**SALE OF FRUIT ACT AMENDMENT BILL 1921**

**Legislative Council, 16 August 1921, pages 256-8**

Second reading

The MINISTER of AGRICULTURE (Hon. T. Pascoe)—In the laws dealing with matters of this character it is nearly always found that, however careful Parliament may have been at the time of the framing of the Act, experience proves its defects. It is subsequently found that certain portions of the Act are difficult to administer, and sometimes the law penalises the wrong person. The present Sale of Fruit Act does this. A grower may in good faith buy cases presumably in accord with the Act as to size and holding capacity. But if the cases hold less than the quantity specified, instead of the maker being liable to prosecution, the man who bought the cases comes under the law. This is one of the anomalies which this Bill seeks to amend. The measure is the same in all respects as the Bill that was introduced in the Assembly last year, but lapsed owing to the prorogation. Its purpose is to give effect to a number of suggestions made by the South Australian Market Gardeners and "Fruitgrowers' Association, and recommended by Mr. Quinn, Government Horticultural Instructor and Chief Inspector of Fruit, for the purpose of improving and rendering more workable the provisions of the present Sale of Fruit Act, 1915, and of removing a certain defect in the policy of the Act which experience in its administration has disclosed. It should be remembered that the Act created standard fruit cases of three sizes, viz., bushel cases, half cases, and quarter cases, and required that the capacity of these standard cases should be guaranteed. The defect referred to is the fact that, though the present Act requires that every case in which fruit is sold shall be branded, yet it places the legal responsibility for the case conforming to the prescribed standard, not on the person who makes the case and stamps his brand thereon,but on the person who uses the case. This is undoubtedly a hardship on the person who in good faith uses a case on the strength of the guarantee which the maker has stamped upon it, and one of the main purposes of this Bill is to place the responsibility for the accuracy of a case's capacity and measurements on the person who places his guarantee on a case, whether he be the maker or a person who has adopted the case as his own.

The Hon. J. Jelley—Is there no exemption when a person alters a fruit case and uses it for some other purpose?

The MINISTER of AGRICULTURE—If a person did not use the case to sell fruit in I do not think he would come under the law. But if he altered it and used it for selling fruit, professing that it contained the quantity of fruit specified on the case itself, he would be liable. If the maker refuses to brand a case as required by the Act, there is nothing to prevent the buyer or any other person placing his own brand upon a case. He then becomes responsible for the compliance of the case with the standard, and any person subsequently using the case whilst that brand remains upon it may look to him for its accuracy. The other provisions of the Bill are due to the scarcity of suitable seasoned timber for box making, and the proposed repeal of the special provisions made with reference to factory and export buyers by the 1915 Act. The report of the Parliamentary Draftsman is:—The first amendment made by clause 1 is to control the import of fruit in cases. The effect of this provision will be that all fruit which is imported into the State in cases will have to be contained in standard cases, unless the fruit is of a kind or quantity which if sold within the State, need not be so contained. This provision will cause no difficulty in practice, as all the Eastern States have standards for cases similar to our own, whilst Western Australia accepts these cases and sends Western Australian fruit eastwards in cases of the standards required by the law of the Eastern States. The remaining amendments in this clause are more or less consequential on the proposed repeal of sections 10, 11, and 12 of the present Act, the provisions making special concessions in favor ofjam and sauce factories and buyers for export. When the 1915 Act was passed there were nostandard cases and all the fruit was handled in kerosene and benzene cases, and this was the immediate reason for these special concessions.

The Hon. W. G. J. Mills—Can you not sell fruit without cases?

The MINISTER of AGRICULTURE—There is a provision where you can sell fruit to factories and so on in bulk and without cases, but when you are dealing with fruits according to standard weights on the open market the law in regard to cases must be complied with. The report continues:—After the lapse of six years since the passing of the 1915 Act, the position of affairs is entirely reversed, and 95 per cent. of the cases used by the fruit trade are standard cases. These is thus no reason for the continuance of these special concessions to the factory and export section of the trade, and it is proposed to put them on the same footing as hawkers, shopkeepers, and market gardeners. Their claims, however, for some consideration on account of the nature of their business have been considered, and subdivisions (b) and (c) of clause 1 provide in effect that when fruit is bought as a growing crop on the bush or tree, or by weight or in bulk when the quantity bought exceeds 500 pounds in weight, the fruit need not be contained in a standard case.

The Hon. W.**G. J.** Mills—There is a lot of little trading by the bag full.

