

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 8 MAY 1872

Electronic reproduction of original hardcopy

LEGISLATIVE COUNCIL.

Wednesday, 8 May, 1872.

Common Law Process Bill.—Land Orders Bill.

COMMON LAW PROCESS BILL.

The POSTMASTER-GENERAL moved that a Bill to amend the Common Law Process Act of 1867 be read the second time. He said it was a short Bill of only one clause, which was to repeal a proviso under the Common Law Process Act now in force in this colony. The proviso was originally part of the common law of England, and was adopted by New South Wales; and it came to us as a matter of course when Queensland was separated from New South Wales. In the consolidation of the statutes of Queensland in 1867, the proviso was retained; and, although the Common Law Process Act had been assented to by the imperial authorities, yet, as soon as it was found that the repeal of the proviso was necessary to prevent a person being put upon his trial twice for the same offence—which was contrary to the English law—the law officers of the Crown requested that a short Bill should be brought in to repeal it.

The Hon. D. F. ROBERTS: Had the honorable gentleman the Act in question?

The POSTMASTER-GENERAL: He had it—in the Consolidated Statutes.

The PRESIDENT: It was the last proviso—the twenty-fourth section.

The POSTMASTER-GENERAL: It was the latter end of clause 24, page 75-6. He would read the proviso of the 24th clause of the Common Law Process Act of 1867, which was required to be omitted:—

“Provided also that if any person shall wilfully and corruptly make a false affidavit before such consul-general consul vice-consul or consular agent every person so offending shall be deemed guilty of perjury in like manner as if such false

affidavit had been made in Queensland before competent authority and shall and may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in any place in which he shall be apprehended or be in custody as if his offence had been actually committed in that place.”

The Hon. D. F. ROBERTS: He thought some consideration should be given to the Bill. The Act which it proposed to amend was one of those which were prepared by the registrar and passed through the House by an honorable member whose word of honor was pledged that nothing was altered. Now, the Council were told that the proviso had been taken from an English Act, and was not applicable to this colony. The Court in Insolvency had no power over a man in Sydney. The Supreme Court of the colony had no power to compel a witness to come here; and yet, as he understood, from the honorable the Postmaster-General, the effect of the provision was to make a man punishable in Queensland who took a false declaration in New South Wales. Now, had we any right to send after anybody? Numerous persons had bolted, by whom his clients had suffered; yet he had no redress in Sydney. He had simply to sue such a defaulter. If he wanted to sue him, there, as a rule, he had to get judgment here; give him notice in Sydney, by a judge's order, to appear and shew cause why the execution should not be made to issue there. That was the experience he (Mr. Roberts) had had, over and over again. Now, if the Postmaster-General wanted a man who had made a false declaration to come here, he had no power to bring him. He must bring the magistrate or commissioner, whoever he was, before whom the affidavit was made; otherwise, he could not identify the accused—he could not prove the false declaration. He (Mr. Roberts) would tell the honorable gentleman that there was an Act now in force under which a declaration was made, and yet there was no reference at all to it in the Act; and the declaration could be made with the greatest faith in driving a coach and four through the Act. He thought the Bill should be well considered. He was quite willing, if the honorable gentleman wished it, to let the Bill go into committee; though, of course, the time for discussing it was when the motion was made for the second reading. He looked upon the matter as an absurdity.

The Hon. H. B. FITZ: He must admit that he had not taken the trouble to inquire into the matter at all; but, after the explanation of the Honorable Mr. Roberts, he thought it was necessary to take time for consideration; and he would suggest that the clause which it proposed to repeal should be printed and appended to the Bill, in order that honorable members could have an opportunity of reading it. He saw no necessity for hurry, and recommended the postponement of the Bill until this day week.

The POSTMASTER-GENERAL: He thought, from what the Honorable Mr. Roberts had just said, that the honorable gentleman was all abroad about the Bill. He asked him if he had studied the Bill, or read it, before this; or, whether he had come to the House prepared to take up the position that he had taken?

The Hon. D. F. ROBERTS: He thought he could give a very simple answer. When he asked what clause was proposed to be repealed, the honorable gentleman could not say.

