

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 8 AUGUST 1882

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LEGISLATIVE COUNCIL.

Tuesday, 8 August, 1882.

Savings Bank Bill—third reading.—Sale to Local Authorities Land Bill—committee.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

SAVINGS BANK BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL (Hon. B. D. Morehead), this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly with the usual message.

SALE TO LOCAL AUTHORITIES LAND BILL—COMMITTEE.

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

Preamble postponed.

Clause 1—"Incorporation herewith of 44 Victoria No. 9"—put and passed.

On clause 2—"Governor in Council may sell land to local authority"—

The HON. A. J. THYNNE said he thought the insertion of a few words in the clause would probably result in having the intention of the Government carried into effect. In order that hon. members might understand what he alluded to, he might remind them that there were two classes of local authorities—one under the Divisional Boards Act and the other under the Local Government Act of 1878. Under the Local Government Act of 1878 institutions formed under that Act could not pledge their revenues without going through the formula of giving the ratepayers an opportunity to object to a loan, or any transaction equivalent to a loan, which would be a charge upon the rates. That would be a most inconvenient process to have to go through on all occasions, and he proposed to insert as an amendment after "authority," in line 15, the words "which is hereby authorised to enter into such contract." That would take away any question of the authority of a local authority to enter into a contract; otherwise a municipality—that of Brisbane, for instance—would not be in a position to enter into a purchase of the kind contemplated, whereby the revenues of the corporation would be chargeable with a loan, without first giving the ratepayers an opportunity of consenting or objecting by ballot in the usual way. In explanation, he ought to say that the list of amendments that had been circulated amongst hon. gentlemen was not intended by him to be all amendments to be proposed in the Bill, but merely suggestions which he prepared when going through the Bill and which he sent to the Postmaster-General for his approval. Some of them he intended to propose, but others he did not. He did not intend to propose the first amendment as printed, which stated that the Governor

in Council could sell to any authority which was authorised by the law—that was, by the present Act—but the one he had moved, which took away any question of the kind he had mentioned.

The POSTMASTER-GENERAL said he could not agree to the amendment. If it were carried the Bill would simply be gone. The principle of the Bill as introduced was to enable the Government to complete contracts already entered into between themselves and the corporations of Brisbane and Cooktown. The amendment would make the Bill apply to a local authority "authorised to enter into such contract"; but the Bill was intended to apply to contracts which had been entered into and practically completed, and if the amendment were carried the contracts or *quasi* contracts would cease to exist. The contracts had been completed, and the Government now came down to Parliament for authority to enable them to carry out the contracts, which he was perfectly sure was the desire of the corporations.

The HON. P. MACPHERSON pointed out that the clause provided that the Governor in Council might sell by private contract, and alienate in fee-simple to a local authority, land which such local authority from time to time desired to purchase—i.e., according to the existing law.

The HON. A. J. THYNNE said the hon. gentlemen who had spoken had misunderstood the object of his amendment. The hon. Mr. Macpherson said the purchase was to be according to the present law; but, as he (Mr. Thynne) had pointed out, it was very questionable under the present law whether a corporation was entitled to make such a purchase. Under the Bill a corporation would charge their revenues with payment of the amount due to the Government, and under the Local Government Act of 1878 that could not be done without giving the ratepayers an opportunity of opposing it; and he wished by his amendment to get over the difficulty which really did exist in carrying out those contracts, because even if the corporation had not had authority to enter into the contracts the amendment would remedy it, and no question could be raised. Otherwise a very serious question might be raised, because at present corporations could not enter into a contract which was virtually a charge upon the ratepayers without their consent. The Bill had been framed almost from one point of view, which was the disability of the Government at the present time; but it appeared to him that the disability of the corporation had been overlooked, and therefore he had introduced the amendment.

The HON. W. D. BOX said if the amendment was to continue the present power of the ratepayers to have a voice in the borrowing of public money he should certainly support it.

The HON. A. J. THYNNE: It is not.

The HON. W. D. BOX said if it were to remove that power the question was one that should be carefully considered by the hon. gentleman in charge of the Bill; because, in his opinion, it was preferable that in the borrowing of money the ratepayers should have a voice.

