**THISTLE AND BURR BILL 1862**

**Legislative Council, 2 September 1862**

Second Reading

The Hon. s. DAVENPORT moved the second reading of the Thistle and Burr Bill, and in doing so remarked that it might be found necessary in some measure to alter the title of the Bill with regard to that portion having reference to "other noxious weeds," inasmuch as those words did not allude to particular weeds, and were of too general a character. The Bill purported to amend the Act passed In 1851, and commonly known as the Scotch Thistle Act, which Act he was aware was very useful, but had been found defective in several respects, and was altogether powerless to prevent the spread of several noxious weeds now overrunning the colony. The Bill now introduced by him intended not only to apply to the Scotch thistle, but to other plants of the vegetable kingdom not well disposed to humanity. (Laughter.) Before proceeding further he would refer to Council Paper No. 57, being a communication from the Chief Inspector of Sheep (Mr. Morris) addressed to the hon. the Commissioner of Crown Lands, in which he (Mr. Morris) stated, that whilst travelling through various districts of the colony upon his official duties, he had noticed a plant known as the Bathurst burr, which was rapidly increasing, and threatening to spread over some of our best agricultural and pastoral lands, (Hear, hear.) Now Morris was a gentleman who had every opportunity to observe the matter, and could as such give a very good opinion as to in what measure the weed in question might affect the interests of the colony. The document referring to the spread of the Bathurst burr alleged that the burr, if permitted to spread, would prove more disastrous to the country than the Scotch thistle, as the latter only did injury to the extent of the ground it occupied, whilst the former took up considerable space, and also produced a most injurious burr, which fixing itself readily and firmly to the wool of the sheep, and to cattle, horses, &c., was carried through the country in every possible direction. The weed, was brought from the neighbouring colonies of Victoria and New South Wales, not by winds or by birds, but from the peculiar structure of the weed, which adhered to the wool of the sheep, and was thus carried about wherever the sheep travelled. This could be proved by the fact of its existence being most prominent at places where sheep from the adjoining colonies had camped. Mr. Morris had traced this plant from the Victoria border to the North-West Bend of the Murray. It was also seen in large quantities between Smithfield and Kapunda, where in some places, the road sides were lined with it, and in many of the ploughed paddocks along the route it grew most luxuriantly. Most probably it was more noticeable between the last-mentioned places, from the fact that sheep ready for the market were frequently camped in that vicinity. Mr. Morris went on further to state that the burr had proved such a nuisance in Victoria, that a Select Committee, recently appointed by the House of Assembly there, had recommended the immediate expenditure of £55,000 for its extermination. That fact plainly showed with what hostility the Victorian Government regarded the burr and Scotch thistle. The plant not only did not afford nutriment to sheep, but on the other hand, whilst uselessly occupying a large area of land, rendered the market of one of the staple articles of produce very low in price. It appeared that upon those runs where the burr could not be kept under control, the wool had deteriorated about 3d. per pound in value—(hear, hear)—in consequence of the difficulty experienced by the manufacturer in extricating the burr from the fleece. Mr. Morris also referred to its ravages upon the Lachlan and Murrumbidgee, at which places it proved so troublesome that some runs cost hundreds annually to keep it under, and in some instances the country had to be altogether abandoned in consequence of the burr having taken universal possession. The letter of Mr. Morris was one of the grounds for introducing the Bill, but only one ground. Another reason was the injury inflicted upon agriculturists, and upon those who were opening up and cultivating fresh land. Farmers, if the evil was allowed to exist, would be unable to allow a few sheep to run on their land, because of the burr they would bring with them; so that it could be plainly seen that not only was the pastoral interest in jeopardy, but also the agricultural interest. (Hear, hear.) The extirpation of this vegetable pest might appear an individual object, but any man possessed of common sense could at once see it was for the benefit of all classes of the community, and consequently it was a very important duty for the State to take in hand. No person could allow the burr to grow on his land without injuring his neighbour, and the injured party had no means of redress. Great difficulties were attached to its extermination in Victoria, and therefore