Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 11 AUGUST 1880

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LEGISLATIVE COUNCIL.

Wednesday, 11 *August*, 1880.

Hansard.—Case of Hon. W. Hobbs.—Insanity Bill—committee.

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

HANSARD.

A message was read from the Legislative Assembly, intimating that that House had approved of the proposal of the Legislative Council, in their message of the 15th July last, that certain members of that House should confer with the Printing Committee in reference to the issue of *Hansard.*

CASE OF HON. W. HOBBS.

A further message was received from the Legislative Assembly, requesting that leave be given to the Hon. W. Hobbs to attended before a Select Committee of that House for the purpose of being examined by said committee.

On the motion of the POSTMASTER-GENERAL, leave was granted accordingly.

INSANITY BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the House went into Committee further to consider the details of this Bill.

On clause 10—"Medical certificates to specify facts upon which opinion of insanity has been formed"—

The POSTMASTER-GENERAL said when the Bill was last under consideration some discussion had arisen as to the wording of this clause with reference to the certificate upon which a person deemed insane was to be received into an asylum. He thought the clause as it stood was perfectly correct. The only certificate to be signed by a medical officer was that referred to in the clause, and which formed schedule 2 of the Bill. There was no other certificate to be signed, and he did not think that any mistake could arise. The clause provided that the medical officer was to distinguish between the facts he had observed and those communicated by others; and it was understood that the medical officer would be a responsible person, perfectly capable of discriminating in regard to these matters.

The HON. K. I. O'DOHERTY said he understood the distinction to be made in the certificate between the facts observed by a medical officer and those communicated to him was to prevent him granting a certificate on mere hearsay evidence. He must see and examine the man himself, form his own opinion, and state the grounds on which his judgment was grounded.

Clause put and passed.

Clause 11—"Who not to sign certificates, &c."—moved.

The HON. K. I. O'DOHERTY said the clause seemed to be an innovation upon what had hitherto been the practice. It said "no medical practitioner who, or whose father, brother, son, partner, or assistant, is the superintendent or a medical officer of an asylum or reception-house, shall sign any order, request, or certificate for the reception of a person into any asylum or reception-house." In Brisbane it was well known that Dr. Hobbs was the medical practitioner most generally called of all their medical men to examine persons in cases of insanity, and to sign certificates connected with them. He was one of the most useful members of the profession in this connection; he had had great experience in connection with lunacy, and his opinion and advice added materially to the value of a certificate. It seemed to him (Dr. O'Doherty) that if that clause of the Bill were passed, Dr. Hobbs would no longer have power to sign any certificate, or examine any patient, nor would Dr. Smith, medical superintendent of Woogaroo, or any of the medical officers of asylums. The clause, if he read it aright, would deprive them of the valuable services of these gentlemen, and he looked upon that as a rather harsh and unnecessary proceeding.

The POSTMASTER-GENERAL said there was a clerical error in the clause which led to a misapprehension. In the last line the words were "reception of a person into any asylum or reception-house." The word "any" should be "such." The clause with that amendment would be correct. If they were to get independent medical certificates signed after the examination of patients they should certainly be by medical men outside the asylum altogether. That would be one safeguard, and the examination of the medical superintendent would be an additional protection against the committal of a sane person to an asylum. The provision was the same as they found in the New South Wales Act, and the English Act, on which the New South Wales Act was founded. He moved that the word "such" be substituted for "any" in the last

ine of the clause; and that "or a medical officer," in line 6, be omitted.

The HON. W. H. WALSH took exception to the remarks of Dr. O'Doherty, as he held that in legislating for the general good of the community of the colony they should not be influenced by personal considerations for Dr. Hobbs or any individual, however talented or useful he might be. The clause provided—

"No medical practitioner whose father, brother, son, partner, or assistant has signed the order or request"—

and so on. He wished to know why his sister, mother, wife, or daughter were excluded. He did not see why they were not mentioned, as it was well enough known they could sign a request.

The POSTMASTER-GENERAL referred the hon. gentleman to a clause in the Acts Shortening Act, by which it was provided that words importing the masculine gender should be held to include females. Under that section he presumed that in the clause under discussion father would include mother, brother would include sister, and so on.

The HON. C. S. D. MELBOURNE thought the clause of the Acts Shortening Act referred to by the Postmaster-General would not bear the interpretation put upon it. It did not enable them to change the word father so as to mean mother.

The HON. W. H. WALSH said, according to the Postmaster-General's reading of the clause, if a father committed a crime the mother might be punished for it.

The POSTMASTER-GENERAL thought the phraseology came within the scope of the Acts Shortening Act to which he had referred. That was, however, a question that the Committee could scarcely decide, and if hon. members desired he would postpone the clause and refer the matter to the law officers of the Crown; but he thought they might very safely take the clause as it was found in other statutes elsewhere.

