Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

FRIDAY, 5 MAY 1871

LEGISLATIVE ASSEMBLY.

Friday, 5 *May*, 1871.

Cotherstone Run.—District Courts Act.—Diseases in Sheep Act.

COTHERSTONE RUN.

Mr. KING moved—

That a Select Committee be appointed, with power to call for persons and papers, and to sit during any adjournment of this House, for the purpose of inquiring into the claim of Mr. Henry Beit, for a refund of £1,200, more or less, paid by him, under protest, to the Colonial Treasurer, as back rent for surplus country, on Cotherstone Run, Leichhardt District.

That such committee consist of five members, viz. :—Messrs. Ramsay, Moreton, McIlwraith, Stephens, and the Mover.

He said he was not perfectly acquainted with the particulars of this case; but he was able to state, for the information of the House, the way that the claim had arisen. Some years ago—about 1856 or 1857—either Mr. Landsborough or Mr. P. F. MacDonald took up four blocks of country to the north of the Peak Range, which blocks formed the Cotherstone Run. Mr. Henry Beit had become the owner of that country. Since then, on the survey of the country some years afterwards, it was discovered that the estimated area of the four blocks was very much less than the actual area, and, consequently, a demand was made by the Government on the then lessee to pay the back rent on the whole; and the money was paid by Mr. Henry Beit, under protest. The objection made to the payment was, that during some years the run belonged to several lessees, and passed through different hands; but Mr. Henry Beit was called upon, after he came into possession, to pay all the back rent. It appeared to him (Mr. King) that it was a question of law———

The COLONIAL SECRETARY and the SECRETARY FOR PUBLIC LANDS: Hear, hear.

Mr. KING: Whether the Crown, as the landlord, could compel an incoming tenant to pay arrears of rent due by a former tenant, as

Mr. Henry Beit had been compelled to do. He was informed that, if he did not pay the back rent, the run would be forfeited. He paid it under protest. The present motion was made in order that the matter in dispute might be settled amicably.

Mr. DE SATGE remarked that he fancied he knew a little about the matter. Mr. Henry Beit was the mortgagee of the run called Cotherstone, and, a year or two ago, he foreclosed the mortgage. The sum of £1,200, Mr. Beit found himself called upon to pay in order to secure his full claim to the run, and now he came forward asking the Government to refund the money to him. The time of the House was too valuable to be taken up in the consideration of such a question. If Mr. Beit had a legal claim, it could be established in a few interviews with the Colonial Treasurer or the Minister for Lands. He (Mr. De Satgé) knew the case of Mr. C. MacDonald, who had got a refund of £3,000 from the Government. That gentleman was the neighbor of Mr. Beit; and if he obtained justice in that way, the present claim should be taken to the Minister, at his office. It certainly was out of place when brought forward in the House. The name of the person who took up Cotherstone Run was Mr. Carr, in conjunction with Mr. Landsborough. He (Mr. De Satgé) believed Mr. King was speaking of his own knowledge, because he had surveyed the run. The matter was certainly not one to come before the House in any shape.

The SECRETARY FOR PUBLIC LANDS said the Government intended to oppose the motion, on principle. In the first place, the Assembly was not the proper court of appeal in money matters between the Government and the Crown tenants.

Mr. FYFE: Yes, it is.

The SECRETARY FOR PUBLIC LANDS: Nor was it constitutional that any direct prayer for money should come to the House by a select committee. If it were so, they would have all kinds of claims put upon them by private individuals. As a matter of fact, this claim by Mr. Beit arose under the previous Government, and that Government had given it very ample consideration indeed. No sooner was he (the Secretary for Lands) in office, than he got numerous letters on the subject, to which he had to give numerous answers. It appeared to him, that if the House were to allow appeals by individuals from one Government to another, and from them to Parliament, they would never have finality in their transactions with that portion of the public with whom they had business; a dissatisfied man would always be anxious to have a chance with the next Government. No Government would be right, in questions of this sort, in opening up the previous decision of their predecessors, more especially if that decision was founded on justice and equity. The question now raised was, that Mr. Beit, as incoming tenant, should only pay such part of the back rent as accrued during the time he was a tenant. He (the Secretary for Lands) never before heard that plea set up; it always appeared to him that Mr. Beit's claim had been for a refund of the whole amount paid, not for part of it. Perhaps he had altered his mind. The matter appeared to have had very ample consideration from the previous Government, not only in writing, but the gentleman interested appeared to have had very numerous interviews with the Colonial Treasurer, and all parties concerned. He (the Secretary for Lands) would just refer to the papers to shew how the matter had progressed. The first letter was dated 25th September, 1868, in which Mr. Drew, the Under Secretary of the Treasury, applied to Mr. Beit for the money, and told him that if the money was not paid by a certain day, it

"will not be accepted, except with twenty-five per cent. added by way of penalty."