The MINISTER of AGRICULTURE—And no doubt that will continue after this Bill is passed. It will not affect that class of trade. The report continues:— Clause 3 (2)—The purpose of this provision has already been referred to. It is to make it quite clear and certain that if a person sells fruit in a case bearing a brand which might reasonably be taken to comply with the Act, and the case reasonably taken to be a standard case, the seller is not to be liable for the case's conformity with the standard. If the case is obviously wrong in capacity or measurement, i.e., far too large or far too small for the size of case stated in the brand, for example, a piano case, or if the brand has become illegible or in some other way clearly does not comply with the rules set out in the Act, so that no reasonable man would seriously consider the case to comply with the Act, then the seller will not be able to get rid of his responsibility for the case by pointing to a brand on it, but will remain responsible therefore. It is all a question of bona fides, and if the seller is to escape liability he should be able to show that he was actually deceived. And this is the effect of the subclause (2) of clause 3. Clause 4.—The necessity for this clause arises out of the present scarcity of suitable and sufficiently-well-seasoned timber for boxmaking purposes. The present margins of variation from standard are said by the trade to be too small. Under the present Act the margin of variation allowable is, both for excess or deficiency in cubic capacity, 2½ per cent, of the prescribed capacity. The Bill increases the margin of excess in capacity to 3½ per cent., and in addition fixes a margin of variation in lineal measurement, as opposed to capacity, of one-half inch. The Chief Inspector of Fruit reports that these margins should be ample if any reasonable effort is made to season the timber. Clause 5 is a further step in making the maker of the case liable for the accuracy of his products. The present Act only requires a case to be branded with a guarantee of capacity when it is actually used for fruit, but it does not expressly require the maker, the person really responsible, to so brand it. This clause meets the deficiency, and requires the case-maker, when he sells a case which he knows is intended to be used for fruit, to brand it as required by the Act with a guarantee of capacity according to the particular standard to which such case should conform. The fact that he brands with the words "guaranteed capacity" is made, by subclause (3), prima facie evidence that he sold the case for the purpose of its being used for containing fruit. The particular form of words to be used in the brand to be placed on fruit cases has been slightly altered so to reduce the lettering in the brand, and the range of area that may be taken up by the brand is increased to a maximum of 8in. x 4in. down to a minimum of 4in. x 2in. The purpose of these amendments is mainly to allow a stencil to be used instead of the rubber stamp now commonly employed, with much more durable and lasting results, and with, as a consequence, a longer continued liability on the maker for the case he makes. The Chief Inspector of Fruit reports that the measurements mentioned will cover most of the cases at present in use with brands on them, and will allow all new ones to be more durably and legibly branded than at present. Subclause (2) repeats the provisions of subclause (2) of clause 3, enabling the seller of fruit to rely upon the brand on the case, with the same safeguards, i.e., the seller must show that the brand appeared to be a proper one, and that the case could reasonably be taken to be of the capacity stated on the brand. It would, for example, be no defence, under the section, for a seller to point to a brand, "guaranteed capacity half bushel, '' if the case was obviously a bushel case, and this is as it should be. Clause 6 is perhaps the main provision of the Bill, and states in so many words the principle upon which the foregoing provisions of the Bill proceed. If a person's name appears on a case along with a guarantee of capacity required by the Act, and such case does not conform with the standard mentioned in such guarantee either in capacity or measurements, then such person is guilty of an offence against the Act. It places on the maker of the case at all times whilst the case continues in existence as a case, and whilst the brand continues to be legible, the responsibility for the case's complying with the prescribed standard, not only when it is made, but whilst it continues in use for fruit. In this way the clause will operate, in conjunction with clause 4, to ensure that the timber used in box-making is suitable for the purpose and reasonably seasoned. The liability of the maker is absolute, but he is protected against the malicious action of third persons by the clause. He may escape liability if he proves to the Court that the brand was not placed by him on the case, nor by anyone with his consent or authority, or that the case since it left his hands has been tampered with by some other person. The maker is further protected by subclause (2), which makes it an offence for anyone to tamper with a case bearing a maker's name, or to alter or tamper with a brand. This subclause will not prevent a person knocking a case to pieces for his own use; in effect it merely requires that he must destroy the identity of the case, or, if he alters or modifies the shape or capacity of the case, he must see that the original brand is erased or does not appear. Clause 7 repeals the exemption of factory buyers and buyers for export from the operation of the Act. The concessions given by the 1915 Act to these sections of the trade have given more trouble and have given rise to more evasions of the law than all the other operations in the fruit trade. The other reasons for this repeal have already been dealt with in this report. I move the second reading.

The Hon. J. JELLEY secured the adjournment of the debate until August 17.