**PYAP IRRIGATION TRUST (PRIVATE) BILL 1923**

**Legislative Council, 4 September 1923, pages 451-5**

Second reading

**The PRESIDENT**—I hold a certificate from the Examiner for Private Bills to the effect that the provisions required by Standing Order 108 (Private Bills) have not been fully complied with.

The Hon. J. H. COOKE—I am not aware in what manner the Standing Orders have not been complied with.

The PRESIDENT—The Standing Orders Provide that a certain guarantee by the treasurer shall be given in connection with Private Bills, and this has not been done.

The Hon. J. H. COOKE moved—That the report of the Examiner be referred to the Standing Orders Committee.

Motion carried.

The Hon. J. H. COOKE—In moving the second reading of this Bill I desire to give a brief history of the Pyap settlement, which is situated near Loxton on the River Murray. This settlement was the property of the DeGaris family. Their land consisted of some 271 acres held under Crown Lease Perpetual No. 8669 and certain other leases adjoining. The particular land, which is subject to the Bill, is the Crown lease 8669, which was planted by the DeGaris’s and contains some very fine fruit trees—apricots, sultanas, currants, and the like. The fruit was irrigated by means of a pumping or irrigation plant and channels which were all constructed for that purpose. The business was turned into a proprietary company known as Pyap Proprietary Limited, which is registered in Victoria, and for some time the company carried on business as fruitgrowers and packers. In August, 1921, the company mortgaged to the Bank of Victoria Limited, the Crown Lease Perpetual No. 8669, and in November, 1921, the company subdivided the land into 15 fruit blocks and offered them for sale by public auction. Certain blocks were sold and others were sold later by private contract, but under the same conditions. The company obviously could not carry on the irrigation works, and two courses were open— either to run the pumping plant as a private concern and charge so much for the water, or, in the alternative, to hand it over to the purchasers and owners of the fruit blocks themselves and let them run it. The latter course was decided upon, and it was understood that the whole of the irrigation plant, channels, implements, and equipment should be vested in a trust which should consist of the settlers themselves, and they should work the plant on such terms as they themselves should decide. In a sense the Bill does no more than the settlers could have done themselves by means of a cooperative society, and it is obvious that the measure is entirely for their benefit, as it would have been possible for the company to have sold the blocks while retaining the plant and then demand its own prices for the water. Nevertheless, it was really a condition that the plant should be handed over to the settlers, and No. 21 of the conditions of sale says (inter alia) :—

“The purchasers of the fruit blocks undertake that in the event of the South Australian Government passing an Act enabling the formation of a Settlers Trust to receive and distribute water, that they will, within three months of such Act being passed, form such a trust of themselves and take over from the vendors, free of cost, the whole of the pumping plant, distributing pipes, and channels, and shall release the vendors of their undertaking as aforesaid, and will then regulate and distribute their own water supply”.

The company is at present supplying water to the purchasers at the rate of £4 per acre per annum, but this cannot go on indefinitely, as the company will eventually be wound up. It is believed that the persons directly affected by the Bill do not number more than 12, and are not likely ever to number more than 20. It is also believed that the Bill is not opposed as a whole, but that certain amendments, particularly as to rating, are desired. As far as any alterations or amendments are concerned, the promoters are willing to consent to whatever is desired, provided always that they are released of their obligation under the conditions of sale to supply irrigation. The Bill is based mainly on the Renmark Irrigation Trust Act, 1893. In fact, at the time of its inception it was believed that the trust might be formed under that Act without the necessity of a separate Act. This, however, proved not to be the case, and the Private Act is therefore necessary. The trust is subject to the Control of Waters Act, 1919, and, it is believed, does not confer on its members greater rights and privileges than are given to any person or company by the above Acts. Except for a slight amendment in one clause, the district council within which the settlement is situated approves of the Bill. The Bill is arranged in five parts. Part 1 is preliminary; Part 2 deals with the irrigation trust, and Part 3 with meetings of the trust; Part 4 is devoted to general purposes and functions of the trust; and Part 5 contains miscellaneous provisions.

The Hon. J. Jelley—Will those concerned get cheaper water by the existence of a trust?

The Hon. J. H. COOKE—That is not quite certain. As the trust proceeds with its work, so it will render the necessary accounts for water. The point is that if the original company goes into liquidation the settlers will be placed in a very awkward position, because it is possible that the machinery will be sold, and they may not be the highest bidders for it. This Bill provides for a trust being formed from the settlers themselves, and it gives to them the control of their own affairs. You may rest assured that whatever is fair will be charged and nothing beyond that, save what is necessary for ordinary repairs and, presumably, the provision of a sinking fund so that in the event of the plant wearing out, money will be there for replacing it.

The Hon. G. H. Prosser—It is to be a cooperative concern?

