

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 27 SEPTEMBER 1881

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LEGISLATIVE COUNCIL.*Tuesday, 27 September, 1881.*

Petition.—Gulland Railway Bill.—Local Government Act Amendment Bill.—Police Jurisdiction Extension Bill.—Marsupials Destruction Bill.—Legal Practitioners Bill.—second reading.—Thomas Railway Bill.

The PRESIDENT took the chair at 4 o'clock.

PETITION.

The Hon. W. PETTIGREW presented a petition from the members and adherents of the Creek-street Presbyterian Church in favour of the Closing of Public-houses on Sunday. He said the petition was respectfully worded, and was signed by 146 members and adherents of the church.

The Hon. W. H. WALSH said he had just glanced over the petition, and he noticed that it did not relate to a Bill now before the House, although it said it did.

The PRESIDENT said he saw nothing to object to in the petition. The error pointed out was a clerical error, and in no way affected the petition as regarded the forms of the House.

The Hon. W. PETTIGREW begged leave to withdraw the petition.

Petition, by leave, withdrawn.

GULLAND RAILWAY BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding the above Bill for the concurrence of the Legislative Council.

On the motion of the POSTMASTER-GENERAL (Mr. Morehead), the Bill was read a first time, and the second reading made an Order of the Day for Thursday, 6th October.

LOCAL GOVERNMENT ACT AMENDMENT BILL.

The PRESIDENT announced a message from the Legislative Assembly, presenting this Bill for the concurrence of the Council.

On the motion of the POSTMASTER-GENERAL, the Bill was read a first time, and the second reading made an Order of the Day for Tuesday, the 4th October.

POLICE JURISDICTION EXTENSION BILL.

The PRESIDENT also announced a message from the Legislative Assembly, presenting this Bill for the concurrence of the Council.

On the motion of the POSTMASTER-GENERAL, the Bill was read a first time, and the second reading made an Order of the Day for Thursday next.

MARSUPIALS DESTRUCTION BILL.

The PRESIDENT announced a message from the Legislative Assembly, stating that the Legislative Assembly had agreed to the amendments made by the Legislative Council in this Bill.

**LEGAL PRACTITIONERS BILL—
SECOND READING.**

The Hon. W. H. WALSH moved that this Bill be now read a second time.

The Hon. J. F. McDOUGALL said he regretted that he was not present when this Bill was introduced. It appeared to him to be one of the shortest Bills ever introduced into that House, but it had called forth very lengthy discussion so far as it had gone up to the present time. He rose for the purpose of saying that he should have great pleasure in supporting the second reading of this Bill. He did so, first, because he had always been of opinion that such a measure as this was very much required by the public. He did so, also, because it had been, he believed, on two occasions, passed in another place. He was not one at all times to admit that this Chamber was bound to pass everything that came before it, simply because it had been passed in the other House; but he thought that when a measure had been well deliberated on two occasions in the other House, and had on each occasion been passed by a large majority, this Chamber was bound, at all events, to give it full consideration and allow it to go to a second reading. He should support the Bill upon those grounds. It was a measure which had been long required, and desired by the public; that he knew of his own knowledge. All practical men would agree with him in thinking that there was no necessity that two parties should be employed where one could do the work. It might be said that this was incompatible, but that was a matter of opinion; and he himself thought it was not incompatible. When they were legislating they should remember that they were legislating for the many and not for the few. It was evident, however, that very determined opposition had been offered to the passing of this measure, and also that that opposition had come from a certain section of the community. It was perfectly natural, he admitted, that that section of the community should be in opposition; but he contended that in the interests of the public it was time that this monopoly should be brought to an end. He contended that it was a monopoly. He had the highest respect for the learned profession which this Bill proposed to deal with, but he had long been of opinion, and he believed it was the opinion of the country, that it was time that they should progress in this matter. This was an age of progress, and there was no reason in the world why the particular profession affected by this Bill should stand still. There was one other ground upon which he should support this measure, and it was this: They had been told that there was no division in the profession as it now stood—that the attorney and barrister were both responsible; in fact, he had heard it so said himself, but he believed that they were not. He knew of his own knowledge that when a matter was put into the hands of an attorney he then transferred it in the shape of a brief to the barrister, and that undoubtedly shifted the responsibility. If this measure were passed it would fix the responsibility, and they should know with whom they were dealing, whereas, at the present time, they did not know. As matters

stood now, they dealt with a gentleman who was intermediate between themselves and the principal—as he might term the barrister—and they had no communication whatever with the principal. Of course, he did not think himself that this Bill could in any way affect the status of the profession with whom they were dealing. It gave those who were qualified a better opportunity for exercising their talents and abilities in either branch of the profession; and, so far from the interests of the profession suffering, he thought that, on the contrary, they would be greatly benefited by this Bill. He said nothing whatever as to how they might be benefited—whether in a pecuniary way or not—though he believed himself that they would be benefited pecuniarily; but whether benefited in that way or not, they would be benefited by being brought into direct communication with their clients, and that, he considered, would be a great advantage. A great deal had been said upon this matter, and he did not know that it was necessary for him to say any more. He was a thorough and firm believer in the measure, and he hoped it would be allowed to go to the second reading.

