**WHEAT HARVEST SCHEME (CLAIMS) BILL 1931**

**House of Assembly, 21 July 1931, page 912**

Second reading

**The ATTORNEY-GENERAL (Hon. W. J. Denny—Adelaide)—**I move—

That the Speaker do now leave the Chair, and the House resolve itself into a Committee of the Whole for the purpose of considering the following resolution:—

That it is desirable to introduce a Bill for an Act to limit the liability of the Crown in certain legal proceedings relating to the Wheat Harvest Scheme, 1915 to 1920, and for purposes incidental thereto.

Mr. CAMERON—I want some information as to the most extraordinary course the Government are adopting to limit the liability of the Crown in respect of war-time compulsory pools. This case is still under consideration by the courts, and has been for the best part of a generation. As a consequence of an unpalatable judgment given against the State of South Australia in the Privy Council recently it appears that the Crown is now getting a little dubious—

The Attorney-General—You are a bit previous. We have not introduced the Bill yet. You do not know what is in it.

Mr. CAMERON—It appears that the Crown is making an attempt to limit its liabilities. It is not desirable to introduce a Bill of this nature when the subject is before the courts of South Australia or any other court in the British Empire. The Attorney-General is taking a most unusual course in attempting to limit the liabilities of the Crown which may be incurred as a result of the court’s decision.

Mr. ANTHONEY—It is not the first time a Bill of this nature has been proposed to be introduced. I would like the ruling of the Chairman as to whether it is within the province of the powers of the Attorney-General to do so.

The CHAIRMAN—It is a matter for the House to decide.

Motion carried. Resolution agreed to in Committee and adopted by the House. Bill introduced by the Attorney-General and read a first time.

The ATTORNEY-GENERAL—I move that the Standing Orders be so far suspended as to enable the second reading to be taken forthwith.

Motion put.

The SPEAKER—There being voices opposition to the motion there must be a division.

The bells were rung.

Later,

The SPEAKER—I appoint the Attorney-General teller for the Ayes and the honourable member for Wooroora, Mr. Cameron, teller for the Noes.

The member for Wooroora did not respond and the Speaker thereupon called on the Hon. G. R. Laffer, who likewise did not come forward.

The SPEAKER—When I put the motion there was a voice raised in opposition. In these circumstances a division must be taken. I do not know which member called "No” and, therefore, I cannot appoint a teller. I declare the motion carried.

Second reading.

The ATTORNEY-GENERAL—I am rather surprised at the warmth displayed by members about a Bill, the provisions of which are unknown to them. We have been engaged a Iong time on financial emergency measures, and I ask members whether this State is in a position to stand a possible loss of £500,000 in respect of an action which may or may not succeed.

Mr. Cameron—You are putting up an act of conditional repudiation.

The ATTORNEY-GENERAL—Nothing of the sort, as I shall explain later.

The Hon. R. L. Butler—-The Attorney- General should not ask us to proceed without a copy of the Bill before us.

The ATTORNEY-GENERAL — There will be no practical difficulty. The honourable member will get a full report of my remarks and have ample time to discuss the measure at great length if he so desires. The object of the Bill is to limit the liability of the Government in the Wheat Scheme litigation concerning the 1916-1917 pool, by which the Crown has been harassed for the past 10 years. It will be remembered that in 1926Parliament passed an Act barring all claims against the Wheat Scheme except those commenced before February 28, 1927. Immediately after this Act was passed actions were commenced against the Government by the holders of scrip representing 10,000,000 bushels of wheat of the 1916-1917 crop for alleged negligence in the handling of the wheat. In 1929, these persons obtained a decision from the Privy Council in a test case to the effect that although they were not the owners of the wheat delivered to the Government, but merely the assignees of the scrip, they had a claim against the Government if they could establish negligence in the handling of the wheat. The Government had reason to believe that the plaintiffs had not at that time, and have not even now any evidence of negligence against the Government, but relied upon being able to compel the Government to produce a number of reports furnished to the Government by inspectors in 1917 on the condition of the wheat stacks. These reports are not themselves evidence, but the Government understand that the plaintiffs propose to call the Government inspectors as witnesses and ask them to use the reports to refresh their memories.

