

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 7 AUGUST 1879

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LEGISLATIVE COUNCIL.

Thursday, 7 August, 1879.

Petition.—Reported Death of the President of the Legislative Council of New South Wales.—Tooth Estate Enabling Bill.

PETITION.

Mr. GREGORY presented a petition in reference to a Bill before the House, and moved that it be received.

REPORTED DEATH OF THE PRESIDENT OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES.

Mr. WALSH said: Before that is done, I will put it to the leader of this House whether it is fitting that we should do any business at all. Information has reached us that a neighbouring colony has lost one of the chief members of its Legislature, no less a person than the Honourable Sir John Hay, President of the Council. I put it that it would be more consonant with our feelings, and more respectful to another colony, for us to adjourn.

Mr. McDougall; Hear, hear,

The POSTMASTER-GENERAL : The intelligence of the sad event just reported to have occurred in the sister colony has come upon me suddenly, and even now I think we require, perhaps, something more authentic than what we have before us. I have read the report which appears in this afternoon's newspaper;—reference is made to a telegram, which, however, I do not find published in the paper. I have sent to the Telegraph Office, to ascertain whether the report is authentic or otherwise. On receipt of confirmatory intelligence, I shall be prepared to move in the way suggested.

After the House had waited some time, and during the progress of the following debate,

The POSTMASTER-GENERAL stated : I have received a memorandum from the Station Master at the Telegraph Office, Brisbane, who states that he inquired from Sydney, and the reply thence was, " Heard nothing of Sir John Hay's death."

MR. WALSH : Hear, hear.

TOOTH ESTATE ENABLING BILL.

Mr. Gregory presented a petition from Lucy Ann Tooth, William Edward Tooth, and Nelson Augustus Tooth, praying that the Tooth Estate Enabling Bill, now before the House, should be passed into law. The petition was respectfully worded, and in accordance with the rules of the House. He moved that it be received.

MR. WALSH suggested that before the petition was received it should be read, in order that the House should know whether it ought to be received.

MR. GREGORY said he thought the objection raised by the honourable gentleman was rather an unusual one, after what he had stated. He claimed that the petition should be received, and the onus would be upon him if it was not framed in proper terms.

The PRESIDENT : The motion was in order; and any honourable member might move that the petition should be read.

Question put and passed.

MR. GREGORY then moved, that the petition be now read.

MR. WALSH : That was an off-hand way of doing business on the part of the honourable Mr. Gregory that he was not going to submit to, at all. There could be very little difference whether the honourable gentleman or himself moved that the petition be read. If he were to treat the honourable gentleman in the way the honourable gentleman had deigned to treat him, he should question his right to deal with the Bill at all. The honourable Mr. Gregory forced him to take a step that he had not wished to take. As a person interested in the Bill the honourable gentleman was the last person who ought to be

moving its passage through Parliament. The question should now be raised; and he (Mr. Walsh) asked for the President's ruling upon it. As it was known that the honourable Mr. Gregory was in the service of the Tooth family, who paid for this business which was now distracting, or attracting, the attention of the Council; and as he was a party interested in what was going on, the President would say whether, under the circumstances, the honourable gentleman had any right to appear in the House to push the Bill. The honourable gentleman drove him to this. He seemed determined to pit himself against him in the Chamber, as to the manner in which business should be conducted. The honourable gentleman was interested as the paid servant of the family whose cause was now before the House; and he had no right to appear in the House, now, nor should he have done so from the beginning. Having made that statement, he (Mr. Walsh) asked the President to request the honourable gentleman to withdraw, unless he could prove that he was not an interested party, and that he was not in the service of the family whose cause he was advocating. He was sorry to do this, but the honourable gentleman assumed such a power to himself that he was compelled to it. He was not in a frame of mind, this afternoon, to carry on the business of the House, from the news that had come from Sydney; but the style of the honourable gentleman, who was determined, apparently, to have his own way, was such that his proceeding must be checked. He had warned the honourable gentleman as to what he was doing. The honourable gentleman was interested in the matter before the House, inasmuch as he was in the employment of, and was being paid by, the parties to be benefited, or otherwise, by the passage of the Bill; and he had no right to touch it. If he was sitting in another Chamber and took the part he did in the Council, he would be liable to expulsion, which members of the House of Commons had been frequently subjected to. It was not decent of the honourable Mr. Gregory to assume a position so persistently that only the most thoroughly disinterested person should take; yet the honourable gentleman singled him out for opposition when he was only trying to get the business of the country carried out in proper form and according to the usages of Parliament. Now, he (Mr. Walsh) objected to his taking a step further in the matter on the grounds stated; not from any personal feeling, but regardless of it towards any gentleman; and to protect from violence the rights and privileges of the House.

