

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 22 JULY 1880

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LEGISLATIVE COUNCIL.

Thursday, 22 July, 1880.

Leave of Absence.—Insanity Bill—second reading.

The PRESIDING CHAIRMAN took the chair at 4 o'clock.

LEAVE OF ABSENCE.

On the motion of the POSTMASTER-GENERAL (the Hon. C. H. Buzacott), leave of absence, on the ground of ill-health, was granted to the Hon. Dr. Mullen for one month.

INSANITY BILL—SECOND READING.

The POSTMASTER-GENERAL, in moving that this Bill be now read a second time, said that it was necessary for him to state that it was the Bill, but in an altered form, that had been introduced last session. It was a measure, as hon. members were aware, of considerable importance—in fact, of so great importance was it considered last year that, in consequence of the late period at which it was introduced, it was thought desirable that hon. members should have an opportunity of revising and considering it during the recess, so as to be able to give it a more intelligent discussion this session. Many of the clauses had been revised and improved, and some had been entirely re-drafted, with a view to remove ambiguities, but the Bill was substantially the same as that of last session. The word “lunacy” had been done away with and “insanity” substituted for it, and instead of “asylum” the word “hospital” was used. The title “Curator of Intestate Estates” had also been inserted instead of “Master in Equity.” Those, he thought, would all be found improvements. The word “Lunacy,” which presumed that mental aberrations were in some way connected with the moon, was now generally held to be improper, and, like “natural-born idiot,” was held to be objectionable. “Asylum,” also, was considered a better word than “hospital,” and the “Curator in Intestacy,” it was believed, would better discharge the duties imposed by the Bill than the “Master in Equity,” an official now, he believed, not in existence, but whose duties were performed by the Registrar of the Supreme Court. No apology was needed for the introduction of this measure, the present law being embodied in a dozen different statutes, beginning with two originating in the Royal prerogative and enacted in the year 1324. As a curiosity he might mention that 17 Edwd. II., c. 9, provided that—

“The King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render it to the right heirs, so that such idiots shall not aliene, nor their heirs be disinherited.”

In the same year another statute provided that—

“Also the King shall provide, when any that before time hath had his wit and memory happen to fail of his wit their lands shall be safely kept without waste or destruction they and their household shall live and be maintained competently with the profits of the same, and the residue, beside their sustentation, shall be kept to their use to be delivered to them when they come to their right mind. . . . The King shall take nothing to his own use, and if the party die in such estate then the residue shall be distributed for his soul by the advice of the Ordinary.”

It was uncertain how much of these antique provisions were now in force, but he thought it would be admitted that this question, among many others, should now be set at rest. He might observe that this Bill had been prepared on the recommendation of the Royal commission appointed two or three years ago to inquire into the condition of Woogaroo Asylum, but that com-

mission, after pointing out the defects of the present law, referred to a Bill that was introduced into the Parliament of New South Wales, which had been very carefully prepared, and was afterwards sent to England for the revision of the highest authorities on lunacy there. Since that time the Bill had come into force in New South Wales, and he observed from the report of the Superintendent of Asylums in that colony that it had so far worked well, and was an improvement on the Acts previously in force. The Bill now before hon. gentlemen was not the same in all respects as that of New South Wales, as there was a separate asylum for the criminal insane, and there were "licensed houses," neither of which was proposed by this Bill. The first provisions he would recommend to the consideration of the House were clauses 4, 5, and 6, which referred to the classes of persons to be placed under restraint. Under the present law a person could be admitted into an asylum only in one way—namely, on the certificate of two medical men, and after having been brought publicly before a magistrate; but the Bill provided for two methods of admission. Clause 6 provided that when any person was brought before magistrates on the suspicion of being insane they should call to their assistance two medical practitioners who, had previously examined him, apart from one another, and each given a separate certificate according to the form laid down in the second schedule of the Bill. Under the present law it generally happened that only one medical man personally examined a person supposed to be insane, the second medical man being generally satisfied to act on the opinion expressed by his brother practitioner. He did not know that he was prepared to cite any instances of persons being improperly incarcerated in this colony, but in England, until the law was altered recently, there were frequent complaints of improper incarceration. Clause 9 provided that any person might be received and detained as a patient in an asylum on the authority of a request under the hand of some person according to the form mentioned in the fourth schedule—such request to be,

"1. Authenticated by the signature of a justice or a registered minister of religion.

