Queensland

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[Hansard]

Legislative Assembly

FRIDAY, 12 AUGUST 1864

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LEGISLATIVE ASSEMBLY.

Friday, 12 *August*, 1864.

Enclosure of Roads Bill, read 2°.—Supply.

ENCLOSURE OF ROADS BILL.

The SECRETARY FOR LANDS AND WORKS, in moving the second reading of this Bill, said he did not think it necessary to detain the House by any lengthened explanation of the principles it contained; he would simply state that the matters to which it referred, had been frequently urged upon the Government; and there was no doubt that legislative enactment was called for. Throughout the Colony, there were hundreds of roads, which were only useful in compelling occupants and proprietors of lands in agricultural reserves, and small farmers, to fence their land in—roads that were of no use whatever to the people living in their vicinity, or to the public generally. In fact, in many cases, the roads referred to were used as stockyards by persons passing by. There could be no doubt that to compel owners and occupants of land to fence in roads, was an act of oppression, and hence the introduction of the Bill. It was not proposed to interfere with the existing roads, or to deprive the public of the use of them; all that was desired was, to save parties from being compelled to incur the expense of fencing them, certain conditions being, of course, imposed, in order that the public should not in any way suffer. He would proceed to go through the various clauses of the Bill in detail. Clause one provided that persons intending to apply for permission to enclose, should advertise in the *Government Gazette*, in order that full publicity should be given of their intention. Clause two, gave power to courts of petty sessions to grant licenses, and to hear and determine upon all objections which might be made, and to impose any conditions they might deem necessary, besides those set down in the Bill. Clause four, gave the Government power at any time to cancel a license, or to impose extra conditions, Clause five, provided that any holder of a license should keep the road in reasonable repair for a distance of fifty yards on each side; and he (the Secretary for Lands and Works) did not think that was too much to ask any person to do who might find it to be to his advantage to get a road enclosed. The honorable gentleman briefly adverted to the remaining clauses of the Bill, and concluded by expressing his opinion that the House would agree with him that such a measure was necessary, in order that hundreds of individuals should be prevented from suffering further injustice. He moved the second reading of the Bill.

The COLONIAL SECRETARY seconded the motion.

Mr. DOUGLAS said he considered the principle of the Bill to be an unobjectionable one, but he thought some alteration should be made in the eighth clause, which had reference to persons driving stock. It was absolutely necessary that those persons should occasionally depasture their cattle within enclosures, and he thought liberty should be given them to do so. He considered that no obstructions whatever should be thrown in the way of persons travelling with stock, and from the fact that the Darling Downs district was rapidly being enclosed, that was rather an important point. Bullock drivers, too, in many cases, could not do otherwise than camp in enclosures; and, unless they were enabled to do so, they would be subjected to great inconvenience. He intended, when the Bill went into committee, to move an amendment on the clause, which, he believed, would have the desired effect.

Mr. TAYLOR said he had carefully perused the Bill, and had come to the conclusion that it was a very fair one, both to the lessees of the Crown and the public. He, however, took the same objection to the eighth clause as the honorable member for Port Curtis. The country might be enclosed for thirty miles at a stretch, and persons travelling with stock could not always get on faster than eight or nine miles a day. But, for all that, he considered the Bill was a fair one, and calculated to give general satisfaction. He intended to move, in committee, that no slip rail should be used, but that gates sixteen feet wide should be put up. He gave his cordial support to the motion.

The question was put and passed, and the Bill read a second time.

SUPPLY.

The SECRETARY FOR LANDS AND WORKS having moved,—"That the Speaker do now leave the chair, and the House resolve itself into a Committee of the Whole, further to consider the supply to be granted to Her Majesty for the service of the year 1865,"