the people of this colony might expect to have to exercise a little energy and expense in checking the evil whilst in a manageable state, and in exterminating it as soon as possible. The Thistle Act of 1851 did not contain proper provisions with respect to the waste lands of the Crown, which he was sorry to say were in most instances the nursery-bed of such noxious plants, and it had been discovered that, notwithstanding whatever stringent efforts private individuals took, the Government lands perpetuated, the evil. He did not know in what view the Hon. the Chief Secretary regarded the matter, more particularly with reference to the expense the country might be put to in remedying the evil, and compelling the owners of private property to get quit of the evil. In some respects the Bill was modelled after the Thistle Act of 1851, which it repealed. It extended the notice to remove and destroy such plants from 7 days to 14 days, which he thought was not too much, especially when they came to consider that many persons might have many acres of land covered with such plants, and which perhaps they might not be able to clear in a short space of time. Whilst travelling by rail to the Port, he had formerly seen in the vicinity of Alberton a privileged piece of land covered with thistles—(laughter)—and no one seemed to know to whom the said land belonged. Under the old Act the Government had power to remove the evil, and in the event of the expenses incurred in so doing not being paid, to sell the land to cover such expenses; but in the Act now introduced, that clause was omitted, and it was provided instead to impose a fine not exceeding £10. The Bill also provided that if the plants were not destroyed within 14 days after notice power should be granted to Magistrates to suspend any conviction upon being satisfied that the person receiving such notice was using reasonable exertions to destroy such plants. The 3rd clause of the Act provided that where no occupier of land could be ascertained, notice might be given in the Government Gazette, and after such notice not being acknowledged power was granted to charge the owner of such land for the eradication of plants, together with costs. As an instance he might mention that acting under the old Act the District Councils of Tungkillo and Mount Barker removed some Scotch thistles from off portions of his land, charging him with the expenses of so doing, which he not only cheerfully paid but acknowledged the services rendered with thanks. (Laughter.) From personal observations he could state that the Scotch thistle could be destroyed at certain periods of the year by cutting the roots and thus destroying its further growth; but with regard to the Bathurst burr, of which he had no practical knowledge, it was a very formidable opponent and required speedy extermination. It had been stated in one of the daily papers that that plant was growing in the vicinity of the reservoir, but he believed that to be a mistake; that plant was what might be called a species of Centaurea, and although not so dangerous and destructive in some respects as the burr, it eat up the grass wherever it made its appearance, whilst nothing would eat it. (Laughter). It contained no pricks, and did not adhere to the wool of the sheep; goats were the only animals who appeared to be particularly fond of it; but as hon. members were not, he presumed, particularly fond of goats, he would say no more on that subject. (Laughter.) He did not think there was any Bathurst burr in the vicinity of Adelaide, nevertheless it might come sooner or later. If the Victorian Government passed a sum of £55,000 for the extermination of such plants, it was some argument why they should take immediate action to effect the same object (hear, hear)—and as an instance of the good results emanating from immediate legislation, he might refer to the Scab Act, passed 10 years ago. (Hear, hear.) That was an excellent Act, and it was carried out successfully in every point of view, by excellent officers. (Hear, hear.) What was the result of that Act? Why, on reference to the report of the Chief Inspector of Sheep, it would be seen that at the present time there were not more than 2,000 diseased sheep in the whole of South Australia. (Hear, hear.) He would not further refer to the two Bills, but acknowledge the difficulties he labored under with respect to the botanical nomenclature of the several species of destructive plants—(laughter)—in existence, and designated by the botanical names of "Carduus Marianus," "Carduus Benedictus," " Cnicus Lanceolatus," and "Xanthium Spinosum." No doubt this learned nomenclature tended to the discomfiture of the public who did not understand such extremely difficult words. (Laughter.) What he wished was that plants said to be destructive should be described to the public in phraseology sufficiently clear as not to be misunderstood. (Hear, hear,) With these remarks he would move the second reading of the Bill.

