

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**WEDNESDAY, 18 AUGUST 1880**

---

Electronic reproduction of original hardcopy

## LEGISLATIVE COUNCIL.

Wednesday, 18 August, 1880.

Publication of *Hansard*.—Insanity Bill—committee.

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

PUBLICATION OF *HANSARD*.

The PRESIDING CHAIRMAN presented the Report of the Conference on the publication of a joint *Hansard*, consisting of certain members of the Legislative Council and certain members of the Legislative Assembly Printing Committee, together with the minutes of the proceedings.

The POSTMASTER-GENERAL (the Hon. C. H. Buzacott) moved that the papers be printed.

The Hon. W. H. WALSH said that although he should be apparently delaying the proceedings of hon. gentlemen, he could not help thinking that it was almost a pity the papers had not been put into their hands before. He was inclined to ask that the papers be read at once. It was a question of so much importance to the dignity of the Chamber, that it was a question with him whether they ought to be allowed to be printed and circulated. He had no wish to appear captious; but, if a rumour which had reached him was correct, he did not think the House had been well represented at the Conference, and he did not hesitate to say so. If it was true—though he could not discover it in the minutes—that they agreed through their Committee that the reports of that Chamber should be printed after the reports of the other Chamber—

The PRESIDING CHAIRMAN asked to what question the hon. member was speaking?

The Hon. W. H. WALSH said the question was whether the papers should be printed, and he was stating his reasons for doubting whether they should be printed at all. It was more in the way of interrogation to the Postmaster-General that he made the remarks. If it was true that the leader of the House had consented, for the sake of having a daily report of the proceedings of the Council, to submit to a degradation which was never practised elsewhere—if it was proved that their Committee had agreed that the reports of that House were to be printed after the proceedings of the other Chamber—he had doubts if their own sense of dignity could consent to the printing of the papers. Perhaps he had been misinformed, as, so far as he could learn, there was no allusion whatever in the papers to such an agreement. If that was not the agreement—if he was wrong respecting the instructions given to the Government Printer and to the chief of the parliamentary reporting staff—if the Postmaster-General would say this, all that he had said under a misapprehension need not have been said. If he had not been correctly informed, he was sure that it would be a kindness to hon. gentlemen if the Postmaster-General would say so, so that the discussion might be brought to a close, as needless. It was a duty the Postmaster-General owed to the House to say whether they were to understand that for the first time in the world where British institutions prevailed the Upper House was to be placed in a matter of this kind below the Lower House. That was the way he took it, and he cast the blame upon the Postmaster-General if he were detaining the Chamber under a misapprehension. On referring more closely to the paper, he was pained to see that he was too right. The agreement was that the *Hansard*, issued as a joint publication, should report the debates of the Legislative Assembly first, on the sheet, on the understanding that the

debates of both Houses be reported as fully as they now were. He refused to sanction the printing of such a paper as that; and it was degrading to that Chamber that their position and dignity should be bartered away for the sake of pandering to and pleasing the other Chamber.

The POSTMASTER-GENERAL said that, with regard to some of the remarks made by the Hon. Mr Walsh, he to some extent sympathised with what he stated as to the order of precedence which should be maintained with regard to the proceedings of Parliament. There was no doubt the practice, since the first establishment of Constitutional Government, had been, in matters of etiquette, for that House to take the precedence; yet there were circumstances in connection with the proposal referred to which might warrant them in assenting to a departure from what had hitherto been recognised as the order of precedence. They found, when the question of a daily *Hansard* was proposed for the Council, that it had been established by the other House, had grown into an institution, and that the members of that Chamber were particularly desirous of maintaining it in the state to which they had brought it after a good deal of trouble and expense. It was, moreover, suggested in their own House at the time the Committee was appointed to confer with the Printing Committee of the Assembly—by an hon. member on the other side of the House—that he did not see why they should insist upon their reports occupying the first place. He confessed that he thought on the whole the suggestion was not undeserving of attention. If they remembered that nearly all the legislation in the colony was initiated in the representative House, that the debates there were much longer, that nearly the entire expense of the *Hansard* publication was absorbed in reporting its proceedings, and also that the reports of their Chamber were frequently very brief, they would admit that it seemed absurd to issue them in a separate publication, and they might without the surrender of any other rights or privileges, waive the order of precedence in this matter. At the same time, he was bound to state that neither in the House nor at the Conference did the proposal come from himself, nor from a member of the Printing Committee, but from a member of that House. Although he did not always agree with that member, still, in a matter where the other House considered their privileges involved, it was desirable to show a disposition to concede to them the first place. So far as he was concerned he did not care about *Hansard* at all; but, at the same time, the fact of there being two co-ordinate Chambers, one of them having the reports published and the other not, seemed an invidious distinction, and to a certain extent they were bound to assert the equal claim of both to a daily publication of their proceedings. Although the concession might be contrary to their practice, it was not so serious a one that they might not entertain it. Their reports would be just as full as if they were placed first; but the Government Printer stated most distinctly that to place the Council reports first would sometimes cause embarrassment in the Printing Office, as large numbers of the *Hansard* were now printed, and the fact of its being done on separate sheets might sometimes delay the publication till an hour when it might be too late to send them to the station for the ordinary train. He should be prepared to support the adoption of the report when it came before the House; but, at the same time, he confessed he was not very warm about it, and if hon. members on the other side chose to refer it back to the Committee, or alter it for other purposes, they were free to do so. As far as he was

