THE TRESPASS ACT 1968

The Trespass Act 1968 raised controversial issues in both public and social spheres and created a storm regarding the parliamentary procedure by which the bill came to its final form (this procedure involving re-examination and amendment by Government of the findings of the Statutes Revision Committee). Amidst this furore, the legal implications of the Act have only been subjected to cursory analysis. The object of this note is to attempt to explore these implications and place them in their correct social perspective.

The Policy Issues Involved

The Act has been declared to be, a compromise in both object and effect. On the one hand the Act purports to give a great degree of protection to farmers and other landowners, acknowledging their right to protection against irresponsible trespassers. On the other hand, we are told that the Act does not restrict in any way the legitimate demand for free and unimpeded access to the countryside. Thus the late Minister of Justice has said (Hansard No. 27 (1968) p. 3379) ". . . the ordinary decent citizen who does no harm to stock or property, who wants merely to picnic by the river, to roam across the hills, or to catch fish, is not likely to be affected in any way or to any degree by this bill". The Minister stated on several occasions that the Act is an effective balance between these two sets of interests (whether this is so in reality will be determined after full examination of the Act's provisions). Perhaps it is because of this attempt to balance, that criticism has flowed from two sides, that the Act has gone too far in acknowledging the demands of one set of interests, while paying scant attention to the legitimate demands of those opposing them.

Thus farming interests allege that the Act does not go far enough —"I should like a bill which requires every person so far as is humanly possible to seek permission to go onto private land". V. S. Young, M.P. for Egmont—Hansard No. 27 (1968) p. 3422.

However, the difficulties of a law of criminal trespass *per se* are obvious—the problem of seeking permission when boundaries are not clearly defined. This problem would be accentuated even more with Maori land and multiple or tribe ownership. The problem need not be detailed any further.

The counter arguments from the opposition, deerstalkers and others, have been of the nature that, in attempting to check the vandalism of a criminal minority, we are punishing a law abiding and reasonable majority, and that the Act will inevitably lead to complete loss of public access to private land. Thus the Editor of *N.Z. Wildlife* (Issue 23, 1968) stated—". . . the actions of a relatively small bunch of lawless hooligans shooters are being used as a pretext for inflicting harsh unwarranted and poorly conceived restrictions on the public generally". As noted, the demands for a wider Act can be countered

on practical grounds, but it is in matching the actual provisions of the Act with the allegation that those provisions are punishing a reasonable majority that we can get a true evaluation of the Act's import and its likely effect and value. While this paper will be concerned mainly with the Act's effect on rural land and conditions, it should be noted that the word "place" as used in the Act is not limited to this context, and includes city properties and dwellinghouses. This extends the import of provisions of the Act and this fact should be constantly borne in mind in the following discussion. Before proceeding to examine the actual provisions of the Act, it is necessary to pay some attention to the common law relating to trespass to land.

The Common Law

There is nothing in the language of the present Act which can be construed as expressly or impliedly abrogating the common law rules regarding trespass to land. In the heated debate over the policy incorporated in the Act the tort of trespass to land whose coverage is in many places much wider and more far reaching than the provisions of the present Act, especially as regards unintentional trespass, has been overlooked.

It is an interesting question as to why the common law has not been more widely availed of—is it due to non-familiarity with the law, or due to the fact that any action brought would be a civil one—initiated and fought by the owner/occupier. This could be a real deterrent especially in a trespass case, where, as will be seen, the difficulties of proof, together with the nominal damages likely to be recovered, form a practical impediment to a successful action.

The present Act puts trespass offences in a criminal category and proceedings may be conducted and in some cases initiated by the police (see later discussion of section 9). It is proposed in the following discussion to contrast the existing common law remedies with the new criminal provisions and it is sufficient to note at this stage that statements that the legislation would not interfere with the *right* of the people to go into the open spaces are incorrect. This right never existed, for while the mere fact of trespass is not a criminal offence, it is a civil one.