"2. Accompanied by a statement in writing containing the particulars specified in the fourth schedule hereto; and

"3. Supported by two medical certificates containing the particulars prescribed in the second schedule to this Act; each of which certificates shall be signed by a medical practitioner who has, not more than twenty-eight days before the date of admittance, personally examined the person to whom the certificate relates.

"Provided that such request may be signed before or after the date of such medical certificates, or either of them."

That provided for a proper safeguard for persons without their being brought before a police court, and it was a very necessary provision, as sometimes when an unfortunate lunatic was brought before magistrates the whole of his private affairs were made public. With the safeguards provided by the Bill, it was believed it would be found very salutary to allow a private examination and admit an insane person on the authorities he had mentioned. There was also another means of admission into an asylum provided by clause 16, namely—

"Provided that in any case of emergency a person may, by order of a justice of the peace in the form of the sixth schedule hereto, be received into a reception-house, public hospital, or gaol, or lockup, upon the certificate of one medical practitioner alone; but in every such case one other such certificate shall, before such person is received into an asylum, be lodged with or obtained by the superintendent or officer in charge of such reception-house, public hospital, or gaol, or lockup."

That proviso was inserted because it might be absolutely necessary to have a man removed

before the certificates of two medical men could be obtained; but he would point out that, at a further stage of the Bill, where reception-houses were referred to, another mode was provided in reference to them—namely, in clause 57, which gave power to two or more justices of the peace to commit any person to a reception-house upon proof on oath by one or more legally qualified medical practitioners of the facts required by the sixth section of the Bill. Whilst on the subject of reception-houses, he might mention the principal alteration which it was proposed to make in the present law. The present Act provided that if at the end of one month the condition of a patient in the reception-house did not warrant his discharge, the bench of magistrates might commit him for another month. That many medical men, and he believed the Surgeon-Superintendent of the Asylum also, considered required alteration, as if a man was not cured at the end of one month his case was such that he should be forwarded to the Asylum. That, however, was a matter on which hon. members would no doubt pronounce an opinion. With that exception he believed the Bill with regard to reception-houses was substantially the same as the Reception-House Act at present in force. The twelfth clause provided that all certificates given by medical men should be after their personal examination of the person suspected of insanity; for instance—

"If a medical practitioner grants any such certificate as aforesaid without having seen and carefully examined the person to whom it relates, at the time and in the manner specified in such certificate, for the purpose of ascertaining the condition of such person to the best of his knowledge and power, he shall for every such offence be liable to a penalty not exceeding fifty pounds. And if such practitioner wilfully and falsely certifies in writing that a person is insane, knowing him not to be insane, the practitioner so certifying shall be guilty of a misdemeanour."

Of course, as a rule, a medical man could be depended on not giving a certificate without knowing what he gave it for; but there might be some members of the profession who, without personally and carefully examining a man, would go on the examination and representation of another; and it was only right that a penalty should be provided to meet such cases. Clause 16 provided that every person receiving a patient into an asylum or reception-house without the requisite documents should be guilty of a misdemeanour. Clause 19 and the clauses following provided for criminal lunatics, and he thought he need not detain the House by going into them minutely. Part 3 of the Bill referred to asylums for the insane, and provided that the Governor in Council might, by notification in the *Gazette*, appoint any place to be an asylum for the insane, and also assign a name to such asylum. It also provided for the continuation of existing asylums, and of the officers thereof, until they were superseded by others. Clause 28 provided that—

"The Governor in Council may appoint for every asylum a superintendent, who shall, unless there is a medical officer resident in the asylum, be a medical practitioner, and also an assistant superintendent, and such other officers as he deems necessary."

