

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 18 AUGUST 1875

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of the Central Board, in which certain verbal amendments were proposed by the honorable member in charge of the Bill, was under consideration.

The Hon. F. T. GREGORY now moved that the second clause, as printed in the Bill, be omitted.

Agreed to.

The Hon. F. T. GREGORY then moved the insertion of a new clause, which was printed and distributed to honorable members, and which, he said, did not interfere with the Constitution Act, or with the Governor's position as the representative of Her Majesty, in the appointment of the members of the Central Board to be created under the Bill. Provision was made for the removal or suspension from office of a member of the board, should he perform his duties contrary to the advantage of the public.

The POSTMASTER-GENERAL said he had a serious objection to the clause, and he did not see what difference there was between it and the one omitted from the Bill as originally framed. The appointment of the proposed board would destroy Executive authority, and do away with Parliamentary government. With regard to the Honorable Captain Simpson's amendment, which also was printed and distributed to honorable members, he might say that, if it was based on the system under which the Board of Land and Works in Victoria worked, all the non-political members of that board were nonentities; the President alone, the Minister of the day, having any power. In that respect it was different from the amendment moved by the Honorable Mr. Gregory, under which the Minister for Lands would have no power. He hoped the Council would not agree to either of the amendments.

The Hon. H. G. SIMPSON observed, that since the last meeting of the committee he had been talking over the matter with honorable gentlemen, and it had been suggested to him that the Bill would be more likely to pass if it were made in accordance with the principle contained in the clauses which he had framed for substitution in the place of the second clause, which had been omitted. He should offer no objection to the Honorable Mr. Gregory's new clause, if he could see any possibility at all of its passing. The principle he advocated was, that two members of the board should be appointed as the Auditor-General was, the third member being the Secretary for Public Lands for the time being, who would also be the chairman of the Board. It was a small matter how such officers were appointed, so long as they could not be put out by the Minister of the day, if he found that they did not agree with him. There was some reason to hope that his clauses would be passed. If not this session, probably at some future time the principle would be adopted and acted upon. He did not think it was possible to put men in a more independent position than as he proposed. He should not, however, press his clauses in opposition

LEGISLATIVE COUNCIL.

Wednesday, 18 August, 1875.

Land Laws Interpretation Bill.—Western Railway Bill.

LAND LAWS INTERPRETATION BILL.

The House resolved into a Committee of the Whole for the further consideration of this Bill. When the committee last sat, the second clause, providing for the appointment

to the Honorable Mr. Gregory, though he thought it right to bring them forward; and, if the feeling of the committee was against them, he should be happy to withdraw them in favor of the honorable member's new clause. In answer to the Postmaster-General, he must say, that if the members of the board should be so subservient to the Minister of the day as the honorable member seemed to think they would be, it would be their own fault. It was, of course, just possible that the Government, having the first appointment of the board, would put in partisans of their own—perhaps, unworthy men, who would take their views;—and, if such cyphers were likely to be appointed, it would be better to have no board than one so constituted. But the Council and the Parliament would have an opportunity to express an opinion upon any improper appointment; and another Government would have an opportunity of making future appointments; and, no doubt, things would come right in the end, and the board would be a tribunal whose decisions would be given with authority and received with respect. He should move the first clause of which he had given notice, as an amendment on the new clause before the committee.

The Hon. E. I. C. BROWNE characterised the new clause moved by the Honorable Mr. Gregory as very obscure, and recommended him to amend its terms and make it clear. He read this passage:—

"The Minister for Lands shall *ex officio* be a member of the Board and the other two members of the said Board shall in the first instance be the persons nominated for appointment by the Governor in the schedule to this Act."

Did the honorable member mean that the Governor was to fill up the schedule? If the Houses nominated "the other two members" and the Governor did not appoint them, would the board be constituted? Did the honorable member intend, supposing the Bill passed through committee, to call upon the House to fill up the schedule?

The Hon. F. T. GREGORY: Certainly.

The Hon. E. I. C. BROWNE: To fill in the names! Well, he did not know that honorable members had come to the House prepared to do so; or that any would be persuaded to decide whom it would be best to put in. For his own part, he had never considered the subject. He saw in the

"Schedule of persons nominated for appointment by the Governor as members of the Central Board of Land Claims.

Nominated by the Council C. C. Esq."

