

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**WEDNESDAY, 30 JULY 1879**

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## LEGISLATIVE COUNCIL.

*Wednesday, 30 July, 1879.*

Tooth Estate Enabling Bill.—Electoral Rolls Bill.

## TOOTH ESTATE ENABLING BILL.

On the motion of Mr. GREGORY, the House resolved into Committee of the Whole for the consideration of “a Bill to enable the Trustees for the time being of the Will of William Butler Tooth to sell and dispose of the trust property comprised therein.”

Formal Question, for the postponement of the preamble, put.

Mr. WALSH said, as far as he was personally concerned, his feelings were very strong on this subject. He was prepared to block the Bill in any way he could, conformably with the practice of Parliament, if the honourable gentleman in charge of it insisted upon proceeding with it in its present shape. Not a single harsh expression would he use; but in defence of the usage and practice of Parliament he should not hesitate to act so as to defeat the progress of the Bill in every possible way. If

the honourable gentleman would consent to withdraw the obnoxious provision to which objection was made on a previous occasion, there would be no further objection to the Bill. If he persisted, as a representative of a certain powerful institution, in forcing that provision upon the Council, it must be resisted, in order to defeat an innovation, or what was equivalent to an innovation, upon the power and privileges of the House, and to expose the whole matter in dispute. It was not worth his while to persist. But if he did, the Bill would be met by the most strenuous opposition; because it was the bounden duty of an honourable member like himself (Mr. Walsh) to preserve the practice of Parliament, to maintain the privileges of honourable members. If the honourable Mr. Gregory would not absolutely withdraw that clause which had no business whatever to be introduced into the Bill, as it was, in select committee, by Mr. Amhurst, he would be met by the most strenuous opposition.

Mr. GREGORY: What clause?

Mr. WALSH: The 7th clause—“Power to mortgage.” If the honourable gentleman did not withdraw it, he should take care to resist the Bill at every step and to stop its passing.

Mr. GREGORY said he thought the objection raised by the honourable gentleman to the Bill was all based upon the 7th clause. The Committee were engaged, just now, on the preamble. He could scarcely promise to do what the honourable gentleman exacted. When the Committee came to consider the 7th clause, he should be glad to entertain any objections advanced against it; and he thought he should be able to answer them and to show that they were not valid. He was not certainly called upon to make any promise at the present stage, or until the obnoxious clause that the honourable gentleman objected to was put to the Committee. He should be very sorry that any rule of Parliament should be infringed or abrogated by the Bill, and, if it were shown at the proper time that the 7th clause was an infringement of Parliamentary usage and practice, the Committee would decide that.

Mr. WALSH: The Bill was so obnoxious to the practice of Parliament, so foreign to the prayer of the petitioner, the wishes of the trustees, so different from the Bill framed by the trustees—in fact, so opposed to any private Bill that the Council should receive—that it ought not to have been received into this Chamber at all. If the honourable member in charge of it insisted upon going on with it, there was only one way to meet him; and so long as he (Mr. Walsh) was a custodian of the privileges, the duties, the proprieties, of the House, he should oppose the Bill; and whatever came of it, he should leave the responsi-

bility of the present proceeding with the honourable member. He moved—

That the Chairman do now leave the chair, report no progress, and ask leave to sit again this day six months.

Mr. GREGORY: If the Committee were satisfied that there was evidence sufficient before them that the Bill should be rejected, let them throw it out—although it had gone through its second reading. He must, of course, submit to their will. But he failed to discover any sufficient reason for such a course in the remarks of the honourable gentleman, or any reason, beyond the fact that he should withdraw a clause from the Bill before the Committee had had a chance of considering it. In ordinary fairness, the honourable gentleman and the Committee should proceed regularly, and leave the discussion of that obnoxious provision until it came under consideration. To reject the Bill as proposed, without consideration, would be a very harsh proceeding towards those whom the Bill was intended to serve.

Mr. THORNTON said, it appeared to him that the honourable Mr. Walsh was interfering seriously with the interests of those persons who were moving for the Bill. The power mentioned in the clause objected to was a smaller power than the persons interested prayed for. He was not sure that the first clause of the petition for the Bill did not cover all the powers given by the provision of the Bill which was objected to. The petitioner applied for the trustees to have power “to sell and dispose of the trust property comprised” in the will of the late Mr. Tooth. The clause gave authority to mortgage. That would be within the power to “dispose of,” though it was not “to sell” the property. It would be a pity to force the sale of an estate that was a splendid inheritance, at a sacrifice. If the trustees were enabled to mortgage it, they might put off the sale until they could sell to greater advantage than at present, and have large surplus proceeds for the benefit of the heirs or devisees. It would be very hard upon those for whose benefit the Bill was introduced if the trustees should be compelled to sell, without liberty to better “dispose” of the estate. The larger power to sell being given, the power to mortgage was of very little consequence except for the advantageous disposal of the estate for the benefit of those interested: the lesser might be conceded when the larger was granted. The honourable Mr. Gregory had eminent legal opinion on the question; the Bill had been passed by the Legislative Assembly; and the report of the select committee bore the signature of Mr. Griffith, who was about the highest authority on such a question in the Parliament. There was no obstacle, that he could see, to the Bill passing.