MR. MURRAY-PRIOR deprecated the causeless objections of the honourable gentleman. The honourable Mr. Gregory in no degree gave offence, but was performing his duty.

Mr. GREGORY said he was sorry the honourable Mr. Walsh seemed determined to detain the House on all sorts of questions which were not necessary. The honourable gentleman reiterated, to-day, the statement that he (Mr. Gregory) was a paid servant of the petitioners; and in answer, he said now, what he said on a former occasion—and he was rather surprised that the honourable gentleman should, after a denial, repeat his statement—that he received no emolument, no payment, no consideration of any sort, for taking the Bill through the House. That he was a friend of the family referred to, he might state; also, that he was particularly interested as a friend in their being as speedily as possible placed in a position to carry out the objects of the Bill as prayed for in the petition. Beyond that, he distinctly stated that he was quite open to make any answer to any direct inquiries as to what his position was in connection with the Tooth family. But he was not going to stand quietly in his place to listen to the honourable Mr. Walsh making such statements as he had made, and reiterated, in spite of a denial, which he ought to have accepted—at any rate, according to the rules of Parliament, for which he professed to have such a high regard. He denied altogether and wholly that he received any pecuniary consideration on account of the Bill, or in any way connected with it, or for conducting it through the House. His denial would be accepted by the House. If it could be proved, if it was possible, that he was paid for his services as a member of the Council, he would have no right or title to sit in the House; the Council would not allow him to remain amongst them; and he should deserve expulsion, if he could act in such a way as no honourable member would act.

Mr. WALSH: On a former occasion, the honourable gentleman charged him with certain idiosyncracies; and he retorted that the honourable gentleman's idiosyncrasy was subtlety. This he repeated; for he begged to say that no one ever charged the honourable gentleman with being paid for getting the Bill through the House. With all his subtlety, the honourable gentleman would not divert him from the position that he had taken up, and he could not get over of the charge that he was paid for his services in connection with the family estate, the disposal of which was provided for by the Bill. If the honourable Mr. Gregory could deny that, he (Mr. Walsh) had no more to add. If he could not, he was totally incompetent by the practice of Parliament to appear in the House as the advocate of the measure in question.

The PRESIDENT asked the honourable gentleman to state the point of order raised by him.

Mr. WALSH: The point of order was—That insomuch as the honourable Mr. Gregory was in the employment of the parties interested in the Bill, he was incompetent as a Member of Parliament to advocate its passage through the House.

The PRESIDENT: The point of order that has been raised has been answered by the honourable gentleman who is charged with a direct interest in the Bill before the House. That charge has been denied—

Mr. WALSH: Pardon me!—

The PRESIDENT: That charge has been denied, and there is no evidence before me, or Standing Order, which would induce me to rule otherwise than that the honourable Mr. Gregory is perfectly in order.

Question put and passed.

The Clerk of the Council thereupon read the petition.

The Order of the Day was then called; and, on the motion of Mr. GREGORY, the House resolved into Committee of the Whole for the further consideration of the Bill.

Clause 7.—Power to mortgage.

Mr. GREGORY moved, that the clause stand part of the Bill.

Mr. MEIN pointed out that when the Bill was under discussion, last week, the consideration of the clause was postponed for the purpose of taking evidence and receiving a petition in support of the power to mortgage which was introduced in the Bill by a select committee of the other House, and which had not been petitioned for nor contemplated in the original Bill by the promoters. A petition was presented to the House, this afternoon; and he suggested that, now, the evidence in support of it should be forthcoming.