The Hon. J. M. SOLOMON seconded.

The Hon. J. H. BARROW said that no two opinions could exist as to the necessity of every effort being made to put a stop to the encroachment of these noxious and destructive plants; but he did not feel disposed, because thistles were nuisances, to impose impossibilities upon farmers and landholders, or to ruin them by heavy penalties because they could not perform impossibilities. (Hear, hear.) The hon. mover clearly did not know himself what were the noxious weeds designated by the fearfully hard Latin names enumerated at the close of the Bill, and he (Mr. Barrow) believed that much more information would be necessary before the general public would clearly understand what were the various descriptions of "noxious weeds" they were called upon to destroy. (Hear, hear.) He had, himself, spoken to several farmers upon the subject, who, whilst acknowledging the benefits that would be derived from such a measure, expressed their incapability to distinguish the description and names of those vegetable pests alluded to in the Bill as Carduus Marianus, Carduus Benedictus, Cnicus Lauceolatus, Xanthium Spinosum, &c. He could not vote for the Bill until more information was before them ; for, whilst he should willingly assist to pass a measure that would have the effect of destroying noxious weeds, he would not be a party to ruining landholders by entailing upon them impossibilities, he would rather wish that the question was referred to a Select Committee—(hear, hear) —for consideration; at the same time he would not like to see a Blue Book containing 500 pages brought up as the result of their labours. He thought, however, they might obtain the opinions of persons acquainted with the Bathurst Burr as to what it was and how it might be best exterminated. The next thing would be to consider the extent of its existence on the waste lands of the Crown—(hear, hear)—and what means should be adopted in order to exterminate it from such Crown lands. The 7th clause, indeed, provided that "Plants growing upon waste lands of the Grown may be eradicated by the Surveyor-General, or expenses of eradication be repaid by the Governor," but what he complained of was, that the Government were not compelled to pay the expenses of its eradication, whilst private persons were compelled. Private persons "shall" eradicate it, but the Government "may" do so. (Mr. Davenport—"No—shall.") Well, it was "may" in the marginal note; but he saw it was "shall" in the clause. (Hear.) But what was the difference if there was no penalty to give effect to the "shall?" There was no penalty upon the Surveyor-General, (Hear.) Certainly it was provided that the Surveyor-General, with the assent of the Governor, should employ the necessary labour to destroy such plants on Crown lands; and that if he did not do so private parties might. (Laughter.) And it was then further provided that it shall be lawful—(hear, hear)—for the Governor, by warrant under his hand, to direct the Treasurer to pay the expenses so incurred. But suppose persons all over the colony were engaged in destroying such plants, and accounts for £10,000 or £20,000 for so doing were sent in, would the government be compelled to pay? What he protested against was that the Surveyor-General was not treated in the same manner as private individuals in the matter. He looked upon the Bill as one-sided, as a private party who might have 80 acres of land surrounded by hundreds of square miles of land belonging to the Crown, would be compelled to clear his land at a great cost, whilst the miles of land around him, the property of the Crown, were overrun with the same weed. (Hear, hear.) The Bill was also very arbitrary and inquisitorial. The 6th clause provided that "any person" authorized by any Justice of the Peace could, without notice, enter upon any lands, whether enclosed or not, for the purpose of ascertaining if any such plants were growing thereupon, and that no person should be deemed a trespasser, or be liable for any damage occasioned—(hear, hear) -unless the same was done wilfully and without necessity. Now, what would the Hon. Mr. Davenport say if he saw half a dozen men in his garden walking about amongst his choice apples and oranges? He could imagine the hon. gentleman demanding of his visitors what they were doing there? to which the reply of course would be—"We came to look for Bathurst burrs" (Laughter.) Instead of looking for Bathurst burrs they might, however, be looking for the hon. member's apples and oranges—(loud laughter)—and unless the hon. member could prove that those men came there with such intention, and that the damage they inflicted was wilfully done, he would have no remedy against them. Again, persons could enter upon private land without notice thereof to the owner. But he would again protest against punishing people for not doing what they could not understand and they were bound, in the first place, to give a popular description of the various noxious weeds against which they were legislating. It was perfectly useless to in- form agriculturists that they must not allow any Carduus Marianus, Carduus Benedictus, Cnicus Lanceolatus, or Xanthium Spinosum to grow on their lands. (Laughter.) There were two methods of metaphysics—the one which made hard things easy, and the other which made easy things hard, and he (Mr. Barrow) must say that the Iramers of this Bill appear to have preferred the latter. (Laughter.) He objected decidedly to an interpretation clause which explained to the people in Latin what certain English words meant; they could not interpret English by means of Latin, so as to make the subject familiar to the unlearned. He must oppose the Bill because it cast impossibilities on the public, and because it would be useless to expect people to understand its provisions as it now stood. In short it was a one-sided and oppressive measure. He did not see why it should not be referred to a Select Committee; the time lost in so doing would be comparatively not worth speaking of, whilst they could obtain the opinions of competent persons as to the practicability of extirpating these weeds, not only on private property, but also on Crown lands. He must oppose the Bill in its present form, but would be happy to support it being referred for consideration to a Select Committee (Hear, hear.)