concerned, he thought the only way in which they would be able to bring about an agreement between the two Houses was to avoid anything like a dispute on a matter that was certainly extremely unseemly. He did not know that he need say any more, as other members of the Committee would no doubt give their opinions on the matter.

The Hon. C. S. MEIN thought that the hon. the Postmaster-General might have omitted the customary reference he made to the members on the opposite side, as there had been too much reference of that sort of late. Whenever anything went wrong, that hon. gentleman always insinuated by his remarks that it was attributable to someone on the opposite side of the House. If the hon. gentleman had listened he must surely have heard the cheers in support of the Hon. Mr. Walsh's remarks, which proceeded from hon. gentlemen near him on the Government side of the Chamber. This was a question that did not affect parties; and with that feeling he deprecated the allusions that had been made to the other side of the House. He (Mr. Mein) should not blame the Postmaster-General or anyone, and should not adopt the hon. gentleman's tactics in endeavouring to shelter himself behind the back of another, but he was prepared to take the consequences of his own action. The question now under discussion cropped up some time ago when some reference was made in the Legislative Assembly to the form of publication on one sheet, and his views on it were well known to hon. members. When it was suggested by their late President that they should have a daily *Hansard*, he stated that he was satisfied with the form in which the reports were then issued. Their weekly sheet of *Hansard* was a highly creditable production, and was a faithful representation of the proceedings of the House, and he doubted whether it could be improved upon. However, there was a general feeling that whilst the Assembly had its proceedings circulated daily throughout the country by means of *Hansard*, the influence of the Council would be diminished and their debates ignored without similar publicity being given to them. The contention was a reasonable one, and he was not inclined to oppose it. There was an idea entertained by many of the members of the other Chamber at the beginning of the session, that in consequence of full publication being given to their debates, and there being a limit to *Hansard*, the debates in the Assembly would be unnecessarily curtailed, and consequently a separate sheet was issued of the reports of the Council; but that had been found inconvenient, and it was to bring about an agreement between the two Houses that the Conference met. Although he considered that in the publication of a joint *Hansard* the proceedings of the Council should take precedence, he had expressed the opinion that he did not think that the dignity of the House would be in the least lowered if their proceedings appeared second on the sheet instead of first. That statement was cheered from all sides of the House, and the feelings of hon. members seemed to him to be generally in favour of it, and they must have known his views on the subject when they consented to him being appointed one of the Committee for consultation with the other House; and he went down with the full belief that members felt they would not sacrifice in the least degree their dignity if they occupied the second place on the broadsheet. Although he had no recollection of being the proposer, yet he admitted that he fully concurred with such an arrangement, and he now saw no reason to dissent from the position he took up then. What was the use of a daily *Hansard*, after all? Was it not that the public might be rightly informed of the proceedings of the Parliament, and

what their own branch of it was doing, which, though not elective, was ultimately responsible for a great deal of legislation? There was no doubt that the people were primarily interested in the actions of the persons who represented them. The Council's labours were more limited than the labours of the Assembly, and unquestionably the people wanted to know, first, what the representatives they had elected were doing, and after satisfying themselves of their action, might possibly feel interested in knowing what the other Chamber were doing; and he could not see for the life of him how the dignity or usefulness of the Council would be affected by their reports appearing second on the broadsheet. If they did not agree to the propositions which the representatives of that Chamber had already agreed to in conference with members of the Legislative Assembly, there might be no provision for the publication of their *Hansard* at all, and they would have to take the responsibility of devising measures for securing an official publication of their utterances; and he felt confident that if they did not seem to work harmoniously now, they might not be able to make satisfactory arrangements. At present they were indebted to the Assembly for their reports appearing from day to day; and he thought the best thing they could do was to agree to the recommendation contained in the report.

