Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
8th August 1861
...
Extracted from the third party account as published in the
Courier 9th August 1861

The SPEAKER took the chair at a quarter past three.

EXPLANATION.

The ATTORNEY-GENERAL wished to make a personal explanation with reference to a speech which he had delivered yesterday. He was at that time under the impression that a certain portion of the evidence taken before the Education Committee had been struck out on the motion of the chairman of that committee whilst he (Mr. Pring) was absent. He was led to make this mistake by the peculiar wording of a portion of the minutes of the proceedings. He found however that he was mistaken, and that that portion of the evidence to which he alluded as having been struck out, had been retained. He begged to express his regret at having said anything which might tend to cast a slur upon the committee in this respect. (Hear, hear.)

ELECTRIC TELEGRAPH.

Mr. LILLEY, pursuant to notice, asked the Colonial Secretary the following questions:—

"1. Whether an offer to lease the electric telegraph line has recently been made by a responsible party, and why the Colonial Secretary refused to entertain such offer? 2. Whether the Colonial Secretary stated to the gentleman offering to tender for the lines that the government had no intention of leasing them, and that he would as soon think of letting the postal department?"

The COLONIAL SECRETARY replied, that he had never received such application from any responsible party, and he could not recall having expressed anything to the effect mentioned by the honorable member.

PETITION OF CHARLES DIFFLO.

Mr. WARRY presented a petition, respectfully worded, from Charles Difflo. He stated that the petitioner had been charged with having stolen a nugget of gold, which he had been unable upon his trial to produce in court. He had, in consequence, been committed for contempt of court, and been in gaol for the last twenty months, and might, in the present state of the law, have to remain there for ever. (The petition was here read by the clerk. It set forth that petitioner was in partnership with certain persons on the diggings; that the partnership was dissolved, and that after the dissolution petitioner found a nugget. That his former partners came upon him for a share of the nugget, and sued him at law. That he had hidden the nugget in the bush. That at the trial he was ordered to produce the nugget. That he went with constables to the place in which he had imagined he had secreted the nugget and that he could not find it. That in consequence of being unable to produce the nugget he was committed for contempt, and had been in gaol for the last twenty months, with no prospect of a release. Petitioner prayed that an act might be passed to enable him to obtain his release.)

Mr. WARRY moved that the petition be received.

Mr. LILLEY opposed the reception of the petition. It was simply a petition from a thief in limbo to be let out. He (Mr. L.) knew the circumstances of the case, as he was professionally

engaged upon it. He was in a position to say that a few days ago parties came to him and offered to give to his clients, the men who were the former partners of this person, one half of the nugget if they could procure the prisoner's release.

Mr. WARRY: The man says he cannot find the nugget, and nothing to the contrary has been proved.

Mr. O'SULLIVAN said it appeared to him that the man had been confined for contempt of court, and had been kept in prison for twenty months. This he conceived to be a sufficiently long term of imprisonment for contempt. Very frivolous actions were often construed into contempt. Would any one stand up and say that for this offence a man should be kept in gaol for the whole course of his life? He thought it would be inhuman not to receive the petition.

Mr. R. CRIBB could not agree with the hon. member for Fortitude Valley that the petition should not be received. Whatever private information that hon. member might have as to the merits of the case could be received, should a subsequent motion be founded on the petition after it had been received.

Dr. CHALLINOR was not in a position to speak upon the merits of the case. He knew, however, that the family of the petitioner were in great distress, as he had had occasion to attend upon them professionally. He should support the motion for the reception of the petition.

Mr. RAFF said that it appeared that this man had been committed by the Judge for refusing to tell where this nugget was hidden. Now, if the man was in a position to make such an offer as that mentioned by the hon. member for Fortitude Valley, he was also in a position to tell the whereabouts of the nugget.

The question was then put, and the motion for the reception of the petition carried on the following division:—

Ayes, 11.		Noes, 8.	
Mr.	Royds	Mr.	Forbes
	Watts		Edmondstone
	Macalister		Lilley
	R. Cribb		Colonial Secretary
	B. Cribb		Colonial Treasurer
	Warry	Mr.	Ferrett
	Fitzsimmons		Blakeney } Tellers.
	Challinor		Raff }
	Coxen		
	O'Sullivan } Tellers.		
	Pring }		

MORETON BAY TRAMWAY COMPANY.