The HON. A. J. THYNNE said the object of his amendment was to remove difficulties which would exist in transactions of the kind in question if corporations had to refer the matter to the ratepayers before carrying them out. As a matter of practice those sales would only take place when they were expected to be of large benefit to corporations; they were not like ordinary borrowing transactions for the purpose of spending money for supposed remunerative works. It was actually acquiring property at a fair value from the

Government, and it would be almost impossible to work the Bill if it were necessary to go to the ratepayers before the transactions could be carried through. The machinery under the Local Government Act was very complicated, and it would be very difficult indeed to carry out such transactions.

The POSTMASTER-GENERAL said hon. gentlemen must see clearly that the object of the Bill was to enable the Government to carry through a contract which had been practically completed with the corporations of Brisbane and Cooktown, and if the amendment were carried it would destroy the whole intention of the Bill, and he should at once move the Chairman out of the chair. The contract with Brisbane was completed, but under the existing law could not be carried out. The corporation were anxious that it should be carried out; the Government were practically making them a present of £50,000 worth of property, and they were not likely to object in any way, and there were no objections from the citizens, who were also interested in the matter. Nor had any objection been raised to it in another place.

The HON. A. J. THYNNE said that many hon. members seemed to have been misled by the printed amendment, which he had not proposed, and which might, if adopted, nullify the Bill. What he moved was the insertion, not of the words as printed, but of the words "is hereby authorised to enter into any such contract."

The HON. W. D. BOX said there was no reason why local authorities should not buy land, but—and he hoped the Committee would watch the point carefully—the Bill ought not to remove from the ratepayers the right to have a voice in the matter. A corporation might wish to buy a piece of land from the Government, but it certainly ought not to be empowered to borrow money to pay for the land without the permission of the ratepayers. Besides, it was not likely that any Government would sell land without seeing that those to whom they sold it were able to pay for it. One question involved the other. If the object of the amendment was to confer upon the local authority the right to buy land and borrow money to pay for it, and to impose on the ratepayers an extra rate for improvements, without giving the people a voice in the matter—which at present they exercised by means of the ballot—he hoped the Committee would never consent to it.

The HON. P. MACPHERSON said the origin of the Bill was this: He, as the city solicitor, was instructed by the Corporation of Brisbane to communicate with the Government for the purpose of carrying out a contract entered into between the Government and them. He found there was some hitch in the way of the Government vesting the wharfage, which they proposed to sell to the corporation, and prepared a private Bill in order to overcome it. Then the Government very wisely prepared the present Bill, embodying the provisions of the Bill which he drew up, and making it applicable to all municipalities; and the Bill, he considered, amply met the necessities of the case. As he read the Bill, it provided that if any local authority desired to purchase certain land for the construction of certain works they must purchase that land under the existing regulations, which enabled them to make the purchase. To meet the Hon. Mr. Thynne's objection, it might, perhaps, be advisable to provide that nothing contained in the Bill should be deemed to abridge the rights of the ratepayers under the Act at present in force, although he did not see that there was any necessity for it.

The HON. A. J. THYNNE said he was sorry he had been unable to convey his meaning to the

hon. gentleman who had just spoken, for the difficulty which the amendment was framed to meet was more than ever confirmed to his mind by the remarks of the Hon. Mr. Box and the Hon. Mr. Macpherson. Under the existing law the corporation was not authorised to make any such purchase as was contemplated; and the two hon. gentlemen to whom he had referred wished that the right of the ratepayers to veto or affirm such purchase should be preserved. If that was also what the Postmaster-General desired, he had no objection to it, so long as the matter was settled one way or another. After what had been said by the Hon. Mr. Box and the Hon. Mr. Macpherson, it would be unwise to leave the clause as it at present stood.

Amendment put and negatived.

Clause, as printed, put and passed.

Clause 3—"Unpaid purchase money to be deemed a loan under 44 Victoria No. 9"—as read, put and passed.

On clause 4—"Conditions and reservations in grant"—

The HON. A. J. THYNNE said the section was not well arranged. He would suggest, as an improvement, that the commencement of the section should be joined to the 1st subsection and formed into one clause relating to the issue of the grant, and that the remaining two subsections, which referred to reservations in the grant, should be formed into a separate and new clause. He moved the omission of all words after "shall," with a view of inserting other words so that the clause should read thus:—

The grant of any land so alienated shall not issue until the whole of the purchase money, whether deemed to have been advanced as aforesaid or otherwise, has been paid to the Treasurer.

