stated:—

The Government is prepared to introduce an amending Bill to make provisions for the individual liability of landholders, whose land was previously assessed for scheme drain repayment to be limited to an amount not exceeding the liability under the apportionment of half cost of scheme drains in accordance with the provisions of Act No. 962 of 1908.

This and other minor concessions thus amounted to sealing down landholders’ liabilities to the further reduced figure of £76,201 as afterwards shown.

Mr. Robinson—-The landholders have only to keep going a little longer and they will not have to meet any payments.

The Hon. M. McINTOSH—The amount of £76.291 was reduced to approximately £74,000 as a result of appeals to the Local Court. The landholders claim that the interpretation will bring the amount down to a lower figure. It is perhaps necessary for me to fully explain the effect of this proposal. Under the 1908 Act scheme drains were constructed, and on the completion of the works certain liabilities were apportioned to particular pieces of land. In some cases the assessment under the 1931 Act, of the benefit accruing to those lands by the construction of the drains, was fixed at a higher sum than, the previous liability. It was contended that the arrangement under the 1908 Act amounted, in effect, to a contract between the Government and the landholders and that, notwithstanding that the land had benefited to a greater extent than the original liability, the landholder should not be required to meet more than his original liability. The difference between the original liability and the assessment of benefit was approximately £22,000*,* and the effect of this suggestion was to reduce the liabilities of landholders under the 1931 Act by this amount, i.e., to approximately £76,000. The proposal to limit the landholders’ liabilities in this manner was supported by the South- Eastern Drainage Board, and the board also pointed out that it was then apparent that some land included in the 1908 assessment had received no benefit from the scheme drains and that, in fairness to the landholders, this land should not be rated notwithstanding that no appeals against the assessment had been lodged.

It will be noted that the previous Government. and the Drainage Board, approached the question in a manner which could by no means be challenged on the grounds of unfair treatment by landholders. The benefits offered

were:—

1. Where land was assessed under the 1931 assessment at a higher figure than under the 1908 Act, i.e., which fixed the amount at one- half of the cost, and the board was satisfied that the particular land had, in fact, received a greater benefit from the scheme drains than the assessment of 1908 contemplated, the landholder was nevertheless only asked to pay the lower amount. This concession totalled £22,184.
2. The land which had been included in the assessment and which had not benefited was excluded. This remission amounted to £475.
3. Accrued interest amounting to. £33,500 was also remitted. The total remissions were £56,159.

In short, every alteration was always in favour of the landholder, but if the present contention is admitted a further remission of over £20,000 not intended by Parliament must be made. On November 25, 1932, the letter of the Hon. J. Jelley setting out his Government’s proposals was acknowledged by the South- Eastern Drainage League, and concluded by stating that “on behalf of the delegates I thank you for the favourable and courteous reply”. This, then, was the position when the present Government assumed office, and on taking over the administration of the department I found that the Government was morally committed to a certain course of action which, without question, I was prepared to honour. The next step was the sending of a letter to the representatives of the South-Eastern Districts Drainage Committee pointing out that the Board’s determination on appeal amounted to £99,179. If, however, the remissions recommended were adopted, namely, the limitation of a landholder’s liability to an amount not exceeding his liability under the 1908 Act and the exclusion of land not benefited by the scheme drains, there would be a reduction of approximately £22,800 (actually on finalisation this amount was fixed at £22,659), which would reduce the total liability of landholders to £76,291. This reduction was still subject to any rights of appeal the landholders may have had from the Board to the Local Court, as provided by section 96 of the South- Eastern Drainage Act, 1931. A considerable correspondence passed on this matter, my original letter being forwarded on May 15, 1933. It is quite clear from the negotiations that the intention of both the former Government and this Government (as accepted by the landholders) was to reduce the amounts payable by landholders to £76,291, with the right of-appeal to the court—no more and no less. The proposals were communicated by me to the Parliamentary members for the South-East, and, in addition, the Board gave notice to all landholders that it was the intention of the Government to amend the South-Eastern Drainage Act, 1931, to provide, inter alia, that the “individual liability of landholders whose land was previously assessed for scheme drain repayment be limited to an amount not exceeding the liability under the apportionment of half-cost of scheme drains made in accordance with the provisions of the South-Eastern Drainage Act of 1908, on land in the hundreds of Young, Mingbool, Grey, Monbulla, Penola, Comaum, Killanoola, Naracoorte, Lochaber, and Spence.” This notification, reduced to figures, meant that approximately £76,291 would be the liability of landholders.