The POSTMASTER-GENERAL said, in explanation, that when he referred to the hon. gentleman as having suggested the proposed arrangement, he had not the slightest intention of being offensive; but merely said it to show the harmony that existed between the hon. gentleman and himself on the subject.

The Hon. G. SANDEMAN said that with all desire to act in harmony with the views of the other Chamber, he agreed with the Hon. Mr. Walsh that they were departing from constitutional practice. If they were, although in a minor degree, in their parliamentary institutions modelled on that of the British constitution, they were bound to carry out its practice in its integrity. If the proceedings of that House were to be put down as secondary to those of the Assembly they were departing from their constitutional rights, and some action should be taken by the House to place the matter on a proper footing. It might not really, as a question of fact, matter how their reports were published, but he put it to the House whether they were justified in creating such a breach in their constitutional practice as this would establish.

Question put; the House divided:—

#### CONTENTS, 14.

The Postmaster-General, the Hon. F. H. Hart, the Hon. F. J. Ivory, the Hon. W. F. Lambert, the Hon. J. S. Turner, the Hon. W. Hobbs, the Hon. C. S. Mein, the Hon. W. Graham, the Hon. F. T. Gregory, the Hon. K. I. O'Doherty, the Hon. W. D. Box, the Hon. G. Edmondstone, the Hon. J. Swan, and the Hon. W. Pettigrew.

#### NON-CONTENTS, 2.

The Hon. W. H. Walsh and the Hon. G. Sandeman.

Question resolved in the affirmative.

#### INSANITY BILL—COMMITTEE.

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

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

The POSTMASTER-GENERAL said that when the Bill was under consideration before it

was pointed out that there was some defect in this clause. He had given consideration to it, and now intended moving that the last two lines should be omitted with a view to the insertion of the word "thereof." The amendment would place the meaning of the proviso beyond all doubt. It was pointed out in the event of a person being committed by a bench of magistrates in the interior, and afterwards forwarded to an asylum, that he could not be received into the asylum unless the officer in charge obtained a second medical certificate. He had contended, and still contended, that no practical harm would have occurred, because the man being sent down, the proceedings would break down, and the man would simply have to be re-examined. There was no doubt, however, that if the clause was amended as suggested, it would be an improvement. He might also mention that he intended moving the following new clause, to follow clause 57 :—

"Where there is no reception-house in a police district a person committed as aforesaid may be placed for safe custody or medical treatment in the nearest hospital, gaol, or lockup until he can be safely conveyed to the reception-house. But no such person shall be so detained in a hospital, gaol, or lockup for a period exceeding fourteen days."

That should meet the case of an insane person or persons who was temporarily insane, who had to be committed in a district where there was no reception-house.

The HON. K. I. O'DOHERTY said that he was happy to see that the Postmaster-General was more favourably disposed towards the objection that he and the Hon. Mr. Melbourne had taken to clause 16. So far as he could see, the amendment proposed would meet the difficulty.

The HON. F. J. IVORY said that before they proceeded with the amendment he would like to draw the Postmaster-General's attention to the wording of the Bill, and more especially of the clause before the Committee. In the clause they had the word "person" used in a different connexion in several places. He would suggest that the word "patient" should be used throughout the Bill, and be defined to be a person who was insane or who was supposed to be insane. They would subsequently have to recommit the explanatory clauses to make that alteration, but it would materially improve the Bill. He would move that the word "patient" be substituted for the word "person," in the 48th line.

