DRIED FRUITS ACT AMENDMENT BILL 1927

**Legislative Council, 6 December 1927, page 2056**

Second reading

**The MINISTER of AGRICULTURE (Hon. J. Cowan)—**The main purpose of this Bill is to make those amendments to the Dried Fruit Acts which have been rendered necessary by a recant decision of the High Court. Honorable members are doubtless aware that under the Dried Fruits Act, 1924, the Dried Fruits Board was employed to determine where and in what quantities the output of dried fruits produced in any particular year should be marketed. The section of the Act which conferred this power has been held by the High Court to be beyond the competence of the State Parliament on the ground that it impairs the freedom of trade commerce and intercourse between the States. It is, therefore, necessary to alter this invalid section, and other provisions relating to the same subject, and at the same time the Dried Fruits Board asks that a number of other amendments necessary for making the Act more effective should be enacted. I Will deal with the clauses of the Bill in order. Clause 3 alters the definition of *“*dealer” and “packing shed’’. At present the term “dealer” is so defined that any person who is a grower cannot be a dealer within the meaning of the Act, although he may buy or sell a great quantity of fruit annually. The Dried Fruits Board cannot properly control the marketing of fruit unless it has some means of checking the sales by growers. It asks, therefore, that any person who buys or sells fruit whether he be a grower or not shall be treated as a dealer and thus be required to register with the board and furnish the prescribed returns. A further amendment is made so that a person shall be a dealer if he buys or sells more than one ton of fruit per annum. As the law stands at present, the amount is five tons. Clause 3 also proposes an alteration in the definition of “packing shed.” At present a place is only a packing shed if fruit is treated or packed in it for the purposes of sale. There are, however, a number of packing sheds in which fruit is processed or packed on behalf of the owners by persons who were not the owners, and the board, is advised that the proprietors of such packing sheds cannot be said to be treating or processing fruit for sale. None the less it is important that such packing sheds should be known to the board, so that the board can ascertain the whereabouts of all the fruit in the State. The amendment proposed therefore is that any building or place in which fruit is stemmed, processed, &c., for the purposes of sale or trade or otherwise, shall be a packing shed within the meaning of the Act. Clause 4 of the Bill empowers the board to regulate by any such means as are prescribed the removal of dried fruit from packing sheds. The object of this power is to enable the board to prevent dried fruits from being marketed without its knowledge and prevent the market from being flooded. Clause 5 alters section 20 of the principal Act. This section, which enabled the board to determine where and in what quantities dried fruit should be marketed, has been held by the High Court to be invalid, because it impairs the freedom of interstate trade. The alteration proposed in the: Bill is to limit the operation of the section definitely to trade within the State. That is to say, in future no determination made by the board will affect interstate contracts. The amendment also provides that if in the future it becomes possible by Federal law for the State Parliament to authorise the board to make determinations which can affect interstate trade, then section 20 shall be deemed to authorise the board to make such determinations. Clause 6 provides that growers of dried fruits are to furnish to the board such particulars as to the dried fruits produced by them as the board requires. This provision is necessary to enable the board to collect the levy provided for in section 18 of the principal Act. Clause 7 makes amendments to the principal Act so as to enable the board to carry out its policy as to the marketing of fruit. Its power to make determinations being limited by the Bill it is necessary that the board should be able to give directions to ensure that its policy will be carried out. Clause 8 re-enacts section 24 of the principal Act in such a way as to make three alterations in the law. Firstly, it enables the board to refuse an application for registration as a dealer; and secondly, it empowers the board to cancel the registration of a dealer if he is acting in such a manner as to defeat or delay or embarrass the board in carrying out any policy of the board, or if he has refused or neglected to carry out any direction of the board. Thirdly, the clause requires a dealer to register within two weeks from the time when he commences business as a dealer. Under the present law this period is fixed at four weeks. Clause 9 enables the board to refuse to register any packing-shed. Under existing law, it appears that the board must register any packing-shed, upon application duly made. The board desires power to refuse registration in cases where the applicant is known to be un­willing to co-operate with the board in carrying out the Act. Clauses 10 to 12 make formal and consequential amendments only. Clause 13 gives the Governor power to make additional regulations for the purpose of carrying the Act into effect, while clause 14 enables proceedings for an offence against the principal Act to be commenced at any time within twelve months after it has been committed. At present the law requires such proceedings to be instituted within six months, but cases have occurred where dealers or growers have furnished untrue returns and the fact has not been discovered until after the expiration of six months. A difficulty has been experienced in administering the Act owing to a High Court decision; and this Bill is necessary to overcome the difficulty. The Development and Migration Commission has been making full investigation into the dried fruit industry, and has come to certain decisions which will be helpful. It is of opinion that there are too many packing-sheds, and as a result there is an economic waste, overhead expenses are too great, and proper grading and packing of the standard required for export purposes are prevented. This Bill will help to remove the difficulties. I move the second reading.