Well, the initials were put; and he could understand that "C. C." would stand for Charles Coxen, a gentleman mentioned by the honorable member the other night. The gentleman named might be very competent to fill the position assigned to him; but he

(Mr. Browne) did not think the Honorable Mr. Gregory was to come to the Council to force down their throats his nomination in the off-hand way proposed. From all he had learned of Mr. Coxen, that gentleman would be a very fit and proper person to fill the office and to perform the duties; but Mr. Gregory's way was not the way in which a decision upon such a matter was to be obtained.

The Hon. F. T. GREGORY: It was in the hands of the House.

The Hon. E. I. C. BROWNE: It was. But were honorable members prepared, this evening, to fill up the schedule? He thought they were not. But before they got to that, he recommended the honorable member to see about making his clause clear, as at present its meaning was lost in obscurity.

The Hon. F. T. GREGORY, in explanation, said he did intend to nominate the gentleman to whom the Honorable Mr. Browne had referred; but it would be for the House to decide whether they would accept his nomination. Having charge of the Bill, he should propose an alteration from the initials in the schedule, when they reached that part of the measure. Then it would be competent for any honorable member to suggest any other gentleman who was competent to fill the appointment. He certainly did not think there was any obscurity such as the Honorable Mr. Browne referred to in the clause. There might be obscurity without the schedule. If his honorable friend thought there would be any obscurity or difficulty in the ultimate working of the Act, he (Mr. Gregory) should be very happy to accept any suggestion for the improvement of the clause.

The Hon. A. H. BROWN argued that the fact of the initials being inserted in the schedule for the nominees of both Houses showed that the honorable gentleman in charge of the Bill did not presume to know who would be appointed to the board by the Legislative Assembly. He (Mr. Brown) hoped honorable gentlemen would see the policy of passing the Bill.

The Hon. W. WILSON objected to the board. An objection to the Bill was, that after the House had nominated a member, the Governor might not think it advisable to confirm his appointment. The proposition of the Honorable Captain Simpson was the only one that he could see any use in.

The Hon. A. B. BUCHANAN said the reading of the Honorable Mr. Gregory's clause was perfectly simple and plain, and it met all objections of the committee. He did not think that, if the Council nominated a gentleman to the board, the Governor in Council would disapprove of the nomination. If the amendment of the Honorable Captain Simpson was agreed to, he hoped that the honorable Mr. Gregory would drop the Bill altogether. A board appointed in the way proposed by the honorable and gallant gentleman would be of the same opinion as the Minister, who would be all-powerful; for, of

course, the Government would appoint friends of their own.

The Hon. H. G. SIMPSON urged that it would be unwise to attempt to legislate for the present time only: the House must look to the future. If the board should not be good at first, for reasons stated by honorable gentlemen, in the changes that were brought about it would become gradually a recognised authority. He did not think any Ministry would be likely to appoint such grossly incompetent persons as some honorable members seemed to think.

The Hon. T. L. MURRAY-PRIOR said that practically, under the Honorable Captain Simpson's clause, the Minister of the day would have all power on the board. There could be no doubt that a Minister was supposed to know more about his department than any one else, and he would have a stronger influence in dealing with matters coming before the board than the other members who would be appointed by the Government. He (Mr. Prior) should much prefer to allow the Minister to act on his own responsibility, without having that of the board. It was a question how far the creation of the Board would be judicious. He differed from the Postmaster-General, who contended that the Minister would have no power on the board; because he thought the Minister would have a great deal to say in all matters that would come before the board. He did not think it was likely that the Bill would become law; but, at any rate, it would show to the country the views that honorable gentlemen of the Council held—that they wished to do what was just. There could be no doubt, however, that in time a Land Bill would be brought forward in another place embodying the views now advanced.

The Hon. J. F. McDUGALL supported the new clause moved by the honorable gentleman who was in charge of the Bill. If the House had to make the appointment of a member of the board, to-day, the choice would be amongst a very small number of gentlemen, indeed. The country must have a board that would be independent of the Ministry. The House had lately seen a case in which a gentleman had had to forfeit his position because he did his duty fearlessly.

The POSTMASTER-GENERAL pointed out, that under Parliamentary government, a Minister who did not do his duty, or a Government, could be castigated, and was responsible to the country.

HONORABLE MEMBERS: Oh! ho!