The HON. C. S. MEIN said he had not gone as carefully through the Bill as he should have liked to have done, but on a casual perusal he could see no difficulty in arriving at a proper interpretation of the word "person" as it occurred. He noticed that the word "patient" had been very carefully put in every clause where the insertion of the word "person" would have caused ambiguity. He also noticed that the Bill was punctuated. This was a question which had been considered fully elsewhere, and it was thought undesirable to punctuate Acts of Parliament, because Acts should be drawn so clearly as to be perfectly intelligible to the meanest capacity. Besides, no two persons could agree on the subject of punctuation. It was better, he thought, to adhere to the old plan, for the new one was likely to lead to more ambiguity. The clause in its present shape seemed to be an exact copy of the Sydney one, and its object was to meet the case of a person who had been committed to a reception-house for being of unsound mind and who was subsequently to be received in the orthodox manner in an asylum, to be detained for a specified period.

The POSTMASTER-GENERAL said, with regard to the amendment of the Hon. Mr. Ivory, that there was no doubt the word "person" was

inserted after due consideration. In the first line of the clause the word "patient" was used because when a person was received into an asylum he was a patient, but when he was sent to a public hospital it would lead to confusion to call him a patient. The proposed amendment would necessitate a great many subsequent alterations, and might cause confusion. With reference to the Hon. Mr. Mein's remarks as to the practice of punctuating Acts of Parliament, he might say that before the determination to punctuate was arrived at inquiries were made, and it was found that in South Australia, Tasmania, Victoria, New Zealand, and England, the practice had been adopted, and that only Queensland and New South Wales adhered to the old plan. The Attorney-General had also been consulted on the matter, and had approved of punctuation being adopted. He did not think that doubts would arise in the interpretation of statutes, because it was well known that courts of law entirely discarded punctuation in the event of a dispute arising as to the meaning of an Act of Parliament, and based their interpretation upon what they conceived to be the true meaning of the language used. Punctuation did undoubtedly help very materially in understanding the provisions of an Act, as might be seen by a comparison of some of the late English statutes with the Queensland ones.

The HON. G. SANDEMAN thought that the Hon. Mr. Ivory's suggestion that the word "patient" should be defined to mean a person who was insane or was supposed to be insane, and should be used throughout the Bill, was one that the Committee might accept. It might doubtless necessitate verbal alterations throughout the Bill to make the measure more consistent, but it would be an improvement. As to the question of punctuation, it might in many cases be the means of preventing litigation. Punctuation was desirable as much in public as in private communications.

The POSTMASTER-GENERAL said that if the Hon. Mr. Ivory would withdraw his amendment he would be happy to reconsider it after they had gone through the measure and understood it better.

Amendment, by leave, withdrawn.

The POSTMASTER-GENERAL moved the omission of all the words after the word "superintendent" in the proviso to clause 16, and the insertion of the word "thereof" in their place.

Question put and passed.

Clause, as amended, agreed to.

Clause 17—"Persons received into asylums, &c., may be retained, and on escape recaptured"—passed as printed.

On clause 18—"Colonial Secretary may order examination of patients in private houses"—

The POSTMASTER-GENERAL moved the omission of the words "Colonial Secretary" throughout the clause with a view to the insertion of the word "Minister."

The HON. K. I. O'DOHERTY said he took it for granted this was a new clause which had never before been in force, and it seemed to him to be putting a power in the hands of the Minister which was scarcely consistent with the precautions that they had agreed upon in the previous part of the Bill. Under the preceding clauses a patient had first to be brought before justices, and could only be committed on the separate certificates of two medical men who had previously examined him apart from each other; but under the clause before the Committee authority was given to a Minister, on being informed by the occupier or in-

mate of a private house in which an insane person was detained, or by the medical practitioner in attendance, to send an inspector or a justice, who was to be accompanied by a doctor, to make inquiries, and on their report he might order the person to be taken away and put in an asylum. The clause did not even say that the Minister might order the person to be put temporarily in a reception-house, but gave him authority to order the superintendent of an asylum to receive an insane person on the certificate of one medical man only. It was going dead in the teeth of what was made the formula in a preceding part of the measure.

The Hon. C. S. MEIN said that under the clause it would unquestionably be possible for a Minister to have a man incarcerated in an asylum upon the certificate of one medical man and the report of one justice. To make the measure symmetrical, and keep away from the Minister for the time being the breath of suspicion in connection with the administration of the law, it would be just as well to have two medical certificates. According to the clause, the friends who had charge of a person who was of unsound mind, and had to exercise restraint over him, would have within twelve months to report the fact of the detention to the Minister, who might thereupon make inquiry and decide whether the state of tutelage should continue, or whether a removal to an asylum should take place. It would be better that in the case of removal the same practice should be gone through as was prescribed by a previous part of the Bill before a person of unsound mind could be committed to an asylum or reception-house.

