BUSH FIRES BILL 1885

**House of Assembly, 26 November 1885, page 1672**

Second reading

**The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe)** in moving the second reading said the Bill was rendered necessary by a recent decision in the Local Court of Adelaide. A case was tried at Crystal Brook and came up on appeal to the Adelaide Local Court. He referred to the case of Nicholls v. Daer. The court at Crystal Brook convicted the appellant of having lighted a fire within prohibited hours, but the superior court held on appeal that the conviction must be quashed on the ground that no penalty was provided by the Act for the offence charged. In consequence of that decision, and of a suggestion made by Mr. Duncan, and in view generally of the importance of the subject, the present consolidating measure was brought in. It repealed Act No. 18 of 1864, No. 15 of 1874, and 264 of 1882. It prohibited the lighting of fires for burning stubble, hay, grass, and herbage except between certain hours from November to April. By another provision it was made a felony maliciously to place matches or other combustible things in such a place or position as to cause a fire to break out. This had frequently been done in the past by malicious or spiteful people who wanted to do an enemy a mischief. In view of the great danger to crops by scrub fires it prohibited the burning of the scrub during the months of November, December, and January. Notice must be given to neighbours of intention to light any fire, whether stubble or scrub, and fires must not be lighted on Sundays. Among other provisions it was stipulated that ignitable wadding might not be used, and travellers must clear a space round their fires and extinguish the fires carefully on leaving. (Hear, hear.) The Bill would not affect other remedies for injuries done. He would not detain the House further, as the Bill was of a very simple character, and would content himself with moving the second reading.

Mr. CATT could congratulate the country upon the measure, which he thought would prove of great value. He would, however, point out that the Act of 1882 provided that outside the limits of district councils’ farmers might burn stubble and scrub between sunrise and sunset. That was passed to meet the case of farmers on the Peninsula, and at Baroota and Telowie, where the moisture of the herbage prevent the free ignition of stubble, &c. The Bill before the House had adopted the provision as to scrub but omitted the provision as to stubble. He would ask the Commissioner to revert in that respect to the provisions of the Act of 1832. Clause 15 provided for the hearing of appeals from a special magistrate before the Local Court of Adelaide. Why should they not be heard at the nearest court of full jurisdiction? There was too great a tendency to bring the parties up to Adelaide at great expense and inconvenience to themselves. As to clause 10, dealing with smoking near ricks, &c, he thought the distance of twenty yards was not sufficient. It did not sufficiently eliminate the element of danger. With some slight alterations he cordially approved of the Bill.

Mr. COPLEY also welcomed the Bill. He endorsed the remarks of Mr. Catt about the burning of stubble. It was much safer to burn in the daytime than at night. He would like to see the clause altered so as to permit of burning from sunrise to sunset. As to clause 10 he did not think a greater distance than twenty yards could be fixed unless smoking were prohibited altogether. He should be glad to see the Bill become law.

Mr. BURGOYNE disagreed with Mr. Catt as to clause 10. That clause might prevent a man smoking for a whole day’s journey. (Mr. Catt — “A good job too.”) If the man kept in the middle of the road, he could not get twenty yards away from a field containing something to which the clause related. This would lead to a continual infraction of the law, and it was unadvisable to pass laws which were not likely to be complied with. He could have understood a proviso to prevent smoking except with a covered pipe, but he thought the distance was already too great instead of being too short.

The Bill was read a second time.

In committee.

Clause 2. No stubble burned during certain months unless between 4 and 10 p.m.

Mr. COPLEY moved to strikeout the words “4 and 10 p.m.,” and insert “12 and 8 p.m.” As a rule stubble did not burn so well in the evening, and it was much safer that it should be burnt in the day time.

Mr. KRICHAUFF thought 8 o’clock was too late to light a fire. He suggested that the hours should be 12 noon and 6 p.m.

Mr. COPLEY agreed to alter his amendment as suggested.

Mr. BURGOYNE thought it would be well after the words, “no fires shall be lighted,” to add “or be continued burning.” (Cries of “No.”)

The Hon. R. D. ROSS said practically a great deal of stubble was burnt about the plains towards the evening, and a fire burnt more freely after sunset than during the day.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said this clause would not interfere with the Adelaide plains.

The amendment was carried, and the clause as amended passed.

Clause 3. Scrub may not be burnt in certain months.

Mr. HANDYSIDE thought “January” should be struck out, as January was the principal month for burning scrub.

Mr. COPLEY said if the month of January were struck out there would be a great risk of standing crops and crops not gathered in catching fire.