The next letter was dated 7th May, 1869, from Mr. Beit, in which he protested against what he called the hardship of the case; and, in answer to that, he got a letter from the Under Secretary of the Lands Department, to this effect, after the usual formalities of acknowledgment—

"I am to state that the application having been laid before the Executive Council, it has been decided that the refundment cannot be sanctioned."

On the 15th November, 1869, Mr. Beit wrote again; and, on the 14th December, the Under Secretary for Lands wrote:—

"I am directed to acknowledge receipt of your letter, dated 15th ultimo, referring to the subject of refundment of rent on the Cotherstone Station, and in reply, to state that the Secretary for Lands will again bring the case under the consideration of the Cabinet at an early date."

That actually shewed that it had been already before the Cabinet. On the 9th May, 1870, Mr. Beit wrote again. After the usual formalities, the answer he got was to the following effect:—

"I have the honor to state, by direction of the Secretary for Lands, that, as the matter has been twice considered by the Government, he does not feel called upon to re-open it."

Mr. Beit wrote again on the 13th January, 1871, and on the 22nd February, he (the Secretary for Lands) wrote to Mr. Beit an answer, in which he entered into the matter somewhat fully, as he would read:—

"I have first to observe, that your previous letter of 9th of May, 1870, was fully considered by me, and finding that the matter had already twice received the attention of the Government, and had been finally settled adversely to yourself, by a formal Executive decision, I did not feel called upon to offer any further reason, nor do I see the object you have in requesting from this Government, the reasons which actuated the previous one, more especially as you appear to have had numerous and lengthened interviews with the Colonial Treasurer and the Chief Com-

missioner of Crown Lands, and to have discussed the matter in all its bearings.

"I do not think it necessary to enter into any discussion as to the means by which you were induced to pay the arrears you complain of; it is sufficient for me, now that the money is paid, to see that it was justly exacted.

"To put the matter in as few words as possible, the case appears to be thus:—You, or those from whom you derive title, took up country as containing a certain area, and paid for it in proportion to that area. After enjoying the country for some time, it is discovered that you hold about three times the quantity you have been paying for.

"The Government, in such a case, were manifestly entitled, in equity, at any rate, to one or two things—either that you should give up the excess of area, or pay for that excess. A demand for arrears was made, and you acceded to it. It was a perfectly equitable one, and acceded to by you in common with all others similarly situated.

"Clause 10 of the Regulations of 1st December, 1865, appears to me to have been intended to apply in cases of this sort, and if this case does not come within the letter, it certainly comes within the spirit of the Regulations.

"Under all the circumstances, even should you succeed in shewing that the money should have been refunded to you, it would be impossible for the present Government, in a case of this sort, to reverse the well-considered action of a previous Administration."

Mr. Beit wrote again and complained, and still urged his case, and went into the particulars of it; and he also wrote privately to members of the Government. This was the last letter he (the Secretary for Lands) wrote to Mr Beit:—

"I have the honor to acknowledge the receipt of your letter, dated the 3rd instant, on the subject of your claim for the refund of money paid by you to the Queensland Government, and in reply to state that, in cases of this sort, there must be some finality, and that the matter having been decided against you, the Government do not feel called upon to go over the same ground again, but that if you wish to try the case in a court of law, will afford every assistance to obtain a decision as cheaply and expeditiously as is consistent with the necessary formalities."