Section 3—Trespass after Warning to Leave

This section in substance repeats section 6A of the Police Offences Act 1927. It makes it an offence punishable on conviction, by a term of imprisonment not exceeding three months or a fine not exceeding $200.00 for any person to wilfully trespass on any place and then neglect or refuse to leave that place after being warned to do so by the owner, or any person in lawful occupation, or any person acting under the express or implied authority of those persons mentioned. It should be noted that the offence is not the initial trespass but the refusal to leave after being warned off. The section raises several definitional problems.

It is a precondition to the application of the section that the initial trespass be "wilful". This word is not defined in the Act itself. However, as in all penal statutes "wilfully" imports a requirement of

mens rea or guilty mind into the offence. See for example *Harding* v. *Price* [1948] 1 K.B. 695 at 700. It is necessary for the prosecution to establish affirmatively that *that* state of mind existed at the time when the offence is alleged to have been committed. It is not sufficient that an act of trespass is proved. The accused person may escape conviction by showing that he held a reasonable and honest belief of the existence of facts which if true would make the act charged against him innocent.

Thus if the trespasser believes in good faith that he is on land which he has a legal right to be on whether by permit, licence or verbal permission, then he cannot be termed a wilful trespasser within section 3. A mere accidental straying over an unmarked boundary where the factual trespass is unaccompanied by the necessary state of mind, is prima facie no offence under section 3.

To a certain extent some of the M.P.'s in discussing the bill were under a misapprehension as to the relationship between the act of trespass and the state of mind accompanying it. Thus Sir Basil Arthur, Labour Member for Timaru, chastised the bill for enacting laws which would "penalise those who in many cases go on to private land unwillingly". This would be criminal trespass *per se* and the Act does not lay down such an offence as regards section 3. Some of the sections, e.g. section 5, do not require a wilful trespass but import an additional substantive element to make up the offence, e.g. disturbance of domestic stock.

Does this mean that because the initial trespass is not wilful in any particular case, the rest of the section is negated in effect and that all that a farmer could do is give a warning under section 4 for future trespasses? Or can it be argued that once confronted and warned off by a farmer the two ingredients necessary to bring the later part of the section into operation have been satisfied? After a warning, the trespasser would be aware that he is unlawfully on private land and accordingly his trespass would be wilful as from that time. Subsequent neglect or refusal to leave would constitute an offence under the section.

The wording of the section—"who wilfully trespasses on any place and neglects or refuses to leave that place after being warned to do so . . . " is capable of both constructions, but it is submitted that the absence of a comma after "place" means that the two conditions which must be satisfied are—

(a) a wilful trespass, and

(b) neglect or refusal to leave after being warned off.

The wilful trespass refers to the initial trespass and not to the trespass subsequent to any warning given. This initial wilful trespass seems to be a precondition to the application of this section. However, section 3 will probably come into effect if after a warning under this section, the trespasser shows clearly by his conduct that he is not making reasonable efforts to leave the place. His trespass can then be termed

"wilful" and on being accosted and warned a second time the conditions of section 3 are satisfied, if he still neglects or refuses to leave the property.

It should also be noted in relation to section 3 that any practical effect it might have is rendered virtually nil by the difficulty of proof of intent except in the occasional case where direct and obviously intentional entry is per-chance viewed and the offender would have no chance of raising the defence of "accidental straying". However, a vast majority of trespasses could be countered by this defence and it will be very difficult for any prosecution to prove otherwise. With the ill defined boundaries of rural land in New Zealand, in most cases unless clear knowledge of the boundaries can be proved to be possessed by the trespasser, it is not only feasible but likely that the trespass was accidental, even where this involves crossing of a fence line. How is the unfamiliar tramper, with legal permission or licence to tramp on one farmer's land, to know that the fence he crosses is a boundary fence, unless he has had this clearly explained to him? Moreover, how is the prosecution to prove that he possessed this knowledge? It seems that the practical effect of the Act, if it is going to be effective, must lie in the later sections.