On the motion of Mr. COXEN, the Moreton Bay Tramway Bill was read a third time, passed, and transmitted to the Legislative Council for their concurrence.

BRISBANE BRIDGE BILL.

This measure having been received from the Council with amendments, the house went into committee to consider the said amendments.

The ATTORNEY-GENERAL explained that he had promised the hon. member for Ipswich to introduce an arbitration clause, and the amendments of the Council had reference principally to this arbitration clause, which had been introduced by that body.

The amendments of the Council were then agreed to *in globo* without debate.

The CHAIRMAN having left the chair and reported progress, the house resumed.

COOLIE IMMIGRATION.

Mr. R. CRIBB, pursuant to notice, moved the following resolutions:—

"That, with reference to a despatch from the Secretary of State for the colonies to his Excellency the Governor, dated the 26th day of April last, and also the answer made by the Colonial Secretary to a question by the honorable member for Leichhardt on the 18th ult.: and also to an answer made by the Colonial Secretary to a question by the honorable member for North Brisbane, on the 1st instant, this house is of opinion—1. That no regulations for removing restrictions on the importation of coolie labour, or for giving additional facilities to such importation, or for the protection of such immigrants, should be published until they have been laid upon the table of his house. 2. That any regulations as aforesaid should be approved of by the legislature of this colony previous to their being acted on."

It would be recollected that this was a question which had been much agitated in the colony. A despatch upon this subject had been received from the Secretary of State, together with the regulations in force at Mauritius. These regulations were no doubt very applicable there, but they were not applicable here. Some time back the hon. member for Leichhardt (Mr. Royds) had asked the Colonial Secretary a question with reference to this matter, and the hon. gentleman at the head of the government had stated that the government would be prepared to frame regulations which would be submitted to the Secretary of State, who would no doubt remove the restrictions which at present exist with regard to Coolie immigration, and place this colony in that respect on a par with other British colonies. Soon after this reply had been given, they had been made acquainted with the despatch of the Secretary of State. He saw then that the essence of the despatch was that if parties wished to procure coolies, it would be necessary to get the Indian government to remove certain restrictions which exist there with regard to coolie emigration. The despatch, after referring to the laws and regulations in Mauritius, said to the government, "It will be for you and the local legislature to adapt these to the circumstances of Queensland." Taking this portion of the despatch in connection with the answer given to the question of the hon. member (Mr. Royds), it appeared to him (Mr. Cribb) that the government intended, in the face of the despatch, to frame regulations without submitting them for the sanction of the local legislature. He had, therefore, on the 18th instant, asked the Colonial Secretary a question, and had been informed in reply that the government intended during the recess to frame regulations, as they conceived that they could be justified in doing so by the terms of the Crown Lands Alienation Act, and also by the recommendations of the report of the Immigration Committee of last session. This reply demonstrated that the government did not deem it necessary to submit these regulations to the legislature for their sanction. He had examined the report of the Immigration Committee, and saw nothing to bear out the answer of the Colonial Secretary. The committee recommended merely that no government aid should be given to coolie immigration, but that no obstacles would be thrown in the way of private enterprise. Again, the Crown Lands Act said that it should be lawful for the government, consistently with the provisions of the act, to make regulations, which, however, it also provided should be inserted in the *Government Gazette* and be submitted to parliament within the space of 14 days after being published. Neither in the report of the committee nor in the act had he seen anything to justify the government in the course which they had indicated their intention of pursuing. He had always expressed himself in favour of allowing private parties to import whatever they liked, but he was opposed to the government offering special facilities for establishing a system of Asiatic immigration. He was quite sure that were the government to publish regulations during the recess, these regulations would be looked upon as dangerous by a large proportion of the people of the colony, and would not be received with favour.

Mr. B. CRIBB seconded the motion.

Mr. FITZSIMMONS moved that the resolutions be omitted, with a view of inserting the following:—"That it shall be competent for the government to frame regulations with regard to coolie immigration, provided that they are in accordance with the stipulations of the despatch of the Secretary of State, and also with the report of the immigration commissioners."

Mr. LILLEY wished to know what "restrictions" there were to be removed. The honorable

member (Mr. Cribb) alluded to restrictions, but he (Mr. L.) did not know that any restrictions upon coolie labour existed at present; or indeed upon any other labour, black, white, or yellow.