The HON. C. S. D. MELBOURNE pointed out that difficulties might arise from the wording of the clause. Take, for instance, the case of a medical officer whose mother signed a request in order to get rid of a relative. They had heard of such things over and over again, and no provision was made for that. He thought a measure of this sort should be made as complete as possible.

The POSTMASTER-GENERAL said if the Committee would accept the clause with the amendment, he would take care to refer the matter to the law officers of the Crown.

Clause, as amended, put and passed.

Clause 12—"No certificate to be granted without examination"—put and passed.

Clause 13—"No order, &c., for reception into any asylum, &c., to remain in force after twenty-eight days"—moved.

The HON. C. S. D. MELBOURNE said the time within which the order or request should lapse—twenty-eight days—appeared to be too short for operation in the remote districts of the colony. It would answer in the vicinity of Brisbane, but in some of the distant parts of the colony an order might expire before a person could be conveyed to an asylum. He had found by experience in the working of another Act, which provided somewhat similar limits as this with regard to time, that it was impossible to fulfil the requirements within the month fixed by the statute.

The POSTMASTER-GENERAL said the order was for the admission of an insane person into the asylum, and the evident intention was that if the person was not admitted within twenty-eight days there should be a further examination. Supposing a person were committed in the far interior to a lunatic asylum, by the time he reached Brisbane the twenty-eight days might have expired, and then he would have to be re-examined. It was possible that in that time he might have perfectly recovered, and unless there was some limit as to the duration of an order a sane person might be confined in an asylum upon the production of some old order.

The HON. C. S. D. MELBOURNE explained that in other Acts where things had to be done at a distance from Brisbane provision was made for time according to distance.

The HON. K. I. O'DOHERTY said the point at issue seemed to be—was twenty-eight days sufficient for the transmission of a patient from some of the remote parts of the colony to an asylum? He did not think it was.

The HON. G. SANDEMAN thought cases would occur in which it would be impossible to send a man to an asylum within the time specified. Take the case of a man committed from the Diamantina. How could such a case be forwarded to the Asylum within the time specified?

The HON. C. S. D. MELBOURNE said the interpretation clause showed that a reception-house could not be considered an asylum, and he had seen patients coming very long distances to the Reception-house at Rockhampton. It would be impossible for them to reach an asylum in twenty-eight days. He thought the period should be extended in the same way as was done in other statutes regulating distance.

The POSTMASTER-GENERAL pointed out that there was no limit to the period within which a person might be received into a reception-house, but under the order for admission to an asylum he must be received within twenty-eight days. He could not be sent from a reception-house into an asylum until examined by two medical men apart from each other.

The HON. G. SANDEMAN thought the time for the order too short. Suppose a person were committed at Cooper's Creek, the nearest medical man would be at Charleville, and if the date of the commitment was from Charleville, would the time specified in the Act be reckoned from that date?

The POSTMASTER-GENERAL said the magistrate's order would have nothing to do with this Act. It was only when the person came under the examination of a medical man that the Act came into operation.

Clause put and passed.

Clause 14—"Orders and medical certificates may be amended"—moved.

The HON. W. H. WALSH said this clause seemed to him to be so strangely worded that he should oppose it in its present form as far as he possibly could. If hon. members would take the trouble to read it, he was sure they would admit, whether it came from the New South Wales Act or anywhere else, that it was a very extraordinary clause:—

"If after the reception of an insane person as a patient into an asylum it appears that any document, being the order or request, or any medical certificate, or any statement or copy of an order upon which he was received, is in any respect defective or incorrect, such document may be amended by the persons who signed the same within twenty-eight days next after the reception of the patient."

There was nothing whatever in the clause to lead anybody to understand to whom this was to appear. The superintendent of the asylum might say it did not appear to him; the Colonial

Secretary might say the same; but the two persons who had signed the documents, and who had perhaps repented of having done so, might say that it did appear to them, and it would be practically in their power to alter the whole position of an insane person in an asylum. The clause then went on—

"Provided, nevertheless, that every such amendment shall be approved by the Colonial Secretary, and if any such defective or incorrect document is not amended within twenty-eight days after the receipt by the superintendent of a direction in writing from the Colonial Secretary requiring such amendment, the Colonial Secretary may order the inspector to visit the patient to whom such document relates, and such inspector may order the patient's discharge, and such patient shall be discharged accordingly."