As noted previously, many have overlooked the existence of the tort of trespass. The trouble of initiating an action, and the minimal damages recoverable (unless the trespass caused tangible loss to the landowner), seem to have rendered the efficacy of the common law rules doubtful and this could indicate a similar fate for some of the provisions of this Act. However, it must be noted that the present Act does provide a greater incentive to farmers to pursue any cause of action they may have. Some of the procedural defects of the common law have been overcome.

At common law a trespass need not be wilful, the slightest crossing of a boundary, indeed mere physical contact with the property of the defendant, is sufficient to constitute the tort. It is actionable without proof of damage, and even where the entry is intentional but made under a mistake of fact or law. The present Act is not as wide —it generally requires a wilful trespass or entry accompanied by some other act. Thus it would seem that an act which escapes section 3 because the trespass was not wilful, will still constitute the tort of trespass. It should also be noted that at common law a person who lawfully enters on land in the possession of another commits a trespass if he remains there after his right of entry has ceased, e.g. by verbal revocation of the leave to enter; in this case by the warning to get off. At common law and under the statute, an accidental as opposed to mistaken entry would not constitute an offence.

As noted, the substantive part of the offence is the neglect or failure of the "wilful trespasser" to leave after being warned to do so. Once again there is this requirement of carelessness or deliberate omission. The shooter or tramper who genuinely loses his way in attempting to leave after such a warning could not be convicted of an offence under the section. Here again the problems of proof raise a

seemingly insurmountable barrier in many cases. This element of neglect or deliberate refusal must be shown under the Act, but not of course at common law (although perhaps the "accident" defence could excuse the plaintiff at common law). Thus the common law covers the situation in much wider terms; the question is why has it not been used—time, expense, difficulty of proof, the amount recoverable by way of damages, or a combination of all four? We may justifiably ask whether the situation will materially improve under the Act.

Section 4—Trespass after Warning to Stay Off

This section adds a new criminal offence. Section 4 (1) states that the person in lawful occupation or a person acting on his express or implied authority may warn a trespasser at the time of the trespass or within a reasonable time thereafter to say off that place. Sub-section (2) specifies the mode in which such warning may be given—orally, by notice in writing, or by registered letter. Sub-section (3) provides that everyone commits an offence who, being a person who has been so warned to stay off any place, wilfully trespasses on that place at any time within 6 months of the giving of the warning. The proviso to section 4 (3) provides two defences:

(a) That the person by whom or on whose behalf the warning was given is no longer in lawful occupation;

(b) It was necessary for the defendant to commit the trespass for his own protection or for the protection of some other person or because of some emergency involving his property or the property of some other person.

This section raises several interesting points. First the trespass prior to the "warning off" which constitutes the offence does not have to be wilful as does the trespass under section 3. Here, belief of legal entitlement will be of no avail.

An interesting point arises regarding the warning necessary under sections 3 and 4. It is quite clear that the typical standing notice "Trespassers will be prosecuted" (which is not as much a falsity now as it used to be) will *not* be sufficient to give notice under the terms of section 4. The section explicitly provides the types of warning necessary, none of which could seriously be held to include the above type of notice.

Section 3 on the contrary does not deal with the warning requirement in such detail, and provides merely for a warning "by the owner or any person in lawful occupation of the place", etc. Thus the question is, will the traditional notice be a sufficient warning for section 3 to apply? This is a difficult question.

The original bill included what is now section 4 as sub-clause 2 of section 3 and provided merely "being a person who has been *so warned* to leave any place" . . . etc. So originally, the warnings contemplated were the same in both cases. The Statutes Revision Committee deleted clause 3 (2) of the original bill and inserted the amplified definition now contained in section 4.

While it could tenuously be argued that because section 4 makes no explicit reference to section 3, there is nothing to prevent section 3 taking on a wider meaning and including notices of a fixed character,

it is submitted that the warning should still be the same under both sections, as was originally contemplated, the amplified meaning contained in section 4 applying in a like manner to section 3. A standing notice will not be sufficient for either.