Mr. HEUSSLER said that, since the last sitting of the House, he had read the petition of the widow, Mrs. Tooth, and he must confess that he found a link wanting between the petition and the mortgage clause of the Bill. The question might be hereafter raised, whether the lady was a consenting party to the action which the trustees would take under the 7th clause. Perhaps it would be very injurious to the family concerned, if the Bill should become law. It struck him that the lady should be examined before the House, so that they could satisfy themselves whether she herself, who had petitioned for the Bill, wished for the new clause in the Bill, and would be willing to abide by the consequences of its being given effect to. The consequences might be the reverse of what was stated by the honourable Mr. Thornton; they might be, that the property would be lower in value than it was now, and that to borrow again on it to pay off the existing mortgage would leave it deeper in the mire.

Mr. WALSH: Hear, hear.

Mr. HEUSSLER: He took it that the House should guard against such a contingency, if possible. He had doubts whether he would act in pursuance of the clause, if he were a trustee.

Mr. GREGORY stated, in answer to the honourable gentleman who spoke last, that the solicitor of the petitioner had watched the progress of the Bill through the Assembly from beginning to end, on behalf of Mrs. Tooth, and had seen that nothing was introduced in it except what was in perfect harmony with her wishes. He could assure the House that what he stated was absolutely the case.

Mr. WALSH said, it struck him that it was the attorney to the family who was just now dictating to the Committee what measure they should pass—who was driving the House to a course of procedure which was not in accordance with Parliamentary practice. It was against his hasty acts, that would lead the House astray, that would further the cause he espoused, that he (Mr. Walsh) protested. However, putting that aside, the question for the Committee was whether they should allow of proceedings which were at variance with the practice of Parliament. On the *ipse dixit* of a member of the other House, who simply moved that the clause should be inserted in the Bill, were they to allow the trustees to exercise a power foreign to the petition and to the Bill founded upon it and accompanying it, which power was not asked for by the widow herself or by any person under the will? The petition asked for power to be conferred on the trustees to sell the real estate to pay off the debts; but, for some inscrutable reason, by some powerful influence, a member of Parliament was in-

duced to make an amendment in the Bill framed by the trustees, the devisees, and the widow—the lady who was so pathetically alluded to in the debate—conferring a power totally at variance with what was prayed for. Well, it was his duty and the duty of the Council to step in at once, and, before such an innovation was sanctioned, before such a crime was connived at, to get testimony beyond what had been brought before them, to prevent it. The Collector of Customs, who was supposed to be the most preventible man in the country, should have remembered that before throwing himself into the hands of the delegate, or the party, to that evil course, he should have tried to understand what the justice of the case demanded. That honourable gentleman had suddenly discovered that it was his duty to stand by the gentleman in charge of the Bill, and he had totally overlooked what was his duty as a member of Parliament. Until it was shown, until it was found, that all the parties under the will were cognizant of the extraordinary change in the Bill, and that they concurred in it, the bounden duty of independent members was, no matter at what trouble, to throw every obstacle in the way of the Bill becoming the law of the land. He did not hesitate to say that it was a crime, that, under the powerful influence of a bank, a Bill was introduced in Parliament on the pretence of benefiting the widow and orphans, and that turned out to be a sham, a veritable sham. The Bill that was before the Committee was a very different measure indeed. He had no interest in the matter at all, beyond his feelings being in favour of the widow and orphans. There was no higher, no more profound, duty that he could perform, that honourable members could perform, that the Government could perform, than to protect the weak from the strong.

MR. SANDEMAN: Hear, hear.

MR. WALSH: He little expected that such an earnest supporter of the Government would cheer so profound a subject. The Government, not he, should have stepped forward to do that duty. If there was an Attorney-General—but there was not, unfortunately—the colony had a tricky Government—he should come forward. The Council had a Postmaster-General who was willing to conciliate anyone so that he could smooth over the business of the House. The Government should protect the widow and children against possible injustice; and should protect the House against the innovation to which attention was called in the Bill now before the Committee, which would do irreparable harm to infants who were unable to assert their rights, and which was for the benefit of a wealthy bank corporation. The Council ought to do all that, and should not cast the duty on him (Mr. Walsh), however

willing he might be to support the cause he had taken up.