The Hon. Sir DAVID GORDON—In view of the fact that we are approaching the end of the session, and that this is a Bill introduced in the Council and has yet to go to the other place, members would consult the wishes of the Chamber if they were prepared to debate this and similar Bills with reasonable dispatch. Although this Bill contains important proposals, no new principle is involved. The principle of control of this trade has been accepted by Parliament on various occasions. An attempt has been made to make a water-tight compartment of the dried fruit industry, and as there has been some leakage this Bill is introduced to prevent it. The dried fruit industry was once one of the most profitable in the State, and, in fact, the Commonwealth. Eighty per cent of the production was consumed in Australia, therefore the growers had the benefit of a protective duty of about. £27 a ton. The time has arrived, however, owing to the actions of Governments, supported by Parliaments, when millions of public money has been expended for the purpose of repatriating returned soldiers and putting them into this industry. So much success has been obtained in that direction by extending areas that today only 20 per cent of the product is consumed in Australia, and 80 per cent, has to be thrown upon the world’s markets. Therefore, however much we may dislike this rigid control and passing Acts to prevent people from doing this, that, and other in respect of trading, we are in a position where we cannot help ourselves. South Australia has spent millions in extending the area in which dried fruits are produced. I have before me a pamphlet setting out the acreage of the various settlements along the Murray. That does not include all areas, because there are non-irrigated places such as Angaston and Clare which are producing dried fruits. The enormous extent of the dried fruit producing area and the amount of public money involved force us to the conclusion that we are in a practically helpless position in regard to objecting to the principle in this Bill. The industry and the men engaged in it, who are deserving of the utmost consideration and encouragement, are in such a precarious position that we cannot possibly refrain from doing anything we can to safeguard their interests, much as we may object to this restrictive legislation. We have accepted this principle before. We have passed legislation, but it left loopholes. The High Court has been able to break it down in regard to interstate trading. The whole purpose of this Bill is to tighten up the law and give this Federally created body increased power so that it can function in the direction Parliament has agreed it should function. I can see no option but to follow the lead of the Minister and give this body all the power it is seeking to save the men and the industry concerned, and to protect the vast sums involved. I support the Bill, and hope it will be as effective as we intended previous legislation of the kind to be. Although we can do nothing to assist the industry in regard to the world’s markets, we can assist in regard to the local market, and we should do it even if in doing so we may interfere with one or two individual traders.

The Hon. J. JELLEY—I agree that there is no new principle involved in this Bill. This is a question of the board having the control we anticipated they would have when we passed previous legislation. The Commonwealth Government have given protection to the dried fruit industry to the extent of 3d. per lb. That protection was granted no doubt to assist all the dried fruit growers in Australia. The only way to make that protection effective is to see that in the export of the 80 per cent of dried fruit not consumed in Australia there is voluntary co-operation. The members of the board are directly connected with the production of dried fruit and it is up to them to evolve ways and means in regard to distribution, so that whether a person gets into the market early or late he shall share proportionately the advantages of the local market, and vice versa, the disadvantages of the oversea market. The great amount of money invested in the industry is another reason why members should give to the board the powers desired. The Government also have a responsibility in this respect because men were placed on areas for fruit culture, the planting in many cases having been done before they took up their blocks. The only clause that might be used detrimentally and perhaps vindictively on occasions is clause 9, which gives the board power to refuse any owner registration of his packing shed. If an owner fails to co-operate with the board in the carrying out of the Act it would be wise for the board not to grant registration of his particular shed. But the clause places great power in the board. There might be just reasons why the owner of a particular shed might fall foul of the board, and they might refuse him registration and thereby do him an injustice. However, we have before in other legislation entrusted boards with very great powers, and I suppose it would be difficult to have the provision amended in any way so as to give redress to the owner of a packing shed who had been refused registration unjustly. It appears to me, however, that the Government might evolve some method whereby an aggrieved party might have the right of appeal.

The Minister of Agriculture—I think a clause to that effect is in the original Act.

The Hon. J. JELLEY—If the right of appeal is contained in the original Act it overcomes my objection. Parliament agreed to the principle on the understanding that the legislation of the past would be effective. That legislation has proved in some respects to be ineffective and it seems to me that Parliament should now do what it sought to do on a previous occasion. I support the second reading.