He had no doubt that clause would excite considerable discussion, as it had always been contended that the superintendent of an asylum should be a medical practitioner. On the other hand, however, many were of opinion that a man of business and of administrative capacity, even if not a medical man, would manage an asylum, with the assistance of a medical officer, better than almost any medical practitioner could, for, without wishing to impute any want of knowledge to members of the profession, they did not always show the same business capacity as was shown by men trained to other pursuits. The nature of the profession

was not probably calculated to lead to a knowledge of exact business habits. In committee he should be prepared to hear hon. gentlemen take exception to the clause, and also be willing to restore the clause to its original state, if the House thought that more advisable than to leave it optional to appoint a surgeon-superintendent who was not a medical man. Part 4 provided for the inspection, transfer, and discharge of patients. With regard to the inspection, he believed the provision made would be found most important. It was specified that the Governor in Council might appoint an inspector, whose duty it would be to inspect every asylum and every reception-house at least once in every six months. It was also laid down what such inspector should do, so that it should not be a mere walking about the asylum, but the performance of specific work as described, namely:—

"1. Inspect every part of the asylum or reception-house, every outhouse and building communicating therewith or detached therefrom, and every part of the grounds or appurtenances held or occupied therewith.

"2. See every patient then confined therein.

"3. Make such inquiries, examinations, and inspections as are set forth in section thirty-six of this Act; and

"4. Enter in the inspector's book hereinafter mentioned a minute of the then condition of the asylum or reception-house, and of the patients therein, and such other remarks as he deems proper."

It would also be seen that the Bill described very minutely other duties to be performed by the inspector, as it stated—

"The inspector on his several visitations to every such asylum, reception-house, ward, or cell, shall inquire—

"1. As to the care, treatment, and mental and bodily health of the patients therein.

"2. As to the arrangements for their maintenance and comfort.

"3. As to whether any patient is under restraint, or in seclusion, and why.

"4. Whether, and at what times, and to what number of patients, Divine service is performed.

"5. What occupations or amusements are provided for the patients.

"6. As to the classification and dietary of the patients, and the number of attendants and nurses; and

"7. As to money, if any, paid for the maintenance of any patient,—

and make such further inquiries as to the inspector seems fit."

He thought the House would see that if the Bill became law, and was effectively administered, the responsible head of the department was likely to know a great deal more about the working of the asylums than he did at the present time. He might mention that the number of patients in the Woogaroo Asylum was fast approaching the maximum number that the highest authorities allowed for one institution—700. There were now nearly 600 patients at Woogaroo; so that before long there must be another asylum. Therefore, the inspector, between the two asylums and the reception-houses, would find himself pretty well employed. In addition to an inspector, the Governor in Council was given power in clause 40 to appoint two or more official visitors, one of whom should be a medical practitioner, who should visit the place to which they were appointed once a month and at any hour of day or night, and also at such other times as the Colonial Secretary might direct. As to the transfer of patients, one of the provisions contained in the Bill might be valuable in this way. He found a large number of the insane patients were Chinese. Those men had no claim on the colony, and it would be a good thing to have the power of deporting them to their homes, as he did not see why the colony should be burdened with the maintenance of a large number of persons at the expense of the taxpayers. The provisions for the discharge of patients were also very complete. There was a special provision that when