Mr. GREGORY stated that there was a witness in attendance; and if the Committee thought fit to examine him, he should be only too glad if they would call him to the bar and take his evidence. He mentioned that Mr. P. Macpherson, solicitor to the trustees of the Tooth Estate, was in attendance, and would answer any questions that the Committee might put to him in connection with the subject under consideration. For himself (Mr. Gregory), he had no questions to ask; he was not at present aware that there was any necessity for his doing so.

Mr. WALSH observed that it was not intended by the course the Committee pursued, in postponing the Bill for a week, to necessitate the attendance of Mrs. Tooth to give evidence; but, while avoiding inconvenience to her, they wanted evidence in support of the petition, as agreed to on the former occasion. The honourable gentleman did not appear to be willing to keep

the promise made by him ; judging by his announcement that the solicitor to the estate was present.

Discussion ensued as to the course of proceeding, and Mr. GREGORY asked the permission of the Committee to withdraw his motion until after the examination of the witness.

Clause withdrawn accordingly.

By direction of the Chairman,

The Usher announced that

Mr. PETER MACPHERSON was introduced at the bar :

1. By Mr. MEIN : You are solicitor, Mr. Macpherson, for the Tooth Estate ? I am.

2. You are acquainted with the circumstances under which this Bill has been introduced to Parliament ? I am.

3. You are aware that a clause was inserted in select committee of the Legislative Assembly authorising the trustees of the estate to mortgage ? Yes.

4. It is now clause 7 of the Bill ? It is.

5. Will you be good enough to explain to the Committee the circumstances which render expedient, in your opinion, and in the opinion of the petitioners, the insertion of this clause in the Bill ? His Honour Mr. Justice Lilley, upon a question submitted to him under the provisions of the Trustees and Incapacitated Persons Act of 1867, intimated his opinion that under the word "manage" the trustees had power to borrow money at a lower rate than they were paying to the Bank of New South Wales, upon the security of the property. When I was instructed to prepare this Bill, I treated His Honour's opinion, though not judicially binding upon him, as law, and did not insert in the Bill, as prepared by me, this particular clause. When the Bill came before the select committee, the Bank of New South Wales, being interested parties, being encumbrancers of the property, suggested that this clause should be inserted, in order to place His Honour's opinion beyond doubt. That suggestion I considered a most excellent one, and coincided in it. Thereupon this clause was passed.

6. This estate is heavily encumbered, is it not ? It is. I said so in my evidence.

7. I see clause 7 makes no provision limiting the amount of interest that the trustees are at liberty to pay upon any mortgage that they may undertake for the purpose of liquidating present debts ? Well ; I do not think it is the intention of the trustees to pay any more interest than they are at present paying. On the contrary, they mean to pay less, if they can.

8. Do you think the parties would be prejudiced in any way by limiting the rate of interest the trustees should be at liberty to give ? I think it would be prudent to leave that matter open. The trustees' own good sense will lead them not to pay more interest than they are paying at present ; because they are paying the highest possible rate, now.

9. Will the interest of any parties be prejudiced, in your opinion, by the limitation of their power as to the rate ? I cannot answer that question, without knowing what the rate proposed to be the limit is.

10. Say, 12 per cent ? Well, I think it would be better to leave that out. I do not think that any trustees would be justified in borrowing money at 12 per cent.

11. Say 10 per cent. According to this clause the trustees will be at liberty to enter into an obligation to pay any rate of interest they may think proper. Do you think that the interests of the parties concerned will be prejudiced by fixing a maximum beyond which the trustees shall not be at liberty to go ?—Do you think any injury will be done ? I do not think so. I may recall to your recollection, Mr. Mein, that there is a rider at the end of the Pawnbrokers Act which might still be in force.

12. Confine your observations to the Bill before the House, Mr. Macpherson ? I mean as regards money lent, by the mortgage of stock.

13. *By Mr. Walsh :* Do you wish the Committee to understand that you are solicitor to the Tooth Estate ? Most certainly.