The Hon. G. R. Laffer—The Government do not want them to have access to private documents.

The ATTORNEY-GENERAL—It would be against public policy to allow litigants access to private documents prepared entirely for the benefit of the producers, without regard to speculators who subsequently came in and apparently lost their money. The Privy Council has held that these documents must be produced to a judge for decision whether they are privileged or not. If they are not privileged from production, it is possible that the plaintiffs may with their aid be able to make out a prima facie case of negligence. Although there is a complete answer to this case it may nevertheless be difficult for the Government to rebut it as the events complained of happened 14 years ago and the necessary evidence may not be available. If the plaintiffs succeed the damages for which the Government is liable may run to £500,000— a sum which the Government certainly cannot find.

The Hon. M. McIntosh-—It is for them to prove and therefore they are in a difficult position.

The ATTORNEY-GENERAL—Yet, as the result of the Privy Council’s decision they have the right to peruse our private documents.

Mr. Cameron—They are not your private documents. They belong to the wheat owners.

The ATTORNEY-GENERAL—Certainly not. They are documents of the Crown. The speculators hope to establish their case by putting the inspectors into the box and showing them their reports to refresh their memories. The proposal in the Bill is not directly to bar the litigation, but to limit the amount which can be recovered to a sum representing the balance of the moneys standing to the credit of the wheat scheme.

The Hon. M. McIntosh—That is already theirs by right. That belongs to the share-holders in the pools.

The ATTORNEY-GENERAL—But the judgment clearly shows that the Crown may be liable, as the Crown, for an amount over and above the balance in the pool.

Mr. Lyons-—Would you limit it to the 1916 pool wheat?

The ATTORNEY-GENERAL—There is not much in any pool. If you put a question to me, I could supply you with the exact amount in each pool. The Government want to establish the principle that the liability shall be in respect of the pool and not a liability of the Crown. It was never intended that the Crown should be liable for these debts.

Mr. Cameron—The Crown commandeered the wheat.

The ATTORNEY-GENERAL—Quite likely, and the Crown’s action considerably assisted the farmers. They received infinitely more than if private enterprise had been allowed to carry on.

The Hon. T. Butterfield—Nobody can deny that the Crown’s action was of great assistance to the farmers.

The ATTORNEY-GENERAL—It was. In other words, for the purpose of this litigation the wheat scheme is to be regarded as a separate entity, not backed by the power to make unlimited drafts on general revenue, and responsible for its acts and omissions only up to the amount of any funds standing to its credit. Admittedly the present balance standing to the credit of the pool may be so low as to discourage the litigation. In justification of the Bill I desire first of all to remind members that this litigation is not litigation carried on by farmers in order to obtain a fair return for their 1916-17 wheat. They have already had a good price for the wheat at 6s. a bushel. The litigation is being carried on principally by Melbourne speculators who bought, in most cases, not wheat, but a right to sue the South Australian Government in the hope of personal profit. The merits of the litigation may be gauged from the following report furnished to the Government by Mr. Ligertwood, K.C., who has acted as counsel to the Wheat Scheme:—