the friends or relatives of patients were desirous and were prepared to take care of them they should be permitted to do so. In clause 51 it was provided that where they were willing to take care of a patient, but were unable owing to indigent circumstances to maintain him, the Colonial Secretary might, on the recommendation of the inspector or official visitor, grant an allowance for the purpose. Provision was also made that where persons were retained in that way they should be properly cared for. Under clause 18, if, upon inquiry it appeared that an insane person had been under restraint or coercion of any kind, and that the circumstances were such as to render removal to an asylum necessary or expedient, the Colonial Secretary could order the removal of such person accordingly. It would be an advantage to let friends take charge of patients, because it would be no more expense to pay their friends to support them than to keep them in the asylum; it would also be the means of lessening the number of patients in the asylum, and leading indirectly to a larger saving than perhaps appeared on the surface. The remainder of the Bill provided for the declaring of persons insane and for the appointment of committees, &c., and for the management of the estates of insane persons. At the present time the law was defective upon these points, and a large amount of money was lost, which, under the Bill, would be recovered and applied towards the maintenance and for the benefit of the insane person. The Bill provided most exhaustively for all such circumstances, and for the management of estates by a Committee of Estates, much in the same way as insolvent estates were worked very often by committees. He did not think he need occupy the attention of the House with detailed explanations of the provisions under these heads. The Bill had also been examined with regard to its legal bearings by professional gentlemen. It had been framed in the same way as the New South Wales Act on the subject, which had been found to work very well. Part 8 contained a number of miscellaneous provisions, but he did not think they called for special remark, beyond saying that they had been gone over very carefully. The schedules of the Bill were very complete, so that on the whole the measure would be found a very desirable one. In going over the Bill since it came from the printer he had found a few clerical errors, but it seemed impossible to bring up a Bill altogether free from errors, and these could easily be remedied. He felt confident the measure would be a good one, and, if passed, would be found useful. He need not speak to that House of the great necessity of a measure of that kind. He trusted to receive the valuable assistance of hon. gentlemen on both sides in perfecting the measure, for it dealt with an unfortunate class whose affliction must evoke their warmest sympathies. Though the subject of it possessed no political interest, they would doubtless feel that in passing such a measure they would be doing a great public service. He begged to move that the Bill be now read a second time.

THE HON. K. I. O'DOHERTY said he had been authorised by the Hon. Mr. Mein to express his regret that, owing to a public appointment, he would be unable to be present that afternoon; and this was the more to be regretted as he was prepared to examine the measure now before the House. He (Dr. O'Doherty) thought, under these circumstances, they should not proceed in the hon. member's absence. He agreed with the Postmaster-General that the Bill was one of the most important the Government had ever brought in; and as it was one of few Bills of that kind, it should be carefully considered and discussed.

He therefore hoped the Postmaster-General would adjourn the debate till Wednesday next. He would move—That this debate be now adjourned.

The POSTMASTER-GENERAL said he had waited, thinking that possibly some other hon. member might have come prepared to discuss the measure that afternoon. He had no wish to push it forward. There was no urgency, and he was quite ready to fall in with the suggestion of the hon. gentleman, as he wished to give members an opportunity of speaking on the measure if they desired.

The HON. W. H. WALSH said that probably it would be a relief to some hon. members if the hon. gentleman would inform the House who the Bill had been examined by, and who was the author of it. If it was a transfer from the New South Wales measure they might pass it with less consideration, as they were aware that some of the ablest men had given their time and attention to that Act. But if it was drawn up by someone connected with the Government they must apply themselves to it with far more diligence than they otherwise would. There was another measure passed last session which was drawn, he had thought, by the gentleman who had introduced it, but the fact was it was drawn by the last man he would have thought of as framing any Bill at all. He alluded to the Divisional Boards Bill. He had paid more attention to the gentleman who introduced it than to the Bill itself, and now it transpired that it was the work of another person altogether. To avoid any jumble of this kind again, he wished to ask the Postmaster-General who had examined the Bill and who was the author of it? He thought the matter was too sacred to be trifled with, and that the Postmaster-General should find no difficulty in replying.

Question—That the debate be now adjourned—put and passed.

POST CARD AND POSTAL NOTE BILL.

On the Order for the third reading of this Bill being read,

The POSTMASTER-GENERAL said he had promised the Hon. Mr. Mein that he would give him an opportunity to have the Bill recommitted on the third reading, and he thought the hon. gentleman would have been there to take advantage of it; but he had apparently paid no attention to the matter. As his desire was to have the measure discussed, he begged to move that the third reading of the Bill form an Order of the Day for next Wednesday.

Question put and passed.

The House adjourned at 5 o'clock.
