

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 25 AUGUST 1881

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the Council on the 24th September, and approved on the 2nd October, 1879, with regard to the introduction of railway plans, it was necessary that those plans should lie on the table for a week, and should then be referred to a select committee. He did not know whether the motion of the Postmaster-General was intended to meet that Standing Order or not, but he imagined, judging from previous practice, that the more correct course would have been to have at once made the motion in accordance with the Standing Order.

The POSTMASTER-GENERAL contended that the new Standing Order did not meet the present case. It read as follows :—

“Whenever resolutions calling for the sanction of Parliament to the construction of railways, and approval of plans, sections, and books of reference,” etc.

It was all in the plural number, while they were dealing with something in the singular number. It was the plan of one railway, and he contended that it did not come within the new Standing Order, and could be dealt with according to the practice pursued before that Standing Order came into existence. They all knew why that Standing Order was framed. A large number of proposals were sent up from another place, and the Standing Order was passed in order that they might not be rushed through the Chamber. As they were now only dealing with one railway, it did not appear to him to come within the new Standing Order.

The PRESIDENT: I am strongly of opinion that the Standing Order was meant to cover a single railway as well as a number sent up together; and I think the House will consider that that is the meaning of the Standing Order.

INSANITY BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL, this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Assembly for their concurrence, by message in the usual form.

PEARL-SHELL AND BECHE-DE-MER FISHERY BILL—COMMITTEE.

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

Preamble postponed.

Clauses 1 and 2 passed as printed.

On clause 3—“Ships or boats employed in fishery to be licensed”—

The HON. W. D. BOX said he would like to know from the Hon. Postmaster-General whether it was necessary to keep in the words “or within one league to seaward from any part thereof.” The islands within sixty miles of our mainland had lately been annexed to Queensland and become part of our shores, and therefore he was of opinion that the words mentioned were unnecessary. The Government had already power within one league to seaward of our mainland, and as the greater implied the less they had the same power within a league to seaward of any part of our territory. He did not see why they should put anything in the Bill that would not do any good.

The POSTMASTER-GENERAL said that, if the Hon. Mr. Box would admit that the words would not do any harm, he did not see why they should not be in the clause. Of course, they had power within sixty miles of the mainland, but this gave them power within sixty-three miles. The water between the islands and the mainland came within their jurisdiction, and the clause provided for three miles outside of that. The

LEGISLATIVE COUNCIL.

Thursday, 25 August, 1881.

Message from Legislative Assembly.—Insanity Bill—third reading.—Pearl-shell and Béche-de-mer Fishery Bill—committee.—Criminals Expulsion Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

MESSAGE FROM LEGISLATIVE ASSEMBLY.

The PRESIDENT reported that he had received a message from the Legislative Assembly, forwarding plans, sections, and books of reference of the extension of the Northern Railway from Charters Towers to Hughenden, approved by the Assembly; and requesting the concurrence of the Council in the same.

The POSTMASTER-GENERAL (Hon. B. D. Morehead) moved that the message be taken into consideration on Wednesday next.

The Hon. F. T. GREGORY said that in accordance with the new Standing Order adopted by

words were extremely necessary, and the hon. gentleman would see that if he read the context of the clause.

The HON. C. H. BUZACOTT said he thought the Hon. Mr. Box was under a mistake. When this Bill was to apply to any vessel within one league to seaward, it meant within one league of the boundaries of the colony, which, of course, was only an imaginary line. He did not see any objection at all to the wording of the clause, and thought it was correctly worded. What he felt, however, was that the license would press heavily upon owners of vessels who resided in the colony. He was quite aware that this clause did not refer to the question of fees; but it had been suggested to him outside of the House that if these words were added to the clause it would relieve the owners of vessels registered in the colony from the disadvantage which would exist if the Bill came into operation. The words which it was suggested should be added, were to insert, after the words "or within one league to seaward from any part thereof," "or unless such ship or boat shall have been only registered in the colony." That would have the effect of compensating all vessels that were only registered in the colony. He fancied that there would be some difficulty in working the clause in that form, as perhaps it would be making an invidious distinction between the Queen's subjects who resided in Queensland and those of the other colonies. At the same time it was obvious that men who were living in the colony, and paid customs duties, and contributed largely to the revenue, ought not to be the only ones who would suffer by this Bill. Of course he would be told that if the owners of vessels from Sydney or Melbourne fished in our waters they would have to take out licenses; but, as he pointed out yesterday, it was the belief of those engaged in this trade that large numbers of these outside owners would not pay license fees at all. It was almost impossible to prevent their coming to our waters and fishing in them. Although he stated this objection to the Bill, he might state that he had no intention of opposing it. He preferred to cast the responsibility upon the Government, who, after fairly inquiring into the subject, had deemed a Bill of this kind requisite. At the same time, if any member of the House desired to make any amendment in the Bill in this direction he would give it his support.

