

Constitution used rarely, if ever, to be overstepped; and if overstepped, the courts of the country used to declare the legislation unconstitutional, either by reason of its being *ultra vires*, or for some other reason.

Here, however, we have a flagrant case of the Legislature's appointing the Town Planner, a Government nominee, as its tribunal with powers to refuse to the citizen the right to resell his land by allotments, defining the tribunal's powers, and after prescribing a right of appeal, from a committee appointed by the Governor, under its own Act, to the same committee, and then purporting to grant a final appeal (subject to Ministerial approval) to a Joint Committee of both Houses of Parliament. This seems to be a complete abandonment of the rule of law, especially in the light of the power given to the Joint Committee, by section 13a (3) to consider the "plan of subdivision and report of the committee, and any other matters deemed relevant by the Joint Committee."

That is very strong language anywhere, and particularly from a court of law. The amending Bill we are asked to consider does not alter the principles so severely criticized by His Honor in the Skye Appeal Case. The fact that we are considering an amendment to this particular section means that, in effect, we are asked once again to endorse the principle of the appointment of the Town Planner which His Honor so criticized. My suggestion is that the committee should be reconstituted so that it is not loaded one way or the other.

I know it was suggested to the Government that there should be a committee something like that appointed to consider the Underground Waters Bill last session—perhaps loaded in favour of the subdivider. As I understand the situation the Government rejected that suggestion and instead proposed the suggested committee with the substitution of an independent chairman for the Town Planner. My suggestion is a kind of compromise between the two—that there should still be the legal practitioner as the new independent chairman, but instead of having the four members of the Town Planning Committee appointed by the Governor as the appeal committee, only two of them shall sit on the committee and the other two shall be independent people, one appointed on the nomination of the Real Estate Institute, and the other on the nomination of the appropriate surveyors' organization. That would mean that two members of the Town Planning Committee who are familiar with the facts of the case would still be on the appeal committee and there would be two new members who could be expected to be reasonably independent, but possibly weighted on the other side. So, there could be two against two who

could put their points of view to the committee and then a completely independent chairman with a casting vote. To my way of thinking that seems to be a fair way to deal with the matter.

If the Minister or any other honourable member can suggest some better way to deal with the matter, so long as the suggested committee is independent of the previous decision, I am prepared to consider the suggestion. Now that we have the opportunity to review this legislation, particularly in the light of the judgment I have quoted, I think that the Council should not flinch from its obligation to do so, and should see that a committee that will independently mete out justice in the circumstances of the case is appointed so that aggrieved parties may have a proper independent hearing. I am not criticizing in any way the members of the Town Planning Committee personally. I have no doubt that they are all very worthy people and I am merely saying that on principle people who make a decision should not hear an appeal from that decision.

The Hon. A. J. SHARD—You did not support that principle this afternoon.

The Hon. Sir ARTHUR RYMILL—I think the honourable member is wrong and his suggestion is in the wrong context. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8—"Amendment of principal Act section 13."

The Hon. C. D. ROWE (Attorney-General)—The honourable Sir Arthur Rymill has raised a point regarding the constitution of the appeal committee, and I should like the opportunity to consider his remarks. I therefore ask that progress be reported.

Progress reported; Committee to sit again.

DOG FENCE ACT AMENDMENT BILL.

Second reading.

The Hon. C. D. ROWE (Attorney-General)—I move—

That this Bill be now read a second time. Its objects are to amend the Dog Fence Act so as to increase the penalties for damage to and unauthorized removal of any part of the dog fence and to render both the person causing the damage or removal and his employer liable therefor, and to place upon the owner of any vehicle, the driver of which causes the damage or removal, the onus of proving that the driver was not at the

material time engaged upon his ordinary employment nor acting within the course and scope thereof. The damage that is caused to vermin fences from time to time is causing sheep owners throughout the pastoral areas some concern and representations have been made to the Chairman of the Pastoral and Dog Fence Boards by the Stockowners' Association of South Australia stressing the difficulties experienced in recovering penalties and compensation for such damage—in particular, for damage caused by vehicles. These representations were referred to the Crown Solicitor for advice. The Crown Solicitor considers that sections 43 and 44 of the Dog Fence Act require attention, and recommended that those sections should be recast with increased penalties, and provision for compensation for damage. He also recommended that provision be made for the employer's liability for damage caused by his employee in the course of his employment and for placing upon the owner of a vehicle, the driver of which causes damage to a fence, the onus of proving that the driver was not, at the material time, engaged upon his ordinary employment nor acting within the course and scope thereof. The Government agrees with these recommendations.

Section 43 of the principal Act at present prohibits wilful damage of any part of the dog fence for which the penalty is a fine not exceeding £50; and under section 44 a person who, without authority, removes any part of the dog fence or does any act whereby the fence ceases to be dog-proof commits an offence for which the penalty is a fine not exceeding £100. The penalty for a similar offence under the Vermin Act is a fine not exceeding £20 or imprisonment for a term not exceeding six months. The Government feels that the penalties under both Acts should be uniform and should be a fine not exceeding £100 or imprisonment for a term not exceeding six months.

Clause 3 substitutes for sections 43 and 44 of the principal Act new sections 43, 44 and 44a. The new section 43 (1) makes it an offence for a person, without lawful excuse, the onus of proving which lies on him, to cause damage to any part of the dog fence. The penalty for the offence is a fine not exceeding £100 or imprisonment for a term not exceeding six months. Subsection (2) of the section has the same effect as the repealed section 44 except for an increase in the penalty as stated earlier. Subsection (3) of the section empowers the court in addition to

or in lieu of any penalty imposable under the section to order a convicted person to compensate the person responsible for maintaining the damaged fence, for the damage.

The new section 44 (1) makes the employer of a person who in the course of his employment damages or removes any part of the dog fence liable for the necessary expenses incurred in restoring it as a dog-proof fence. Subsection (2) of the section provides for the recovery of those expenses in any court of competent jurisdiction. Subsection (3) of the section provides that where damage to or removal of any part of the dog fence is caused by the driver of a vehicle, the owner of the vehicle shall be deemed to be the employer of the driver unless the owner proves that at the material time the driver was not in the ordinary employment of the owner nor acting within the course and scope thereof. The new section 44a contains an interpretation which places beyond doubt that any gate or ramp pertaining to the dog fence shall, for the purposes of sections 43 and 44, be deemed to be part of the dog fence.

The Hon. F. J. CONDON secured the adjournment of the debate.

VERMIN ACT AMENDMENT BILL.

Second reading.

The Hon. C. D. ROWE (Attorney-General)—I move—

That this Bill be now read a second time. Its objects are to amend the Vermin Act so as to increase the penalties for damage to and removal of any part of a vermin fence, dog-proof fence or wire-netting fence, and to render both the person causing the damage or removal and his employer liable therefor, and to place upon the owner of any vehicle, the driver of which causes the damage or removal, the onus of proving that the driver was not at the material time engaged upon his ordinary employment nor acting within the course and scope thereof. The damage that is caused to vermin fences from time to time is causing sheep owners throughout the pastoral areas some concern and representations have been made to the chairman of the Pastoral and Dog Fence Boards by the Stockowners' Association of South Australia stressing the difficulties experienced in recovering penalties and compensation for such damage in particular, for damage caused by vehicles. These representations were referred to the Crown Solicitor for advice.

The Crown Solicitor considers that section 229 of the Vermin Act requires attention and