Mr. HANDYSIDE said in the parts of the country he referred to there were no crops.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said November, December, and January were the harvesting months, and scrub could be burnt just as well in February.

Mr. DUNCAN said scrub burnt better late in the summer.

The Hon. G. C. HAWKER said the great danger in scrub fires was the bark being carried by the wind for a long distance. In the south-east many years ago he had seen a piece of lighted bark carried 200 or 300 yards.

Mr CATT said he had travelled through the south-east in March, and had seen scrub burning furiously.

Passed.

Clause 4. Scrub may be burnt under certain conditions.

Mr. KINGSTON said the words “sunset and sunrise” occurred, and he thought the hours ought to be specified. (Mr. Catt — “This applies to scrub only.”)

Passed.

Clause 5. Penalty for neglecting precaution.

Mr. COPLEY thought the hours of 12 and 6 would have to be specified here. (The Commissioner of Crown Lands — “This embraces both stubble and scrub.”)

Mr. CATT thought an alteration was required in the clause.

Mr. KINGSTON thought that some qualifying words were needed so that the clause should read as regarded any stubble, hay, grass, or herbage, the hours should be between 12 and 6 p.m., and as regarded scrub between sunrise and sunset.

The Hon. G. C. HAWKER suggested that the word “scrub” in the second line should be struck out, and a proviso respecting scrub inserted. (Mr. Kingston — “No, there will have to be a fresh provision for offences on scrub-burning.”)

The ATTORNEY-GENERAL (Hon. J. W. Downer) would move to strike out the words “before 4 o’clock and after 10 o’clock in the afternoon” with a view of inserting “except during the specified times.”

Mr. HOMBURG said there was a peculiar distinction made in this Bill. A person who held scrub land and wanted to clear it must plough and clear half a chain before he was permitted to burn, but a person holding simply an annual license might enter on Crown lands and burn the scrub so long as he cleared eight feet. Why should the two cases be different? (The Commissioner of Crown Lands — “It is the same as the old Act.”) Yes, and under that the people used to escape.

The Hon. R. D. ROSS said the measure was so severe that it would be a dead letter. It was perfectly impossible for persons to carry out its provisions.

Mr. BEWS said in Wallaroo a man had been heavily fined for infringing the provisions of the Act. That man had been acting in good faith, but had mistaken the reading of the Act.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said in the Act of 1854 the space to be cleared was three feet. This Bill made it eight feet.

Mr. CATT thought the same principle ought to apply in both cases, and suggested that the clause should be postponed, and that it should be redrafted.

Mr. BEWS was quite certain that this half-chain provision was very seldom carried out.

The hour of 6.30 p. m. having arrived the sitting of the House was suspended for an hour.

On resuming, Mr. HANDYSIDE said the provision that 8 feet must be cleared round the field previous to burning would make it prohibitory to the class of lessees who hold large extents of country, because of the expense it would involve.

The amendment to strike out “before 4 o’clock” was carried.

Mr. KINGSTON moved to insert instead “during the prohibited time.”

Carried, and the clause passed as amended.

Clauses 6, 7, 8, and 9 passed.

Clause 10. Smoking in the open air, near stacks, &c.

Mr. BURGOYNE thought the Government might reconsider this clause, which was so unreasonable as to be quite inoperative.

The CHIEF SECRETARY (Hon. J. C. Bray)—It has been the law since 1874.

Mr. BURGOYNE said the fact that it had led to breaches of the law for so long was an additional reason for repealing it.

Mr. KINGSTON said there had never been a conviction under the clause.

The CHIEF SECRETARY (Hon. J. C. Bray) said it was a useful clause, but required some slight amendment.

Mr. KINGSTON said the clause prohibited a man from smoking on a road unless it was forty yards wide. (Laughter.) He could not even smoke on his own property.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said the clause had worked no harm, and had done a great deal of good. (Mr. Copley — “Hear, hear.”) The notices which were annually sent out made people in the country cautious, and this was proved by the fact that he had noticed men smoking in prohibited places who ceased directly any one approached.

The CHIEF SECRETARY (Hon. J. C. Bray) moved to add after “production,” “unless within a town or on any public road.”

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe)—Oh, that won’t do. (Laughter.)

Mr. CATT thought the clause had better be abolished than nullified by the words “on a public road.” These roads lay alongside fields which a spark would ignite. He thought the clause a useful safeguard against the carelessness of smokers.