As the honorable member who had moved the resolutions had said, this was a point of law. The House was no court to decide an appeal on a point of law. They had had many instances of that. And, a select committee was a still worse tribunal than the whole House to decide a point of law. The probability was, that a select committee would have no lawyer upon it. The time of honorable members who were lawyers was too fully occupied, and they did not get on select committees. Besides, this was not a matter of such importance that it should be either dealt with by the House or referred to a select committee. As he had put it, if a refund of the money was made to Mr. Beit, the Government would have to pay thousands of pounds of refunds out of the Treasury; and really, if parties had been wronged, the proper place to try an action was in the Supreme Court. Scott, Brothers, and Co. had paid £600 10s.; Ham and Co., £395; J. Eales, £192; and Morehead and Young, £1,101; and those amounts were paid for only two or three years arrears. If those parties had been in possession as long as Mr. Beit, the amounts they would have had to pay would have been very much increased. So that honorable members would see that this was not simply a question of Mr. Beit's claim, but a question involving the whole of those refunds to a very large amount. What would be the result, supposing the House got a report from the committee? The Government would not feel justified on that in refunding such an enormous amount of money where they knew it had been equitably exacted. The present case was a clear case for a court of law, and not a very expensive case to try. The facts were in a nutshell, and the issues might be agreed upon, and everything put in apple-pie order to be tried, before going into court at all. The whole thing could be arranged before going into court; as there was no dispute about the facts whatever. The only dispute was the equity and the point of law. He (the Secretary for Public Lands) thought that Mr. Beit had justly paid the money; and he did not think that the Government would be justified in acceding to the motion.

Mr. MILES said he intended to vote against the motion. On a previous occasion an Act was passed by Parliament, on the motion of the Minister for Works, under which parties having claims against the Government had the right to sue the Government. He objected to sit in the House in judgment upon private claims. Why did not the party interested go to the Supreme Court? But, above that, he thought the claim an unjust one. All parties who took up country by tender estimated its area. When they applied for it to the Government, the Government were not in a position to say what the area was, and the occupant of the country contracted, in the event of the area being much larger than as applied for by him, to pay the rent for the whole. It appeared that Mr. Beit had about three times the quantity of land he had paid for; he had the use of it—if not he, the original holder had; and, Mr. Beit, coming in as the mortgagee, was bound by the acts of the mortgagor or original lessee. At all events, he advanced money on the property, and he was responsible for the tenderer. The proper place to settle the dispute was the Supreme Court, seeing that the House had made ample provision for cases of this description. He (Mr. Miles) did not see why honorable members should occupy their time upon such cases, when there was so much important legislation requiring their attention.

Mr. FERRETT observed that the House was not the proper tribunal to deal with the case presented to honorable members. If the motion were carried, it would open the door to something like this: where a bank fore-

closed a mortgage and came into possession of a run, and the back rent had been paid by the mortgagor or the original lessee or holder of the run, even before the foreclosure, the bank would be in a position to go to the Government and claim the refund out of the Treasury of that very back rent. It would place the bank in the position of being able to charge its customer first, and then to come upon the Government for the refund of the money it had advanced to him to pay the back rent.

Mr. KING said: After the explanation of the facts of the case by the Minister of Lands, he felt that he could not ask the House to consent to the motion; and, he therefore begged leave to withdraw it. His reason for bringing it before the House was, that injustice might be inflicted upon purchasers of runs of Crown lands by their being held responsible for the arrears of the previous tenants. The greater the difference between the estimated area and the actual area, the greater the amount of back rent for which the incoming tenant would become liable.

The COLONIAL SECRETARY said he had no objection to the motion being withdrawn. He wished to say that there could be no hardship such as the honorable member for Wide Bay feared, because, as in any other instance, the mortgagee coming into possession was not obliged to take up the extra land at all: he could take what had been paid for, and throw the other up. But, if he chose to take up the whole, he must pay for it.

Motion, by leave, withdrawn.

CONTRACTS EQUALISATION BILL.

The SECRETARY FOR PUBLIC LANDS, in the absence of the honorable and learned member for Kennedy, and for him, moved the second reading of a Bill to Equalise Specialty and Simple Contract Debts. This was, he said, the last step in a reform that had been going on for some years. As the law originally stood, a man's lands were not liable to pay his debts at death, unless special debts. Various Acts had been passed, till, at last, it came to this, that a man's lands were, in equity, liable to pay his other debts. But now, in England, in the wisdom of the Legislature, it had been deemed right to abolish all distinctions between special and simple contract debts. The difference between them was merely that a special debt was one where a man had written on a document and put his seal to it, or had got a judgment against him in court; so that the creditor who had taken that precaution—a mere technicality, a mere form—had given to him an advantage, in case of the death of his debtor, over a creditor whose claim was equally just, but who had not a deed or an acknowledgment under seal, or the judgment of the court. The Bill consisted of one clause only, and it said that the distinction between special and simple contract debts was no longer in existence. As it stood, there could be no possible objection to it. He (the Secretary for Lands) had no doubt the House would pass it as a useful and obvious measure of legal reform. Of course, the Bill did not interfere with securities in any way; the proviso being—

"That this Act shall not prejudice or affect any lien charge or other security which any creditor may hold or be entitled to for the payment of his debt."