The Hon. T. PASCOE—Unless all the four interested States are legislating on similar lines, I doubt whether the passing of this Bill will have much effect.

The Minister of Agriculture—They are.

The Hon. T. PASCOE—Then that disposes of that point. In regard to the activities of the board complaints have been made by growers not against having to export the decided portion of their crop, but that they should have a freer hand in regard to the portion sold for home consumption. One grower that I know of applied for permission to sell that portion of his crop at a certain price, but the board considered that the figure offered was not high enough, and withheld their approval for so long that the person who was prepared to buy the fruit in the first place no longer wanted it. The result was that the grower sustained a loss. I should like, therefore, for the Government to see if the growers could not have a freer hand in regard to that portion of their fruit sold in the local market. When the Minister was speaking on clause 9 I thought with Mr. Jelley that it seemed a dangerous provision. We have, however, to consider the whole aspect of the dried fruit business, and remember the information we got years ago when we started on the export campaign to the effect that one of the principal factors in regard to the sale of the fruit abroad was uniform grading. If we want to give the board more power in regard to the uniformity of grading, we must take the risk of any injustice which might be done to one or two growers who may have small sheds. When we remember that the reputation of Australian dried fruits and the prices obtained for it depend on the grading, we must take some risk. I hope this Bill will accomplish all that the Minister expects and that the turning point of this industry may prove not to be far off, and that it may be more prosperous in the future.

The Hon. T. McCALLUM—It is a pity this Bill has been brought down so late, because there is really not time for members to get information from anybody outside. It is a very good thing to talk about principle, but no principle is involved in this measure. There is a want of principle, but once we set out to enact legislation of this kind, we always have to bring various devices to bear in order to prop up what has been done previously. As Sir David Gordon said, we must do it, but we do it with reluctance. When are we going to stop this game of bolstering up things like this— passing laws which we know are only artificial, and are in opposition to principle? However, in view of the High Court decision, if we do not pass this Bill the whole of past results will be fruitless. Some of us have a certain amount of sympathy for the individual who took the law into his own hands. He is an enterprising man, but he should be consoled by the reflection that he ought not to seek to enrich himself or to better his own business at the expense of his fellow fruit growers and sellers, and accordingly he must have the law turned directly against him. To an extent I feel sorry for him, because in trying to benefit himself he has in some way endeavored to advance the industries of the country by growing more and exporting more. It is sad to think that we have to pass legislation to check enterprise but, having started out on the wrong road, I suppose that this Bill will have to be passed.

The MINISTER of AGRICULTURE—I thank members for the expeditious manner in which they have dealt with the Bill. I assure Mr. Pascoe that legislation on the question in each of the four States interested will be uniform. Conferences have been held quite recently, and another will be held on Monday between the four States, who are all acting in unison. Legislation will be effected in each of them this year. I do think that some of the growers or exporters have a reason to complain about the control in regard to export markets. A little more freedom exercised in that regard might be advantageous.

The Hon. T. McCallum—A little more commonsense by the board.

The MINISTER of AGRICULTURE—I mean a little more freedom to exporters in finding markets of their own. I am told that quite profitable markets were available in South Africa, New Zealand, Java, and other countries, but that since the Export Control Board assumed power those markets have to some extent been lost. That may be a reflection on the business capacity of the board. We do not want to lose markets, but to find more. However, the State has no power in regard to the, export trade.

The Hon. J. Jelley—Of course, continuity of supply in Great Britain is a big factor to which the board might give consideration.

The MINISTER of AGRICULTURE—Yes, and continuity of supply might be interfered with if the trade is diverted from one market to another. We must take it for granted that the board is well informed on all such matters, and are doing the best they can for the industry. Quite an impetus has been given to the consumption of dried fruits in the old country through the Migration and Development Commission. Another Board was appointed there which has splendidly advertised our dried fruits, and greatly increased consumption as a result. I look with much optimism to the future of the industry and I know that this legislation will be helpful to the board in its proper administration of the laws. I do not want to take the Bill out of Committee today. There is a Conference of the States interested next Monday and there may be some development necessitating amendments. I want to give members the fullest opportunity of considering the matter.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8—"Re-enactment of principal Act, section 24.”

The Hon. T. McCALLUM—I direct attention to the penalty of £500 provided for in this clause. It is sudden death. I suggest to the Minister that £500 might be the maximum.

Progress reported; Committee to sit again, December 13.