The POSTMASTER-GENERAL said the objection of the hon. gentleman was hypercritical. The clause as it stood was perfectly clear, and would be made cumbersome if the amendment of the hon. gentleman were adopted. He should therefore resist it.

The HON. A. J. THYNNE said the amendment was not of great importance, and if the Postmaster-General opposed it he should not insist upon moving it.

Amendment, by leave, withdrawn.

The HON. A. J. THYNNE said he had another amendment to propose in the clause, the importance of which he thought the hon. Postmaster-General would admit. He moved the insertion, at the end of the 2nd subsection, of the words "nor lease the same except as hereinafter provided." If a provision of that kind were not inserted there would be nothing to prevent leasing, although it might be contrary to the intention of the Act. He also moved the insertion, at the end of subsection 3, of the words "when entering into such contract"; the object of such amendment being to prevent the Governor in Council from imposing fresh conditions or altering the terms of the contract after the contract had been made.

The POSTMASTER-GENERAL said he was sorry he could not accept the amendment. The Bill being to a certain extent a legal one, he had taken the advice of his colleague the Attorney-General, who was of opinion that there was no necessity for cumbering the section with the proposed new provisions, seeing that everything necessary was provided by the 5th and 6th clauses.

The HON. W. D. BOX said, as the question of leases had been introduced he wished to call the attention of the hon. gentleman in charge of the Bill to section 6, which would have to be altered unless something on the subject of leases

were inserted in clause 4. The Governor in Council, by section 6, had power, on non-payment of any portion of a loan made by the Government to a municipality, to seize and take possession of buildings, machinery, apparatus, and appliances upon land which a man might have leased from the corporation with the sanction of the Government. That would be quite right if the property were seized on account of money due upon that particular piece of land, but it would not be right to seize machinery and appliances on account of money due on a loan which had no reference to that particular piece of land. A firm like the Apollo Candle Company might have expended a large sum of money upon a small area of land, and it would be very unfair that their machinery and appliances should be liable to seizure if the corporation failed to pay the principal and interest of a loan from the Government made in respect of other land. Each piece of land might be expected to bear its own burden, but it should not be made liable for the whole debt of the municipality.

The POSTMASTER-GENERAL said the hon. gentleman had stated a case from an extreme point of view; but he might tell the hon. gentleman that the Government did not intend to give up their rights as first mortgagees of lands alienated to corporations or to anybody else. Any person who took a lease under the proposed Act would do so with his eyes open, and he would not be likely to place himself in the extreme position suggested by the hon. gentleman. He could assure the Committee that the Government were determined not to alter the 5th and 6th clauses in any way whatever. He thought the hon. gentleman would see, on consideration, that the Government would be acting liberally if they treated corporations as they proposed to do under the circumstances under which the Bill was brought in; and that they would be to some extent justified, if not altogether justified, in retaining the very fullest power to enable them to have repaid some portion of the value of the land.

The Hon. J. COWLISHAW asked whether a lease was not an incumbrance. If they were dealing with property they would find it an incumbrance.

The POSTMASTER-GENERAL: It is sometimes an advantage.

The Hon. W. GRAHAM said he agreed with the remarks that had fallen from the Postmaster-General—that the Government were making concessions to local bodies. In doing so they had a perfect right to retain a certain amount of power in their hands; all the more so, considering that the present Government would not always be in office.

Question—That the words proposed to be inserted be so inserted—put and negatived.

Clause put and passed.

On clause 5—"Local authority may lease land"—

The Hon. A. J. THYNNE said he trusted that an amendment would be made preventing the granting of leases, except in possession and without any premium or fine being paid upon them. He thought there was one practical question arising out of the clause. He noticed that in the Divisional Boards Act Amendment Bill subscriptions for public purposes would be entitled to a grant as revenue of a corporation, upon which endowment would be paid. There was also in the Bill a new proposal by which certain parts of the colony would be endowed at the rate of £8 for every £1 payable. Unless care was taken the Government would be plundered by some divisional boards. He thought it would be

very inconvenient that leases for twelve months should require the sanction of the Governor in Council. Leases of municipal properties were generally put up to auction year by year, but the clause would absolutely prevent them being sold by auction.