The COLONIAL SECRETARY believed, with the honorable member for Fortitude Valley, that there were no restrictions at present upon coolie labour, requiring removal. There were, however, certain requirements which the Indian government demanded should be complied with before they could permit the emigration of coolies. The two answers which he had given to questions upon previous occasions were based upon this view of the case. The government here were not entitled to offer opposition to the importation of any kind of labor, if carried on at private expense. If the government of India required certain guarantees to be given for the protection of emigrants, as was the duty of the government here, as a mere matter of routine, to furnish the same. The government were not authorised by the report of the committee to expend public money upon Coolie immigration; but at the same time persons willing to invest their money in this way were to be encouraged; and, as doubt appeared to exist in the minds of some honorable members with regard to the power of the government in the matter, he was glad the hon. member for Port Curtis had brought forward the amendment before the house. He would point out that the details of the regulations were framed in order to meet the requirements of the government of India, not in consequence of any legal restrictions existing here ; as these Coolies he would remind the house, were our fellow subjects, and it was for their protection that the Indian government required regulations to be framed. In remembering that they were our fellow subjects, we should also remember that a great famine had recently visited India, and that thousands of these poor creatures were in the greatest distress, and last extremity of starvation. In the mother country, large sums of money had been raised for their assistance. Another fact of which he wished to inform hon. members was that one ship had already sailed from Sydney to Madras for the purpose of bringing coolies to Queensland. The regulations of Mauritius, it is true, were not quite applicable to this colony, and would have to be remodelled to a certain extent. He did not anticipate, however, that they would be very extensively availed of.

Mr. O'SULLIVAN would vote against the original motion, if the hon. member who made the amendment would withdraw it. He did not like either the amendment or the motion. He had no objection to this immigration, so long as it took place exclusively at the expense of those who required it. The Colonial Secretary had said that none of the public money would be expended in its support, but he would draw the attention of that hon. member to the regulations as existing in the Mauritius, which said that the immigrants on landing were to be kept in the depot for so many days at the expense of the government. (The COLONIAL SECRETARY: That is one of the regulations which will have to be altered.) The amendment, he contended, could be no good, as if the government felt convinced they had power to make regulations, without submitting them to parliament, they could do so without the motion of the hon. member for Port Curtis. There was also a regulation providing that the government should, at the end of a certain number of years, pay the passage of the immigrant back to the country whence he came. In the West Indies the term named was ten years, and in the Mauritius half that time. He concluded the number of years was fixed according to the rate of wages in the colony, and the cost of the passage back from the colony to India. Regulations dealing with these matters, he thought, ought to be submitted to parliament. The terms of the despatch, however, were so imperative that he could not conceive how, in the face of them, the government could frame regulations without submitting them to parliament. The despatch plainly said that any act for the regulation of Coolie immigration must be approved of by parliament and reserved for the royal assent. This was imperative; yet how did these facts agree with the statements just made by the hon. Colonial Secretary?

Mr. HALY could inform the previous speaker that twenty years ago a lot of Coolies were introduced, and no restriction was then placed upon the immigration. It was compulsory upon the employers to send them back to their country at the end of five years if they wished to return to India.

Dr. CHALLINOR regretted that all the gentlemen on the ministerial benches, from the Colonial Secretary downwards, thought it necessary to commence talking amongst themselves in

a very loud tone of voice whenever certain hon. members on the opposite side of the house rose to speak. If the government thought that they possessed the power to frame regulations they ought to take upon themselves the responsibility of exercising that power without asking for a resolution of that house. He had not yet had time to study the despatch, and the accompanying regulations which had been referred to in the course of debate, but he certainly would vote against the amendment, although he should feel justified in supporting the original motion if the amendment were to be withdrawn.

Mr. R. CRIBB briefly replied, and quoted copiously from the despatch of the Duke of Newcastle, dwelling upon the fact that it was expressly stated in the despatch that an act would have to be passed by the local legislature, and reserved for the royal assent, before any system of Coolie immigration could be commenced. If the government intended to press these amendments, he should feel himself justified in counting-out the house.

