Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 24 AUGUST 1881

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LEGISLATIVE COUNCIL.

Wednesday, 24 *August*, 1881.

The Royal Visit.—Petition.—The Border Patrol.—Pearl-shell and Bêche-de-mer Fishery Bill—second reading.—Criminals Expulsion Bill—second reading.—Intercolonial Warrants Bill—second reading.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

THE ROYAL VISIT.

The PRESIDENT reported to the House that on Thursday, the 18th instant, he presented to their Royal Highnesses Prince Edward and Prince George, of Wales, the Address agreed to by the House on the 17th instant, and that the Princes were pleased to make thereto the following reply :—

"Government House, Brisbane, 18th August, 1881.

"To the Honourable Members of the Legislative Council of Queensland.

"Gentlemen,—It will be our privilege to inform the Queen of the loyalty and attachment towards Her Majesty to which you have this morning given utterance.

"For your welcome to ourselves we heartily thank you. The hospitable reception we have met with in Queensland we shall never forget.

(Signed) "EDWARD.
"GEORGE."

PETITION.

The HON. W. F. LAMBERT presented a petition from certain carriers in central Queensland, setting forth grievances under which they suffered, and praying relief in the premises.

Petition read at length by the CLERK.

On the motion that the petition be received,

The POSTMASTER-GENERAL (Hon. B. D. Morehead) said there were two paragraphs in the petition which he thought would debar the House from receiving it. In the first place, the petitioners sought, as far as he could judge, to ask the House to do what it had no power to do without first amending the law. They admitted that by the 62nd section of the Pastoral Leases Act they could not go beyond half-a-mile from the road on unenclosed land. No doubt the petitioners were suffering under a grievance, and wished to have it remedied, but it should have been done by a petition to amend the Pastoral Leases Act of 1869. A similar statement was made by the petitioners with regard to the right of pasturage, and yet they wished to have the right of pasturage over a larger area than was provided by the Act. While fully admitting that the petitioners were suffering under severe grievances, yet those grievances could not be remedied in the way asked for by them. He would raise the point of order whether, on the grounds he had stated, the petition could be received.

The HON. W. F. LAMBERT said he believed that an exactly similar petition had been received in another place. Whether it was right or not to receive the petition here rested with the President. At any rate, he had done a service to a worthy class of men, on whom those living out west had to depend very largely. He knew well that those men required relief. He knew of his own knowledge that a carrier had had to travel sixty miles, whereas, if he had been allowed to go in a direct line, he could have got to the railway terminus in twenty-five miles. Whether the petition was received or not, he would have done a good service by bringing before the notice of the House the grievances under which those men laboured. The entire success of what he might term the Riverina of Queensland depended upon facilities given to the carriers, because without them it would be impossible to carry out those great enterprises which had been, or would soon be, introduced there. He trusted the House would receive the petition.

The HON. C. H. BUZACOTT said he saw no reason why they should refuse to receive the petition. The Standing Orders laid down certain conditions under which petitions should not be received, but they did not seem to him to apply to the petition before the House. It would be a hard case if the House were to determine that it would not receive a petition, setting forth a substantial grievance, simply because that grievance was caused by an existing Act. If one of Her Majesty's subjects was suffering under a grievance, he had a full and perfect right to petition the House for redress, and it did not matter whether the grievance complained of arose from the operation of an existing Act or otherwise. Parliament was a proper authority to be appealed to for the legitimate redress of grievances by an amendment of the law or an alteration in the administration of it. He could not see why the House should refuse to receive the petition.

The POSTMASTER-GENERAL said the Hon. Mr. Buzacott seemed to think that the Act in question was very elastic in its nature; but on referring to it he would find that it was very positive indeed, and strictly defined the limit to be half-a-mile from the road. It was not in the power of any Administration to make it more or less. He certainly held that the petition should not be received, because it did not set forth what the petitioners really wanted —namely, an amendment of the existing Act. With reference to the remark of the Hon. Mr. Lambert, it was of no consequence here what had been done in another place with reference to the acceptance of the petition; it was for hon. members to see whether it should be received by the Council. He fully admitted that the petitioners complained of a very substantial grievance, but to redress it they ought to have petitioned the House for an amendment of the existing Act. As the petition stood, it was simply waste paper, because it asked for something which the House had no power whatever to give without an alteration in the law. The petitioners themselves had his keenest sympathy.

The HON. W. D. BOX said he trusted the House would receive the petition. Whether the petitioners had framed their petition wisely or unwisely, so long as it was respectfully worded, and contained a prayer for relief, it was their duty to receive it. Whether the petition was waste paper or not depended on the hon. member who presented it, for it could not be printed unless he made a motion to that effect.