MR. THORNTON took exception to being addressed in the House as the Collector of Customs.

MR. WALSH apologised.

MR. THORNTON was understood to say that the Committee might obtain some evidence to show whether or not the persons under the will were favourable to the clause objected to.

MR. WALSH: Move that the Bill be referred to a select committee.

MR. THORNTON: There was danger of shelving the Bill altogether. They ought to go on until they could discuss the clause in proper order; but, perhaps, some light might be thrown upon it more promptly.

MR. GREGORY said he did object to be bounced into promising what he would do before the proper time. The honourable Mr. Walsh bounced about what he would do if the clause which he objected to so strongly was not withdrawn. He had the same power in the House as any other honourable member; but he had no right to assume anything beyond that. At the proper time, he (Mr. Gregory) would explain the clause thoroughly; but he did not think it right for any honourable member to detain the House at the present stage of the Bill. He wished to keep before the Committee that the preamble was before them, and that the Bill should be considered in pursuance of the order of the day.

MR. HEUSSLER said he was quite cognisant of the question.

MR. TURNER: It occurred to him that possibly honourable gentlemen had overlooked the facts that one of the trustees was the widow herself, who had petitioned the Assembly for the Bill, and that, if she did not like to exercise the powers conferred by the Bill, or under the particular clause which was so strongly objected to, she had a perfect right to refuse to do so. The objections of the honourable Mr. Heussler that a link was wanting, and of other honourable gentlemen that testimony did not exist to show that the petition and the Bill were in accord, were thus answered sufficiently. As Mrs. Tooth would be one of the parties to exercise the power of mortgage, she could, of course, refuse to exercise it, if she did not approve of it.

HONOURABLE MEMBERS: Hear, hear.

MR. TAYLOR said he was sorry, indeed, that the honourable Mr. Walsh opposed the Bill, particularly the new clause, because he felt satisfied that it would do a great injury to the Tooth family if it should not pass. As to the Bill being brought forward without the widow's consent, he could say nothing further than this: the honourable gentleman who now had charge of it was in her confidence in every possible way, in business matters, and it was at Mrs. Tooth's re-

quest that the Bill was brought forward. He was surprised that the honourable Mr. Walsh should imagine that any member of the House should receive a fee for bringing forward a Bill. Honourable gentlemen were all too much men of business, and too competent, to undertake anything of that sort. Nothing of that kind, he was sure, had occurred. The honourable Mr. Walsh, having that on his mind, opposed the Bill. The Bill was simply to enable the trustees to sell land and to endeavour to save some remnant of the estate for the family. Honourable members knew perfectly well that it was utterly impossible, in the present depressed times, to sell an estate like Clifton. If it was put up to auction, not a bid would be made for it; although the land was prime, as good as any on Darling Downs, it would have to be offered several times before it could be sold. Clause 7 enabled the trustees to borrow money. A certain bank to which the estate owed money charged 10 per cent. interest. Under the 7th clause, the trustees would be able to shift the mortgage and get the money at 8 per cent. interest. That would be a very good thing for all concerned, and would save a nice little revenue to the estate. The Tooth family was very large, and unless the clause should be passed the land might be lost to the family; because it must be sold; and if sold, now or soon, it must be at a loss.

Mr. SANDEMAN said he thoroughly understood and believed what the honourable Mr. Taylor had told the Committee, from his own knowledge of the circumstances of the case. The Bill was merely an enabling Bill. It enabled the trustees in whom the estate was vested to do the best they could with it for the interests of the family—to sell or to mortgage the land. He appealed to his honourable friend, Mr. Walsh, who spoke of the duty of assisting the weaker party, to act up to his principle. The weaker party was the party under the Bill. The Committee had heard from the honourable Mr. Gregory, who was in charge of the Bill, that he acted with the authority of the executrix, the widow of Mr. Tooth, and that it was her desire that the clause should be passed. And what did the clause provide? To enable the trustees to raise money at a lower rate of interest than they were paying. "To dispose" of the property was not alone to sell it; but it left them to do with it that which was best for the interests of all under the trust—in the best manner for the family concerned. In a legal point of view, that would be found the correct meaning. The Committee had the evidence of the widow, who used the word in her petition, "to dispose" of the trust property comprised in the will of the late Mr. Tooth. He (Mr. Sandeman) urged his honourable friend not, at the present stage,

at all events, to obstruct the Bill. When the 7th clause came under consideration, probably the Committee would obtain some further information which would satisfy them.