The Hon. C. DAVIES quite agreed with the hon. gentleman who had just sat down. He did not object to the principle of the Bill, but to the oppressive and arbitrary character of its provisions, and he must remark that the Bill altogether had been loosely and carelessly drawn up. It was arbitrary, because any stranger could go upon private property under the pretence of looking for and exterminating a certain plant, whilst at the same time the real object of such privileged intruder might be quite different—(hear, hear) -and he could escape punishment unless it could be proved that he was trespassing with a felonious intention, which under the circumstances would be a very difficult task. If such a clause was passed there should be some limitation as to the hours that enclosed property might be inspected. (Hear.) He considered the public would experience considerable difficulty in distinguishing one of the interdicted plants from another. He would like to hear the opinions of large farmers on the subject. The cost in carrying out the requirements of the Act would fall very severe on some persons—for instance, the South Australian Company—it might cost them thousands annually to remove the evil, and to do so in a limited space of time might be impossible. Mr. Neales had informed him that it had cost him £30 to remove Scotch thistles, &c., from off two sections of land, and that gentleman had said in a jocular manner—and he sometimes believed jokes—(laughter)—that he offered the fee simple of a block of land to a District Council if they would pay all taxes and remove all liabilities out of his hands in respect to it. (Laughter.) Thus, in some instances it would cost more to remove the evil than the land was worth, and whilst a private person was compelled to keep his land clear, the Government could do so at their option. Again, small properties would be put to infinitely more expense. The Hon. Mr. Davenport, in alluding to Mr. Morris's letter, said that that gentleman had referred to the late existence of the Bathurst burr on the banks of the Murray ; but upwards of two years ago a settler at Mount Remarkable brought seeds of a plant from that neighbourhood, and on sowing them it brought forth the notorious Bathurst burr. (Laughter.) His reason for stating that the Bill had been put loosely together was, that the words "all other noxious weeds" include so numerous a variety of plants that one did not know what course to pursue in order to ascertain what was a noxious weed within the meaning of the Act. The hon. gentleman here referred to the existence of a species or Centaurea at Beaumont, which although it was not exactly a thistle, was still more destructive. The second clause of the Bill provided, that unless the owners or occupiers of land removed plants commonly known as the Scotch thistle, variegated thistle, or Bathurst burr, within 14 days after receiving notice so to do, they shall be liable to a penalty not exceeding £10. Now, he would ask were 14 days sufficient for such a purpose? Supposing the owner of a certain piece of land in the North, lived at Mount Gambier, and received notice to clear his land at the North, and was fined for not doing So within the 14 days prescribed, would that be justice? (No.) A month at the very least ought to be granted for the purpose. As to the 6th clause, granting persons authority to enter upon lands in search of plants, he thought that before they were authorized the lands should be first inspected by the parties giving permission to enter upon them. He hoped the Bill would be withdrawn and a fresh one written. With respect to clause 7, he quite agreed with the opinions expressed by the Hon. Mr. Barrow, that the public was not guaranteed any safeguard as against the Government, whilst the Government made everything compulsory upon private holders. He had read the last line in the 3rd clause 20 times, and he could not make out what it meant. With respect to the granting of District Councils and Corporations authority to clear land, he considered that if such power were granted, those Councils and Corporations, if desirable to increase their funds, might issue frivolous notices. (Hear, hear.) He quite agreed with the principle of the Bill, but if passed as now printed it would work in a most oppressive manner on the community. He saw great force in the Hon. Mr. Barrow's suggestions for referring the Bill to a Select Committee. He would like to know what amount of money the House of Assembly would vote in aid of carrying out and enforcing the provisions of the Bill—(hear, hear) —as he thought they would have to pay dear for their whistle.

The Hon. the CHIEF SECRETARY would vote for the second reading of the Bill, but doubted whether it would in all respects remedy the evil complained of, and carry out the wishes of its introducers ; yet he would lend his assistance towards the passing of a measure, the object of which was to check the growth of the Bathurst burr, or any other noxious plants. The measure required some amendment. The notice to owners or occupiers of lands, for instance, was very indefinite. It would be useless to serve a notice upon a person to remove the plants, unless the precise locality was pointed out. A person possessed of a large number of acres of land situated in different parts of the colony, if served with such notice, might expend days in looking for the plants in question, and if he did not remove them in 14 days after such notice, he would be held liable to a fine of not less than £10. With regard to the compelling of owners of land to remove the nuisance complained of, he thought that in some respects would be a great difficulty, as in some instances owners of some pieces of land resided in England, and cautiously avoided to acknowledge the ownership, in order to escape the rates and other liabilities they were subjected to. Thus the owners of such land would escape all penalties, whilst those adjoining them would suffer for their negligence, and be subjected to a constant source of annoyance and expense, in order to comply with the provisions of the Bill. Under the old Act the District Councils had the privilege of fixing a notice in some conspicuous place, adjoining property affected with noxious weeds, &c., in order to ascertain to whom it belonged; and if they did not discover the owner, they were granted permission to remove the evil, and sell the land to defray the expenses, but the present Bill contained no such provision, and he considered it was very necessary it should do so. Supposing any member of the Council had land adjoining that of an absentee, what use would it be to attempt to remove obnoxious weeds from his property, if it was fed yearly from that belonging to the absentee? He was of opinion that the Bill should authorize the selling of such land to defray the expenses incurred in clearing it. He saw great force in the remarks made by the Hon, Mr. Barrow, with respect to the 7th clause, which he (the Chief Secretary) thought dealt too leniently with the waste lands of the Crown. He certainly did not think if £20,000, or it might be £55,000, were expended by private parties in clearing Government land, that the Treasurer would hold himself bound to repay. It would greatly depend upon the state of the exchequer. (Laughter.) Nor did he see any utility in the so-called interpretation clause. The Hon. Mr. Davenport had, however, greatly edified them by his botanical researches, and he (the Chief Secretary) hoped that knowledge would be used with beneficial results to the colony. (Hear, hear.) There was in his (the Chief Secretary's) neighbourhood, a fine patch of thistles, and though he would not say that the hon. gentleman had any natural affinity for that herb—(loud laughter)—it might be advantageous to all parties it he would spend a little time on the patch referred to. (Laughter.)