The HON. W. F. LAMBERT said it was not his intention to move that the petition be printed.

The PRESIDENT: It is my opinion that the right of petition is in no way restricted, so long as a petition is in accordance with the Standing Orders of the House; and I see nothing in this petition contrary to our Standing Orders.

Question put and passed.

THE BORDER PATROL.

The HON. W. D. BOX moved—

That there be laid upon the table of the House, a Return showing,—

1. The amount paid from the Consolidated Revenue for the maintenance of the Border Patrol for the years 1879 and 1880.

2. The sums received by the Colonial Treasurer from the officer in charge of the Border Patrol, on account of revenue, for the periods stated above, distinguishing the moneys received under the heading of wines, spirits, tobacco, *ad valorem*, fixed duties, and other sources.

He hoped the Postmaster-General would consent to the return being granted. The maintenance of the Border Patrol seemed to him to be an unwise expenditure of money. Such an arrangement as was in existence between Victoria and New South Wales would be a great saving to the country. Excepting for the preservation of peace, the force was not wisely employed. Two sessions ago the House consented to a similar motion, and to continue the information would be useful to the country, and would also bring the matter more prominently under the notice of the Colonial Treasurer.

The POSTMASTER-GENERAL said he had not the slightest objection, on the part of the Government, to give the information asked for.

Question put and passed.

PEARL-SHELL AND BECHE-DE-MER FISHERY BILL—SECOND READING.

The POSTMASTER-GENERAL, in moving the second reading of this Bill, said he thought he would have the sympathy of hon. members on both sides of the House, as some such measure, whether this Bill or another, was very much wanted in the colony. For many years past they had had a very valuable property belonging to themselves in bêche-de-mer and pearl-shells taken away without any sufficient return by traders from other than Queensland ports. It was also patent to them all that many outrages had been committed in that trade—whether by their own traders or by others it was unnecessary for him to say—but there could be hardly any doubt that these outrages had been committed. With a view, therefore, of enabling them to get a return from these valuable marine fisheries which they possessed, and with a view also of preventing any unnecessary injury which might be avoided being done to the native inhabitants of the northern coasts of the colony and the adjacent islands, the Government had introduced this measure. He himself was very glad that they had in that House one hon. gentleman at least, (the Hon. Mr. Aplin), who would be able to give them some very valuable information when they got into Committee upon the Bill, and who could also possibly give them some suggestions which would assist them in making the Bill before them a better one than it was at present. As the Bill stood, it had passed the Lower House with but few amendments, and had been before them on one or two occasions. The only amendments made were verbal ones, and in one or two instances the omission of some clause which was considered too stringent—at any rate by the Lower House—to stand in the Bill. The only amendment of any consequence was the omission in the 11th clause of the words "made in the presence of an officer of Customs or shipping master at a Queensland port," which appeared in the Bill as it originally stood; and an addition to that clause, which was moved by the leader of the Opposition, namely:—

"Recorded in the custom house or shipping office nearest to the place where it is intended to employ such labourer, or under a license issued under the provisions of the Pacific Islanders Protection Act, 1875."

He believed himself that it was very desirable that a Bill of this sort should become law as soon as possible. There was no doubt that hitherto the Southern colonies had benefited a great deal more from what was really Queensland property than Queensland had herself, and they had got no return in any shape or form. The Bill proposed that they should get some return from these fisheries, and whether it went far enough was a matter for discussion and probably for censure. He himself would probably prefer that the Bill should go a little further, and should make these men pay a little more. He trusted the measure would be fully considered in Committee; and, believing that they would get very valuable assistance from one or more members in Committee, he would content himself by moving that the Bill be now read a second time.

The HON. C. H. BUZACOTT said he quite agreed that it was necessary that Parliament should take steps to obtain some revenue from the persons engaged in the fisheries upon our coasts. He understood that nearly the whole of this trade was at present carried on by persons who were not connected with this colony in any sense; who did not obtain their supplies from this colony; whose vessels were registered elsewhere, and who were really taking a great portion of the wealth from our coasts from us, and entering into competition with our own colonists who obtained their supplies from here, and contributed towards the taxation of the colony. It was obvious that steps ought to be taken to protect local interests, and to see that the wealth of our coastal waters was not taken away without the colony receiving something in the form of an equivalent. At the same time, from such information as he had been able to obtain, he was of opinion that the Bill before the House would press rather hardly upon those whose vessels were registered in the colony, because they would have to pay a license fee; whereas those who were what they might term foreign owners would, in nine cases out of ten, still continue to engage in the fisheries and be relieved of the license altogether. It would be very difficult, he understood, for the Government to interfere or to say when these vessels trespassed upon our own fishing grounds and when they were outside of them. If so, it was obvious that by imposing a heavy license fee on our own shipowners they handicapped them and gave the preference to men who did not belong to the colony and did not contribute in any way to the taxation. He was not going to offer any opposition to the second reading of the Bill to-day; at the same time he wished it to be understood that in committee he thought the House ought to satisfy itself that the measure they intended to pass would really attain the objects it was desired to secure. He might say that he had been in communication with one resident of the Northern districts who was engaged in these fisheries, and who said that if this tax was imposed upon shipowners whose vessels were registered in the colony he would simply have to discontinue his enterprise. If that really was so he thought the House ought to pause before passing the Bill.