The POSTMASTER-GENERAL said he presumed the hon. member's remark applied to one of the suggestions he had made—namely, that after "years" the words "in possession and without any premium, fine, or subscription being taken or paid thereon." The opinion of the Attorney-General, whom he had consulted, was that that was not at all necessary. He (the Postmaster-General) did not think it at all likely that the clause would give them much trouble. Besides, if they made the Bill a perfect measure they would have nothing to do in that House; if they had no Bills to amend they would find their occupation gone. The Bill had been very carefully considered before it came before them, and he did not think the suggestions of the hon. member were necessary.

The Hon. P. MACPHERSON said he did not see any necessity to amend the clause. He thought they might safely leave it as it was.

The Hon. A. J. THYNNE said he had no desire whatever to reflect on the present Government in making his suggestions. He mentioned them to the Committee, and hon. members could take their own views upon them.

The POSTMASTER-GENERAL said he was perfectly certain that there was no intention on the part of the hon. gentleman to cast any reflection on the Government. He had consulted his colleagues, more especially the Attorney-General, with regard to the suggestions of the hon. gentleman, and although he had no doubt many of them were improvements he thought it was advisable not to affirm new principles, but to affirm what had been done in another place.

The Hon. W. D. BOX asked the Postmaster-General whether it was correct that leases were not to be valid without the approval of the Governor in Council? The clause said that a lease should not be valid unless the Governor in Council endorsed the fact on a certificate or title, such endorsement to be notified in the *Gazette*. Was every lease to be approved in that way?

The POSTMASTER-GENERAL said the Government intended that no local authority should have power to lease land except under the conditions proposed in the clause. The Government would not move one inch from their position as mortgagees of the property. Every lease, no matter what period it was for, would have to be approved by the Governor in Council, and the approval endorsed thereon.

Clause put and passed.

On clause 6—"Additional remedies for default in payment"—

"In addition to the remedies provided by the Incorporated Act for the recovery of overdue moneys, the Governor in Council may, for the recovery from a local authority of the overdue purchase money of any land sold under the provisions of this Act—

1. Enter upon and take possession of any such land, or any portion thereof, upon which the payments to the Treasurer are at any time in arrear; also
2. Seize and take possession of all buildings, materials, machinery, apparatus, and appliances erected upon or connected with such land; and
 - (a) Lease for a term, or from year to year, such land to any person; or
 - (b) Appoint a receiver of the rent, income, or profit of the property."

The Hon. W. D. BOX said that he trusted that the Committee would not consent to pass the clause. He did not know much about it,

but it seemed to him to read in the most terrible manner. Even the marginal note frightened him. He could not understand any right by which the Government could be allowed to seize and take possession of buildings and machinery upon land which they had themselves leased to the corporation. The Government allowed the lease to be obtained, and then asked for a further right to be reserved to them in the power to enter and seize property for breach of contract. It was not a question whether a Government would do so or not. He believed that the clause would be safe in the hands of the present Government, and he trusted that it would be safe in the hands of future Governments. What had happened, however, elsewhere in the past might happen again in the future. Hon. gentlemen must remember what had taken place in Victoria, and also that when universal suffrage was the law of the land, and was the source of power, men might get into office who would have no respect for anything.

The Hon. P. MACPHERSON pointed out that under the Real Property Act there was the power to enter upon and distrain in cases of non-payment of interest on the mortgage. He saw no particular hardship in the clause.

The Hon. J. COWLISHAW said that, the lease of the land not being valid unless sanctioned by the Governor in Council, he was at a loss to know how they were afterwards to seize and take possession of improvements on account of non-fulfilment of the conditions by the mortgagor?

The Hon. P. MACPHERSON said that it did not follow that such would be the case, although the mortgagee would have consented to the terms.