The HON. F. H. HART saw very great objection to the suggestion of the Hon. Mr. Buzacott. If his suggestion were carried out, there would be nothing to prevent the owners of vessels who resided in the other colonies from sending their vessels to Queensland and getting them registered here, and avoiding the license altogether. They would simply transfer their vessels to someone resident in Queensland. He did not think the suggestion would work at all. But there was another reason. They were bringing in this Bill, as he understood it, to get some revenue out of these fisheries, and he really did not see why they should force fees upon owners of vessels from New South Wales and the other Australian colonies, and exempt our own people. Why should not the owners of vessels registered in Queensland contribute their share to the revenue? Persons who owned steamers here had to pay licenses, and why should not the owners of vessels engaged in this trade? He did not think it was a fair thing at all to try to impose these duties upon foreigners, and shield our own people simply because they were Queenslanders.

Question put and passed.

On clause 4—"Principal officers of Customs may grant licenses"—

The HON. W. APLIN said that, living as he did in the North, he had some knowledge of the

value of these fisheries, and he, for one, would be very glad to see some revenue derived from them. Still, he fancied this clause would press rather unduly upon the smaller boats engaged in the trade, most of which belonged to this colony. They would be heavily handicapped against vessels coming from Sydney and Melbourne, which were generally large schooners. They were fitted out in the other colonies, and stayed during a whole season without coming to this colony for anything. They were taxed to £20, and the smaller boats would be taxed to almost a similar extent. He thought the clause should read this way:—

For every boat ten shillings; for every ship of ten tons burden or under, the sum of two pounds; for every ship above ten tons burden up to one hundred tons, the sum of five pounds, and for every ship above one hundred tons burden the sum of twenty-five pounds.

He should like to see the clause amended in that way.

The POSTMASTER-GENERAL said it was quite clear that under the 2nd section of the 268th Standing Order the House could not amend the clause in that way. The Standing Order was as follows:—

"268. With respect to any Bill brought to this House from the Legislative Council, or returned by the Legislative Council to this House, with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorised, imposed, appropriated, regulated, varied, or extinguished, this House will not insist on its privileges in the following cases:—

- "1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.
- "2. Where such fees are imposed in respect of benefit taken or service rendered under the Act and in order to the execution of the Act, and are not made payable into the Treasury, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.
- "3. When such Bill shall be a private Bill for a local or personal Act."

He thought that under that Standing Order they had not the power to alter the clause in the way mentioned; which, he believed, was to interfere with the revenue in some way. They might reject the Bill if they liked, but they could not amend it so as to interfere with the revenue.

The HON. C. H. BUZACOTT said that the Standing Order which the Hon. Postmaster-General had just read to the House was not a Standing Order of that House at all, but was a Standing Order of the Legislative Assembly. He thought, however, that, though it was not applicable under the circumstances, it would be idle for them to endeavour to make amendments of the kind. He should like to say that the Constitution Act did not prevent them from making any amendments in a Bill; it was entirely a question of whether they should bring themselves into collision with the other House by insisting upon their privileges. He did not propose to carry the contention so far; but, at the same time, when it was seen that they could make an amendment, he thought they might as well make it and send it down to the other House in order that the matter might be brought under their consideration. He certainly did not think that it quite followed that they should accept a measure sent up from the other House just as it stood. They were the revising Chamber; and, in this particular instance, they happened to have a member in that House who had had more practical experience in the matter under consideration than perhaps any member in the other House. That gentleman said he considered the license fee proposed in the Bill would be oppressive, and suggested that they should make an alteration. He (Mr. Buzacott) should support him if he proposed it, as he did not suffi-

ciently understand the matter to take it in hand himself. If he proposed a reduction he should support him, because he thought there was a great deal in what he said, and that it would be very desirable to give the other House an opportunity of reconsidering the license fee it was proposed to impose.

The POSTMASTER-GENERAL said that when he read the Standing Order he certainly thought he was reading a Standing Order of that House. This was really a money Bill, as it affected the revenue of the colony, and this clause and the Bill must either be accepted or thrown out. With regard to the remarks made by the Hon. Mr. Buzacott, to the effect that this was an important reduction proposed, he said it was absurd if it was to be considered that that was a question which stood between the profit and loss of the undertaking; he would leave it to the common sense of hon. gentlemen to say what there was in such an argument. He must still think that the license proposed under this Bill was not in any way excessive. He thought, on the contrary, it was a low one, and might wisely be made higher. He denied the right of that Chamber to interfere with this clause, as it affected the revenue of the colony. The result of altering the clause in the manner suggested would inevitably be to interfere with the Standing Order which he had referred to.