It appeared from this that if these two persons did not give the amended certificate, or if the Colonial Secretary did not approve of it, he might send his inspector or other officer to the asylum and cause a patient to be discharged who all along was presumed to be an insane person; so that under the provisions of this clause the Colonial Secretary could let loose upon the world an insane person; or, taking the other view of it, he might confine at his will a perfectly sane person. From first to last the clause was most awkwardly worded, and was the most dangerous provision he had seen in the Bill; and unless the Postmaster-General could make some amendment in it he should feel inclined to move the omission of the whole clause. He was aware that the Postmaster-General had had great labour in endeavouring to remedy the defects that appeared in the New South Wales Act, and he was afraid the more the hon. gentleman tried to pass the Bill through Committee the more difficulties he would meet with. He would therefore suggest that the Bill should be referred to a select committee, who could put it into something like better form than it was at present. He believed that by adopting that course the Bill could be made very much shorter, more easily understood, and altogether more acceptable to the public. In dealing with the last clause even, the Hon. the Postmaster-General had found it necessary to quote the Acts Shortening Act to explain it; and how could they expect it to be understood by those who would have to administrate it without referring to that Act? A measure of this kind should be so clear that he who ran might read, and especially that he who had to administrate it should be able to understand it. It should not be so ambiguous as to require reference to such an abstruse Act as the Acts Shortening Act to explain it.

The HON. C. S. D. MELBOURNE said it appeared to him that this clause was inserted to meet the contingency that whenever a warrant was delivered to the superintendent of an asylum, and it appeared to be defective, he would have to follow the course at present adopted by the governor of a gaol, and refuse to receive the patient. If a gaoler refused to receive a prisoner, there would be no great difficulty in bringing him again before a magistrate and having the proceedings rectified; but there would be some difficulty, and perhaps great inconvenience, in dealing in that way with an insane person who might require immediate attention. He offered no opinion as to the necessity of the clause, but he thought some provision should be made to prevent the rejection of an insane person by a superintendent of an asylum, and also to protect the superintendent against proceedings being taken against him for an illegal detention of a person who, although insane at the time that he was brought to the superintendent, that officer had no right whatever to detain him. Some provision should certainly be made to prevent an insane person from being cast adrift owing to the constable or apprehending officer being afraid to take upon himself the responsibility of detaining a person who had already been refused to be admitted by the superintendent because of a defect in the warrant.

The POSTMASTER-GENERAL admitted that some clauses of the Bill appeared rather obscure; but it was a measure dealing with a subject of very great difficulty, and it was very desirable to adhere to phraseology which had a well understood meaning in the Courts rather than to strike out in an entire different line. He had studied the Bill carefully, and had found that every clause had some object, and that it would be most dangerous to alter it materially. He did not think that clause was liable to the danger to which the Hon. Mr. Walsh referred; but if the hon. gentleman desired it he would insert the words "to the superintendent" after "appears." That would fix the responsibility. The clause was inserted because if a man were received into an asylum without every document being complete the superintendent would be liable to an action; and as to the approval of the Colonial Secretary, that was simply required to prevent abuses. The superintendent or officer in charge of an asylum might allow the persons who signed the documents to amend them, but in order to guard against that being done improperly every such amendment must receive the approval of the Colonial Secretary. This might cast upon the Colonial Secretary an onerous duty; but the effect of that approval being required would be that it would be very seldom resorted to. But still it was a necessary safeguard. Supposing a dangerously-insane person was taken to an asylum, and the superintendent refused to receive him because a document was defective, it would be a very hard case; and he thought that the clause, with a few verbal amendments, would effect the object in view. As to referring the Bill to a select committee, the hon. gentleman knew very well that when a Bill was referred to a select committee it very rarely came out of it. He moved that the words "to the superintendent" be inserted after "appears," in the second line of the clause.

Amendment agreed to.

The clause was further amended by substituting "Minister" for "Colonial Secretary," and agreed to.

The POSTMASTER-GENERAL, in moving clause 15, said it provided that where a person had been found insane by any proceeding in the court, an order signed by the judge, or by the committee appointed by the court, would be sufficient authority for the reception of such person into an asylum.

The HON. C. S. D. MELBOURNE pointed out that in this clause the word "court" occurred, and on reference to the interpretation clause he found "court" defined "The Supreme Court of Queensland." The Supreme Court consisted of the full court, so that under this clause it would be necessary to get the signatures of all the judges. He would suggest to the Postmaster-General whether it would not be better to amend the clause so as to give power to one judge. It was a power that might be very easily exercised by one judge.

The HON. J. COWLISHAW pointed out that the clause provided that an order might be signed by a single judge.

The POSTMASTER-GENERAL said the intention of the clause was very easy to understand, but at the same time there were other clauses in which the term "court" was used, and therefore there might be something in the Hon. Mr. Melbourne's observations. He was

not sufficiently well up in law to say whether it was as the hon. gentleman had pointed out, but he would take care to inquire into the matter before the Bill left that House, and, if necessary, to have an alteration made in the interpretation clause.