The Hon. J. H. COOKE—Practically it is. Under clause 5 the trust is to control irrigation. It is to have a common seal, and clause 7 provides that the trust shall consist of allpersons who, for the time being, are lesseesof land within the settlement. It shallmaintain a suitable office, and will elect its own chairman from among the members. Clause25 is important. It sets out that the trust may enter into contracts with any person for the execution of any works which it may third; proper to be carried out, in such manner and upon such terms, and for such sum or sums of money, and under such stipulations, conditions, and restrictions as the trust thinks proper. The trust is given proper powers for entering into contracts for the construction of any necessary works, and it can compound for breaches of contracts.

The Hon. J. Jelley—Are all the settlers satisfied with this Bill?

The Hon. J. H. COOKE—I do not think so, otherwise we would not have had the petition which was presented this afternoon.

The Hon. W. Hannaford—Are the petitioners on the same land as the others?

The Hon. J. H. COOKE—I think so. I believe that the objection is not so much to the Bill as a whole, but possibly to some of the conditions in it. In that respect every opportunity will be afforded to all those interested to give evidence, and to place before the Select Committee any matter of which it should be made aware, so that members of the Council will have the fullest possible information to guide them in indorsing or rejecting the measure.

The Hon. J. Jelley—Will the Select Committee go to Pyap?

The Hon. J. H. COOKE—I think it is highly probable they will, in order that the people concerned may give evidence on the spot, and so that the Committee may see the proposition as it stands and get a comprehensive view of it.

The Hon. G. H. Prosser—How are they raising the water now?

The Hon. J H. COOKE—They have a pumping plant that was provided by the original company, which mortgaged everything to the Bank of Victoria. Provision must now be made to enable the settlers to control the plant, so that they may have water as and when required and in the necessary quantities. The whole of the rating will be in their own hands, and they will manage their own affairs, provision is made in the Bill for easements through various lands in order that channels may be cut and so on, and the drains and channels are to be maintained in proper order by the trust. They may be carried across public roads if necessary, and there is power for entry and inspection by the officers of the trust in order that they may see that the channels are being kept in proper repair, and are not being polluted with rubbish or obstructed. Clause 33 provides that, subject to the provisions of the Control of Waters Act, 1919, and any licence thereunder, and to the provisions of any other Act or law, the trust shall supply water to lessees of blocks within the settlement at such charges, and in such quantities, for such periods, and upon anil subject to such terms and conditions, as the trust from time to time determines. The landholders themselves form the trust, and, therefore, practically have control of their own destinies. The trust will also be given power to supply water to persons outside its area. That is desirable, because in the immediate vicinity there may be settlers who desire to have water, and without a provision to that effect the trust would be de­barred from supplying them. The trust will, of course, charge for the water supplied, and the money received from that source will go to its credit.

The Hon. J. Jelley—How will they pay for the water?

The Hon. J. H. COOKE—They will be rated on a proper scientific basis. The trust will keep an irrigation rate assessment book, and the whole of the accounts are to be properly set out, in order that it may produce a balance-sheet which can be inspected by any person so entitled. Clause 42 is important. It provides that every lessee or occupier of land through or over which a channel or drain is cut, or conducted, or carried by the trust, shall give free passage to water of supply or drainage turned into such channel or drain by the trust. The trust will not only have power to go through the various settlements in order to get proper levels for drainage purposes, but it must have free passage for the water running through the various sections. Clause 47 provides a penalty for throwing rubbish, dirt, filth, or other noisome thing into any drain or channel which would obstruct the flow or pollute the water. Clause 55 says that every order, notice, authorisation, permit, or other document requiring to be authenticated by the trust may be sufficiently authenticated without the common seal of the trust, if signed by the chairman, by two members, or by the secretary. That would probably save the expense of calling the whole of the trust together to give effect to some minor matter re­quiring immediate attention. Clause 72 makes provision for the keeping of proper books of account showing the revenue and expenditure of the trust, and clause 73 provides for an annual audit of the accounts by a public accountant, or some person approved by the Attorney- General. Thus the State will be able to exercise a certain amount of control, and there is an assurance that the accounts will be properly kept. Clause 75 says that the passing of the Act shall be deemed to be sufficient compliance on the part of the company with the conditions of sale pursuant to which the blocks comprised in the settlement were purchased from the company by the original lessees thereof, and that the company is released from the undertaking given by it in the said conditions to the pur­chasers of the said blocks. There are two schedules, one of which sets out the areas or holdings which are comprised in the settlement, and the other is a detailed statement of the machinery and plant to be taken over from the old company by the trust, and which will do the necessary pumping work to enable irrigation to be carried out. Those are the principal matters which the Select Committee will have to consider. I have already referred to the fact that there is a petition in opposition to the trust, but I still fully believe that this Bill is necessary for the welfare of the people resident on these areas and for the continuation of pumping. If this Bill is not passed it may be necessary for the old company to go into liquidation. It would be very much better that the residents there should have the absolute control of their own irrigation plant under the guidance of a Trust promoted by themselves and formed from their own numbers.