The COLONIAL SECRETARY stated that no good would be attained by thus delaying the public business. Whether this amendment were carried out or not, the government would feel justified in acting in this matter without the sanction of parliament. He would explain that he understood the effect of the resolution to be of course provisional, upon the Secretary of State approving of the regulations which the government might frame.

The house then divided upon the original motion with the following result—

Ayes, 4.		Noes, 13.	
Mr. O'Sullivan		The Colonial Secretary	
Challinor		The Attorney-General	
B. Cribb	} Tellers.	Mr. Raff	
R. Cribb	}	Fitzsimmons	
		Lilley	
		Haly	
		Royds	
		Ferrett	
		Watts	
		Forbes	
		Coxen	
		Blakeney	} Tellers.
		Col. Treas.	}

The original motion was in consequence lost, and the amendment carried.

RELIGIOUS, EDUCATIONAL, AND CHARITABLE INSTITUTIONS BILL.

On the motion of Mr. FITZSIMMONS, the house went into committee upon this measure.

Mr. LILLEY proposed that clause 1 stand clause one of the bill.

The COLONIAL SECRETARY thought the measure was an exceedingly valuable one. The want of power to enable such institutions to be incorporated, had proved a great inconvenience in the colonies. As the bill was now wanted, however, it might appear that the law of Mortmain had been interfered with. (Mr. Lilley—It is not in force here.) He knew that it was a doubtful question whether such law had force here or not, but he would like, supposing such law were in force, to avoid any infringement of it. He thought some power should be in the crown to enquire into the expenditure of these monies, in order that the abuses which had sprung up on the old country might be prevented. He would therefore propose an amendment, the effect of which would be to prevent any infringement of the law of Mortmain. The hon. member here proposed an amendment in the clause.

Mr. LILLEY pointed out that the best lawyers had agreed that the statute of Mortmain was not in force in these colonies. The state of society which caused this statute to be enacted had

never obtained here. It had been decided by the most competent legal authorities that that law had no existence here. That law had arisen from a state of society in which the feudal law existed, and in times when the subject was required to furnish a certain number of troops for the field. It was enacted to prevent the crown from being defeated of its forfeitures or estuaries. After passing the Real Property Act, which was entirely subversive of these principles regarding the possession of land, which had descended from the feudal times, he thought that the amendment of the Colonial Secretary was quite superfluous, and would only lead to great confusion in the interpretation of the bill.

The COLONIAL SECRETARY must press his amendment. Although the state of society in which Mortmain had arisen had no existence here, there were certain contingencies which had arisen from that state of society which still existed. Testamentary dispositions in favor of ecclesiastical corporations could not be enforced until certain requirements had been fulfilled. The deed had to be drawn up and registered in Chancery for at least twelve months before the death of the testating party. These restrictions were, of course, made to prevent children and relations, under certain circumstances, from being disinherited; and he thought that we ought not to try to entirely do away with these restrictions.

Mr. LILLEY pointed out that, without this act, or without the amendment, all the evils which the law referred to was intended to obviate, existed. At present, any man could pass any amount of property to an ecclesiastical corporation, and the presence of only two witnesses was required. This bill required the presence of three witnesses. There was nothing very new or revolutionary in the act. It enabled property to descend to successive members of a corporation. Property would flow from one bishop to another. He thought that the presence of three witnesses would prove as efficient a protection against the abuses which the amendment was intended to obviate as could be devised.

Dr. CHALLINOR on this occasion agreed with the head of the government. Indeed so firmly was he convinced that some such amendment was necessary, that he had intended to propose the following as an amendment in the 3rd clause:—"That no deed of grant, gift, benefaction, or testamentary disposition shall take effect unless the same shall have been executed not less than twelve months before the decease of the party making it."

The ATTORNEY-GENERAL said that a judicial decision had been given in the matter, and the hon. member for Fortitude Valley was correct in stating that the statute of mortmain was not in force in the colonies. But he thought that some provision should be made to guard against the abuses which the statute of mortmain 9 Geo. 2nd was framed to meet. No doubt some persons *in extremis* might be worked upon to pass away property by testamentary disposition in an unjust manner.

Mr. LILLEY considered that clause 3 requiring the presence of three witnesses would be a sufficient safeguard.

The COLONIAL SECRETARY was willing to withdraw his amendment, and would support that suggested by the hon. member (Dr. Challinor).