Question put and passed, and the committal of the Bill made an Order of the Day for to-morrow.

CRIMINALS EXPULSION BILL—SECOND READING.

The POSTMASTER-GENERAL said that in moving the second reading of this Bill he would preface his remarks by saying that it had been described in many places outside the House as an excessively stringent measure. He took it, however, that a measure of this sort must necessarily, and *de facto*, be a very stringent measure. Some of the most stringent clauses in the Act as originally introduced had been considerably modified. It must be within the knowledge of all of them that some legislation was necessary to prevent the influx of criminals from New Caledonia, as he was afraid he might almost say that sufficient supervision had evidently not been taken by the authorities in New Caledonia to keep her criminal population within her own shores. That in itself would be sufficient reason for introducing a Bill of this sort; but they had also to guard against criminals from other countries. They had also this fact before them: that there was an Act of this nature at present in existence in Victoria which dealt with passengers, at all events, by the mail steamers. Western Australia had, he believed, a somewhat similar Act, dealing with people coming from the other colonies. He (the Postmaster-General) was told by the late Attorney-General of Victoria, when he was recently in Sydney, that a friend of his going to England and calling at King George's Sound was compelled to take a solemn oath that he was not a convict; and that led him (the Postmaster-General) to think—if the gentleman who had spoken to him was to be trusted, and he was sure he was—that some such law as this existed in Western Australia. With reference to the various clauses of the Bill, if they commenced with the first one they would find that in subsection A the word "perjury" was added to the clause as it appeared in the original Bill. The clause was as follows:—

"1. The following persons shall be deemed to be offenders illegally at large within the meaning of this Act, that is to say—

"(*a*) Any person in Queensland, who, having been found guilty of felony or perjury by a court of competent jurisdiction in the United Kingdom of Great Britain and Ireland, or in any British possession other than Queensland, has escaped from custody within three years of the date of his arrival in Queensland; or

"(*b*) Any person in Queensland who, having been transported or imprisoned under the authority of any foreign State for any crime, has escaped from custody within three years of the date of his arrival in Queensland; or

"(*c*) Any person who, having served a sentence of transportation or imprisonment under the authority of any foreign State, for any offence for which any foreign State may request the extradition of an offender, comes into Queensland within three years after the expiration of his sentence."

This clause, as in the original Bill, was amended by the addition of the words "for any offence for which any foreign State may request the extradition of an offender." Subsection (*d*) read—

"(*d.*) Or any person who, having been convicted of felony or perjury, and sentenced to imprisonment or penal servitude in any British possession other than Queensland for a period of not less than twelve months, comes into Queensland within two years after the expiration of his sentence."

In the original Bill the words were "not less than three years," instead of "twelve months." Clause 2 provided that—

"It shall be lawful for any justice of the peace, or any constable, at any time after the passing of this Act, having reasonable cause to suspect that any person is an offender illegally at large within the meaning of this Act, forthwith, and without any warrant for such purpose, to arrest, or cause such suspected person to be apprehended and taken before any two justices of the peace, to be dealt with as hereinafter provided."

When that clause was analysed it seemed a very stringent one; but desperate diseases required desperate remedies. The second portion of that clause—

"Any justice may, if he think fit, instead of causing a suspected person to be apprehended, in the first instance, issue a summons under his hand requiring such suspected person to appear before two justices to be dealt with as hereinafter provided"—

was interpolated. It did not exist in the original Bill, but the latter portion was as at first introduced—

"It shall be lawful for any justice to take bail for the appearance of any person charged with being an offender illegally at large, to answer the charge before two such justices, in such sum and with or without such sureties as such justice may deem expedient."