The Hon. J. COWAN—The information given by Mr. Cooke is quite correct so far as it goes. The Pyap Irrigation area was under the control of a company, which subdivided the area into 15 blocks for the purpose of sale. Nine of those blocks were purchased by settlers on whose behalf I presented a petition this afternoon protesting against the conditions of this Bill. Under the conditions of the sale when these nine blocks were purchased the company undertook to supply to the purchasers four irrigations per annum on the then planted area for a sum of £4 per acre, payable £1 per acre per quarter. The purchasers on their part undertook, in the event of an Act being passed enabling a trust of settlers to be formed to receive and distribute the water, that they would within three months of such Act being passed form such a trust themselves and take over from the company the whole of the pumping plant etc., and release the company from its undertaking. They entered into this agreement on the condition that the whole of the 15 blocks were sold by the company. If the Bill is passed in its present form those nine settlers will be liable for the irrigating costs that 15 should undertake, and they should be protected. Mr. Cooke has pointed out that unless this Bill becomes law there is a possibility of the company going into liquidation, and that then the liability would be thrust upon the settlers. I do not hold that view, as in that event those settlers would be absolved from their liability altogether. If they wish they could then purchase their blocks on more favorable terms. If the company went into liquidation the whole of the blocks would be put up for sale, and these men would be in the position to surrender if they chose, because the agreement has been broken by the company.

The Hon. R. T. Melrose—Would it not go into the hands of the Government by reason of default?

The Hon. J. COWAN—I think not. The Government would have no voice in the matter at all. There is another vital question, the method of assessing. Some of the land comprised in this area is outside the irrigation channel and too high for the present pumping plant, so that if it were included it would considerably increase the cost of irrigating.

The Hon. J. H. Cooke—Would that not be controlled by the trust comprised of the settlers themselves?

The Hon. J. COWAN—That is so, but the company would be relieved of this liability altogether, and it would be thrust upon the settlers.

The Hon. J. Jellev-—The nine would have to carry the responsibility of the 15?

The Hon. J. COWAN – Yes. The trust which will be responsible for the successful carrying out of the irrigation works wants different conditions from those contained in this Bill. Clause 75 states definitely that the passing of this Bill shall be deemed to be sufficient compliance on the part of the company with the conditions of sale pursuant to which the blocks comprised in the settlement were purchased from the company by the original lessees, and that the company is released from the undertaking given by it in the said conditions to the purchasers of the blocks.

The Hon. R. T. Melrose—Does the company hold the freehold of the area?

The Hon. J. COWAN—It is not freehold, but a Crown perpetual lease.

The Hon. R. T. Melrose—Has the company fulfilled all the conditions of the lease?

The Hon. J. COWAN—I think so. The mater should be referred to a Select Committee in the usual way, and then possibly the company and the settlers can come to some agreement on matters which are vital to the success of the purchasers of these blocks. I do not intend to oppose the Bill as I take it that the settlers will have an opportunity to give evidence before the Select Committee and possibly to arrive at a satisfactory arrangement.

The Hon. J. JELLEY—This appears to be simply an attempt at repudiation. I cannot call it anything else. The company obtained certain rights from the Crown in regard to its control over a piece of land adjacent to the River Murray and cut it up into 15 blocks. It asked persons to take up the land on the understanding that so long as they were prepared to work the blocks the company would provide water at a certain rate. Had the company made a financial success of its venture and some landholder, who either through mismanagement or no fault of his own, had got into difficulties, I am sure that the company would have expected him to adhere to the terms of the contract. The company, however, finds that it cannot make a success of this venture. It offered 15 blocks for allotment, but has been unable to dispose of them all. It cannot get any revenue from the unallotted blocks, because they are not being worked and no water is being used on them, and therefore none is being paid for. But the amount paid for the water which is being used by the nine settlers who are working their blocks appears to be insufficient to meet expenses. The usual procedure in cases like this is for the company concerned to go into liquidation. Why should we deal differently with a successful and an unsuccessful company ? We have no right to intrude into the affairs of a successful company and say that because it is dealing with its shareholders in such and such a manner it must cease doing so. We do not do that, and why should we carry a measure that might mean that the settlers, instead of getting their water at £4 per annum as was at first understood, may have to pay £6 or £10 per annum? I question the moral right of Parliament to interfere with a contract that has been entered into between the settlers and the vendors of the blocks in a way which may ultimately mean that the settlers will have to face a set of conditions entirely different from those which now exist. I am prepared when the company gets to the end of its tether—when it has realised its assets; that is, gone through the Insolvency Court like a private individual has to—to do something for the settlers. The company should realise its assets, and the people concerned should then petition Parliament to do something for them. I do not intend to vote

against this measure, but I sound these notes of warning so that the Select Committee can go into the whole question in a thorough businesslike way. I trust we will not be led aside by sentimental reasons.

The COMMISSIONER of PUBLIC WORKS secured the adjournment of the debate until September 5.