Mr. O'SULLIVAN was of opinion that the hon. member for West Moreton, in proposing his amendment, had displayed his petty sectarian prejudices. The statute referred to by the Colonial Secretary had been passed in the old times to suit the prejudices of a number of persons. The trait of those prejudices could be seen in that house. The lawyers well knew that the law in question had been aimed at one particular body of religionists. It was passed at a time when the son could rob the father who had nursed him and brought him up, if he chose only to feign to change his religion. Could the Attorney-General point out any case in which the act had been put in force except against the one religious body. Only 33 years ago an illustrious countryman of his own had had to part with his last shilling to enable him to go and buy a freehold to qualify him to speak in a public assembly, and to disabuse the mind of Englishmen of the notion that the inhabitants of the land from which he came were idolators. Yet although they had been represented as idolators, the other day the Queen's mother had died a Catholic. He considered it

preposterous to attempt to revive this antediluvian piece of legislation. Suppose the government executed a deed of grant in favor of some institution, and that the Governor died 11 months 28 days after it was executed, the deed would be null and void. A similar injustice might also be inflicted in the case of a grant from a private individual. It was most insulting to say that clergymen of the present day attended on sick beds in order to make the dying person will away his property in an unjust manner.

Mr. LILLEY opposed the amendment, and contended that clause 3 in its present shape would provide sufficient restrictions. It was impossible, by any legislation that could be devised, to prevent fools or weak-minded people from making away their property foolishly if they were bent on so doing. The proposed amendment would in many cases be the cause of great injustice. If he wished to give certain property to a church, it was hard that the legislature should step in and say you shall not give the property, or, if you do give it, the gift will be null and void should you happen to die before the expiration of twelve months.

Dr. CHALLINOR rose and said that the amendment proposed by him had no reference to any particular church; in fact, it would as much affect the church he belonged to himself as any other. Its operation also would not be confined to religious bodies, but to other institutions, included in the act, in favor of which similar influence could be used. In fact, a case of this nature was attempted some years ago in connection with the Manchester infirmary. The object of the amendment was merely to prevent property being conveyed to such institutions in the manner it provided against. His willingness to include his own denomination was a proof of the fairness of his intentions.

Mr. LILLEY admitted that the amendment applied not only to the body to which Dr. Challinor belonged, but to all others. The object of the act was, now that state aid to religion was abolished, to enable religious bodies that had been incorporated to hold in perpetuity land granted them as endowments, but if such a proviso were enacted, it would become useless. (Dr. CHALLINOR: “I am willing to make it six months.”) Why make any limit at all? Would six months give greater security than one day ? The only question should be whether the testator had signed the deed in the presence of parties who could guarantee that it was not a fraud. The old statute of mortmain was based upon a bad principle, which the Attorney-General had not attempted to defend ; modern law had said it was bad in principle, and should be swept away. The question to be settled was, would they prevent a man from doing as he thought fit with his property. If he were anxious to give five acres of land to any religious body, what right had any law to prevent him?

Mr. R. CRIBB observed that the object of the amendment was not to make bargains for fools, but to prevent fools making bargains for families. If the law was so bad, why was it not repealed in England? He was sorry such remarks had been introduced, there being nothing sectarian in the bill.

Mr. FITZSIMMONS thought the amendment would destroy the effect of the bill, as it would restrict persons from doing as they liked with their own property. There was no reason why a person in his sound senses should not, in the presence of three witnesses, bequeath his property to whom he liked. He would oppose the bill if the amendment were carried.

Mr. O’SULLIVAN would apologise to Dr. Challinor if he had made any personal attack upon him, as it was not his intention to do so. He was well aware what the statute of mortmain was made for, and how it had been made use of. He did refer to the attacks made on clergymen who attended the deathbeds of people, because no other clergy did so but those of the church he belonged to. (Cries of “yes, yes.”) Well, he hoped they did. As Dr. Challinor was well aware, in no portion of the world was a man so subject to sudden death as in this colony. That being the case, he would ask why any bequest made by him to-day in his sober moments and good health should be frustrated by his being killed suddenly a month hence. He thought that all that was necessary could be insured by making it compulsory that such bequests should be made in good health of body and mind, in the presence of three witnesses.