The Hon. R. D ROSS did not know whether it was a provision of the old Acts, or of district councils, that smokers during certain months must use a cap to their pipes. He thought some such provision might be introduced here. (Mr. Burgoyne — “Hear, hear.”) The danger was in smoking with an open pipe.

Mr. DUNCAN knew there was a general impression in the country that during the summer season men could only use pipes with covers on them. He thought, however, the clause should be rendered applicable to the whole year, as haystacks were just as inflammable in other months as November to April. He asked the Chief Secretary to withdraw his amendment in order to allow him to make this as a prior alteration.

The CHIEF SECRETARY (Hon. J. C. Bray) agreed, and his amendment was withdrawn.

The Hon. R. D. ROSS asked Mr. Duncan not to seek to apply the Bush Fires Act to the whole year, as such a course would really make it lose its effect by becoming troublesome. (Hear, hear.)

Mr. HANDYSIDE thought all that was wanted was a cap on the pipe. (Mr. Bagster — “How about cigars?”) There was no spark in cigars. (Hon. R. D. Ross — “The bulk of the people smoke pipes.”)

Mr. DUNCAN said he recognised the force of the Speaker’s remark.

The Chief Secretary’s amendment was put in the form “unless within a town” and carried.

Mr. DUNCAN thought it would also be well to add “or on a public road,” as otherwise the clause would only be inoperative. If it were understood that a man could not smoke within twenty yards of a stack, but could smoke on a road, people would take care to build their stacks that distance from the road. (The Hon. R. D. Ross — “It applies to hayfields as well.”)

Mr. KINGSTON moved to insert “or on a public road.” He asked the Commissioner of Crown Lands what was the use of stiffening the old clause by adding “or other inflammable production” after “field of corn, straw, or stubble?” As it stood the clause was a laughing-stock.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said if the hon. member had lived in the agricultural districts as long as he had he would feel the importance of the clause. Country people looked on the clause as a great safeguard against rash smoking.

Mr. JOHNSON thought the Chief Secretary should adhere to his proposition. There were a number of closed and partially-closed roads covered with long grass, where smoking with an uncovered pipe was most dangerous. He suggested the addition of the words “except with a pipe properly covered.”

Mr. CASTINE agreed with Mr. Johnson’s remarks.

Mr. FURNER did not know if he was considered any authority on smoking by hon. members — (laughter and hear, hear)—but he must say he did not believe a fire had ever been started by pipe-smoking. (Cries of “Oh.”) Fires were caused by matches carelessly thrown away, and there was no law against that. (The Commissioner of Grown Lands — “If they did not smoke, they would not light matches.”) People might strike them for amusement as they went along. The clause would not apply to cigars and cigarettes. He supported Mr. Kingston’s amendment.

Mr. KRICHAUFF knew that fires frequently occurred through smokers throwing the ends of their cigars away.

Mr. COGLIN hoped the Chief Secretary would not allow this clause to be mutilated by amendments.

Mr. CATT had seen the spark from a smoker’s pipe set the grass alight at his feet. Only lately his silk umbrella was burnt through a similar accident.

Mr. KINGSTON said the clause was good for nothing without the various amendments that had been proposed. Mr. Catt should move to add, “and any umbrella,” as an umbrella would hardly come under the head of a “field of hay. corn, straw, stubble, or other vegetable production.” (Laughter.)

Mr. COPLEY said the clause had done great good in the country, and people felt that they must not smoke under certain conditions unless their pipes were covered.

Mr. MOULE said the clause would be unworkable without Mr. Johnson’s amendment. Men would smoke, and every precaution should be taken so that they could smoke with safety.

Mr. KINGSTON asked whether a man smoking on the top of a coach along the South road would be liable to be fined under the section. (The Commissioner of Crown Lands — “Certainly he would be.”)

Mr. DUNCAN thought it would be well that the Chief Secretary’s amendment should be qualified by the addition of the word “macadamised.” The country roads were in some cases almost completely covered with grass.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) hoped this suggestion would not be carried out, because macadamised roads in the country were very narrow, and the grass grew on each side of them. The clause had done no harm, but a great deal of good.

Mr. FURNER said that under the clause the Commissioner of Crown Lands himself could not smoke on an East Adelaide tramcar without being liable to a fine. The clause could not be other than inoperative.

Mr. BURGOYNE hoped the amendments would be carried. If the clause remained as it was, it would cause more fires than would be caused by smoking, for a man about to light his pipe would strike a match, remember the law, and throw the match away with maledictions on those who made the laws.