These proposals were considered by the South- Eastern Drainage League, which by letter dated June 12, 1933, notified me as follows:—

That at a meeting of delegates held at Penola on Friday, June 9th, 1933, the following resolutions were unanimously carried:—

That this conference of delegates properly appointed from the various drainage committees and thoroughly representative of every portion of the South-Eastern Drainage Area approves as a basis towards settlement the proposed amendment to the South-Eastern Drainage Act, 1931, as recommended by the Minister of Irrigation and the South-Eastern Drainage Board.

Again note that no prescribed or specified amount was mentioned by the League and the acceptance was based on the Government’s proposals that the liability should be reduced to approximately £76,291, subject only to any appeal to the Local Court. The resolution went on to refer to the question of the remission of interest and existing rights. These remissions in interest made by the Government on behalf of the taxpayer with the object of bringing about an amicable and satisfactory conclusion to all items in issue, amounted to approximately £33,500. The League was given an assurance that the Bill would be submitted to them in due course, and in August another letter was forwarded from the South-Eastern Drainage League which again stated that a conference of delegates approved of the Government proceeding with the Bill in the terms of. their previous resolution. The Bill was duly forwarded to the South-Eastern Drainage League for consideration on the 25th September, 1933. The Bill provided for the matters already discussed and, in addition, gave remissions of interest payments amounting to approximately £33,500. That Bill carried out the arrangements which had arisen out of the requests of the landholders, had been accepted by the previous Government and ratified by this Government. It was introduced into Parliament on October 3, 1933, and in moving the second reading, I stated that the Bill could be summarised as an attempt to remove all outstanding issues between the Government and the people concerned in the South-East. After the introduction of the Bill, Mr. C. L. Spehr of Mount Gambier attended on behalf of the South- Eastern Drainage League to discuss the Bill. Mr. Spehr submitted amendments of the Bill and it was contended by him on behalf of the League that the Government Bill did not make the intention perfectly clear on the point as to whether the liability of landholders was to be limited to £76,291 after making allowance for the concessions given by the Bill. These amendments prepared by Mr. Spehr were accepted and were incorporated in the Bill as passed in 1933. Again I must state that the intention of the Government and the South-Eastern Drainage League was to secure that under the existing assessment no person was to pay on the same land more than he was originally required to pay under the 1908 scheme and that at no time during the discussion on the Bill was it ever suggested that the Bill should go any further. The report of the Assistant Parliamentary Draftsman on the amendments prepared by Mr. Spehr was as follows: —

The South-Eastern Drainage Committee is desirous that the effect of this provision should be stated more explicitly, and this is proposed by the amendment which, however, does not do more than state in different language the changes of the law already provided for in clause 6.

It is, therefore, clear that at no time was it intended that the amendment should alter the policy of the Bill. The clause before being amended in this manner read as follows: —

1. If, pursuant to the South-Eastern Drainage Scheme Act, 1908, and the South- Eastern Drainage Scheme Amendment Act, 1920, any part of one-half of the cost of construction of drains and works or drainage works connected therewith was apportioned with respect to any land, and the amount apportioned under this section in respect of the said land exceeds the amount apportioned to the land under the said Acts, the amount apportioned under this section to the said land shall (without affecting the apportionment with respect to any other land) be deemed to be the amount so apportioned under the said Acts.

It is apparent from this clause that the Government’s intention was to scale down the liabilities of landholders in such a manner that the total liability would be approximately £76,000, and that the clause could never have been interpreted in the manner now suggested on behalf of the landholders. If any such interpretation had been put forward at the time the matter was before Parliament, there can be no doubt that Parliament would never have agreed to any legislation bearing such an interpretation.