Another point that the section raises, is what significance is to be placed on the deletion of the word "owner" as one of those entitled to give the warning (cf. section 3 which authorises in specific terms the "owner" to give the warning contemplated). At common law it is reasonably clear that "lawful occupation" alone would have been held to include a non-resident owner—

> "Occupation" means that the owner is in actual physical enjoyment of the house, property, or estate by himself, *his agents or servants. Martin Estate Co. Ltd.* v. *Watt and Hunter* [1925] N.I. 79 at 85 per Moore C.J.

However, by including the word "owner" in section 3, it seems that the legislature intended to limit the meaning of "lawful occupation" in these sections to lawful physical possession. If this is not the case, "owner" in section 3 is mere surplusage. Thus the legislature intended to draw some distinction between the two sections, intending to limit section 4 to a warning by those having lawful physical possession.

If this is so, the section prima facie precludes the non-resident owner from giving the warning contemplated. While no doubt it could be argued that the non-resident owner has the implied authority of the manager who is in lawful occupation, this seems a needless complication. This is complicated further by the first defence which is that "the person by whom or on whose behalf the warning was given" is no longer in lawful occupation of the place. As the person entitled to give the warning is the person in lawful occupation the "on whose behalf"—would mean on the behalf of the manager, in the case of a non-resident owner. This means that in such a situation the section is only applicable while the manager remains unchanged. If this section is justifiable in terms of restrictions on liberty,—this drawing the line at lawful occupation does not seem logical.

Is the section justifiable? The six month period seems unduly harsh where it can result in non-access for that period to a favourite shooting area for example; this is a country which does not enjoy extensive public rights of way into the back country as is the case in England.

The late Minister of Justice, Mr. Hanan, has stated that this Act does not infringe the inviolate right of the ordinary reasonable citizen to go out into the open spaces. Yet under this section there can be an accidental trespass (no requirement of wilfulness) followed by a verbal warning to get off. The trespasser could be given no reason for this, no indication that he will commit an offence if he trespasses there within six months, or could be given an excuse such as that the denial of access to the back country is necessary on the grounds of lambing ewes.

In ignorance or on the assumption that the grounds of the farmer's objection had disappeared he could return in three month's time, be sighted and find himself liable for a fine of up to $200.00 on conviction. While ignorance of the law is obviously no defence (Section 25 Crimes Act 1961), the section seems defective in that it should be provided that the farmer must give reasons for the warning off, which reasons the magistrate may balance up with the validity of the trespasser's reasons for being on the land, as grounds for conviction and not only going to the amount of penalty, as will happen under the present Act.

On the other hand, this may present the magistrate with an unwelcome task, and one must also look to the desirability of having certainty in the criminal law. However, it is impossible to escape the feeling that protection of person and property should only be one end of the spectrum of justification to the trespasser. There could be many other reasons why a person trespasses whether wilfully or accidentally which are in themselves reasonable when considered in context. The Act as a whole does not provide sufficient acknowledgment of this as a factor to be weighed and balanced in the convicting of a person as opposed to the present situation where it can be used in fixing the amount of the fine. However, the desire for certainty (strengthened by the policy which the Act seems to enforce) deprives the court of such a consideration and perhaps the discretion in amount of penalty will be a sufficient safeguard against injustice.

Section 5—Disturbance of Domestic Stock

Section 103 of the Animals Act 1967 made it an offence for any person without the authority of the occupier or other lawful authority to go upon private land with dog or firearm and disturb any domesticated animal (as defined). The present section 5 extends this provision so that it is now an offence to go upon any private land and "wilfully or recklessly disturb any domestic animal thereon".

The main part of the section now provides an offence where disturbance of a domestic animal is caused by means of dog, firearm or vehicle. In contrast to the prior provisions in the Animals Act where the wording was such that the offence could have been committed by the mere fact of a disturbance, such disturbance having no relation with the gun or dog; now there must be a relationship between the disturbance and the gun, dog or vehicle *or* the prosecution will have to try and bring it within the extended part of the section relating to "wilfully or recklessly disturbing". As noted previously, this will require a distinct element of *mens rea*—accidental disturbance will not suffice.