The Hon. C. H. BUZACOTT said the question before the House was not as to whether they could alter this Bill, but as to whether the Standing Order would prevent them from making an alteration which would affect the revenue. He was quite certain that they had that power, and the question was as to whether it was expedient to insist upon it. The fact that the other House had not insisted on its right showed that it was a matter of discretion. If they thought a Bill of this kind brought before this House required amending, he thought they had a perfect right to send it back to the other House for reconsideration. He was quite certain of this. But if, on sending the Bill back to the other House, the members there persisted in the charge originally imposed, then this House ought to give way; but he was not ready to accept any charge imposed by the other House without protest, or without giving the other House an opportunity for reconsideration.

Question put and passed.

On clause 5—"Duration of license"—

The Hon. W. APLIN said he observed that the proviso at the end of the clause stated that—

"In respect of all licenses issued subsequent to the first day of May in any one year, one-half the annual license fee only shall be payable."

He would like to move as an amendment that the word "May" be omitted, with a view to the substitution of the word "July," as the best part of the fishing season was after the 1st of May.

The POSTMASTER-GENERAL did not think sufficient reason for the alteration had been given, unless the hon. gentleman desired to increase the revenue.

The Hon. W. D. BOX said it was quite clear that if a man wanted a license from the 1st of May he could get it by paying for the half-year, but if the word "July" were substituted—if he wished to begin fishing in May—he would have to pay for the whole year.

The POSTMASTER-GENERAL said the hon. gentleman could not certainly object to the clause as it stood. He would like him to state his objection more plainly. If a man got eight months' fishing it would be so much the better for him.

The Hon. C. H. BUZACOTT said the amendment proposed would have a tendency to increase the charge. As the clause stood, a man, by being enabled to fish for eight months, would really be able to fish during the whole season; so that it would be only practically imposing one-half of the charges which appeared to be charged, so as to enable them to fish the whole season without paying the full license.

The POSTMASTER-GENERAL said that the clause was perfectly clear. A man could take out his license, if he wished, in July or August and up to the end of the year. No doubt this Bill had been compiled by someone with a more thorough knowledge of fishing speculations than he possessed, and it was perfectly certain that May had been selected in order to allow them to go on fishing through July. He could not see that any practical good would arise in any way by making the suggested alteration.

The Hon. F. H. HART said that, the best fishing months in the year being May and June, men would not take out their licenses until May, when there would be only a half-year's license to pay. From January till the 1st of May there was no good fishing, so that it was worth while, as the best half-year commenced in May, to take out a license from the 1st of May. That was what he understood.

The Hon. C. H. BUZACOTT said the fees, according to the Bill, would be quite sufficient, and he would support the clause as it stood.

The Hon. T. ROME said that if the hon. member would move an amendment he would support it.

The POSTMASTER-GENERAL said he was prepared to accept an amendment if the hon. member would move it.

The Hon. W. APLIN then moved that the word "May" be omitted, with the view of inserting the word "July."

The House divided on the amendment :—

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Hons. B. D. Morehead, F. H. Hart, L. Hope, J. S. Turner, W. D. Box, F. T. Gregory, T. Rome, W. Aplin, J. C. Foote, P. Macpherson, and J. Swan.

NON-CONTENT, 1.

The Hon. C. H. Buzacott.

The question was therefore resolved in the affirmative; and the clause, as amended, was passed.

Clauses 6—"Penalty for using unlicensed ship or boat;" 7—"Unlicensed ship or boat may be seized;" 8—"Licensed number to be painted on bow in addition to the name;" and 9—"Master refusing to produce license;"—were put and passed.

On clause 10—"License to occupy Crown lands for fishery purposes"—

The Hon. W. D. BOX asked the hon. gentleman in charge of the Bill what would be done in case a man took 5 acres on an island 5½ acres in extent. He would also suggest that there should be some limit as to the duration of the license, and that it should be stated whether the land would be granted under this or another Act.

The POSTMASTER-GENERAL said the difficulty was almost purely imaginary, for, before anybody could occupy land for the purpose of a fishery, he would have to obtain a license from the nearest commissioner of Crown lands, who would surely have some little intelligence.

The Hon. P. MACPHERSON pointed out that the matter was entirely covered by the 18th section, which empowered the Governor in Council to make regulations.