The POSTMASTER-GENERAL: The honorable gentleman had given a very simple answer! He (the Postmaster-General) would have shewn him the clause, at first, but, instead of looking into the Consolidated Statutes, Part I., he had looked into the second volume of Pring's Statutes. However, he had read the proviso which it was proposed to repeal, and it fully accounted for the Bill: there was no proviso in the Bill whatever, but there was one to be taken out of the Act, which got in when the Statutes were consolidated in 1867, and which was either not seen by the honorable gentleman who had pledged his word of honor—as his honorable friend, Mr. Roberts, had said—that nothing was altered, or it was copied because it was the law before. However, upon the Act being looked into by the Crown Law Officers of England, a despatch was sent to this colony that that proviso should be repealed, as it was contrary to the principles of the common law of the empire that a man should be triable twice for the same offence. He (the Postmaster-General) was not a lawyer himself, and, as a matter of course, he must rely a great deal upon legal members of the House; but he did hope, when professional gentlemen dealt with a measure affecting legal process, that they would have first studied it. From the way in which his honorable friend had shirked the question, he was perfectly satisfied that he had not looked at the Bill at all. There was no great hurry for the Bill, as an honorable member had said; but the passing of the second reading would make very little difference, for the House could deal with it in committee. There was but one clause, and honorable gentlemen could have ample time to read it and compare it with the Act. He (the Postmaster-General) did not see why the proviso should be printed; when the books were at the command of honorable members, and any who chose could look into the question for themselves. Of course, if honorable gentlemen came to the House ignorant of a Bill that had been on the table for some time, and said that they had not seen it, he could not help it; but he did not see that that was a reason why the Bill should be set aside. However, he was in the hands of the House; if they desired to postpone its consideration, he was perfectly willing to consent. If his honorable friend, Mr. Roberts, really

studied the Bill, he would see that it was very different from what he had anticipated. After what he (the Postmaster-General) had said, the House would see that there was no occasion not to read the Bill the second time. The clause could be amended or rejected in committee. The Council had not much work before them, and they might as well go on with what they had.

The PRESIDENT suggested to the honorable gentleman who had charge of the Bill, that it would perhaps facilitate the passing of the Bill through its future stages, if he would lay on the table a copy of the despatch which had led to its being introduced. Evidently, the Bill was introduced in consequence of a despatch from the Crown Law Officers, in England, pointing out that the Act to which it referred did exceed the power of the Legislature, the proviso proposed to be repealed dealing with offences beyond the colony. That was the meaning of it. The House would be able to understand, better than now, the object of the Government, if a copy of that despatch was produced and laid on the table.

The Hon. D. F. ROBERTS said he had been surprised at the Bill being brought forward. If the honorable the Postmaster-General had explained that it was in consequence of a despatch from the authorities in England, he (Mr. Roberts) and others would have allowed the question to pass; but they had been totally ignorant, until the honorable the President spoke, of what was the cause of it.

Question put and passed.

LAND ORDERS BILL.

The POSTMASTER-GENERAL, in moving that a Bill for the cancellation and other disposal of Non-transferable Land Orders, be read the second time, observed that a measure with the same title was brought in during the last session of the previous Parliament, in 1871, and a considerable amount of discussion took place upon it. A select committee was appointed, and made full inquiry into the subject. His honorable friend, Mr. Fitz, was a member of that committee, as well as himself. The purpose of the Bill was to enable holders of land orders which otherwise would be cancelled, to use them. Objection had been made to the repealing clause of the former Bill, on the ground that existing rights had not been preserved. The Bill was now so altered that existing rights would be preserved as far as possible. It was altered also in other respects. Time, if he remembered rightly, was the great desideratum which honorable members of the Council expressed their wish to secure; and, of course, there was a long time during which land orders would be available and redeemable, from the fact that the former Bill had lapsed. Another objection which was taken to the former Bill was, that a person could not do by his agent what he could perform himself; and that in fact it would not be

worth while—it would be impossible—for persons residing at a long distance to come to Brisbane to present their land orders. That condition was modified, and, under the present Bill, persons could present their land orders to the land agent in the district in which they resided; and on its being there ascertained that the holders were the proper persons entitled to them, agents could then perform on their behalf as they could act for themselves. He (the Postmaster-General) thought that honorable members would find the Bill a good one, and that it would enable persons to make use of their land orders, which they could not do heretofore. In committee the clauses would be more readily explained and looked into than at present.

Question put and passed.