The HON. C. S. D. MELBOURNE said he had observed the words "an order signed by a judge thereof," but he drew attention to the matter at this stage because there were other clauses of the Bill in which "court" was mentioned alone, and which might necessitate application to the full court.

Clause put and passed.

Clause 16—"Penalty for receiving person into asylum, &c., without the requisite documents, &c."—moved.

The HON. K. I. O'DOHERTY thought the words "every person who receives a patient into an asylum" were rather obscure. It scarcely fixed the responsibility upon any one person, and he thought it would be better to say the superintendent or some particular officer.

The HON. W. H. WALSH also pointed out that there was a great want of clearness in the clause. The words "every person" were used in the 17th clause to mean an insane person, and in this to mean a sane person—or rather an insane person, because no one but an insane person would receive a patient into an asylum without proper documents. He would suggest the substitution of "any officer of the asylum" for "every person."

The POSTMASTER-GENERAL said "every person" included every person authorised to receive a patient, and he did not see any difficulty in the clause.

The HON. C. S. D. MELBOURNE asked the Postmaster-General whether he had any reason for making the phraseology of the clause different from that of the same clause in the New South Wales Act, which said "Every person who shall receive any person," and so on?

The POSTMASTER-GENERAL said the alteration was made to prevent confusion. The clause in the New South Wales Act was open to the objection pointed out by the Hon. Mr. Walsh, and the clause now before the Committee was perfectly right.

The HON. C. S. D. MELBOURNE drew attention to the difference between the New South Wales statute and the clause now before the House, which 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."

In this clause the term "lockup" appeared, which was not in the New South Wales statute, and it seemed to him to have been inserted to meet the case of persons committed in the outside districts. But supposing the case of a committal at the Diamantina, for instance, the man would be put in the lockup, but how would it be possible to get a second medical certificate? He put it to the hon. gentleman whether it would not be better to eliminate the portion referring to the receipt of a second medical certificate.

The POSTMASTER-GENERAL said that the intention of the clause was that although a patient might be received into the lockup, he could not be received into the asylum until the second certificate was received. The clause related to an emergency certificate upon which a patient might be received into the lockup, reception-house, hospital, or gaol; but before he could be received into the asylum the second certificate must be supplied.

The HON. C. S. D. MELBOURNE said, supposing a person were committed at Muttaburra, where there was only one medical officer, how was the person in charge of the lockup to obtain a second certificate? He would suggest to the Postmaster-General whether some alteration could not be made in the phraseology of the clause to provide more clearly for outside cases.

The POSTMASTER-GENERAL said the first portion of the clause made it a misdemeanour to receive any person into an asylum without proper authority, and then it was provided that, in cases of emergency a patient might be received into a reception-house, hospital, gaol, or lockup upon the certificate of one medical practitioner, but he could not be forwarded to an asylum until the superintendent received a second certificate. The word "lockup" was inserted to meet the objection raised by the Hon. Mr. Melbourne. There were no gaols in the interior, and to provide against that in cases of emergency a person might be committed to a lockup although it had not been proclaimed a gaol. He did not think anything would be gained by striking out "lockup," because the worst that could happen was that the man could not be received into the asylum without a fresh examination.

Tho HON. K. I. O'DOHERTY said the difficulty was that a person might be received into a lockup but could not be removed to an asylum until a second certificate was obtained, and he might be kept in a lockup for no one knew how long.

The POSTMASTER-GENERAL said some members of the Committee appeared to have got into a fog on this point; and, in order to give time for further consideration, he moved—

"That the Chairman leave the chair, report progress, and ask leave to sit again."

The HON. W. H. WALSH said the only member of the Committee who appeared to be in a fog was the hon. gentleman himself, who seemed quite unable to follow the able arguments of the Hon. Mr. Melbourne or the objections of the Hon. Dr. O'Doherty. He would much rather the hon. gentleman took the blame to himself.

The HON. K. I. O'DOHERTY confessed that he felt somewhat puzzled at the legal interpretation that had been given on some of the clauses of the Bill, and that he did not feel at all in a position to discuss them as he would wish to. Under the circumstances, it was perhaps as well that they should postpone the further consideration of the measure, which he should like to see passed through that Chamber in such a form that it could not be said in the other House that they had done their work in a careless manner.

The POSTMASTER-GENERAL said he was under an obligation to hon. gentlemen for the attention they had given to the Bill, but at the same time this provision seemed so clear that he could not understand how any fog could arise, and perhaps on further consideration they might see their way out of it.

Question put and passed.

The House having resumed, the further consideration of the Bill was made an Order of the Day for to-morrow.

The House adjourned at twelve minutes to 6 o'clock.