Mr. WALSH: Two honourable gentlemen who last addressed the House seemed to know all about it. He professed to know nothing about the Bill, but he professed to know something about the customs of Parliament, and to represent the feelings of those who had no place in the House. He had no interest in the Bill. In those respects he was different from those who wanted only to please each other or to please some banking institution, in clearing the business off the paper. He said simply, that the Bill was *ultra vires*—he stood upon that. He said it was not the Bill that was placed before the members of the Tooth family, those who were interested under the will of the late Mr. Tooth. He took his stand upon that. The thing that those persons were now asked to agree to was at variance with the widow's petition. He stood upon that. He stood up in the House for the widow. In the name of the widow, he said, the Bill which the Committee were now asked to sanction was not the Bill petitioned for by her. Now, where were all the arguments of honourable members on the other side? Men might sit there as the representatives of banks, or lenders of money, or usurers, or whatever they liked to call themselves; but as the delegates or supporters of the widow and the orphans they were not supporting the claim she made on her own and her family's behalf when she first came as a petitioner before the Legislative Assembly, or that she advocated when petitioning for power to be conferred on the trustees. Honourable members were giving her a thing diametrically opposite to that which she asked for. Was that protecting the widow? He called it pandering to the bank, that had stepped in and seemed to have commanded, coerced, and taken possession of the select committee. His honourable friend, Mr. Sandeman, was doing a great deal of injury to the widow. He (Mr. Walsh) represented the widow, this afternoon;—he was the widow's friend. That honourable gentleman and his coadjutors, conspirators, were endeavouring to pass through the Council something else than what the widow asked for, and something very different from what was asked for on behalf of the poor children. The responsibility be with those honourable members. In the name of Heaven! would the honourable Mr. Sandeman tell the House where he got his information—where he learned that the widow wanted the Bill altered? Would he show that she or the poor youthful family sanctioned him to act for them, or authorised him to speak, in their names, for the alteration of the Bill? He (Mr.

Walsh) had no hesitation in saying that the way in which it was being carried through, by the paid representative of a certain portion of the family, and the way in which it was being supported by the representatives of banking institutions, appeared to him to be evidence of one of the grossest conspiracies; because the Bill was diametrically opposed to what was asked for—a Bill to sell land to pay debts—and they had contorted the Bill to do other things. If there could be a greater contortion, he could not comprehend it. And all that was done by two or three members who were not, as far as he could know, the friends of widows, or of anybody else. Therefore, the Bill ought to be opposed. At the same time, he would do nothing that would tend to the injury of the family. Let the Bill be sent to a select committee to take evidence upon it, and to put it into Parliamentary form. So long as it was put into a proper state—and the House ought to do anything for that purpose—he should not oppose it. He would not interfere with the welfare or oppose the wishes of the family; but, also, he would do nothing at the instigation of a bank, or at the instigation of the paid representative of a section of the family; nor would he do anything to impose silence on dumb members of the family.

Mr. GREGORY said that he could not really allow the remarks of the honourable gentleman to pass. He flatly contradicted his assertions, or, at any rate, his implications. The honourable member implied, first, that, being in charge of the Bill, he (Mr. Gregory) was in the House as the paid delegate or the paid representative of the family. He asserted positively that he did not receive a single sixpence for taking charge of the Bill in the Council.

HONOURABLE MEMBERS: Hear, hear.

Mr. GREGORY: That imputation was met. It was thoroughly groundless. The next imputation was, that he or his friends who held the same view as he, were the representatives of the bank. As far as he was concerned, he utterly denied it. He did not represent the bank; he did not recognise it at all. He took charge of the Bill as a friend of the family.

Mr. SANDEMAN: Hear, hear.

Mr. GREGORY: He did so, knowing perfectly the whole of their requirements and wishes. He felt that in supporting the Bill he was doing the only thing that would save them from ruin. With regard to the clause which was objected to, the honourable Mr. Turner had given as good an answer as was required; his definition was quite correct. Clause 7 asserted that the trustees should borrow. Who were they? The widow and her two sons. Were they likely to exercise a power that was detrimental to them? Surely, it was saying that they would not take care

of themselves—that they would burn their fingers. The trustees, and not the bank, would exercise the power under clause 7—those who were themselves interested. If they disliked it, they could refuse to act under the clause. There was no power in the Bill to compel them to exercise its powers if they did not like to do so. Consequently, the honourable Mr. Walsh's insinuations fell to the ground. His objections were not valid. The assertions he made were groundless; his insinuations were dispelled; the difficulty he raised was not in existence. One remark more, as to the family not being represented before the select committee. Let the honourable member look over the evidence; he would see that the infants of the family were expressly represented; that guardians had been appointed to represent them. The greater portion of the family were of age, and they had given their unqualified consent, in writing, to the Bill. They were at present in the colony. The whole matter had been fairly gone into and properly conducted. He had been driven into this explanation at what he conceived to be the wrong period in the consideration of the Bill. Still, he had shown to the Committee that the whole of the objections of the honourable Mr. Walsh had fallen to the ground, and that not one of them could be supported.