With reference to the third clause—"Punishment of offenders illegally at large"—the second and third sections appeared pretty severe, but there was an alternative in the first section which allowed the justices to use their own discretion, and take bail that the person left the colony within seven days after his conviction; and he (the Postmaster-General) presumed they would use it and grant bail—if they thought, after a man had been brought up before them, that it would be better to let him go to another place, rather than let him stop here—they would exercise their right, and let him depart. Clause 4 provided for the punishment of offenders remaining after the expiration of sentence. Clause 5, "Penalty for harbouring." This clause, if the others were agreed to, would not be objected to. He thought the harbourer was even worse than the criminal, because when the time came when he had got all he could from the criminal he peached upon him. Hon. members would remember that when the bushrangers were in the other colonies the men who were the cause of most of the crime committed, and who were greater criminals than the criminals themselves, were the harbourers of criminals, and he considered the clause a very fair one. The clause providing for "search warrants" was a very important and necessary clause, as unless they had power to search these houses and had preventive powers there would be no opportunity for arresting criminals. He thought he had now spoken of the most debatable clauses in this Bill; and although it might be argued, and would be argued that the measure was a very high-handed one, yet he thought that in a colony such as this high-handed measures should be adopted. This was a tolerably honest colony, and would, he thought, compare with their statistics of crime very favourably with any other colony in Australia. He thought that they were quite justified in considering any Bill which would prevent their deteriorating in that respect. If a man sinned he must suffer, and it was all very well to say that a man had paid the penalty of his crime after he had completed his sentence; but they all knew very well that that was not the case. They all knew that a man bore the brand of a crime in private life often during the whole of his lifetime. That no one would dispute; but the reason it was so probably only existed in the human mind itself. Therefore hon. members would see that this measure might appear very stringent considered at first blush; still if carefully read over and considered, was one which would commend itself to all. Of course, none of them wished to make punishment eternal, nor was it proposed by this Bill that it should be so; but it was proposed that a man should give proof that he was an honest man before he was admitted to their shores, and he thought the time given to this Act was not one week too long. With these remarks, he begged to move the second reading of the Bill.

The HON. W. D. BOX said the Bill before the House was, to his mind, a very severe one. According to it there must be no forgiveness at all, and it appeared to strike very hardly at the possibility of any reformation in criminals. He did not say that it was not a wise Bill, or that it was not necessary; but unless some measure of the same sort was actually in existence in the neighbouring colonies—New South Wales, Victoria, or South Australia—he should be disinclined to assist in its becoming the law of the land in Queensland. The portion of it that should receive a good deal of attention was subsection D. He quite agreed that if any person escaped from custody they should do all they could to get him back again into custody: he had been tried by his peers and sentenced to punishment, and he ought to suffer every hour of it; he (Mr. Box) did not believe in remitting sentences. As far as concerned the escaping of criminals from custody, he believed it to be our duty most distinctly to assist our neighbours in having them restored to punishment for escaping, and to make them expiate their crimes. But, under this subsection D, if a man was convicted by the judges, that man must not come to Queensland until two years after the expiration of his sentence. He did not like this. He might be wrong, but he thought it severe to prevent fellow-colonists—for all in the colonies were fellow-colonists—from commencing life under new conditions for two years after the expiration of their sentence. There was another clause which the Postmaster-General would probably have some opposition to, and that was clause 6, which stated—

"Any master mariner or other person commanding, navigating, or sailing any vessel for the trip or voyage, who knowingly brings in such vessel to any port or place in Queensland, any such person as is mentioned in the first section of this Act"—

That was to say, that if any captain brought a criminal here within two years after the expiration of his sentence, he was to be punished. The phrase was, "knowingly brings"; but it would be impossible to convict a captain under this clause. This 6th section would have to be watched very closely, if not eliminated. It went on—

"Shall, upon conviction thereof before any two justices of the peace, for every such offence be liable to a fine not exceeding twenty pounds, or to imprisonment for any time not exceeding three months, or to both, at the discretion of the said justices."

No doubt other hon. members would discuss this measure, but to him, at present, it seemed a hard one.