Dr. CHALLINOR remarked that there was a great difference between bequeathing land to private individuals, and alienating it to corporate bodies who held it in perpetuity; for, in the latter case, the land went on increasing to an extent that it was desirable to encourage. He thought then there should be some medical testimony required that persons when making such bequest were in mind and health.

Mr. LILLEY observed that if Dr. Challinor had had his experience in will cases, he would know that when the relatives of the deceased suspected bequests to have been improperly obtained they always found the means to dispute them. Although he had no objection to the insertion of the words “sound health both of body and mind,” it must be remembered that any bequest by a person of unsound mind was null and void. The object of the act was, in this country were all men were money-grubbers, to encourage private individuals to found schools, colleges, churches, or charitable institutions. The present law was quite sufficient, for if any fraud were committed the Supreme Court would step in and remedy it.

The COLONIAL SECRETARY was willing to admit that the statute of mortmain, but it was also the case that there were not in the colony any corporate bodies. He thought that although twelve months was perhaps too long, some period should be fixed shewing that the donor was not *in extremis* at the time of making the bequest.

Mr. LILLEY thought that a person *in extremis* would be influenced by such solemn feelings of truth, justice, religion, and affection that he would hardly be neglectful of the interests of his family.

Mr. O’SULLIVAN considered it most miserable pettifogging pleading to say that a man could be shut up in a room, and in the presence of three persons be influenced to make a will. That property left to such bodies would go on increasing he thought so much in favour of such institutions, as in the course of time they would become self-supporting, and their expense saved both to the state and private individuals. Another objection was that people on their deathbeds would probably be induced to make large donations; but as the truth must be told there was very little religion in the colony, and that little would be soon lost under the sublime teaching of the national system. He did not however believe that many people would, under such circumstances, give away much to either clergy or laymen.

Dr. CHALLINOR thought that although twelve months might be too much to require, the clause should be so amended as to require proof of the testator being in sound health and having no fear of death before his eyes, and also that he was making the bequest without injuring his family. Beside a certificate of health being required, proof should be given of the consent of the family. It might appear to a person in good health that the idea of a man unwillingly willing away his property on his deathbed would be absurd, but he was certain that many persons in that state could, under the fear of eternity, be easily induced to make away with their property. It was well known that large educational establishments in England had, by the increased value of their property, become so much abused that the intervention of the government was necessary. He was confident that it was not for the public good that such should be the case, and all he required was that a check should be put upon a man bequeathing his property to such institutions to the injury of his family.

Mr. RAFF expressed his opinion that the objects of the amendment could be gained by reducing the time to a month or fourteen days.

The clause was then amended by making it necessary that such wills should be executed and registered at least one month before death.

The remaining clauses were passed without discussion, the bill read a third time, and ordered to be transmitted to the Legislative Council.

CARRIERS’ BILL.

Mr. WATTS, in moving the second reading of this bill, said that its object was to enable persons who lent teams to others for a certain time to recover them without the present expensive

process of law. There were many persons who, after assisting men without means by letting them whole teams, were, at the expiration of the period for which they were let, met by a distinct refusal to return them, and being set at defiance. To provide for such cases, the first clause gave power to two justices to order the re-delivery of such goods according to agreement, and declared disobedience to such orders to be a misdemeanor punishable with six months imprisonment. The second clause gave power to two justices to order the delivery or removal of goods from drays on the carrier's refusing or neglecting to convey them according to agreement, with power to award either party compensation for the loss sustained. The third clause made it compulsory on carriers to obtain a license. He thought the act a very necessary one, and trusted that it would pass without alteration.

After some observations from Mr. O'SULLIVAN against the bill, the ATTORNEY-GENERAL in its favor, and Dr. CHALLINOR against the fees for licenses, the bill was read a second time.

The house then resolved itself into a committee of the whole to consider the clauses.

Clause 1 was amended, on the motion of Mr. FITZSIMMONS, by the addition of the words "according to the terms of such agreement" after the word " thereof" on the tenth line, and, on the motion of Mr. O'SULLIVAN, by the reduction of the punishment from six to three months imprisonment.

Clause 2 was passed, and on the motion of Mr. WATTS, the fee for a license was reduced from £1 to 2s. 6d.

The remaining clauses having been carried, the bill was read a third time, passed, and ordered to be forwarded to the Legislative Council with amendments.

The house adjourned at half-past six till four o'clock this day.