Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 1 NOVEMBER 1876

LEGISLATIVE COUNCIL.

Wednesday, 1 *November*, 1876.

Assent to Bills.—Bill Reserved.—Resumption of Lands.—Absence of the Chairman of Committees.—Leave to Members to Attend Committee of Assembly.—Management of the Railway Department.—Insolvency Act Amendment Bill.

ASSENT TO BILLS.

Messages from the Governor were received informing the Council that His Excellency had assented to the following measures, which had been passed by both Houses:—

Stamp Duties Bill.

Port Albany Free Port Repeal Bill.

BILL RESERVED.

A message was received from the Governor informing the House that His Excellency had reserved, for the signification of Her Majesty's pleasure thereon,

The Navigation Bill.

RESUMPTION OF LANDS.

The POSTMASTER-GENERAL said that, on this day week, the House received a message from the Legislative Assembly embodying a resolution to the effect that certain lands under lease in the settled districts of the colony should be resumed; and, in accordance with a Standing Order, that resolution had lain on the table of the Council for one week. By the same Standing Order, it was prescribed that the resolution should next be referred to a Select Committee, "to sit *de die in diem*," to collect evidence, and so forth; and it now seemed the duty of the House to comply therewith. He accordingly proposed—

That the resolution of the Legislative Assembly, embodied within Message No. 5, received from that House on the 25th October last, be referred to a Select Committee, consisting of the following members, viz.:—The Honorable E. I. C. Browne, The Honorable J. Gibbon, The Honorable F. T. Gregory, The Honorable A. H. Brown, The Honorable T. B. Stephens, and the mover, in pursuance of the Standing Order of 1st September, 1875.

Affirmed *nem. diss.*

ABSENCE OF THE CHAIRMAN OF COMMITTEES.

Before the Orders of the Day were called on,

The PRESIDENT announced that he had received a communication informing him that the Chairman of Committees would not be able to attend in his place in the Council, to-day, owing to ill-health.

On the motion of the POSTMASTER-GENERAL, the Hon. E. I. C. Browne was appointed Acting Chairman of Committees, "for this day only."

LEAVE TO MEMBERS TO ATTEND COMMITTEE OF ASSEMBLY.

Messages were received from the Legislative Assembly requesting that the Council would give leave to the Honorable W. F. Lambert and the Honorable G. Sandeman to attend for examination before the Select Committee of the Assembly on the General Question of South Sea Island Labor; and,

On the motion of the POSTMASTER-GENERAL, leave was given to the honorable members to attend if they should think fit.

MANAGEMENT OF THE RAILWAY DEPARTMENT.

A message was received from the Legislative Assembly informing the Council that the Assembly concurred in the resolution passed on the 11th October last for the separation of the Railway Department from the Department of Public Works, and for the appointment of a Commissioner for Railways.

INSOLVENCY ACT AMENDMENT BILL.

On the motion of the POSTMASTER-GENERAL, the House resolved into a Committee of the Whole for the consideration of this Bill.

Clause 1.—Police Magistrates at Brisbane and Bowen not to have jurisdiction under sections 73, 114, and 165 of the principal Act.

The PRESIDENT asked the honorable gentleman who was in charge of the Bill to explain what induced the Government so rapidly to bring in an amendment of the Insolvency Act, which was passed so recently as 1874, and upon which the Council had spent many days in discussion? It seemed, at any rate, to be an unwise mode to put upon the Statute Book laws which so soon required amendment.

The POSTMASTER-GENERAL said he endeavored to explain, on the second reading of the Bill, the reasons which the Government had for introducing the measure. He explained that under the insolvency law preceding the Act of 1874, all examinations in insolvent estates were conducted before the Judge in insolvency sitting in Brisbane. That was found highly inconvenient, and oppressive to some extent, because of the attendant expenses of bringing insolvents and witnesses from the extremities of the colony to Brisbane. Therefore, when the law was being amended, provision was made that the police magistrates of the several towns of the colony should be examining courts, that was, courts where insolvents and other witnesses in insolvent estates could be examined. That was assimilating it to the law in force in England, which provided that in all places out of London, proceedings in insolvency

should be held before local courts; and it was a desirable amendment, to prevent oppression and hardship. Still, honorable members would agree with him (the Postmaster-General) that where the best examination possible could be secured, the public should be able to avail itself of its advantages; and that as the Judges were on the spot, and were not overburdened with too much work, they should be asked to continue to take the examinations where they could take them, in Brisbane and Bowen. Apart from that, the police Magistrate of Brisbane had enough work on hand, and it could not be expected of him that he should be acquainted with the law of evidence and matters connected with insolvency, or that he could conduct an examination that might possibly end in a committal, or demand further investigation before a Judge of the Supreme Court. For that reason the Government introduced the measure. And, as an instance of what might take place through an oversight or the possible ignorance of the Police Magistrate, he might refer to the case that came under honorable members' notice the other day. During an insolvency examination exception was taken before the Police Magistrate, and he decided, against the right of one of the insolvents to be present, although directly interested. An application was made to the Supreme Court by the insolvent who was excluded from the examination, and the Court quashed the whole proceedings; so that the evidence that was given at the first examination before the Police Magistrate was valueless altogether, as the party who gave the evidence was not now available—the whole proceeding was not only nugatory, but fruitless, and the evidence could not be replaced. There was an instance where the Police Magistrate committed a serious blunder, which could not be rectified; whereas, if the examination took place before a Judge of the Supreme Court it could not have arisen. Other mistakes would arise. It would be very hard for the legislature to determine that the Police Magistrates should have sufficient knowledge of law that they should not commit blunders in a matter altogether foreign to their duties. The Judges of the Supreme Court would now only be called upon to do what they did before the Insolvency Act of 1874 was passed.