The question has been raised as to why, if a trespasser goes on without gun or dog, the disturbance must be proved to be wilful or reckless, yet when accompanied by dog, gun or vehicle which disturbs stock, he is liable without proof of intent or negligence. Perhaps it is justifiable that if the discharge of a firearm on private land, albeit with

all due care for domestic stock or without knowledge of their presence, disturbs that stock and the person discharging the firearm was a trespasser, then this should be an offence.

But "disturb" as defined in the Act bears a very wide meaning—"likely to cause harm to the animal or inconvenience to the person who owns it or is in charge of it". Note that "disturb" was not defined in the Animals Act, but the Shorter Oxford Dictionary in defining this word; ". . . to interfere with the settled course of operation of . . . to interrupt, hinder . . . ", seems to stress the aspect of a positive result following from the disturbance. "Inconvenience" is a dangerously wide and arbitrary term and should not be grounds of action unless it is of a sufficiently serious nature. Presumably this would follow in the majority of cases; no action would be commenced for slight inconvenience suffered, but there is going to be the odd selfish farmer insisting on his strict legal rights who will plead any inconvenience. If such a wide definition is to be adopted, there should be some discretion in the magistrate to take the facts into account on the question of conviction as well as on amount of penalty.

Section 6—Discharge of Firearm on Private Land

This section makes it an offence punishable by a fine of $100.00 for a person without "reasonable cause" to:—

(a) Discharge a firearm on any private land;

(b) Discharge a firearm from any place, vehicle, vessel, aircraft, or hovercraft, into or across any private land.

The section does not apply to any act done by or with the authority of the owner or occupier of the land, or other lawful authority.

This was one of the more controversial sections in the bill, being struck out after representations to the Statutes Revision Committee, but being reinstated by Government when the bill came before the committee of the whole. This area of law had not been dealt with in such a detailed manner by previous legislation, though there were some sections in the Arms Act 1908 and its more recent amendments dealing with the abusive use of firearms (see particularly section 54 of 1966 Amendment), and section 298 (a) of the Crimes Act 1961 could be invoked for use of a firearm causing damage to property in a wilful manner.

Section 6 widens these existing statutory provisions considerably. The deletion of the original clause was based mainly on evidence presented by the Department of Agriculture and the Forest Service, who thought that section 6 would give a high degree of protection to noxious animals. The views of farming interests changed this.

It is interesting first to compare these new provisions with the existing common law rules on trespass to airspace. There has been some controversy as to whether any invasion of air space constitutes an actionable trespass. *Salmond Law of Torts* (6th ed. 1924) p. 226

thought that this would be an unreasonably wide restriction and that the general rule should be that there could be no trespass without some physical contact with the land; that mere entry into the air space above the land was not actionable unless it caused some harm, danger or inconvenience to the occupier. On the present state of the authorities it is impossible to say with any confidence what the exact law on this point is. (See the conflicting authorities listed in *Salmond on Torts* (14th ed. 1965) p. 75 n. 57).

It has been held that a direct infringement of the air space over another man's land can constitute a trespass. *Kelsen* v. *Imperial Tobacco Co. Ltd.* [1957] 2 Q.B. 334. See also *Davies* v. *Bennison* (1927) 22 Tas. L.R. 52, where the defendant shot a cat on the plaintiff's roof. The defendant was held liable for trespass to land as well as damage to the cat. However, the contrary view seems to have been preferred by the English Court of Appeal in *Lemon* v. *Webb* [1894] 3 Ch. 1 and *Davey* v. *Harrow Corporation* [1958] 1 Q.B. 60.

Thus section 6 was the opportune moment to redraft and rationalise this part of the law. Instead Parliament has lapsed once again to the "reasonable cause" doctrine, which while suitable to a vast majority of situations is not entirely appropriate to an offence of trespass of this nature. The question is, what is reasonable cause? While this will depend in all cases on a court's assessment of the facts of the particular case, is it reasonable cause to attempt to shoot a noxious animal or at a flying duck? Most duck shooting, for example, takes place on narrow river banks and infringement of private air space will happen on many occasions usually without damage or inconvenience to the landowner. The original clause was deleted because it would supposedly give a high degree of protection to noxious animals. By its reinsertion the Act seems to have relegated that consideration to second place. It can therefore be argued strongly that shooting at noxious animals is *not* reasonable cause within the meaning of the section. They cannot be shot at, if such shooting will involve infringement of private air space.

