IMPOUNDING BILL 1920

LEGISLATIVE COUNCIL, 26 OCTOBER 1920, PAGE 1233

Second reading

The MINISTER of AGRICULTURE (Hon. T. Pascoe)—This is largely a committee Bill. After the very severe reproof I received this afternoon for not going thoroughly into the clauses of the Town Planning Bill, perhaps it would be better if I dealt specifically with the amendments to existing legislation which this Bill proposes to make. The present Impounding Acts date back to 1858, and since that year when the principal Act became law there have only been two short amending Acts passed to bring it up to date, one in 1895, making some very minor administrative amendments, the other in 1913, dealing almost exclusively with Angora goats. As might be expected in an Act passed so long ago, many of the provisions of the Impounding Act of 1858 are now archaic and out of keeping with modern requirements, and apart from this a number of its sections are very obscure in meaning and exceedingly hard to interpret. The present Bill consolidates the existing Acts dealing with the impounding of cattle, and at the same time gives effect to a number of amendments that have been suggested from time to time by local governing bodies and other authorities concerned in the administration of that branch of the law. The Bill rearranges somewhat the order of the sections contained in the Act of 1858, grouping the various provisions under appropriate headings and generally making the provisions more easy of reference. The main scheme of the existing impounding law, however, has not been altered, and for this reason it is proposed in this report not to deal with the Bill as a whole but to indicate only the alterations that have been made or any particular matter that calls for comment. When this report does not refer to a particular clause or provision of the Bill, it is to be understood that the law contained in that clause or provision has not been altered. Clause 7 makes an amendment of very minor importance with a view to allowing the poundkeeper more latitude in looking after the cattle impounded. Section 7 of the old Act required him to feed and water the cattle at least twice a day, once between 8 and 9 o'clock in the morning, and once between 4 and 5 o'clock in the afternoon. The Bill allows him to feed the cattle at any time before 9 o'clock and at any time after 4, whilst in view of the provision, clause 8, requiring a constant supply of wholesome water to be maintained in the pound at all times, the watering of the stock is not mentioned. Clause 9 authorises the milking of a cow whilst in pound by the owner or a person authorised by him as well as by the poundkeeper, and in thisregard places a goat in the same category as a cow. In clause 10 the amount of the surety required of the poundkeeper has been reduced from £100 to £25. The present Act of 1858 requires a poundkeeper "to keep a file of the 'Government Gazette' " but does not specify how long a period such file is to cover. Clause 11 limits the numbers of the "Gazette" necessarily kept by the poundkeeper to the past six months.

Clause 14 is the main provision of the Bill. It collects together in one clause all the sections at present scattered throughout the Act of 1858 or contained in the 1913 Act setting out the persons who may impound cattle and the circumstances under which cattle may be impounded. The owner of land may impound any cattle trespassing upon it, and if such land is enclosed, he may also impound any cattle wandering straying, or lying upon any road in front of it, and also any cattle which, although on the road are found feeding off it through the fence. Under these circumstances the owner may impound cattle found on the road notwithstanding that such cattle may be lawfully depastured there, as for instance, under a district council by-law. The object of this provision is to prevent cattle lawfully depastured on a road from becoming a nuisance to traffic or doing damage to growing crops on the adjoining fields and in effect to require that such cattle must be kept moving, and that they must always be in charge of some person or other.

The Hon. J. Jelley—Does that apply to cattle on commonage?

The MINISTER of AGRICULTURE—On commonage there is a reserve laid out. The provision applies to any cattle along a Government road which take it into their heads to knock down fences, and which are a nuisance.

The Hon. W. Hannaford—Supposing there is somebody in charge?

The MINISTER of AGRICULTURE—The stock must he kept moving, but if there be somebody in charge the provision of the Bill does not apply.

The Hon. J. Jelley—A person could impound a beast and say it had its head through his fence.

The MINISTER of AGRICULTURE—A beast cannot be impounded if anybody is in charge of it. The provision seems to have been what was contemplated by the Act of 1858, which provides that cattle may be impounded in the foregoing circumstances "although tailed." As an alternative to this provision it has been urged in some quarters on the ground already mentioned, i.e., interference with traffic and damage to wayside property, that district councils should be precluded from licensing the depasturing of cattle on roads at all, but that alternative is too drastic and far reaching and goes much further than is required to meet the necessities of the case. The present provision is the middle course, and gives ample protection to the rights of both parties, the owner of the cattle and the owner of the land; clause 14 (1) and (3). A ranger may impound any cattle trespassing on private land or found wandering, straying, or lying upon any road within the district. He may claim from the owner the sum of 5s. in respect of every impounding, but no matter how many animals are impounded at any time he may only claim that same amount from, the one owner; clause 14 (1) and (2). This provision is copied from the Roads Act, 1886. When the cattle are found straying in a street or public place, within any town or township, they may be impounded by any person; clause 14 (4). This provision applies to every town or township within the State. The present Act of 1858 requires a proclamation to be made in respect of a particular town or township to bring the section into operation therein. The special provision with respect to Angora goats made by the Act of 1913 is repeated without alteration; clause 14 (5).