The PRESIDENT thought that the reason given by the Postmaster-General was not a very good one, as, if it applied to Brisbane, it applied to all the other police magistrates in the colony. It seemed, therefore, that a provision in that Act was an entirely improper one. Because, he might presume that the Police Magistrate of Brisbane was the one best capable of performing the duties under the Insolvency Act. If the best magistrate was not fit to perform the duties under it, he (the President) should fancy that those magistrates who were at a distance were less able to perform them, and were more liable to make mistakes than the Police Magistrates of Brisbane and Bowen.

The Hon. A. H. BROWN thought the alteration of the law would be valuable, since it would give the Judges some work to do. At present they could not have enough to do.

The POSTMASTER-GENERAL explained, with reference to an objection made on the second reading of the Bill, that Bowen might be out of place in the Bill if the residence of the Northern Judge of the Supreme Court should be changed to some other town, that the change could be made by statute only, which would repeal the location of the Northern Judge, and which would provide that where Bowen was referred to in the existing law, the name of the other town should be read in its place.

Agreed to.

The Hon. F. T. GREGORY proposed a new clause to have the effect of amending the law in respect to a point which had been found to operate unfairly, and to bear rather heavily on insolvents in a few instances. There might be, he said, instances in which an insolvent had furnished a full and fair schedule of his estate, and satisfied his creditors in every way, by disclosing all his assets; but, owing to the circumstance that some property forming part of the insolvent estate was not readily realisable, considerable delay—it might extend over years—might ensue before the insolvent could get his certificate, and be enabled to begin business again or earn his living. In fact, the getting of his certificate of discharge was now dependent on the realisation of the estate. He (Mr. Gregory) moved that the following clause should stand clause two of the Bill:—

"So much of section 160 of the said recited Act as is contained in the words 'If no such order has been made at the time of granting a certificate of discharge as hereinafter provided the Court shall on granting such certificate also make an order that the insolvency has closed, shall be and the same is hereby repealed' And the said Act shall hereafter be read and construed as if the words aforesaid had not been contained therein."

Another reason for the clause was, that one of the rules of court with regard to insolvency prevented a Judge from granting a certificate until the official trustee, or, rather, the trustee in insolvency, had handed over the accounts in the estate to the registrar of the court; in which case, if an order must be made, before an insolvent could obtain his certificate, the property would have to be realised. It was not desirable that the winding up of the estate should be closed before an insolvent was entitled to a certificate.

The POSTMASTER-GENERAL stated that he had no objection to the insertion of the clause. The words proposed to be omitted from the section of the Act had been inserted in view of conflicting decisions of the English

court under the insolvency law. It had been maintained, he might state, by the Vice-Chancellor at home that a certificate of discharge could not be granted until the insolvency was closed—until all the assets were realised and distributed. But, since the Queensland Act was passed, those decisions had been revised by the Court of Appeal of the House of Lords, which had decided that the certificate of discharge might be granted, although the insolvency was not closed. That being so, it was undesirable by any words in the colonial statute to imply that it was impossible that a certificate of discharge should be granted until the insolvency was closed, as, under those circumstances, great hardship might ensue. The fact would be, that until the whole estate had been realised, though the insolvent had satisfied his creditors, had given up all his assets, after disclosing all his affairs and doing the best he could for the creditors, he would be debarred from getting his certificate, simply because the trustee did not feel himself justified in closing the insolvency by the realisation of the estate. The amendment would harmonise the law of the colony with the latest decisions given under the English Act.

The Hon. W. D. Box enjoined caution in interfering with the statute, and urged that he had not had time to consider the amendment.

The POSTMASTER-GENERAL again explained the effect of the existing law, and the object and scope of the amendment. The words proposed to be excised were not in the English statute. The giving of a certificate to the insolvent would not necessarily stop the realisation of the assets in the estate by the creditor's assignee.

The Hon. F. H. HART supported the amendment.

The Hon. T. B. STEPHENS said, as he understood the matter, the four lines which it was proposed to omit from the clause had got in by mistake, and were not in the English Act. Their omission would assimilate the law of the colony to the English law. If they remained, injustice must arise to somebody. The insolvent must be kept waiting for his certificate, or, if he got it, the insolvency must be deemed to have closed. There might be some property in the estate which could not be realised or worked out for some time, and while it would be a hardship to keep the insolvent without his certificate of discharge until that took place, it might be equally an injustice to the creditors to make an order that the insolvency was closed.

The question was put, and the new clause was adopted.

A consequential amendment was made in the preamble, and the Bill was reported to the House with amendments.