Mr. DOUGLAS, who said he had a contingent notice of motion, rose and proceeded to address the House at some length in reference to the conduct of the Government in the case of a tender from a gentleman named Clarke, for a run on the Calliope River. He said that in 1857 Colonel O'Connell, as commissioner of Crown lands for Port Curtis, had to decide upon the granting of the run. It appeared that at that time Mr. Clarke had tendered for a certain run, describing its boundaries and extent, and the run was granted to him. Subsequently a Mr. Bell tendered for certain country, but it was pointed out to him that the boundaries he had set forth in his tender would entrench upon a portion of Mr. Clarke's country. Colonel O'Connell therefore advised Mr. Bell to withdraw his tender, and to send in another one with an amended description, which would not interfere with the run already granted to Mr. Clarke. The tender of Mr. Clarke specified an amount of country of an average breadth of five miles, bounded by the mountain range. (The honorable member here read the specified boundaries and extent.) It was in accordance with such tender that Clarke held his occupation; he had held it for three years, and under such occupation the validity of his right to the run should have been recognised. The circumstance previously mentioned with regard to Bell's tender demonstrated that Colonel O'Connell considered that occupation valid. But in 1861 an application under the new Act was sent into the Queensland Government by a Mr. Neale for certain country between the Calliope and the Range. Now a large portion of this very country was at that time in the occupancy of Clarke, forming, in fact, a portion of the run tendered for years before by him, as previously stated. It was occupied by him; he had paid licenses for it, and he was presumed to have a good title. But such was not the opinion of the Government, for the claim of Neale was taken into consideration, and a license was issued to him for the land included in the boundaries mentioned in his tender. Before this was done, Mr. Wood, the present commissioner of Crown lands for the district, was instructed by the Government to report on Neale's claim, but declined to recommend the granting of the license, conceiving that Mr. Clarke's title was good. In spite of the recognition of Mr. Clarke's right to the country by Colonel O'Connell; in spite of the opinion of the local commissioner, Mr. Woods, the Executive stepped in and said they would grant a title to Neale, depriving Clarke of his country. Thus, after years had elapsed, Clarke's title was wholly set aside. Supposing a dispute had occurred, and there were doubts as to the clearness of the title, according to the Crown Lands Occupation Act, 11 Victoria, No. 61, it was laid down with regard to disputed boundaries, "That in hearing and enquiring into all claims to leases of runs, or any part of a run as aforesaid, every such commissioner shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct himself by the best evidence that he can procure, or that is laid before him, whether the same be such evidence as the law would require in other cases or not, and in case he shall be satisfied that the person or persons so claiming a lease of the land in dispute, is or are entitled in equity or good conscience thereto, or any portion thereof, he shall report the same to the Governor, &c." The Unoccupied Crown Lands Act of 1860 also set forth, with reference to that description of leased lands, that "notwithstanding that such description may not have been prepared after actual survey, and no license or lease shall be liable to be set aside by reason only of the imperfection of any such description, so long as the land shall be thereby defined with reasonable certainty." Yet here they found, in opposition to the clear injunction of these laws, that, after Clarke's claim had been recognised for three years, it was arbitrarily set aside, and that country which he had always considered his own was withdrawn from him. It might be urged that Clarke's lease expired in 1861; but the Government should have been guided by the equity of the case. They might have said to him, "if your run is really found to be larger than you describe, we will appraise the amount of stock it will hold, and by that appraisement you must abide, if you wish to retain possession." They might even have called upon him to pay the back assessment upon the extra stock which it was rated as capable of carrying. But instead of that, they resume the country, and tell Mr. Clarke that he never had a claim to it. An Executive minute, wholly conflicting with the advice of the local commissioner, is passed, which has the effect of confiscating Clarke's property. He (Mr. Douglas) had brought this forward because he was aware that there were many other cases of a similar nature. He wished to know upon what principle the Minister of Lands intended to go, in deciding these disputes. Would he take the base lines, and be governed strictly by measurement in all instances, or would he deal with the cases which arose according to the different aspects which each assumed? If he did the latter, he must be aware that there were hardly two cases alike. It might be said, that it was the proper course to take this and similar cases to the Supreme Court; but most of the lessees were not in a position, and did not care, to engage in a suit involving an action against the Government —an undertaking which few private individuals could enter into. What the licensees or lessees wanted, was a clear legal definition of their position in such cases. They were constantly hearing complaints in relation to the conduct of the Government to lessees with disputed boundaries; and the doubt and

delay which often occurred were very great. A gentleman had first to come down from the country a long distance, and have a conversation with the Minister for Lands and Works. On his return home, he very likely found that, owing to the Minister not understanding it, or owing to the representations of others, the case had assumed a new aspect, and he had to travel to town again. The whole matter was involved at present in a complexity of administration, which virtually made the Minister for Lands the only appeal in matters largely affecting pastoral property.

The SECRETARY FOR LANDS AND WORKS said he had not before him all the papers affecting the case in question, but he thought he had evidence enough to put the House in possession of its main features, and to disprove the charge made by the honorable member for Port Curtis. The honorable member had stated that a dispute had existed, and that all kinds of decisions had been given in similar disputes. He (the Secretary for Lands and Works) believed it would be found that such a dispute did exist; it arose from the fact that the particular party, represented on this occasion by the honorable member for Port Curtis, had attempted to take an advantage at the expense of the public interest, and to retain land to which he had no title, and upon which he had never paid one single sixpence. He knew nothing of the original facts of the case, by which Mr. Clarke had come in possession of the run. The country referred to was in the settled district of Port Curtis. It was true that the pastoral occupant had been in possession for some years. He had originally tendered for the run of Alma as a block of land 50 square miles in extent, and the Government had no reason to doubt that he possessed a greater extent of country than that mentioned in his original tender; but after the Act of 1860 was passed, a gentleman named Neale sent in a tender which appeared to affect the country then in the possession of Clarke. A correspondence in consequence arose between the head of the Government department here and the officials at Rockhampton. He admitted that at one time the correspondence was not of a satisfactory character. The Government, therefore, adopted the only course in their power under the circumstances, a course which he maintained was perfectly legitimate and just, and which brought the matter to a certainty. A survey was instituted, and it turned out that Mr. Clarke, instead of having fifty square miles—the quantity for which he had tendered and paid for under the New South Wales law—was actually in possession of a run of upwards of one hundred square miles in extent. In consequence of this survey, the Government were not in a position to deal with Clarke, and the tender sent in by Neale, under the Act of 1860, had to be accepted. Clarke got all the country mentioned in his tender, as could be seen by the tracing which he (Mr. Macalister) held in his hand; he got all that stretched from a certain distance from his point of boundary. The land was measured by a chain survey. The only difference was that the boundary of the dividing range would have made the run twenty miles in extent, instead of ten miles as tendered for for. He would conclude by stating, that in cases of a similar nature the parties would be treated in precisely the same manner as Messrs. Clarke and Neale.