The POSTMASTER-GENERAL: The committee were wasting time over the Bill. He should not protract the discussion further than to say that the clause of the Honorable Mr. Gregory was impracticable, and that he was certain, if the Board was appointed, it would never work. He hoped the honorable gentleman would withdraw the clause, and allow the motion of the Honorable Captain Simpson to be put. Under that provision, the board

would consist of the Surveyor-General and the Under Secretary for Lands; but in that case, it would be worthless, as those officers would be at the beck of the Minister for the time being. For the Council to dictate to the country the land legislation, was not to be heard of or tolerated.

The Hon. H. G. SIMPSON said he could mention a board presided over by a Minister that had its own way, and set aside other authority than its own. He referred to the Board of General Education. That board was removable at the discretion of the Minister of the day; and he (Captain Simpson) did not see why a board that was not removable by a Minister should not be equally independent. He thanked the Postmaster-General for throwing a little light on the question of the appointments; and he should add to the disqualifications, that a member of the board should not hold any other appointment in the public service. The honorable gentleman's notion of responsible government was to have a Ministry that would not accept the opinions or decisions of either House, and that would not take counsel or advice from any quarter. That was, in fact, the most irresponsible government he (Captain Simpson) ever heard of.

The Hon. F. T. GREGORY suggested a transposition of words, so that the reading of his clause should run:—

"The persons nominated in the schedule to this Act for appointment by the Governor."

The Hon. W. YALDWIN said he did not think the postponement of the Bill had tended to clear the haze that surrounded it. In comparing the original clause with the new one proposed to be substituted for it, he thought the first was the better. He was reminded of the words of Sir Thomas More, when requested to speak to the merits of two authors:—"Marry, this is somewhat—this is rhyme;—the other is neither rhyme nor reason." He hoped the Honorable Mr. Gregory would see his way to withdrawing the Bill altogether.

A difficulty arising, the committee deliberated, subject to the direction of the Chairman, as to the best mode of dealing with the question; and eventually, both the clauses submitted by the Honorable H. G. Simpson were made to coalesce, and were put as one clause, by way of amendment on the new clause moved by the Honorable F. T. Gregory.

The question—That the clause following stand clause 2 of the Bill—was put:—

"2. Upon the passing of this Act a Board to be designated 'The Central Board of Land Claims' shall be appointed to investigate the claims of selectors for deeds of grant prior to their issue. The Board shall consist of three members any two of whom shall form a quorum the Secretary for Public Lands for the time being shall be *ex officio* a member of the Board and the other two members shall be appointed by the Governor in Council and shall hold their offices

during good behavior and shall not be removed therefrom unless an address praying for such removal shall be presented by the Legislative Council and Legislative Assembly respectively in the same session of Parliament and at any time when Parliament is not sitting it shall be lawful for the Governor in Council to suspend either or both of such members from his or their office or offices for inability or misbehavior and when and so often as the same shall happen a full statement of the cause of such suspension shall be laid before both Houses of Parliament within seven days after the commencement of the next session thereof and if an address shall at any time during that session be presented to the Governor by the Legislative Council or Legislative Assembly praying for the restoration of such member or members to his or their office or offices such member or members shall be restored accordingly but if no such address shall be so presented it shall be lawful for the Governor in Council to confirm such suspension and to declare the office or offices of such member or members to be and the same shall thereupon become and be vacant as if such member or members were naturally dead. Provided that neither of such members during his continuance in office shall be capable of being a member of the Executive Council or of either House of Parliament."

And the committee divided.

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The Honorables W. Thornton, H. G. Simpson, E. I. C. Browne, J. Mullen, W. Wilson, W. Yaldwyn, and G. Thorn.

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The Honorables A. B. Buchanan, A. H. Brown, J. F. McDougall, F. T. Gregory, T. L. Murray-Prior, and G. Sandeman.

Question resolved in the affirmative.

The Hon. F. T. GREGORY stated, that after the division which had just taken place with regard to clause 2, and seeing that many honorable members whom he knew to be supporters of the Bill were absent, he did not feel inclined to proceed with the Bill. In such a thin House, it would be hardly fair to those who had taken an interest in the Bill in committee, and who desired to assist in making it uniform and satisfactory, to proceed. The country was every day more and more anxious, and indeed it was almost clamorous, that some measure such as his Bill should be passed this session. But after Captain Simpson's amendment, it became a question whether it was desirable for the Bill to be passed at all. At any rate, honorable members should have an opportunity of considering its present shape; and, at some future day, a majority of the House might see fit to recommit it. He moved—

That the Chairman leave the chair, report progress, and obtain leave to sit again this day fortnight (Wednesday, 1st September).