Mr. SANDEMAN: Hear, hear.

Mr. WALSH said he should not have risen again but for the obnoxious "Hear, hear," of the honourable Mr. Sandeman. The honourable gentleman who last addressed the House was the paid representative of the family in the Council. He did not put it in the way that the honourable gentleman himself had. The honourable Mr. Gregory did represent the family, and was the paid representative of the bank.

Mr. GREGORY rose to a point of order. After his positive denial, he did not think the honourable gentleman had any right whatever to repeat the statements made by him. He flatly contradicted them.

Mr. WALSH: He did not want the Chairman's ruling;—he apologised to the honourable member. The honourable Mr. Gregory stated that he was not the representative or the paid representative of the family. He (Mr. Walsh) trusted they would keep him to his word. After all, putting aside all paid services, it was a serious question that was before the Committee. He now called upon the Government to do their duty in the present matter. Seeing that they had no Attorney-General, in the Council, at any rate, there might be some difficulty in the way; but it was their duty to defend the widow and the fatherless children—the motherless children possibly—and the trusteeless children probably. God knows! what

might be the consequences of the reckless legislation of the Council. It was on behalf of those he had named that he called upon the Government to see that justice was done. He called upon the President, as an independent member, to assert his authority and great powers to see that no harm was done by the Chamber to the widow and children who required protection. The honourable gentleman opposite was not displeased with him—

Mr. GREGORY: I know you too well of old.

Mr. WALSH: The honourable gentleman should not get his Bill through. He (Mr. Walsh) would do all that he possibly could to prevent it. Knowing as he did the banks, he would prevent it.

Question put and passed.

Clause 2—Power of trustees to sell.

Mr. WALSH asked for an explanation of "hereditaments," in the clause.

Mr. GREGORY: It simply was the usual form of mere legal phraseology: lands which were inherited from the late Mr. Tooth—lands which were heritable by transmission, lands coming by inheritance—were hereditaments. If the honourable gentleman would look into a law dictionary, he would see what they were.

Mr. WALSH: Where were they?

Mr. GREGORY was understood to say, in the bank.

Mr. WALSH said he distrusted the bank, and he distrusted a man as the representative of a bank. It was bank phraseology. It meant more than the Committee knew of. The honourable gentleman said it was mere legal phraseology. If the Chairman could leave the chair he would tell the Committee at once what was the potency of that word, and would awaken the earnestness of honourable gentlemen, and make them pause about what they were doing. But honourable gentlemen seemed to be, under the sanction of the Postmaster-General, bamboozled; and the honourable Mr. Gregory's object seemed to be to bamboozle them.

Mr. GREGORY failed to see what the honourable gentleman was driving at. If he would explain the danger of the term. Was it a species of legal dynamite, to explode to the destruction of all around?

Mr. WALSH: There was some dodge in it.

Agreed to.

Clause 3—Sale to be without prejudice to existing incumbrances.

Mr. GREGORY observed that this was a new clause inserted in the Bill by the Select Committee, expressly to provide that

every sale shall be made free from the incumbrances of such of the incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent thereto.

Nothing could be more just than that parties who had claims over the estate should not be injuriously affected or have their claims set aside. It was perfectly clear that it would not be right by the Bill to take property out of the hands of those parties without its being subject to liabilities existing. The clause was inserted to cover any doubt as to any rights of persons being infringed by the Bill.

Mr. WALSH: The explanation was that that the Bill was a mortgage Bill. He defied anyone to tell the quantity of it. The honourable gentleman gave a glimmering of the meaning of it. The honourable gentleman said he did not represent the trustees.

Mr. GREGORY: Yes; he did represent them.

Mr. WALSH: He did not believe him.

Mr. GREGORY: Not a paid representative.