The POSTMASTER-GENERAL did not think the alteration suggested was necessary, as it would be observed that under clauses 4, 5, and 6, a person proved to be insane before a justice of the peace, or by the certificates of two medical practitioners, might be committed to an asylum. Subsequently, by clause 9, it was provided that a person might be received into an asylum on the authority of a request. This 18th clause was a distinct matter, as action under it was only taken where a person kept an insane person in his private house for a period beyond one year, if the malady had become apparent and confirmed, and had required during any part of the period coercion or restraint. It required that a person should be insane, or be believed to be insane, for twelve months before any action was taken, and he did not think it was necessary to encumber the authorities by insisting upon having the certificates of two medical practitioners. At the same time, if the Committee were in favour of only sending persons to an asylum on two medical certificates he should not offer any objection.

The Hon. W. GRAHAM did not agree with altering the clause so as to make two medical practitioners necessary instead of one, but thought that provision should be made for the certificate of a second medical practitioner; so that there would be the certificate of the first medical man of the condition of the person detained, and the certificate, also, of the medical man authorised by the Minister to make inquiry respecting the treatment of such person.

The Hon. C. S. MEIN thought that if the principle of having two medical certificates was affirmed in other parts of the Bill it should be applied in the present instance, because otherwise it would be in the power of a Colonial Secretary or Minister to put a person into an asylum on the certificate of one medical man—and the Colonial Secretary was, after all, only a man. Supposing, for instance, a man wanted to put a person into an asylum, it would be possible

for him, with the assistance of one medical practitioner and one justice of the peace, to trump up a case sufficient to induce the Minister to order the removal of the person to an asylum. There was some force in what the Hon. Mr. Graham said about not providing for a second certificate, but he thought it would be better to give power to the Colonial Secretary or Minister to authorise an inquiry by an inspector or justice accompanied by two medical practitioners, and if upon their report a person was insane, then to order his removal to an asylum. At present it was putting too much responsibility on the Minister to authorise him to act on one certificate alone.

The POSTMASTER-GENERAL said that he agreed with the Hon. Mr. Mein that in the second paragraph of the clause there should be "two medical practitioners" inserted instead of "a medical practitioner," and moved that the clause be amended accordingly.

Question—That the word "a" be omitted, with the view of inserting the word "two"—put and passed.

Some further verbal amendments were made, and the clause, as amended, was agreed to.

Clause 19—"Procedure where persons charged with offences are found to be insane by a jury or are acquitted on the ground of insanity"—agreed to with one small verbal amendment.

On clause 20—"Persons found to be insane before trial to be sent to asylum for the insane"—

The POSTMASTER-GENERAL moved the omission of the words "a medical officer," with the view to insert the words "the superintendent," as it was provided by the Bill that the superintendent should in all cases be a medical man.

Question put and passed.

Clause, as amended, agreed to.

Clause 21—"Persons detained during the Governor's pleasure may be liberated,"—and clause 22—"Penalties for aiding or permitting escapes"—agreed to.

On clause 23, as follows:—

"Any person committed to take his trial for having attempted to commit suicide, who is certified by two medical practitioners, in the form of the second schedule hereto, to be insane, shall forthwith be sent to an asylum; and such person, when certified by a medical officer and inspector or official visitor to be of sound mind, shall be discharged from such asylum, and shall not be put upon his trial, or be liable to any charge or indictment for having attempted such act of suicide."

The POSTMASTER-GENERAL moved that the words "a medical officer" be struck out, with the view of substituting the words "the superintendent."

Question put and passed.

The POSTMASTER-GENERAL further moved, after the word "inspector," the insertion of the words "the superintendent and."

Question put and passed.

Clause, as amended, agreed to.

Clause 24—"Governor to appoint wards or cells for observing supposed insane persons in gaol"—agreed to, after being amended by the omission of words "or medical officer of an asylum."

Clause 25—"Colonial Secretary may order insane criminals to be conveyed to hospital"—agreed to.

On the motion of the POSTMASTER-GENERAL, the House resumed, the Chairman reported progress, and obtained leave to sit again to-morrow.

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