Mr. KINGSTON’S amendment was declared negatived.

Mr. FURNER called for a division, which resulted as follows:—

Ayes, 4—Messrs. Basedow, Burgoyne, Furner, and Kingston (teller).

Noes,16—The Chief Secretary, Treasurer, Minister of Education, Messrs. Bagster, Bower, Castine, Catt, Coglin, Copley, Darling, Duncan, Handyside, Johnson, Krichauff, Moule, and the Commissioner of Crown Lands (teller).

Majority of 12 for the Noes.

Mr. JOHNSON to insert “or except with a pipe properly covered” after “down” in the Chief Secretary’s amendment.

Mr. KINGSTON said the clause was ridiculous throughout. He would vote for the amendment, which had some redeeming features in it.

Mr. FURNER would also support the amendment. It was absurd to have a clause in the Bill which hon. members knew would not be enforced.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said that if a man could smoke with his pipe properly covered, and a fire was caused owing to the cover being lost, it would be difficult to prove that he had not had the pipe properly covered. He would swear that it was covered, and would have the support of the storekeeper who sold it to him.

Mr. MOULE pointed out that the covers were used with a chain and a ring attached, and it was impossible to lose them.

Mr. CASTINE thought the amendment could not do any harm. Personally, he would fine any man who was brought before him for lighting his pipe on the high road, because clause 9 prohibited the lighting of a fire for any purpose.

Mr. BAGSTER said it would be a good thing if smoking could be prohibited in the open air during a certain time of the year. He would point out, however, that the amendment was not sufficient, because cigars were used considerably and caused more danger than pipes, owing to the stumps being thrown on to the ground.

Mr. JOHNSON said the Commissioner of Crown Lands said that the clause had been inoperative, and yet when he tried to improve it, he would not agree to the amendment.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said that if the amendment were carried there was nothing to prevent a man resting by the roadside and lighting his pipe beside a field of wheat, and saying when the wheat was burnt that it was simply an accident. (Mr. Johnson — “Clause 9 will cover that.”)

Mr. KINGSTON said clause 9 met the case by preventing the lighting of a fire in the open air for cooking, bivouacing, or for any other purpose. (The Commissioner of Crown Lands — “It does not apply to smoking.” Laughter.) Clauses 9 and 10 imposed restrictions on smokers that were most absurd. They interfered with the liberty of the subject on his premises and elsewhere; and if the amendment were not carried the best plan would be to negative the clause altogether. Mr. Bagster would see that Mr. Johnson’s amendment did not affect the question of cigars and cigarettes.

Mr. FURNER said he had seen the Commissioner of Crown Lands sitting on the roadside in the neighbourhood of Woodside enjoying his cigar. Under this clause he would have rendered himself liable to a fine of 10s. or £2. (Laughter.)

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe) said he certainly had enjoyed his cigar, but he was surrounded by a beautiful green sward and there was no danger. He did not smoke on his farm during the summer months.

Mr. DUNCAN would ask whether the effect of the clause would not be to prohibit smoking in railway carriages.

The COMMISSIONER of CROWN LANDS (Hon. J. H. Howe)—It applies to the open air.

Mr. DUNCAN said that if they were careful not to go too far the measure could be made a very useful one, but it would be useless to attempt to prevent smoking in the country altogether.

Mr. KINGSTON had been grieved to hear of the recent illegal conduct of the Commissioner. (Laughter). Would not the Chief Secretary take steps in the matter?

The amendment proposed by Mr. Johnson was carried, and the clause as amended was passed.

Clause 11. Causing a fire.

The CHIEF SECRETARY (Hon. J. C. Bray), acting on a suggestion made by Mr. Ross, moved to strike out the words “and may be whipped.” (Hear, hear.)

Carried, and the clause passed as amended.

Clause 12. Blasting of trees.

Mr. FURNER thought the use of blasting for removal of trees need not be restricted in the way provided by the clause.

Mr. JOHNSON said that it was the scattering of the fuse that was the element of danger in the case of lithofracteur, &c. (Hear, hear.)

Passed.

Clauses 13 and 14. Passed.

Clause 15. Appeal to Adelaide.

Mr. CATT moved to insert the words or to the nearest Local Court” after “Adelaide,” and at the suggestion of Mr. Kingston would add the words “or at the option of the appellant.”

Carried, and the clause was amended accordingly.

The remaining clauses and the schedule being passed without amendment, the Bill was reported, and the consideration of the report made an order of the day for Tuesday next.