The Hon. J. MORPHETT supported the second reading of the Bill; at the same time he quite agreed with the suggestions of the Hon. Mr. Barrow, to refer the matter for consideration to a Select Committee, so that the objections pointed out could be considered. It was a wise suggestion, and be hoped, if agreed to, the Committee would lose no time in considering the matter, and not allow the session to pass without passing the Bill, (hear, hear.) The success which had attended the working of the Scab Act, showed how much could be done by timely and combined effort, and he had no doubt a workable measure might be framed.

The Hon. J. M. SOLOMON, as the seconder of the motion for the second reading of the Bill, would still support it; at the same time he was in favour of its being referred for consideration to a Select Committee, in order to obtain full information on the subject. He was aware of the evils that resulted from such destructive plants as the Bathurst burr and Scotch thistle, and hoped that in passing the Bill every effort would be used to exterminate those plants without being too severe on persons whose land might be infested with them. He agreed that private individuals should be protected against the evils resulting from the vicinity of their properties to the waste lands of the Crown. He would support the consideration of the Bill being referred to a Select Committee.

The Hon. W. SCOTT felt the importance of the Bill, and hoped means would be taken as soon as possible in order to eradicate the evil in question, which might be removed at a hundredth part of the expense at the present time that it would cost two years hence. He would support a motion referring the Bill to a Select Committee, and hoped the Committee would lose no time in the matter, so that it might be passed during the present session. As to the best means of eradicating the plants in question, he thought the most desirable way would be for the Committee to obtain the evidence of gentlemen acquainted with the subject, and lay before the Mouse the benefit of their knowledge. He would be sorry indeed that the session should pass over without taking some steps in the matter.

The Hon. G. TINLINE had intended to have given a silent vote on the question, and would now only say a very few words. The Hon. Mr. Barrow and the Hon. Mr. Davies had expressed an opinion that if the Bill was passed in its present form it would prove oppressive and abortive, and he quite concurred with their opinions in that respect. The question was no doubt one of great importance, and affected in a great measure various interests of the colony. The time had arrived when the Legislature should grapple with it boldly. He highly approved of the suggestion for referring the Bill for consideration to a Select Committee.

The Hon. S. DAVENPORT would be most happy to support the Hon. Mr. Barrow's suggestion, and the only objection he offered was, that he thought time might be lost in carrying out that suggestion. At the same time he did not think that the Committee would waste much time in considering the matter. It was necessary to remedy the evil speedily, as the weeds were on the increase, and would soon seed. The Chief Secretary had said that the Bill was not so good as the old Act ; but one object of the Bill was to compel the eradication of weeds from the waste lands, a provision which the Act of 1851 did not contain. Objections had been raised to some of the clauses as being framed from the old Act ; this he acknowledged. He quite agreed that land not claimed should be made amendable to the Act. He had worked many hours on unclaimed land, removing Scotch thistles, in order to protect his own property from its ravages. He had spent not less than £20 a year for the last eight years to eradicate such plants as were of a destructive character, and he might add that he had been successful. (Hear, hear.) He would move the second reading of the Bill.

The motion was carried.

The Hon. J. H. BARROW moved-"That the Bill be now referred to a Select Committee, with power to call tor evidence and papers."

The Hon. the CHIEF SECRETARY seconded, expressing a hope that the Committee would obtain the evidence of such gentlemen on the subject as would soon afford some assistance to the Council in carrying out the object in view.

The motion was carried.

The following members were appointed on the Committee : —The Hons, J. H. Barrow, S. Davenport, Dr. Davies, Dr. Everard, and G. F. Angas.

ADJOURNMENT.

On the motion of the Hon, the CHIEF SECRETARY the House adjourned at 10 minutes after 4 till Tuesday next at 2 o'clock.