This section is an unwarranted intrusion into the liberty of the individual sportsman and while a law to prevent harm to property or stock can be condoned, a law such as this which hits at a practice which in the vast majority of cases causes neither harm nor inconvenience, cannot gain widespread support as a justifiable legal measure. In Parliament the late Minister of Justice, Mr. Hanan, justified the reinsertion of the clause on the grounds of stock killing. Perhaps a requirement of serious inconvenience or wilful damage would restrict the section to those areas where it can most justifiably be used, while leaving intact this basic freedom. If such requirement is felt desirable, the question then arises as to whether or not section 5 provides a sufficient remedy for the problem.

The difficulties of obtaining positive proof for a conviction under this section need no amplification.

Section 7—Failure to Shut Gate

The offence under this section is:—

(a) Wilfully trespassing on any private land (see comments under section 3), opening and leaving open a shut gate or unfastening and leaving unfastened a fastened gate on or leading to any land used for the farming of domestic animals; or

(b) Any person who with intent to cause annoyance or harm to any other person, opens and leaves open a shut gate or unfastens and leaves unfastened a fastened gate or shuts an opened gate on or leading to any land used for the farming of domestic animals.

It is submitted that while the general policy enforced by the section is desirable the section itself is undesirably wide and will be correspondingly hard to enforce. The original clause as amended by the Statutes Revision Committee had the requirement that the offence must concern a gate on or leading to any private land "on which there is for the time being any domestic animal which may move to other land if the gate is left opened or unfastened". This was struck out by the Government and has led to a section which is dangerous in so far as it is based on possible annoyance or minor inconvenience as opposed to positive harm or danger. That the annoyance or inconvenience contemplated did not in fact result is irrelevant, it being sufficient if the court adjudges the offender's intent to be one of causing annoyance. How is the court to tell the difference between the listed intents and mere careless neglect which does not qualify at law as wilful intent? The situation is not the same as in many of the more public criminal offences where the accused's action will lead readily to an inference of intent in the circumstances of the case. In this trespass situation the offender's conduct will in most cases be patently ambiguous and the offence correspondingly harder to prove.

As a positive preventive section, this, like many of the other provisions, must be classed as doubtful value. The present section is an unjustifiable extension of the original clause, the practical value of both doubtful. One must not forget that the trespass provisions of sections 3 and 4 still apply as well as the wide reaching common law offences. To provide an offence such as the present one in addition to these other offences—the minimum requirement should be the positive possibility of stock straying or being prevented from straying from one paddock to another. This would require reversion to the original clause which was more realistic in approach.

Section 8—Obligation to Give Name

Presumably this section was intended as a practical aid to the enforcement of several of the earlier sections. It was not included in the original bill but was added after the bill was referred back from the Statutes Revision Committee. It provides that where a person is found trespassing on any private land, the owner, person in lawful occupation or the wife, husband, employer or agent of those persons

may demand particulars of name and address from the trespasser. If there is reasonable ground to suppose that the particulars so given are false, the person asking for particulars may demand the production of satisfactory evidence thereof.

If such a person refuses to give name and address or satisfactory evidence thereof, any member of the police may caution and on continued refusal may arrest without warrant. Section 8 (3) provides an offence punishable by a fine not exceeding $200.00 to persons failing to give name and address as required under the section, or who supply false evidence with respect thereto.

While this will obviously be a pre-requisite to enforcement of the Act's provisions this section is objectionable and borders on the classification of undue invasion of personal liberty, especially when it is remembered that the section applies not only to farm land, but to city dwellings, and indeed any private land.