As before mentioned, the proposals were expected to bring the amount payable by land-holders down to approximately £76,291, and this amount was definitely mentioned in the amendments put forward on behalf of the South-Eastern Drainage League. The inclusion of this amount of £76,291 because of the particular manner of drafting adopted has, however, led to a difference as to the correct construction of the section. The Act works out in this manner. The Board was required to make an assessment. That amount, subject to appeal to the Local Court, was to be apportioned between the landholders, provided that if a landholder’s liability under the 1931 Act exceeded the amount for which he was previously liable under the 1908 Act, the liability was to be fixed at the amount of the 1908 liability. If, on the other hand, a landholder’s new assessment were less than the 1908 liability the lesser amount only was to be repaid. This was surely a big concession under which the landholder would gain in any case.

The Board made its assessment, the appeals have been finalised by the Local Court and, on the basis of the terms originally sought by the South-Eastern Drainage League, the amount payable by landholders is now £74,002. It now appears, however, that different interpretations of the section have been put forward. The interpretation of the Board is that manifestly intended by Parliament, approved by landholders and their representatives in and out of Parliament, and is the one upon which the assessments and notices of the payment by landholders have been based. This interpretation means that the amount of the assessment is to be taken (subject to appeal) and then apportioned amongst the various landholders, subject to the proviso that on apportionment no landholder is to pay more than he was required to pay under the 1908 scheme and that the total amount payable by landholders is to be not more than £76,291. This interpretation works out as shown in the following table:—

£ *£*

Board’s assessment £99,179, reduced after appeals to the

Local Court to 96,661

Less amounts remitted to landholders by reason of restriction

of liability to liability under 1908 *scheme* 22,184

And less amount remitted by reason of exclusion of certain

land which the Board decided had not been benefited 475

 22,659

Balance being net amount payable by landholders £74,002

The second interpretation is one which has just lately been put forward on behalf of the landholders, and it must be stressed that it is not until the appeals have been finally disposed of that the question has been raised at all. This interpretation contends that, for the purpose of ascertaining the final amount to be apportioned, the Board must ignore its assessment of £96,661 and regard £76,291 as the amount of its assessment. In point of fact, Parliament intended £76,291 to be the approximate liability of landholders after providing for the concessions under the Act. The present contention is that first a reduction of approximately £20,000 must be given and the Board must apportion £76,291 and not its actual assessment, which amounted to £96,661; £20,000 would thus have already been remitted to all landholders and at this stage the Board must remit the further sum of £22,000 by the remissions already shown in the table put before members. If this interpretation is accepted the following table shows the results:—

Amount of Board’s assessment, £99,177, reduced after

appeal to £96,661, but to be arbitrarily regarded as £76,291

Less amounts remitted as previously shown (approx.) £22,659

Note.—To ascertain this figure accurately would entail considerable calculation by the Drainage Board.

Balance being net amount payable by landholders (approx.) £53,632

If this interpretation is accepted, landholders will, in addition to receiving a remission of capital of £22,000 contemplated and authorised by Parliament, and a remission of interest to the extent of approximately £33,500, receive a. further reduction of capital liabilities of about £22,000 in excess of that intended by this and the previous Government and by Parliament and accepted by the League. In other words, a reduction of £22,000 is to be made twice over.

It is remarkable and regrettable that this point is only taken at this late stage. If the landholders or their advisers and representatives were of opinion that the Board’s interpretation was incorrect, one would have expected the matter to have been raised at an earlier date. At no time during the discussion prior to the preparation of- the 1933 Bill and during its passage through Parliament, and at. no time until just recently, and then only after appeals to the Local Court were disposed of, was the point-taken on behalf of the landholders that the correct interpretation of this provision was other than that adopted by the Board. On the contrary, at every stage it was put forward by the landholders’ representatives that the effect and intention of the legislation was, subject to appeal, to reduce their capital liabilities to approximately £76,000 and no other figure was ever, mentioned.