The PRESIDENT said he fully approved of the principle of the Bill, inasmuch as he thought it was intended to meet a want largely felt by the public—that there should

be some tribunal beyond the suspicion of political influence to inquire into all cases arising under the Land Acts of 1866 and 1868. He did not vote on the last division, because he did not quite understand what the question was before the committee. However, between the two arrangements proposed, that of nomination by each House of a member of the Board, and that of the appointment of the Board by the Governor in Council, he was certainly in favor of the latter, as put forward in the amendment of the Honorable Captain Simpson. It was a novel procedure that was originally proposed. He had contemplated a similar measure with regard to the Board of Education, but he never saw his way to carry it out. He thought it was undesirable that Parliament should assume to itself the Executive function in the appointment of public servants; and he would remind honorable members on the other side that even the judges of the land—the judges of the Supreme Court as well as the judges of the District Courts—to whom were entrusted the most serious interests of Her Majesty's subjects in this colony, were appointed on the recommendation of the Executive of the day. By the Supreme Court Acts of 1867 and 1872, the Governor, with the advice of the Executive Council, had power to appoint, in Her Majesty's name, barristers of certain specified standing to be judges, and the judges held their offices during good behavior, and were protected against removal by other means than "upon the address of both Houses of the Legislature." The judges were appointed in the same manner as the Honorable Captain Simpson proposed that the Board should be appointed, and the members of the Board were to be protected as the judges were, by being made removable only upon resolution of both Houses. If such protection would not make men independent, nothing could do so; no other process would be so effectual to ensure their independence. The nomination by either House of an individual to be put into a public position would not make him more independent than would his nomination and appointment by the Governor in Council. There was no reason to apprehend that the tribunal to be created in accordance with the clause just passed would be liable to be influenced as honorable members had stated. No doubt the *ex officio* presidency of the Board would give the Minister influence; but not a greater influence than the Government for the time being should possess. The Ministry were responsible to Parliament and the country: not quite as his honorable friend the Postmaster-General seemed to think, that the Parliament was responsible to the Ministry. He (the President) could not adopt that honorable gentleman's reading of the relative positions of the Parliament and the Ministry. The Ministry were for the time being the agents or the servants of the Parliament; and they were responsible to Parliament for their

acts. If the Minister at the head of the Board chose not to act as Parliament wished, he would have to accept the consequences: Parliament would know the reason why. The committee were losing their time discussing the measure; nevertheless, he did not see any reason against the adjournment. He felt it necessary, now, to give the reasons why he did not vote on the division. He did not wish to shirk any responsibility; but, at the moment, he did not clearly understand the question. He said now that he would have voted with the majority. He would readily go further than the Bill proposed, and enable the Board to deal with equitable claims where they could not be brought precisely within the reading of the Act. A fortnight's adjournment would be judicious to allow honorable members to consider the Bill; and he should not oppose the motion.

Question put and passed; the House resumed, and the Chairman reported progress. Leave was given to the committee to sit again on Wednesday, 1st September proximo.

WESTERN RAILWAY BILL.

On the Order of the Day being read for the consideration in committee of the Legislative Assembly's message having reference to the disagreement of the other House with the Council's amendments in the Western Railway Bill,

The POSTMASTER-GENERAL moved—

That the House resolve itself into a Committee of the Whole.

The Hon. A. B. BUCHANAN moved by way of amendment—

That the consideration in committee of the message be postponed until this day week.

He said his reason for so doing was, that since he came to the House, this afternoon, he was informed that in the debate, last night, in another place, it was stated distinctly, twice, that if the Bill passed, it was the intention of the Government to resume at once the whole of the runs in the railway reserve—to resume them to the exclusion of the present lessees. Now, as the Council understood the Act of 1869, the lessees of runs resumed in pursuance of its provisions should be allowed the use of the land until it was actually alienated from the Crown. This was denied authoritatively, last night, in another place; and, until the Council had an opportunity of having the matter explained, the Bill should be postponed. By Tuesday next, honorable members would have "Hansard" in their hands, and the Postmaster-General would be able to explain on the part of the Government. The course he proposed was the best for the House to adopt in the sudden contingency that had arisen.