Question—That the Bill be now read a second time—put and passed; and, on motion of the Hon. W. H. WALSH, the committal of the Bill was made an Order of the Day for to-morrow.

THOMAS RAILWAY BILL.

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

Question—That clause 2 be amended by the insertion of the word “hereafter,” so as to read—

Subject to the provisions of this Act, Lewis Thomas shall and may, with all convenient speed, construct in a substantial manner, and in accordance with plans and books of reference to be hereafter approved by Parliament, a branch line of railway connected with the Southern and Western Railway.

The POSTMASTER-GENERAL said he did not think this amendment would meet the case at all. “Hereafter” might mean any time—next year or twenty years hence. As a matter of fact, the plans and books of reference of this particular line had not yet been passed in another place; but he would probably be in a position to-morrow to put them on the table here. He could not see what objection there could be to going on with the Bill, the Government undertaking that the third reading of the measure should not be proceeded with until the report of a Committee of that House was laid upon the table; and also on the further understanding that, in the event of that report differing from the principle or details of the Bill, the Government would recommit it for the consideration of any objections that might be raised.

The Hon. T. L. MURRAY-PRIOR said that the Postmaster-General had now acceded to what he (Mr. Murray-Prior) first requested him to do. The objection that he had held was to the manner in which this Bill had been brought on. In his estimation—although it had been ruled differently—it should have been introduced in the light of a private Bill, and if it had been initiated in that way the objection he raised would not have been required; but the Bill had been brought forward as a public Bill, and the plans and specifications had not come before them. They now knew, however, from what had transpired in the House, what they did not know before—that this railway was already under construction. He regretted very much that they were not informed of that in the first instance. With the permission of hon. gentlemen, he would read to them a short extract from a volume of “May,”

on the practice of the Imperial Parliament with regard to private Bills, in order that they might see what he had tried to elucidate before:—

“In deliberating upon private Bills, Parliament may be considered as acting judicially. The conflicting interests of private parties, the rights of individuals, and the protection of the public have to be reconciled. Care must be taken, in furthering an apparently useful object, that injustice be not done to individuals, although the public may derive advantage from it. Vigilance and caution should be exercised lest parties professing to have the public interests in view should be establishing, under the protection of a statute, an injurious monopoly.”

The writer ended by saying—

“In short, Parliament must be the umpire between all parties, and endeavour to reconcile all interests.”

In these matters they certainly were the umpires. This was quite different from a Bill to introduce a Government railway, and he thought that the greatest care should be taken to conserve the interests of all others, as well as those of the person who asked for the Bill.

Amendment put and negatived; and clause put and passed.

On clause 3—“Mode in which land to be resumed”—

The Hon. W. H. WALSH asked the hon. gentleman in charge of the Bill if he was aware whether Mr. Thomas was merely the leaseholder of the property on which this coal-mine existed, or was he the owner in fee-simple. Hon. gentlemen would see that this was a very important matter, because, if Mr. Thomas were only a leaseholder, it was possible that he might obtain certain powers by Act of Parliament which might embarrass the rightful owner of the property when the lease expired, and which might prove highly detrimental to him. He did not know whether this was the case or not, but he had heard it; and if Mr. Thomas was only a leaseholder, then he thought hon. gentlemen were bound to hesitate before proceeding further in this matter.

The POSTMASTER-GENERAL said he had not the slightest doubt in his own mind that Mr. Thomas was the freeholder of this land, but he would be able to give the hon. gentleman a positive assurance on the point within a few minutes. He was certain that, if Mr. Thomas had only been the leaseholder, the objection raised by the hon. gentleman would have been brought forward, and they would have heard something of it. If the hon. gentleman would turn to clause 1 of the Bill he would find that Lewis Thomas was described as the proprietor of the land, and he (the Postmaster-General) took it that that in itself was clear enough that he was the freeholder.

The Hon. F. H. HART said he was aware, from his own knowledge, that Mr. Thomas was the actual owner of this land.

Clause put and passed.