The HON. F. T. GREGORY said he agreed with the remarks made in reference to this Bill, with the exception of the question raised as to the stringency of the measure and as to whether they were justified in using such very strong measures to keep escaped criminals out of the colony. For his own part, he confessed that he did not see anything in the Bill that was by any means severe, if they compared it with the laws enacted in the neighbouring colonies. It was not so many years since an Act was passed in South Australia by which not only was every person arriving in that colony from the neighbouring colony of Western Australia compelled to produce a certificate that he was not an escaped convict, but if a person arrived without a certificate he was liable to be taken into custody as soon as he landed. Unless he could prove to the satisfaction of the authorities there that he was not an escaped convict, prisoner, or ticket-of-leave man, he was liable to be detained in custody and put upon a vessel, where he would be in charge of the captain until arriving at the port of destination. Certainly, in regard to this particular case, Western Australia was then a penal settlement, although the Act was kept in force for some time after transportation ceased, in order to prevent the criminals from getting into the neighbouring colonies. He remembered, so stringently was that Act enforced, that on arriving in South Australia with some gentlemen from Western Australia, who were well known—he himself was among the number, and was known to the police authorities who came aboard the ship—they were questioned by the police, and although he vouched for those gentlemen, they were not allowed to enter the port because they had not a certificate, and it was not until he (Mr. Gregory) lodged a complaint with the Commissioner of Police that the restriction was removed. He was aware also that the Chief Justice of that colony, on arriving at South Australia, had an experience of a similar thing. He mentioned these facts in order to show what was the law in the neighbouring colonies. He had heard parties complain, while this Bill was before the other branch of the Legislature, that it was extremely dictatorial, and that many unpleasant consequences might arise from persons being questioned as to whether they might or might not have been criminals; that this might be done out of spite, and through some person giving information to the police that he believed them to be escaped criminals; and that all this would cause delay and very serious inconvenience. But from the working of the system, so far as it had gone in the other colonies, in a modified form—any parties being arrested by the police where there was sufficient information to justify it—he thought it was very desirable to have it here. He could not believe that the police in Queensland, or the magistracy of the colony, would cause anyone to be arrested or put him to any inconvenience unless when, in times of marauding or bushranging in the other colonies, the person answered in some way the description of the person looked for. It was easy to satisfy any reasonable man as to whether one was a criminal or not. Taking the measure all through, he hoped it would pass with some slight amendments in committee, as he thought it a very desirable one.

Question put and passed; the Bill was read a second time, and its committal, on the motion of the POSTMASTER-GENERAL, made an Order of the Day for to-morrow.

INTERCOLONIAL WARRANTS BILL—SECOND READING.

The POSTMASTER-GENERAL, in moving the second reading of this Bill, said it was considered by the Conference lately held in Sydney, and was to be brought before the different Legislatures of the colonies, in order to enable criminals flying from one colony to another to be arrested. No doubt there were certain clauses in this Bill that might appear excessively hard. There was one clause particularly which might compel a witness to go against his will from one colony to another, but at the same time they had the same thing in their midst in this colony, as an unwilling witness might be conveyed from one portion of it to another. He would point out that when this measure was brought before the Conference it was referred to a select committee, consisting of the legal members of the Conference and others; that it was carefully considered by them, and that the opinions of the Attorney-General of Victoria, and, he believed, of a very able lawyer indeed—the Chief Justice of Western Australia—were obtained. It was brought up by the committee before the Conference and was unanimously adopted. Now, even if this Bill did nothing else—and he thought it did a very great deal more—the effect of the 16th clause

would, he hoped, commend it to every member of that Chamber. For the miserable wife-deserter, who left his wife unprovided for, there should be some process by which he might be brought back. As the law stood at present, that could not be done. But this was only one instance of many that could be dealt with under this Act. He thought it stood to reason and common sense that there should be some means in these colonies—which had in many cases imaginary boundaries—to send back a criminal who might slip over from one region to another and laugh to scorn the crime that he had committed in an adjoining colony. Hon. gentlemen, he had no doubt, would not dissent from the provision as contained in the Bill, which allowed a criminal to be captured by warrant in another colony. But when they captured a criminal, if they could not get witnesses, the case against the criminal would be very slight indeed; in fact, it would fall to the ground. The question, to his mind, rested simply on the pecuniary loss of the witnesses in being brought very great distances in a case with which they might after all have very little to do; but still these anomalies did exist in the law as it stood, and unless they took some means of altering that he did not see how they could alter it in this case, because the question would arise as to which colony was to pay the expenses of the witnesses. No doubt, there was a great deal to discuss in the Bill, but he trusted when it went into committee that, with the legal talent they had in the House, and the good sense which they also possessed, they would be able, if any amendment did arise, to give it due consideration. He hoped, however, that the Bill would pass in this or in some slightly amended form, because he looked upon it as a very important one; and he could assure them that the representatives of the other colonies were as strongly in favour of it as he believed his colleague, the Colonial Secretary, and himself were. He concluded by moving that the Bill be read a second time.

Question put and passed; and, on the motion of the POSTMASTER-GENERAL, the committal of the Bill was made an Order of the Day for to-morrow.

ADJOURNMENT.

On the motion of the POSTMASTER-GENERAL, the House adjourned at fifty-eight minutes past 4 o'clock until the usual hour to-morrow.