The POSTMASTER-GENERAL said he desired to inform the Honorable Mr. Buchanan that, under the fifty-sixth clause of the Pastoral Leases Act of 1869, the pastoral lessees were

entitled to the grazing right over the whole of their runs until the land was alienated, notwithstanding what might have been said in another place. The clause was as follows:—

"56. Notwithstanding any notice of resumption the lessee shall have a right to depasture on the resumed portion until the same shall be actually alienated or otherwise disposed of by the Crown when the lessee shall be entitled to claim and be paid by the Crown the value of his improvements erected or made on the lands so alienated or disposed of such value to be ascertained by arbitration under the provisions of this Act."

So that the objection to proceed with the Bill fell to the ground. Further, the Act gave the lessees the right to get in cash from the Government the value of their improvements, compensation for their fencing; and, in fact, they were very fairly dealt with.

The Hon. A. B. BUCHANAN, in explanation, stated that he had already given the same interpretation of the law as the Postmaster-General, which was the one honorable members understood to be right. But a statement was made in another place to contradict that. He appealed to the House to support his amendment, which he should press to a division.

The Hon. T. L. MURRAY-PRIOR advised that the Postmaster-General should give way to a reasonable request; as, though many friends were absent, yet honorable members who wished for the postponement of the Bill had the means of preventing it being gone on with.

The POSTMASTER-GENERAL: Use them.

The Hon. A. H. BROWN expressed his hope that the Postmaster-General would see the propriety of acceding to the request.

The POSTMASTER-GENERAL: No; I will not.

The Hon. A. H. BROWN: The honorable gentleman was in his usual state of innocence. Perhaps the Bill, if passed, would give power over the present Act for the resumption of runs. It was to inquire into the difficult and painful position that the pastoral lessees were said to be about to be placed in, the postponement was asked for. The honorable gentleman must give way. Of the division, he (Mr. Brown) was not afraid, as even the honorable members who usually acted with the representative of the Government would do justice in this instance. The postponement was not to defeat the Railway Bill, but to see that justice should be done to the pastoral lessees whose land would be taken away by the action of the Government.

The Hon. E. I. C. BROWNE said he hoped the Postmaster-General would accede to the proposition for postponement, because it was not made with any desire to throw out the Railway Bill, but on account of some words that were uttered in the other House last night. He quite agreed that it was not in the power of the Ministry to override the

Act; but if, in the heat of debate, language was used by them that should not be used, it was as well to read them a lesson, that they should be more cautious in their words. Although he was as anxious as the Postmaster-General for the Bill to pass, yet he should vote for the amendment, as it was evidently the opinion of the House that the Bill should not be forced.

The Hon. H. G. SIMPSON said he was most anxious that the Bill should be passed; but in a question affecting the dignity, or the privileges, or the position of the House, he should be one to support the assertion of their dignity and position. The amendment must be insisted on, for reasons that came to his knowledge since the meeting of the House.

The Hon. A. B. BUCHANAN said he did not raise the question as affecting the position or dignity of the House, but upon a question affecting very materially the prospects of the Bill. He pledged his word to this. He had been prepared to go on with the Bill, until he heard of the matter of which he required an explanation.

The Hon. W. WILSON rose to speak; when

The PRESIDENT stated that honorable members must not refer to what had been said in the other House.

The Hon. G. SANDEMAN supported the amendment, as it was important that the Council should know what had been said in another place.

The Hon. F. T. GREGORY considered the grounds quite sufficient for the postponement of the Bill.

The POSTMASTER-GENERAL, in explanation, contended that the Council had nothing to do with what had been stated by a Minister or any other person in another place; and he could not see how anything so stated could affect the existing Act. The amendment appeared to him very like obstruction—it was tantamount to refusing to proceed with the Bill. He hoped the House would refuse to postpone the Bill. He did not think it was in order for the Honorable Mr. Buchanan to have made use of any statement made by an honorable member in the other House; and the way in which he had done so savored of a desire to obstruct the Council in going on with the Bill. However much the honorable member might like to see a majority against the Bill, the country would not like to see it.

The question for the House to go into committee, now, was put and negatived on a division:—

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The Honorables J. C. Heussler, G. Thorn, J. Mullen, W. Yaldwyn, and D. F. Roberts.

NOT-CONTENTS, 10.

The Honorables A. H. Brown, F. T. Gregory, A. B. Buchanan, T. L. Murray-Prior, H. G. Simpson, F. H. Hart, W. Wilson, E. I. C. Browne, J. F. McDougall, and G. Sandeman.

The amendment was then put and passed.