Question put and passed.

DISTRICT COURTS ACT.

The ATTORNEY-GENERAL moved the second reading of a Bill to amend the District Courts Act of 1867. He said this was a Bill purely of detail, and therefore if any amendments were thought necessary in it, it would be better to make them in committee. The first section was one which he had considered it necessary to insert in consequence of a doubt he entertained in reference to the effect of the Consolidation Act. The other clauses were entirely framed to deal with matters of detail; most of them, he believed, would commend themselves to the House, and there might be some discussion upon a few of them. But there were no principles in the Bill, and he would therefore, without any further remarks, move that it be now read a second time.

Mr. MILES said he should like to ascertain from the honorable Attorney-General whether it was his intention to repeal that clause of the District Courts Act which applied to residence in the district. It was continually violated, and it was really unseemly to allow it to remain. The judges, who ought to be the last persons to break the law, were in this case the first. It was a notorious fact, and he thought the Government should either compel the judges to reside within their own districts, or else repeal the law.

Mr. THORN was understood to say, he hoped the legal members of the House would second the efforts of the other members in their endeavors to carry out some measure of reform in connection with this question. An opportunity was now afforded to honorable members of cheapening law, and it was to be hoped members of the legal profession would be ready to accept some of the amendments which would be suggested in committee.

Mr. HANDY said he disapproved of the principle proposed in the fifth clause, that in all cases above £10 the Clerk of the Court should take evidence for transmission to the Court of Appeal. He thought the present practice was much better. He would not, however, make any opposition to the second reading of the Bill.

Mr. KING called attention to the state of the House, and a quorum having been formed,

The question was put and passed.

DISEASES IN SHEEP ACT.

The SECRETARY FOR PUBLIC LANDS moved the second reading of a Bill to further amend the Diseases in Sheep Act of 1867. He said this was a very harmless Bill. Its object was to alter the date of certain returns sent in to the Government, so as to make them come in at the same time as the other returns. At present, they were sent in in the beginning of the year, and were perfectly useless for the purposes of the Statistical Register. He proposed that the next returns should not be taken until January next. That would necessitate the non-payment of five months assessment, but the fund would bear some reduction; and a great advantage would be gained. There was another slight amendment he proposed to make, which was not of any great consequence. It was to this effect. By the last Act there was only a penalty attached to not making the return, or to making a false return; but in this Bill, there would be a penalty for not paying the money, which had not hitherto been made. He did not think there would be any discussion on this Bill, and the details would be better considered in committee.

Mr. MILES said he had no intention to oppose the second reading of this Bill. He rose merely for the purpose of pointing out the amount of penalty. It appeared that in all the Bills brought in by the Government, there was the same penalty provided, fifty pounds. When the Bill went into committee, he should move that it be altered to five pounds.

Mr. STEPHENS suggested, that the day for sending in the returns should be altered to 31st December instead of 1st January. That would bring them into the same year; otherwise, they would not appear in the Statistical Register until the following year.

Mr. HANDY pointed out that it was sometimes very difficult to get the returns when they were left to the last week; and he should, therefore, in committee, suggest the insertion of a few words after the word "failing," such as "without just cause," so that the penalty should not be absolute.

Mr. FERRETT said he wished to set the honorable member for Maranoa right in reference to the penalty provided by this Bill. The honorable member seemed to think the amount was too high, but if he looked again at the clause, he would find it was "not exceeding fifty pounds." Now, supposing a person had thirty-five pounds or forty pounds to pay for assessments, and in default of payment, had to pay five pounds penalty, he might refuse to pay another shilling, and there would be no means of recovering the thirty-five pounds. The honorable member's suggestion to reduce the penalty to five pounds would, therefore, hardly meet the case.

The question was put and passed, and the Bill read a second time.