It should be noted that there is no requirement of wilful trespass as in some previous sections. One can readily imagine the reactions of a person who has perhaps innocently strayed on to private land is confronted by an irate farmer demanding his name and address. Natural reaction would put the trespasser on the defensive and the immediate question would be, what right has this person to demand this information. Remember the trespasser is under the misapprehension that he is still within his legal rights. The farmer would probably not feel inclined and probably would not be able to furnish proof of identity. While reasonable people would resolve such a situation without recourse to legal measures, it is going to be the irate farmer having suffered or foreseeing damage to stock or property, who could by his manner create tension and misunderstanding which could lead to injustice under this section.

Once again the difficulties of enforcement are formidable, especially the provision for police arrest, when it is remembered that the majority of supposed offences will occur miles from the nearest farmhouse, let alone police station. Note also the danger of information obtained under the section being put to improper uses, other than the prosecution contemplated.

Section 9—Form of Proceedings under Sections 5, 6, 7 and 8 (3)

Proceedings under the above sections which include disturbance of domestic animals, failure to shut gate, discharge of firearm on private land and refusal to give name and address shall be taken on the information of the occupier of the land in question (*quaere*—does this include the owner?) but notwithstanding section 37 of the Summary Proceedings Act a constable may appear at the hearing of the charge and conduct proceedings on the informant's behalf. This section, which modified the original clause by including the latter provisions concerning the police, was enacted in this form to meet the fears of Federated Farmers and other farming interests that the occupier would have to conduct a private prosecution.

The point to note is that the police have a discretion not a duty as to whether or not they will prosecute for the specified offences. Perhaps this provision while providing an aid to the genuinely harmed farmer will also provide a safeguard against the farmer whose charges are filled with exaggerated and in some cases unjustified indignation.

Note with regard to who may sue, the section substantially reiterates the common law where trespass is only actionable at the suit of him who is in possession of the land using the word "possession" in its strict sense as including a person entitled to immediate and exclusive possession—ownership unaccompanied by possession is not protected by trespass at common law.

Section 10—Cancellation of Firearms, Registration or Permit

The section provides the court with the power to add another sanction instead of or in addition to that provided for any offence under the Act, when at the time of the offence the offender was carrying or had a firearm with him.

The court can impose penalties such as revocation of registration of ownership, revocation of permit for possession and order that a person shall not carry a firearm or shall be disqualified from being so registered or from obtaining such a permit for such period not exceeding two years from the date of conviction as the court thinks fit. A person is liable for a fine of $400.00 who carries a firearm in contravention of an order made under this section.

While it is questionable whether this section would have been better restricted to those offences, the substantial matter of which concerned the use or misuse of firearms, the invocation of these penalties is discretionary and the court's sense of justice can be counted on to impose the restriction which should logically have been included in the section.

Conclusions

The provisions of the Act are the direct result of agitation from farming interests, who backed demands for stronger legal measures with evidence of heavy stock losses in the main. The end result must, therefore, be balanced against the objective and the result in this case is that the Act is not going to solve the problem. The mischief is not the trespass so much as the damage that is done. "What the farmer is really complaining about is not trespass. It is a mixture of stock disturbance, property damage, stock shooting and dangerous use of fire-arms"—*N.Z. Wildlife* (issue 23, 1968) p. 2—and the provisions of this Act do not deal with actual destruction or the apprehension and conviction of offenders which is the crux of the problem. While the act of trespass may be the initiation of the damage, this has led to an Act which has proceeded on a mistaken basis.

The Act is an appeasement measure but is virtually valueless in practical terms. The difficulties of proof are enormous and provide the effective counter for most of the Act's provisions. Perhaps for this reason we can applaud the Act as a strong deterrent measure while

overlooking the fact that if its provisions are effectually enforced it could substantially restrict the freedom and enjoyment of many reasonable and careful people.

The impression should not be gained that the Act is going to be devoid of effect. It is the nature of the act of trespass that is the trip-wire—it is particularly hard to detect with foresight in a country like New Zealand and the hindsight gained offers no assistance in apprehending the culprit. The Act will be of benefit in the isolated case where proof and apprehension can be obtained and as noted its deterrent value is great. It has given the public a greater awareness of the farmer's view-point and they will not be able to blame weak legislation if the situation continues.

I. B. Cowie