The Hon. A. J. THYNNE expressed his satisfaction at an objection having been taken to the clause by the Hon. Mr. Cowlishaw. There was nothing in the subsection to show that the property to be seized in default of payment of rent was to be the property of the local body that had incurred the obligation. Even if the property belonged to an unfortunate tenant who had fulfilled all the conditions of his lease, still, if through something or other the local body failed to keep up its payments, the goods of the tenant would be liable to be seized and sold. The power proposed to be given to the Government was one which they would not acquire under the provisions of the Real Property Act, and he should oppose it. The Government ought to be satisfied with ordinary powers, and if the tenant failed to fulfil his agreement let him be ejected. Such a provision as the one proposed would prevent persons of energy and enterprise renting properties from making any substantial additions or improvements. If, for instance, in the case of Howard Smith and Company's wharves, the corporation were to fail to pay up properly, would all the valuable plant and machinery be liable to forfeiture? He admitted that the case he had suggested was not a likely one to occur, but still there were other places in the country where the Act might be put in force where the proposed provision would operate as an absolute prohibition which would prevent such grants being utilised, and which would make the property useless. He suggested that some alteration should be made which would preserve to the Government the rights of an ordinary mortgagee and at the same time be a protection to the tenant and prevent his being, in such Algerine style, bundled out of his possession for no fault of his own.

The Hon. P. MACPHERSON: Surely you would not prevent the Government having any remedy at law?

The Hon. W. D. BOX: Who wants to go to law?

The Hon. P. MACPHERSON: We are making laws here, or trying to do so.

The Hon. W. D. BOX: But we are not going to law.

The POSTMASTER-GENERAL said he thought the hon. gentleman who had spoken against the clause had not stated the case fairly. The hon. gentleman stated that the Government ought not to be placed in any other position than that of ordinary mortgagees; but they forgot that the Government, in addition to being mortgagees, were large donors under the Act, and therefore were entitled to exceptional rights to have their interests considered. He could assure hon. gentlemen that the clause had been very carefully considered and discussed both elsewhere and in the Cabinet, and it was a clause which the Government must adhere to. They were determined that the interests of the State should be protected, and fully protected; and that more especially because of the local bodies being most generously treated in the matter. Any man who was going to lease a property under the Act would look at the Act before he did so. Where, then, would be the injustice if he had to suffer under its provisions? He was told that if any default was made his property might be made liable for it, and so he would take very good care that such a result would not be brought about. The case mentioned by an hon. member, of Messrs. Howard Smith's wharf, was not at all likely to occur. The corporation or any other local body concerned in it were not likely to be so unwise or to make such a bad bargain as not to be able to pay the interest which they had incurred. He did not think the clause one bit too strong.

The Hon. W. D. BOX said that although the Government were going, as the hon. gentleman said, to make the municipalities such handsome presents, the result of such security being kept over those presents would be that the Algerine clause would prevent reasonable rents being obtained for them, and indeed prevent their being of any use to the taxpayers at all. He would rather see the Bill lost altogether than see the clause passed as it stood.

The Hon. J. C. HEUSSLER said that the provisions of the clause seemed to be very stiff ones. If the Government seized machinery or other property, how would Messrs. Howard Smith have their remedy against the corporation, supposing the corporation to be bankrupt, as had been suggested? In his opinion the Government should have no other right than to collect the rent from the lessee, and the present proposition was unreasonable, for they ought not to take away any people's property because other people were defaulters. It would be much better to delay further consideration of the Bill, and to allow the representative of the Government in that Chamber to consult the Attorney-General upon the point.

The Hon. W. APLIN said that he also had an objection to subsection 2 of the clause. He thought the power of the Government should be limited to collecting the rent from the lessee, and that they should not be allowed to seize upon the property. The hon. the Postmaster-General had said that persons making a contract with the corporation would do so with their eyes open and knowing the provisions of the Act, but, in his (Mr. Aplin's) opinion, in nine cases out of ten the parties would not trouble their heads about the law, and it was therefore the duty of the Committee to protect the tenants under the corporation. If any hon. member would move that the subsection be struck out he would support him.

The POSTMASTER-GENERAL pointed out that hon. members of the other House were

just as much the guardians of the liberty of the public as hon. members of that Committee; and if they read the debates of the other Chamber they would see that the clause had not been objected to in the same way there. However, as the Committee were evidently against the clause, he would move that the Chairman leave the chair, report progress, and ask leave to sit again.

Question put and passed.

The House resumed; the CHAIRMAN reported progress, and obtained leave to sit again on Tuesday.

ADJOURNMENT.

The POSTMASTER-GENERAL, in moving the adjournment, said that if any hon. gentlemen were anxious to attend the Royal Agricultural Society's Show at Toowoomba to-morrow there would be a special train available for that purpose at 9 o'clock a.m.

The House adjourned at seventeen minutes past 5 o'clock.