Mr. WALSH: If it was for a bank corporation, the introduction of the Bill was absolutely a fraud. The unfortunate widow's name was used to get it into Parliament; then the bank stepped in, and the attorney to the trustees came forward and tried to foist it upon the House as a Bill emanating from the widow. That was wrong. Honourable members ought to be ashamed of themselves. The Government ought to put their foot on it immediately—if the country had a Government that dared to go against a bank. After the explanation the Committee had got from the honourable Mr. Gregory, it appeared that the Bill was not the Bill of the widow at all, or of the devisees under the will. Where did the honourable member who had charge of it get the long words from? What was the meaning of "incumbrances" and "incumbrancers"? Any meaning the bank chose to put on them. The incumbrancers were, he (Mr. Walsh) feared, those who had a legal claim to the property. If the Bill was to set aside their claim, the House did not know where they would find themselves. How was the honourable gentleman going to protect those persons who had legal claims on the estate?

Mr. GREGORY: There was nothing in the Bill to prejudice anybody's claim.

Question put—That the clause do stand part of the Bill—and the Committee divided:—

CONTENTS, 14.

The President, Mr. Gregory, Mr. Thornton, Captain Hope, Mr. Sandeman, Mr. Box, Mr. Hart, Mr. Swan, Mr. Heussler, Mr. Taylor, Mr. Turner, Mr. Lambert, Mr. Edmondstone, and the Postmaster-General.

NOT CONTENTS, 2.

Mr. Walsh and Mr. Pettigrew.

Resolved in the affirmative.

Clause 4—On special conditions if necessary.

MR. WALSH: Had the Government nothing to say in favour of the clause? Were they reduced to that state, now—the Bill appeared to be a Government measure entirely—that they had to rely upon the support of the representatives of the Tooth family and the bank, and had to obey their behests? Had they nothing to say in defence of the clause? It was a wonderful provision, and he fancied it must have been framed by the Attorney-General, who was a mythical character. After reading it, for the benefit of honourable members, he said he could see that no Attorney-General would frame such a clause. It was one of the contrivances of his honourable friend, Mr. Gregory, to allow the trustees to insert any stipulations they pleased, “either as to title or evidence of title or otherwise” in any conditions of sale or contract. However, the Government had called their troops together, this afternoon, to support the Bill. How would his honourable friend, the late Minister for Lands (Mr. Taylor), regard any such clause, if he had dealings in any matter of the nature contemplated by the Bill? The Bill was full of quips and quirks that the petition never prayed for and that the trustees never asked for, and that they never wished for. But everything was to be given over to the Bank of New South Wales and its myrmidons who had charge of the measure, and who allowed those things to be introduced. No doubt the Bill would injure the persons interested under the Bill, who not only never wished for what was in it, but who had not had time to petition against it. He held that it was disgraceful that the Council should legislate on behalf of the mother, who had never been asked to consent to what they were doing, and that they should force upon the children what was not for their advantage. It was shameful, it was disgraceful, to foist upon the family by the Bill what was never asked for. Sooner or later, the honourable gentleman in charge of the Bill would see reason to regret what he was now doing.

MR. GREGORY: In the first place, the 4th clause was exactly as in the Bill sent in by the petitioner to the Assembly. In the second place, with regard to the honourable gentleman's perpetual references to the bank, the bank had had nothing to do with the drafting of the Bill; nor had he (Mr. Gregory);—it had been drafted by the legal adviser of the trustees and submitted to counsel.

Question put—That the clause do stand part of the Bill—and the Committee divided:—

CONTENTS, 13.

The President, the Postmaster-General, Captain Hope, Mr. Hart, Mr. Foote, Mr. Swan,

Mr. Thornton, Mr. Sandeman, Mr. Taylor, Mr. Turner, Mr. Lambert, Mr. Edmondstone, and Mr. Gregory.

NOT CONTENT, 1.

Mr. Walsh.

Resolved in the affirmative.

Clause 7—Power to mortgage.

MR. WALSH: There was not the least chance of the clause passing this sitting; and he might just as well say that, as far as he was concerned, he would stop it, on behalf of the unprotected members of the family, and for the character of the House. The 7th clause had no business in the Bill; it was an innovation. If he sat in his place for a week, he would combat it, he would resist it, he would struggle against it, and he would prevent its passing; because he was sure he was right. It was not a question of argument, now; it was a question of voting, and of submitting to wrong. He could see how curiously the other side had been manipulated. On a question of public policy he should now be ready to give way, because the people had the right to be heard by the voices of their representatives; but in a matter of private interest, where the voices of the widow and orphans might not be heard, he should stand out, though single-handed, on their behalf. He pointed out that the House should exercise their judicial functions in this matter, not alone their legislative powers. The honourable gentleman in charge of the Bill knew that the clause was wrong, and that it conferred a dangerous power; but, simply because he had the Government at his back and their servile supporters, with their Treasury advise and duty revise—and, God only knows! what other advisers—the honourable gentleman did an injustice to the family and to the Parliament. He (Mr. Walsh) would not allow it. Although inconvenient to himself, yet he should resist it as long as he could. He believed that he should have the support of one or two members to stand by him; and as long as he could get support the clause should not pass.