The HON. C. H. BUZACOTT thought the limitation to two acres would meet the difficulty, and moved the insertion of words to that effect.

The HON. W. APLIN said that two acres were enough, but not too much, for one fishing station.

The POSTMASTER-GENERAL said he could not accept the amendment, as the difficulty was covered by the 18th clause, by which the Governor in Council could reserve as much land on the islands as was thought proper, and the Executive were not likely to restrict the legitimate business of the fisheries.

The HON. T. ROME asked whether a man, having taken an island on payment of the £5 license, could turn it into a sheep or cattle station?

The POSTMASTER-GENERAL replied that he did not think anyone would start cattle stations on those barren islands unless they intended to rear sea-horses.

The HON. C. H. BUZACOTT, with the consent of the Committee, withdrew his amendment, and the clause was passed as printed.

Clauses 11 to 19 inclusive, schedule, and preamble, passed as printed.

The CHAIRMAN left the chair, and reported the Bill to the House with an amendment.

The report was adopted, and the third reading of the Bill made an Order of the Day for Wednesday next.

CRIMINALS EXPULSION BILL— COMMITTEE.

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

Preamble postponed.

On clause 1—"Offenders illegally at large"—

The POSTMASTER-GENERAL said that, as that was probably the most debatable clause in the Bill, he would point out that it had been framed purely and simply for a deterrent purpose. Prevention was better than cure, and he thought the subsections of the clause were none too strong. In fact, for his own part he thought the clause as it originally stood, before being amended in another place, ought to have remained in the Bill. By that amendment the period was reduced from three years to two years, during which a criminal who had served a sentence for felony in another colony should not be permitted to come to Queensland without being punished—and very properly punished—for so doing.

The HON. W. D. BOX said that yesterday he endeavoured to lay before the House his opinion on subsection D of the clause. While holding that criminals who had escaped from custody ought to be brought to justice, he held that any person who had been convicted of felony, and who had served his sentence in gaol, might reasonably be admitted into the colony. He certainly hoped they would not come, for he did not want them to come; but he could not help thinking that it was not their duty to pass so stringent a clause. A man who had expiated his crime ought not to be for ever under a ban. Under subsection 4 of clause 3, a criminal who came from another colony, after having formed evil gaol associations, would be apprehended and again consigned to prison, where he would have an opportunity of forming more acquaintances of a similar character. Then, by clause 4, he was bound to leave the colony within a month after the expiration of his second sentence; and he would then go to

Sydney, return by the same steamer, and become a citizen of Queensland. He could not help thinking that subsection D of clause 1 would do more harm than good, and he hoped some hon. members would assist him in opposing it.

The HON. F. T. GREGORY said he was afraid there would be a risk, if the clause was allowed to pass as it stood, of its rendering the whole Bill nugatory. If he felt sure that the Bill would receive the approval of the Governor on behalf of Her Majesty, he would be in favour of passing the clause as printed. As it was important to at once stop the influx of foreign criminals, it would be desirable for the Committee to pause before passing it in its present form. He was strongly inclined to think that it was contrary to British law, for they could not imprison any of Her Majesty's subjects unless they were actually found guilty of some offence against the laws. If that were so, they were about to pass a measure which would not receive the sanction of the Crown. In that case they would suffer in the meantime from what was recognised as a very serious evil—the introduction of prisoners belonging to foreign countries. There was another point which had not been directly touched upon by the Hon. Mr. Box, and which they should, he thought, take into consideration; and that was that if they expelled from this colony any prisoner who had served his sentence, until after the expiration of two years, and that as this was one of the Bills proposed to be passed through the Legislatures of the neighbouring colonies, they virtually would expel him from Australia altogether. Perhaps that might be a very desirable conclusion to arrive at—that they would be better without these people; but still there were cases in which he thought that this would prove a hardship, and he thought that if this clause had been limited to a certain class of prisoners it would be more desirable. He thought it would be quite enough to confine this to persons who had undergone a sentence of one year's imprisonment. He was afraid they would run the risk of the Bill being lost if this clause was insisted upon. He hoped the Hon. Postmaster-General would be able to tell them that the matter had been under the consideration of the law officers of the Crown.