Clause 15.—This clause amplifies and enlarges a provision of the Act of 1858 that has always been needlessly restricted and is most difficult of interpretation. It gives the owner of land not situated within five miles of a public pound the right to impound in any convenient place upon his own land cattle found trespassing thereon. The limitation on an owner's right to impound cattle on his own land to cases where there is no public pound within five miles is new, and does not appear in the 1858 Act. It was inserted in the Assembly. Where the owner has the right to impound on his own land, he may under the clause do so whether the owner of the cattle is known to him or not but not only, as at present, when the owner is known to him. If the owner of the cattle is known to him, the person impounding must give notice to him within 24 hours. If he is unknown, then within the same time notice of the impounding must be given to the keeper of the nearest public pound. The cattle may be kept impounded on private land for not more than three whole days, and if not then released may be placed in the nearest public pound. In such case the owner of the land has the right to claim against the cattle for their sustenance whilst impounded on his land. This right is not clearly given (if at all) by the present Act of 1858, and indeed the meaning of the Act on this point is obscure. Clause 21 is a new provision, and is taken from the Victorian Act. It gives the owner of any cattle that have been seized for the purpose of being impounded the right to tender to the person in charge the amount claimed by him in respect of them, and the cattle must then be delivered up to him. This clause obviates the necessity for an owner who sees his cattle being impounded having to follow them up to the pound perhaps a number of miles, and wait until they have been impounded before he can release them. This clause will enable him to intercept them on their way, and by paying, the ranger or other person in charge of the cattle his lawful claims for trespass, sustenance, and impounding, secure their release upon the spot.

Clause 23 enables the poundkeeper to keep the cattle impounded elsewhere than in the pound. This will authorise him to graze them in an adjoining paddock if he so desires. Clause 24 enables the poundkeeper to deliver the notice of impounding personally in all cases. At present if the owner of the cattle resides more than 10 miles from the pound, the keeper must post it. Clause 26, however, provides that if in any case where a poundkeeper might have posted the notice, he delivers it personally, then he may only charge mileage for delivery on the distance from the pound to the nearest post office. The mileage that can be charged by the poundkeeper for delivering the notice is increased, by clause 26, from 6d. to 1s. per mile. Clause 33 makes a minor alteration in a matter of detail dealing with pound sales. The Act of 1858 required all such sales to commence at noon. This clause, subclause (2) (c), gives the poundkeeper a discretion in the matter allowing the sale to take place at any time fixed by him, but he must give notice of the time of sale in the "Government Gazette" and on the board at the pound.

Clause41 deals with the much-debatedsubject of the destruction of goats, poultry, and other animals trespassing upon private lands. The clause makes no alteration in the present law; it merely sets out the meaning a little more clearly. The owner or person in charge of any enclosed land may, after giving notice of his intention, kill by any means, except by the use of poison, any goats, pigs, dogs, or poultry trespassing on his land. The notice may be given personally to the owner of the animals trespassing, in which case only the animals of that owner may be killed, and the notice may be given generally with respect to all animals by advertisement in two local newspapers.

Clause 43 deals with rescues of cattle impounded and pound breaches. The present penal provisions have not been altered, but an evidentiary provision has been added to the effect that, if, within 48 hours of the time when the cattle escape or are rescued or released such cattle are found in the possession or on the lands or with any of the herds of their owner, that fact is prima facie evidence that the rescue or pound breach was committed by him. The Act of 1858 imposed a special penalty on allowing a bull or entire horse to roam at large. This is dealt with by clause 45, which in addition, makes it an offence to allow a ram over six months old to stray at large. I am afraid the Act in the past has not been put into force because in almost any country district in South Australia bulls roam at large with practically no interference. That accounts probably for the character of our cattle generally. Clause 46 makes it an offence to allow cattle to be tethered in any street or public place within any town or township in the State. No proclamation is required, as at present is the case, to make the provision operative in any particular place. The proviso section 20 of the Impounding Act of 1858, has been omitted as meaningless, and section 43 as being obsolete. The only other alteration calling for comment is the omission from the schedules of the provision to the effect that no daily charge in addition to that for the first day is to be made for the sustenance of cattle impounded until the expiration of 24 hours from the impounding of the cattle. It is considered that this provision is an anomaly and may, in certain cases, result in the poundkeeper having to pay for part of the feed supplied to impounded cattle out of his own pocket.

That is the report that I have on the Bill, which is partly consolidating and partly new, and which, taken all round, will be a very great improvement on the present law. I move the second reading.

The Hon. J. COWAN secured the adjournment of the debate until October 27.