MR. GREGORY was aware that the honourable gentleman had not waded through the evidence with the same attention as he had himself done. Therefore, he would quote the evidence of Mr. Macpherson, the solicitor for the Bill. In his examination by the chairman of the select committee, Mr. Griffith, the following came out:—

Have any questions been raised before the Supreme Court with respect to the construction of this will? Yes; one question was submitted, under the Trustees and Incapacitated Persons Act of 1867, to Mr. Justice Liley, by persons interested in the estate, as to whether or not the trustees had power to mortgage the trust property comprised in it, and his honour decided that they had such power.

MR. SANDEMAN: Hear, hear.



Mr. GREGORY : Now, turning to question 34, he read :—

What was the question submitted to Mr. Justice Lilliey? The question submitted to His Honour was this:—Whether in His Honour's judgment it would be proper, and in accord with the duty of the petitioner and other trustees of the will, to mortgage the lands and premises for the purpose of discharging the indebtedness to the bank of New South Wales, and for carrying on and managing the station known as Clifton.

That would meet the objections raised by his honourable friend. The question had been answered by a Judge of the Supreme Court, now the Chief Justice of the colony. The Committee had fully discussed the clause and the Bill in all other respects.

Mr. WALSH spoke at length in opposition to the clause, reviewing all his arguments previously advanced, and enforcing especially the necessity for the House to observe strictly Parliamentary practice and usage; and he declared his intention of occupying the time of the Committee by reading a few chapters from "May" for the purpose of enlightening honourable members as to the proceedings in regard to private Bills in Parliament. He regretted to have to do so, but it was his duty to endeavour to obstruct the Bill in every way.

Mr. SANDEMAN urged the honourable member, who had mentioned him specially in the debate, to read from a standard dictionary now on the table the meaning of the word "dispose." Perhaps it would enlighten the honourable gentleman himself.

Mr. WALSH said he could give the meaning: to keep the Bill out of the manipulating hands of the honourable Mr. Sandeman. At a later stage of his address, the honourable gentleman called attention to the state of the Committee.

The CHAIRMAN left the Chair, and reported that there was no quorum in Committee.

After the usual forms had been complied with,

The PRESIDENT said there was a quorum; and

The House again resolved into Committee of the Whole.

Mr. PETTIGREW said he had looked through the evidence pretty carefully, and in his estimation there was no need at all for the 7th clause. It was very undesirable to insert it in the Bill. Some years ago, a Bill was introduced to Parliament in the interests of the Municipal Corporation in Brisbane; and, at the last moment, a clause was inserted in it, on the suggestion of Mr. Herbert, which took it completely out of the hands of the City Council. That was, he considered, a very disgraceful act. The 7th clause of the Bill was in the same category. Nobody interested under the

will asked for the clause; all that the trustees asked for was the power to sell; and that was all that was petitioned for by Mrs. Tooth, or asked for by her sons, or that was claimed for the benefit of the family interested in the property. Nothing was said anywhere by them about wanting the power to mortgage.

Mr. WALSH : Hear, hear.

Mr. PETTIGREW : He assisted the honourable Mr. Walsh in the previous division. He had conscientious scruples as to some matters; but in regard to the 7th clause, he had no doubt at all that it was quite unnecessary. He could see nothing better for a trust estate embarrassed than to sell it, and wind it up entirely; and to invest the balance, if any, for the benefit of the devisees under the will. There should be no more borrowing, or mortgaging, which only led to additional expense. Honourable members of the Council were the representatives of the whole country; and they had a right to consider how the Bill, though a private measure, affected the country. He considered that large estates were not for the good of the country. People were wanted to settle on the land. If ten men could be put where only one was, now, that would benefit the country. The evidence of the honourable Mr. Gregory before the Committee went to show that the estate would sell for £4 to £6 an acre, if sold to the best advantage. Let the trustees get money for it, and pay off the liabilities of the estate. It was best that the estate should be sold for the good of the country—to settle people on the land. That was the view of the case that the Council ought to take. That, however, was not the view of the money lenders. The money lenders did very well; they were well enough represented in the country, without coming forward to ask Parliament to assist in accomplishing their ends. He trusted that the honourable Mr. Gregory would expunge the clause; the Bill was complete without, as containing everything that the petition asked for. The honourable member would do well to accept his suggestion.

