IMPOUNDING ACT AMENDMENT BILL 1938

Legislative Council, 12 July 1938, pages 364-6

Second reading

The Hon. A. P. BLESING (Northern— Minister of Agriculture)—It is proposed by this Bill to make a number of amendments to the Impounding Act, 1920-1935. The amendments are of a disconnected nature and must therefore be considered separately. Clause 2 inserts in the principal Act a definition of “nearest public pound.” Various provisions of the principal Act provide that straying cattle may be seized and impounded in the nearest public pound. Section 28 of the Acts Interpretation Act, 1915, provides that in any measure of distance for the purpose of any Act passed after the passing of that Act, distances shall be measured in a straight line. This is commonly and tersely expressed as being measured “as the crow flies.” As the Impounding Act was passed after the Acts Interpretation Act, it follows that, when cattle are seized, they must be impounded in the nearest public pound "as the crow flies". It sometimes occurs that by reason of natural obstacles, such as rivers, the nearest public pound "as the crow flies" is not the nearest pound reached by the shortest route usually used in travelling. It is therefore provided by clause 2 that the nearest public pound shall be the public pound nearest by distance measured along the shortest route usually used for travelling. Clause 3 makes a drafting amendment to section 14. Subsection (4) of that section authorises persons to seize and impound in the nearest pound cattle straying in streets and public places. Obviously this should be “public pound” and the clause therefore inserts the word “public” accordingly.

Section 19 of the principal Act provides that a council may, with respect to any pound within its area, vary the fees and charges specified in the fifth and sixth schedules. This variation is effected by notice published in the “Gazette.” The fifth and sixth schedules deal with the table of poundage fees for cattle impounded and rates for damages by trespass by the cattle. It is provided by clause 4 that any such variation by a council should be mp.de with the consent of the Minister. This, it is considered, is necessary in order to secure some uniformity in the charges made by different councils. In addition, it is provided that the councils shall have the same powers of variation with respect to the fourth schedule. This schedule sets out the table of fees payable by a ranger in respect of the impounded cattle It is considered that the law should enable these fees to be varied in the same manner as the fees in the other schedules mentioned. In such a case the consent of the Minister to the variation will be required. Section 28 provides that where cattle are impounded and the proper fees to secure the release of those cattle are not paid, the money may be secured by an undertaking in writing, signed by the owner of the impounded cattle or by some person acting on his behalf. This section has been construed to mean that, if an undertaking of this nature is given, the poundkeeper must release the cattle, although in many cases it is obvious that the undertaking is worthless. Clause 5 therefore re-drafts subsection (1) of section 28 to provide that, in effect, a poundkeeper will have a discretion whether he will accept such an undertaking or not.

Clause 6 is inserted at the instance of the Stockowners’ Association and deals with the question of cattle travelling along a road. A considerable amount of dissatisfaction exists because cattle whilst in a road and in charge of a person do not travel at a reasonable rate per day, but in effect are merely kept upon the road for depasturing purposes. Section 273 of the Crown Lands Act requires cattle on Crown lands or dedicated or reserved lands to travel at least five miles a day in a direct line. It is therefore provided by clause 6 that, if cattle in charge of a person in any street or public place do not travel at this rate, they will be deemed to be at large. Section 46 already imposes penalties upon the owner of cattle which are at large.

Clause 7 is also inserted at the instance of the Stockowners’ Association and contains the most important amendment proposed by the Bill. This amendment also deals with travelling stock. It has been found in.practice that roads used for travelling stock are sometimes let under the Local Government Act by the council in the area of which the roads are situated. Under these transactions owners of adjoining property secure grazing rights over roads used as stock routes with the result that the feed available for travelling stock frequently is eaten out. It is considered that upon routes necessary to be used by travelling stock preference should be given to travelling stock. It also sometimes occurs that grazing licences are issued by councils over main or other roads which carry a large volume of traffic and this, of course, creates a considerable danger to the travelling public. It is therefore provided by clause 7 that, where the Governor is satisfied that any road is one which is necessary to be used by travelling stock or is a main road, or is a road which, by reason of traffic, should not be leased or subject to depasturing licences, he may make a proclamation applying the clause to that road. “Road” :is defined to include any part of a road. If any such proclamation is made, then during the time it is in force no depasturing licence or road lease is to be granted by any council over that part of the road affected. Licences and leases existing at the time of the proclamation will be determined by the proclamation, but the holder will be entitled to receive from the council a refund of the proportionate part of the fees paid therefor.

Clause 8 makes a small amendment to the fifth schedule of the principal Act. This schedule provides a table of poundage fees for cattle impounded, and requires various sums to be paid in respect of cattle for each day or part of a day during which the cattle are impounded. The term "day” has given rise to some confusion as the term is capable of being interpreted as a period of twenty-four hours or a day of the week. In order to make the matter clear, this expression is struck out of the schedule and the words "for each period of twenty-four hours or part thereof” inserted in lieu thereof. It is considered that poundage fees should be reckoned on the basis of the actual time during which the cattle are impounded, and the amendment will provide accordingly. I move the second reading.

The Hon. W. G. DUNCAN secured the adjournment of the debate.