14. And that under your advice the trustees applied for an Act of Parliament to enable them to deal with the estate ? Certainly.

15. And that you promoted that Act of Parliament ? Yes.

16. And that you presented a petition in respect of that Act of Parliament ? Yes.

17. And that you caused the petition to be duly published according to law ? Yes ; at least, the notice, to be published.

18. The notice thereof ? Thank you.

19. And that, when you did that, you were acting under the instructions of the representatives of the family ? Certainly.

20. And you carried out their instructions ? Yes.

21. Neither more nor less ? Yes.

22. And the only way that you account for this new clause being introduced into the Bill which you promoted is, that it was at the suggestion of the Bank of New South Wales ? Yes.

23. Have you any knowledge of a petition which has been presented to the Legislative Council, this afternoon ? Yes.

24. Did you prepare it ? I did.

25. At whose instigation ? At my own, and after communicating with my clients about it ; of course, telling them the necessity for it.

26. With your clients ? My clients ; yes. The trustees.

27. Will you mention the names of your clients in connection with this ? Yes. The remaining trustees under the will, whom I represent—Lucy Ann Tooth, William Edward Tooth, and Nelson Augustus Tooth. I also represent Florence Rowena Tooth, who is of age, and Sydney Herbert Tooth, who is also of age. Those five persons are five out of the ten interested in the ultimate disposition of the estate.

28. Under what authority, Mr. Macpherson, do you represent the two last-named Toths ?—They appear to be infants ? They are, the two last named, *sui juris*, twenty-one years of age. Though not trustees, those two are parties to the *cestui que trust* whose consent to this Bill I now hold in my hand.

29. Do you represent any parties interested under the will who are not of age ? I do. I represent the whole family.

30. Any parties interested in the will not of age? Yes.

31. Will you give their names, please? Arthur George Tooth, Ernest Septimus Tooth, Hedley Havelock Tooth, Edwin Butler Tooth, and Cecil Robert Tooth.

32. Can you give their respective ages? I cannot. I know they are under twenty one.

33. By what authority do you represent them in the matter of this petition? By the authority of their mother. I may say that I have represented them for the last three or four years, before the Supreme Court, and by their consent; or, rather, I had a guardian appointed for them in legal proceedings before the Supreme Court.

34. You represent those infants at law by the instruction of the mother? Certainly.

35. Were any instructions given to you at the time you prepared the first petition and the original Bill, to ask for power to borrow money? I am not in order in answering such a question as that, Mr. Walsh. You cannot ask me as to what took place between myself and clients. I have already explained to the Committee why the clause came into the Bill.

36. I will put it in another way. Did you do your duty to your clients by not asking for that power? Well, that is a question that it is not fair to ask, with all respect.

37. I will put it in another way, Mr. Macpherson. Did you do all that you were called upon to do, as the solicitor for the estate? [*Witness made no answer.*]

38. Have you received any instructions, Mr. Macpherson, from the Honourable Francis Thomas Gregory in connection with your dealing with the estate? No; I cannot say that I have. I may say, in a general way, what will perhaps satisfy you, that I was told by the trustees to do what I thought best. I have done what I think best.

39. No one doubts that for a moment, Mr. Macpherson. Have you recognised Mr. Gregory as the financial agent of the estate? No. I have never had anything to do with the finances of the estate at all.

40. Whom do you look upon as the financial agent of the estate in dealing with you, Mr. Macpherson? I have never had any financial transactions with the estate, beyond payment of my costs.

41. I will put it in another way. As far as you are concerned as solicitor to the estate, you would have been quite satisfied, I take it, if the Bill as you presented it had been passed intact? I might have been, in the first instance; but, on reflection, I think this is an improvement—a decided improvement.

42. But you thought it necessary, in the first instance, to promulgate by petition all that you desired? Most certainly.

43. And in doing that, Mr. Macpherson, you were carrying out, as a solicitor, and as an experienced lawyer, what you knew to be the requirements of the law in that respect? Certainly.

The Witness then withdrew;

The CHAIRMAN intimating that he must understand he was to remain within the precincts of the House.