Clauses 5 to 9 were agreed to without discussion.

On clause 10—“Commissioner to convey coal waggons of Mr. Thomas on Government line”—

The Hon. W. H. WALSH said this clause was most objectionable. He could not see why it should be tolerated in the Bill that Lewis Thomas should have the power to insist upon his produce being carried on our railway line any more than any other individual in the colony. The line he believed Mr. Thomas was making was only a few hundred yards in extent, and because he obtained the peculiar privileges of being allowed to make that line—of taking possession of other people's land, and of getting a

water frontage which other people would not have the use of—he then asked for a right to insist upon the Commissioner for Railways carrying, not only his produce, but his waggons, over any portion of the Southern and Western Railway. What was Mr. Thomas going to do to justify his having any such right as this? He (Mr. Walsh) thought it was going too far, and believed that if the Bill had been sent to a committee, as it ought to have been, and that if it were thoroughly understood by members of both Houses, such a clause as this would not be allowed for one moment. What was Mr. Thomas' business that he should have a right to insist upon the Commissioner for Railways doing that which he was not bound to do for ninety-nine out of every hundred people in the colony? He thought the hon. gentleman in charge of the Bill would see that there was no occasion for this clause. It must be highly prejudicial—or, if not prejudicial, at any rate distasteful—to the rest of the colonists who had not the same power over the Commissioner. Under the Railway Act every individual had a certain right—a co-equal right—to require the Commissioner for Railways to do work for him; but here, after conferring a number of privileges on Mr. Thomas, they were going to give him, in addition, the right of compelling the Commissioner for Railways to place his line at his disposal, not only for the carriage of his produce, but for the running of his trains and vehicles over hundreds and hundreds of miles of the line. The thing was absurd, and he hoped the hon. gentleman in charge of the Bill would see the absurdity of it.

The HON. P. MACPHERSON said he could answer the objection of the Hon. Mr. Walsh on this point. This clause was, in fact, a compensating clause for clause 6, which provided that this railway should at all times, when not in actual use by Mr. Thomas, be open to the Commissioner and to the public. He would also point out to the hon. member that Mr. Thomas could only require the Commissioner to carry his coal and waggons subject to such terms as the Governor in Council might from time to time prescribe; and, of course, it would be presumed that these terms would be for the benefit of the public.

The HON. W. H. WALSH said he could quite understand the view the hon. member took of the matter; but in the Bill there was nothing to prescribe what he had just stated. The Bill gave Mr. Thomas a certain right which all the rest of the colonists had not; and what obligation had Mr. Thomas conferred on the colony that he should have this special right? It might be that when the Commissioner for Railways was called upon to do other work he might say that he had work for Mr. Thomas, and therefore he could not do it for the rest of the colony. He maintained there was nothing in Mr. Thomas' work which would be beneficial to the colony; and he would advise hon. gentlemen who took an interest in the Bill, even for the sake of Mr. Thomas, to consent to the clause being expunged altogether. It was not wanted. It was giving an invidious distinction to Mr. Thomas; and if they set the example in this case, where was it to end?

The POSTMASTER-GENERAL objected to this clause being expunged. It seemed to him that any rights or privileges supposed to be given by this clause were so hedged and fenced round by precautions that there was not the least danger of the public being inconvenienced. He also thought, considering the power that was given to the Government in the preceding clauses to use the line, that this was hardly a compensating clause. The provision was a very

fair one, and could not prove detrimental or injurious to any living soul.

The HON. J. C. HEUSSLER understood the clause to provide simply that the Commissioner for Railways would be obliged to carry Thomas' own waggons—a right which other people had not. With regard to coal waggons, he could say that they were most useful in the old country; and in this case they would merely bring down coal and be sent back under certain arrangements made between the Commissioner and Mr. Thomas. He could see no objection to Mr. Thomas' waggons, or those of any other person who sent a great quantity of goods to the railway, being allowed to be carried on the line.

The HON. F. H. HART wished to point out that the Hon. Mr. Walsh made a mistake when he stated that this was a concession that was not made to any other colonist of Queensland. On referring to the Gulland Railway Act of last session he found that clause 10 was word for word the same as the clause under discussion.

The HON. W. H. WALSH said he was afraid it was so. He could plainly see that if they passed a few more Bills of this kind their Railway Commissioner would be entirely under the control of the Gullands and Thomas' of the colony. That would be the end of it.

Clause put and passed.

Clause 11 and the preamble having been agreed to, the Bill was reported to the House without amendment, and the third reading was made an Order of the Day for the 11th October.

The House adjourned at 5 o'clock until the usual hour to-morrow afternoon.