1. The wheat scheme was introduced as an emergency war measure to save South Australian farmers from ruin. It effects its purpose. The farmers received about 6s. per bushel for wheat which, if the scheme had not been brought into being, would have been worth only 2s. a bushel.
2. The scheme worked under the greatest difficulties:—(a) It was faced with the heaviest wheat crop on record; (b) There was a tremendous shortage of shipping. During the period complained of in the present case the U-Boat campaign against the British and allied shipping was at its worst. The consequence was that the wheat had to be stored; (c) The scheme employed the best agents possible to handle the wheat on their behalf, namely, John Darling. & Son, Dalgety & Co. Limited, the S.A. Farmers’ Co-operative Union, Louis Dreyfus and Co., and other merchants who had been accustomed to handling the wheat trade in South Australia; (d) The scheme made provision for storage grounds, and the merchants built large stacks of wheat at the various country centres and at the seaboard. The stacks were skilfully built, according to the recognised practice; (e) Owing to the interruption of shipping there was a great shortage of galvanised iron in South Australia. It was, in fact, almost unprocurable. The wheat stacks in many instances could not be roofed; (f) The State then suffered from the worst mouse plague on record. The mice attacked the stacks and caused them to collapse. At no stage was a remedy found to defeat the attacks of the mice; (g) The only apparent solution was to get the wheat to the seaboard. In their efforts to do this the scheme came up against a shortage of trucks. The numbers were limited and the Broken Hill metal trade and the coal industry had the first call on the trucks. The Schemes were allowed only what were left over. The wheat agents accordingly had to do the best they could to maintain the stacks at the country centres against the mice; (h) On top of the shortage of galvanized iron for roofing, and the damage done by the mice, came the wettest winter in the history of South Australia; (i) It is not surprising that the losses in the wheat were considerable. But they could not reasonably be avoided, and were not due to negligence.
3. In these circumstances, I think, and have always thought, that it is just for the Legislature to intervene and relieve the Government from the trouble and inconvenience of fighting claims in which there is no substance. The litigation is bound to be very protracted. It will make a huge block in the work of the Supreme Court. It is doubtful whether one Judge sitting continuously for 12 months will be able to dispose of the case. In the time of the Supreme Court alone the case will represent a heavy tax on the State. As far as the legal costs are concerned, security for costs has been ordered against the plaintiff, but such security, being on a party and party basis, will not be sufficient for the costs which will be necessarily incurred in properly getting up and presenting the case for the Government. For instance the services of Mr. G. G. Nicholls, the former manager of the Scheme, will have to be made available, and only a very small part of his expenses will be recoverable against the plaintiff.
4. Added weight is given to the above reasons by the fact that the litigation is being promoted largely by Victorian speculators who purchased wheat scrip from South Australian farmers, who could not afford to hold it, and at a time when it was known that large losses had occurred. These speculators are thus pursuing the litigation for a profit, which if it enures to anybody, should, in equity, belong to the farmers who grew the wheat.
5. The South Australian Government, without any reward to itself, undertook the marketing of the wheat for the South Australian farmers at a time when no one else could have marketed it. It employed the most skilled persons in South Australia to assist in the work. It encountered difficulties which were without precedent in the history of the wheat trade in South Australia. It overcame them and gave an excellent return to the farmers. It seems unjust that speculators in another State should be allowed, after 14 years, to embarrass the Government by compelling it to engage in protracted litigation to explain losses, which can be seen to be due mainly, if not entirely, to general causes over which the Government had no control.
6. The conduct of the claimants in the litigation has shown that they have had no real desire to bring to trial the real issues involved in the litigation. The legal liability of the Government, if negligence could be proved, was decided by the Privy Council in the year 1924. In the appeal which was then made to the Privy Council, the claimants could also have included the other technical points which have since been decided by the High Court and the Privy Council. They have preferred to take each point separately and to protract the decision of the real points in issue as long as possible, probably in the hope that the evidence in favour of the Government will, in the meantime, have disappeared. Their object appears to have been to raise technical issues in an attempt to wear out the Government and force a settlement. If they had been genuinely anxious to prove their case of negligence the trial could have been held in 1925. It cannot now be held until 1932, at the earliest.
7. It would have been a proper thing to have inserted in the original legislation a clause relieving the Government from all liability in the handling of the wheat. The legislation was introduced hurriedly, and in an emergency, and the necessity for such a clause was, no doubt, overlooked. In my opinion no injustice will be done to anyone by absolving the Government from liability at this stage.

This, I think, is an adequate justification for this Bill. I regret that in another place a short time ago—

The Hon. R. L. Butler-—You were wrong to accept their amendment.

The ATTORNEY-GENERAL—I did not accept it. It may have happened that we got a very polite intimation that if we did not accept their amendment, we would get nothing. I have no doubt that the House will be very glad to accept this measure.

The Hon. R. L. BUTLER secured the adjournment of the debate until July *22.*