Mr. WALSH said that some extra duty devolved upon him, as a very respectable member of the House, the honourable Mr. Mein, had been suddenly attacked by illness, and had sent him a pencil-note expressing his regret that he could not be present this afternoon to assist in the debate on the question before the Committee. He asked the honourable Mr. Gregory, who seemed to feel that he had might on his side, to postpone the consideration of the question, out of respect to an unwilling absentee.

Mr. GREGORY had two courses open to him. In the first place, as to the absence of the honourable Mr. Mein, no one regretted that more than he, because that honourable gentleman's legal knowledge would have been

very valuable to the Committee, and, no doubt, his explanation would have shortened the debate very materially this afternoon. In the second place, he offered to add a proviso to the clause, which might remove the difficulties of the honourable Mr. Walsh—

Provided that it shall not be lawful for the said trustees to borrow upon the security any sum greater than the sum of the debts of the testator.

The fact was, the trustees were, some time ago, offered money at a lower rate of interest than they now paid to one bank. The Committee knew that they could not sell the estate profitably in the present state of the market; consequently, the power was asked to enable the trustees to shift the mortgage, in the way stated, and to avoid hurrying the property to sale. It was for that reason the clause was inserted. To meet the objections of the honourable Mr. Walsh, the proviso would be inserted—if he would withdraw his opposition.

Mr. WALSH admitted the importance of the concession made by the honourable gentleman in charge of the Bill. It would be found beneficial to the family, and he was so far thankful, on behalf of the family, for the mercies that were offered; but as it was a legal point, he thought the honourable gentleman should not urge it this afternoon, in the absence of either a legal adviser of the Government or the legal gentleman who was unfortunately prevented by sudden illness from sitting in his place on the Opposition benches of the Chamber. It seemed to him that a Bill of the character that puzzled the Judges was not one into which the Committee should rush, like fools, "where angels fear to tread"; it was not one that they should pass at the simple dictation of the honourable gentleman who had charge of it and his coadjutors, who were bound to support him simply because he supported the Government. He was quite sure that if the honourable Mr. Mein was present, he would embellish the discussion and enlighten the Committee upon the legal bearing of the matter before them, and break up that stony stolid phalanx that the Government could command whenever a measure was brought forward that did not affect the public but private persons and private interests.

Mr. GREGORY moved that the Chairman leave the chair and report progress.

Question put and passed.

Leave was given to the Committee to sit again next day.

#### ELECTORAL ROLLS BILL.

The House resolved itself into Committee of the Whole for the further consideration of this Bill.

Clause 9—Quarterly electoral roll to be compiled and exhibited—Objections—Registration court to revise quarterly lists—Quarterly electoral rolls.

On the motion of the POSTMASTER-GENERAL, verbal amendments were made in the third sub-section of the clause:—After the word "court," in the thirty-fifth line, the words "for such police district" were inserted; and after "officer," in the thirty-eight line, "who" was omitted, and the words, "of the electoral district to which the same belongs or relates and such returning officer," substituted therefor.

Clause 10—Registrar to furnish list of deaths—was amended on the motion of the POSTMASTER-GENERAL by the insertion of the words, after "deaths," "of adult males of twenty-one years and upwards."

Clause 19—Objections to names on list.

The POSTMASTER-GENERAL moved the omission of the word "list" in the first line of the clause, to insert other words, and to insert words after "list," at the end of the second line; so that the clause should stand thus:—

Every person named in any electoral roll for the time being in force in any district objecting to any other person as not entitled to have his name retained on any electoral list for such district, &c.

Agreed to.

Clause 29—Electoral roll, how compiled—was amended by the substitution, in the first line, of "Police" for "Electoral" district.

The House resumed, and the Bill was reported with amendments.

The POSTMASTER-GENERAL, on moving that the adoption of the report be made an Order of the Day for to-morrow, said, as it was almost indispensable that the Bill should come into operation on the 1st of August, if there should be sixteen members present at the next sitting, he would ask the House to allow of the suspension of the Standing Orders that the Bill might be advanced through its remaining stages and be returned to the Assembly. He found that the collectors were being appointed under the existing law by the various police courts. If the Bill came into force, as it was almost certain to do, the Council having made no alteration to which the other House could take exception, that would not matter. But unless the Bill came into force, the collectors would commence the work of collecting the lists in the way hitherto followed. It was very desirable that that should not occur. Therefore, he hoped there would be an absolute majority present, and that the House would be willing to suspend the Standing Orders to allow of the Bill being passed without further delay.