The purpose of clause 3 of the Bill is, therefore, to provide definitely that the interpretation of the Board shall be accepted and that the apportionment made by the Board shall be validated. If it is said that Parliament should not pass retrospective legislation let me remind members that the 1933 Act in question had retrospective effect as it removed from landholders liabilities imposed by previous Acts totaling over £56,000, inclusive of interest. If, therefore, Parliament passed retrospective legislation to benefit these landholders, it should not hesitate to pass further legislation affecting the same people to make abundantly clear the limits of the intended benefits. In a ease like the one in question, it is obvious that, for the Bill to be effective it must provide that the provision in question is to be interpreted as always having the meaning originally intended by Parliament. This course has been followed by Parliament on other occasions, and an example is contained in section 13. of the Taxation Act, 1932, where definitions of certain terms were provided and the amendments were given retrospective effect, as from December 29, 1904, or dating back nearly 30 years.

Mr. Robinson—Which was most unfair.

The Hon. M. McINTOSH—It is beyond all doubt that the intention of the Government and Parliament and that the request of the South- Eastern Drainage League was, in effect, that the amending legislation should provide that the capital liabilities of landholders were to be fixed at approximately £76,000 and not £54,000 as now suggested. If this interpretation is not adopted, the apportionment the Board recently made would be a nullity, and the landholders will, in effect, get the benefit of a writing-down of approximately £22,000 twice over.; If the Bill is passed, any doubts will be removed and the liability of landholders will be fixed at £74-,002. This amount, it may be; noted, is to be the only repayment, apart from interest charges,

received by the Government for a capital expenditure of £440,000, and as stated previously, Parliament has waived by retrospective legislation the sum of £56,169 already mentioned.

The Bill will do no injustice to any person. It will merely put beyond any shadow of legal doubt what was the original intention of Parliament in this matter. If the 1933 Act is abortive in one respect it would be fair to claim that it be annulled in every: other regard, but the Government does not intend that this should be so; but seeks that all the benefits, and likewise-all obligations under the 1933 Act should be maintained.

If the Government Bill as introduced in 1933 had not been amended at the instance of Mr. Spehr, the question of different interpretation could not have arisen. The amendments were, however, put forward by Mr. Spehr as an attempt to make the position clearer and for no other purpose, and were accepted in good faith by the Government and Parliament on the recommendation of the Assistant Parliamentary Draftsman. Parliament cannot now permit its intentions to be frustrated by a fortuitous interpretation of an amendment not contended for or even (as far as is known) contemplated by the persons responsible for the amendment, or intended by Parliament. The Government regards it as an obligation to see that the will of Parliament shall prevail, and that the taxpayers should not be put to the risk and expense of litigation involved in fighting against unwarranted extension of a concession granted as a ***“***final” settlement. Under section 103 of the principal Act it is provided that, where the landholder before the passing of the 1931 Act paid any money on account of instalments under the South-Eastern Drainage Scheme Act, 1908, the Board may, in its discretion, appropriate the money to any payments due under the 1931 Act. If no money is payable by the landholder the amounts are to be refunded. Difficulties arise under this section, as the term "landholder” used in the section is not capable of exact legal definition. Where there has been a change in ownership of land, it is obvious that the person who paid the money is not now the “landholder” and consequently the Board is in doubt as to the person to whom the money should be paid or credited under the present section. Clause 4 resolves these difficulties, and provides in general that the landholder for the time being is the person to whom the money is to be credited or repaid in the case of over-payment. This solution is put forward as the fairest under the circumstances. If a sale has taken place it must be assumed that the vendor took these matters into consideration in fixing his price. In any event, it is obvious that a legislative decision must be made as to which landholder in such circumstances is to be entitled to the repayment or credit, and the Government puts forward this proposal as the fairest under the circumstances.

The clause also gives the board power to refund an over payment in a case where a liability for payment by the landholder still obtains. In one case, there is a credit to the landholder of approximately £30, which will be sufficient with interest to meet the liability for drainage rates for approximately 25 years. In instances such as these it is thought that the board should be empowered to pay the balance outstanding to the landholder rather than hold such an amount for so long a period, and this power is accordingly given by the clause. This also might be regarded as a retrospective clause. I move the second reading.

Mr. LACEY secured the adjournment of the debate**.**