Mr. GREGORY then moved that clause 7 stand part of the Bill.

Mr. WALSH said ample testimony had been adduced to show that the requirements of Parliamentary practice had not been fulfilled, and that there had been mistakes made by the gentleman in charge of the Bill which it was the duty of the House to take notice of. To a certain extent, those mistakes had been removed by the proceedings of this afternoon. He trusted that the action of the Council would for the future prevent irregularities in the other Chamber, and that it would go far to protect those, at least, who were not old enough to protect themselves. The bounden duty of the Council, while acting judicially as well as legislatively, was to protect those who, from weakness or years, were not capable of self-protection. In the present instance, he did not think such persons had been properly regarded. He admitted that he did not like to see the clause go through the Committee in any form;—it was especially dangerous, it was inimical, antagonistic, and entirely foreign to the intention of the Bill. It was the most dangerous kind of legislation. He did not like the clause at all. He liked less its being carried under the guardianship, or management, or enforcement of a gentleman who was interested according to his own admission. He found by evidence in his hand that the honourable Mr. Gregory was directly interested in the business to be done under the Bill; that he was the financial agent of the estate, and that he was acting for the family. Hence, the Council ought to exercise double caution before allowing him to force upon them a measure of the kind before them without the ordinary safeguards having been adopted. They were passing a Bill that had been irregularly introduced. He admitted that they had done all they could reasonably do. He was exceedingly proud of the way in which the Upper Chamber had tried to prevent mischief being done. The Bill was in the hands of a gentleman who was of honourable intentions, probably, but who, according to all usage and practice of Parliament, had no right to be custodian of it in the House, he being personally interested in the matter. Well, he (Mr. Walsh) could see sufficient to show him that the Council were determined to let the clause pass; but he thought some good could be done by limiting the rate of interest to be paid by the trustees in the exercise of their powers under it; and he suggested an amendment to that effect. The persons interested might have every confidence in the trustees, but others might take their place. The honourable gentleman should introduce in the first part of the clause, following the word "at," the words "not more than ten per cent."

rate of " interest " per annum." There was no use in moving the amendment unless he found a chance of its being carried. But honourable members ought to see that tremendous pressure might be brought to bear by the bank upon the trustees, to compel them to go out into the highways and by-ways to borrow, in order to relieve some cherished constituent, who would have to pay only ten per cent.;—and for that the trustees might be forced to effect a mortgage at 12 or 20 per cent. If the honourable gentleman would not accept the amendment, all he (Mr. Walsh) could say was that he could not understand it, unless the Bill was a sham from beginning to end—to enable the bank to shift any matter it did not care for from its own to other shoulders. The amendment commended itself to honourable members. They were bound to protect the estate, the children, the trustees, from an attack of the kind he alluded to—if the bank had any intention of making it.

Mr. GREGORY said he had listened attentively to the arguments of the honourable gentleman, and he characterised them as full of speciousness for the pretence of protecting the trustees. The trustees were perfectly well aware of the clause; its effect was not a new idea to them; nor was the question of the limit of the rate of interest raised by the amendment new to them. The whole matter had been before the legal advisers; the trustees saw that, for good and sufficient reason, the limit would hamper their operations under the Bill. They had not the remotest idea of borrowing money at a high rate of interest—not higher than, and not so high as, was now paid under the mortgage to the bank. Any coercion that the bank could bring upon them under the Bill could not be greater than it might now exercise: as mortgagees, if the money was not paid, it could foreclose for the whole amount of its claim.

Mr. WALSH: What was the amount?—£6,000.

Mr. GREGORY: The amendment was one that, for reasons which were quite sufficient, he could not accept. It would impede the progress of the Bill; and the trustees were satisfied, under their legal advisers, to accept the Bill as it was. Of course, if the Committee approved of it, that was quite another thing; but he, as the member in charge of the Bill, could not accept it.

Question, on the amendment, put and negatived; the clause was then passed.