The POSTMASTER-GENERAL said he assumed that every hon. member present would know that a Bill of this sort would not have been introduced at all if it had not been carefully considered by the law officers of the Crown. With reference to the remarks made by the Hon. Mr. Box, they were very sentimental, and very nice, and all that, and would form a very good tract, especially if he (the Postmaster-General) had the compiling of them. The hon. gentleman said that a man's punishment was over when his sentence expired. He denied that; and though the statement might to a certain extent hold water, it would be a very little water if applied to our own criminals. But this Bill, and this special subsection D, was intended to prevent their having the criminals of the other colonies and of other than British possessions amongst them. It could do no harm to anybody in the colony, and was only intended, as was stated in the Bill, to prevent the influx of criminals into Queensland; and it might, and he hoped would, prevent those who had served their sentences in the other colonies coming here. They knew for a fact that they had criminals from the other colonies coming here at the expense of the other colonies. Without this subsection D they might have a lot of these criminals sent here at the expense of the State, and have them in our midst, and they would not be able to deal with them in the way in which this Bill proposed, and

which he did not consider was at all too stringent. He should be one of the last to propose that punishment should be eternal in this life, though they knew that to a certain extent it was. Before deciding against this subsection—which he considered was one of the most important things in the Bill—he thought that when they considered that it would not in any way affect anyone residing within the colony, but was intended to prevent, and he hoped would be successful in preventing, the influx of criminals amongst them, they should have no hesitation in passing it.

The Hon. T. ROME said that this was a clause which had received a great deal of attention in the Lower Chamber, and he was prepared to support it in its integrity without the slightest amendment whatever. Certainly, from the very great consideration which the clause received in the Lower Chamber, they ought to pay deference to it here. Really the sympathetic strain of the Hon. Mr. Box nearly overcame him, and he almost yielded; but he did not wish to see this colony become a reformatory for criminals, who were only a charge to the State and a burden upon the taxpayers. When a criminal came here and propagated his species, his mental defects might be transmitted and might add to the expense in future years. He thought it was a most important matter, and it was quite enough to deal with our own criminals without opening the colony to the criminal population of our neighbours; and he thought the only thing they could do was to make things so hot for them that they would not come here. The Hon. Mr. Box had made an objection to the 4th clause, providing for the punishment of offenders remaining after the expiration of their sentence. But that was only one provision, and there was another provision in the first subsection of clause 3, which gave power to the justices to take bail that the offender left the colony within seven days after his conviction; and he thought that if the man did not leave within seven days, the sooner he got twelve months' imprisonment the better.

The Hon. P. MACPHERSON said he had intended to move that this clause should be struck out, but upon further inquiry and reflection he thought it would be better to give this Bill a fair trial. He had been informed to-day, upon the best authority, that certain people in high places in the adjoining colonies were in the habit of deporting prisoners who had served long sentences to our shores, and they were put to the expense of sending them back. He must say that there was a considerable amount of logic in the Hon. Mr. Box's argument, as well as sentiment; because there was power given by this 3rd section to sentence a man to one year's imprisonment, which was something like punishing him twice for the same offence. After he had served his sentence he might be imprisoned again if he did not leave the colony. It was not likely that a stranger would be in a position to get bail.

The Hon. J. SWAN said that twenty or thirty years ago some persons had done what they could to get these people into the colony, and he would have much pleasure in supporting the Bill.

Clause passed as printed.

On clause 2—"Offenders may be arrested"—

The Hon. W. D. BOX said he would like to ask the hon. gentleman in charge of the Bill if he was satisfied that a constable should have the right to arrest a person. It might be very well for a constable to convey an information in a warrant; but the clause said—

"2. 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."

He might be wrong, but he certainly did not think that any less a personage than a justice of the peace should be allowed to interfere with the liberty of the subject.

The POSTMASTER-GENERAL said the Hon. Mr. Box might not be well posted up in the law as it stood, but he believed that the law as it stood admitted of the position the hon. gentleman objected to, and he thought it would be very improper if it were not so. He considered that if a constable saw any reasonable grounds to suspect that he was dealing with a wrongdoer he had every right to arrest him. Let them take the case of a murderer—the murder in the Brighton Railway case, for instance. Surely, if anyone approaching the advertised description of the man—who had since been arrested—was seen by a constable, it would be sufficient ground for insisting that he should be arrested, and the man in this instance was arrested accordingly. Even an hon. member of that House, if he was not known to a constable, and it was believed that he had committed a crime, might be arrested under the existing law; and they, therefore, did not propose to give any more power under this Bill than at present existed. He considered the clause perfectly reasonable.

Clause passed as printed.

Clauses 3 to 15 inclusive, and the preamble, passed as printed.

The CHAIRMAN left the chair, and reported the Bill to the House without amendment.

The report was adopted, and the third reading of the Bill made an Order of the Day for Wednesday next.

On the motion of the POSTMASTER-GENERAL, the House adjourned at twenty minutes to 5 o'clock until the usual hour on Wednesday next.