On the preamble,

Mr. WALSH pointed out that, in his view of the measure, the preamble was not in consonance with the provisions of the Bill; and that it was incumbent on the honourable gentleman to amend it. The preamble simply set out the necessity and ex-

pediency of the estate being " sold and converted into money " for the purpose of satisfying debts of the testator. There was not a word about " mortgage," though provision had been made empowering the trustees to mortgage the estate. He suggested that the preamble should read—" sold, or mortgaged, or otherwise converted." The amendment was not for obstruction, but to perfect the Bill. Surely the honourable gentleman was not so stubborn as to refuse to take an amendment of that sort from his hands? But there was a phalanx of supporters who would support the honourable gentleman and his Bill.

The POSTMASTER-GENERAL said he did not think there was anything in the Bill contrary to the preamble.

Mr. WALSH: If the honourable gentleman would study Parliamentary practice, he should know that the preamble must be in accordance with the provisions of the Bill; and he should be the last in the House to prevent a Bill being shaped in a proper way. When an important alteration was made in a Bill, the preamble was altered to fit it.

Mr. MURRAY-PRIOR: The honourable gentleman was such a persistent opponent of the Bill, that the House looked with very considerable doubt upon any suggestion of his.

Mr. WALSH: It was all very well for honourable gentlemen who had sat in the Council, in a bank-parlour kind of way, doing things in an easy careless style, to call him a persistent opponent; but he was used to doing what he thought right, on principle, from a sense of public duty, and not because a private friend was to be pleased. Honourable members should know better, and they would do their duties better.

Mr. HEUSSLER did not quite see the phalanx altogether on the side of the honourable Mr. Gregory, and he reminded the honourable Mr. Walsh of the assistance he had given him at an earlier stage of the progress of the Bill. He did not see why the words should not be inserted.

The POSTMASTER-GENERAL said he was sorry the honourable Mr. Walsh should have thought fit to interrupt him when he was offering a suggestion to the Committee. No doubt, the honourable gentleman was a very high authority on the practice of Parliament, but not on that account should other honourable members surrender their private judgment to him. The imputations that he had hurled at one side of the House were entirely unwarranted. He (the Postmaster-General) was sorry to speak in this way; but it was necessary to do so, if only to vindicate the right of every member of the Council to express his opinions on any measure brought before the House.

According to "May," he found it laid down that when all the clauses and schedules of a Bill had been agreed to, and any new clause or schedule added, the preamble, which had been postponed, was considered, and amended if necessary, so as to conform to any important amendments made in the Bill. He admitted that authority and agreed with it, that if any material alteration had been made in the Bill it would be necessary to alter the preamble, as suggested by the honourable Mr. Walsh. He should, in that case, be one of the first in the House to act upon it. But his opinion was, all through, that the amendment with regard to the power of mortgage was in perfect conformity with the preamble and the general scope of the Bill before the Committee; and it was not necessary, because the 7th clause had been inserted, to alter the preamble. The House had had a full discussion of the Bill in every respect, and he thought the honourable gentleman should withdraw his opposition and let it go through. He quite appreciated the honourable gentleman's desire to have everything done in accordance with Parliamentary practice; but he did not think he was going beyond fair criticism when he said he thought that the way in which the honourable Mr. Walsh sometimes addressed members on his (the Postmaster-General's) side of the House was rather presuming on his position as an old Parliamentarian, and it was scarcely right towards honourable members who did not wish to be brought into antagonism. He hoped the honourable gentleman would accept those remarks in the spirit in which they were offered. No one had a higher respect for the honourable gentleman than himself.

Mr. WALSH was exceedingly obliged to the Postmaster-General, but he was inclined to think his honourable friend would not have had the courage to make that last speech if the honourable Mr. Mein was in the Chamber, as that honourable gentleman generally followed the representative of the Government. He would say no more. He regretted exceedingly that honourable members were so determined to support anything that emanated from the other side, to support each other, in the most transparent wrong. He hoped he should have another opportunity of challenging the Bill on the third reading. His simple suggestion to make it perfect could not be accepted, because the Postmaster-General patted on the back the introducer of a very imperfect Bill.

Question put and passed.

The House resumed, the Bill was reported without amendment, and the report was adopted.