

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**TUESDAY, 15 AUGUST 1882**

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## LEGISLATIVE COUNCIL.

*Tuesday, 15 August, 1882.*

Resignation.—New Member.—Immigration Bill—first reading.—Corrected Titles to Land Bill—second reading.—Sale to Local Authorities Land Bill.

The PRESIDENT took the chair at 4 o'clock.

### RESIGNATION.

The PRESIDENT announced that he had received a letter from His Excellency's Private Secretary stating that His Excellency had been pleased to accept the resignation of the Hon. Eyles Irwin Caulfeild Browne, of his seat in the Legislative Council.

### NEW MEMBER.

The PRESIDENT also announced the receipt of a letter from His Excellency's Private Secretary intimating that His Excellency had been pleased to advise the Executive Council to summon Edward Barron Forrest to the Legislative Council, and that His Excellency had administered the oath of allegiance to him.

The Hon. Edward Barron Forrest was then introduced, and, having subscribed the roll, took his seat.

### IMMIGRATION BILL—FIRST READING.

A message was received from the Legislative Assembly forwarding this Bill for the concurrence of the Legislative Council.

On the motion of the POSTMASTER-GENERAL (Hon. B. D. Morehead), the Bill was read a first time, ordered to be printed, and the second reading made an Order of the Day for Tuesday next.

### CORRECTED TITLES TO LAND BILL—SECOND READING.

The POSTMASTER-GENERAL said the Bill had been in the hands of hon. members for some considerable time, and had no doubt received much consideration at their hands. Its object was to remedy what he considered, and what the Government considered, an existing evil; but at the same time it was in no way a compulsory Bill. As matters stood at present, where a road was closed and a new road opened, as was often the case through freehold lands, it was the practice to issue deeds of grant for every small piece which had been replaced in the land,

so to speak, by the closing of a road, and also for all the subdivisions therewith connected. He had with him what the Premier showed in the other House—a diagram showing very clearly the necessity for some such measure being passed. If hon. members would look at it they would perceive that in a very small area of land where one road was closed and another opened it caused the issue of ten different deeds; whereas by the proposed Bill one deed would meet the whole of the requirements of the case. He would point out to hon. members that it was in no way a Bill forcing anyone to act under its provisions if it became law. He looked upon it as a very necessary piece of legislation, and one which would be a benefit to a great number of people; and those who did not wish to take the benefit might, if they chose, still continue to have those various deeds issued as at present. He thought that anyone looking at the Bill and considering the complicated state of affairs at present in existence would also come to the conclusion that it was a very necessary piece of legislation. The clauses were very simple, and he need hardly go through them. The first provided that a grantee might surrender to the Crown and obtain a new title. The second applied to the correction of erroneous descriptions in deeds of grant, and was one that would commend itself to all. They knew perfectly well that there were many deeds which set forth a landed possession which really did not exist, in cases where lands had been badly surveyed—and many of the surveys in the olden times were far from correct. The clause gave the owner the right to send his deeds back and have the corrected survey set forth on the new deeds issued. Clause 3 provided that land must be brought under the Real Property Act of 1861 before new deeds were issued, and was also a very necessary one. The next clause provided that a mortgage or encumbrance should be endorsed by the Registrar-General on the new grant without fee, so that there would be no cost. The 5th clause was also highly necessary. It stated:—

"In cases when roads through freehold lands are proposed to be closed under the provisions of the Crown Lands Alienation Act of 1876, and the titles of the lands through which the said roads pass are surrendered to the Crown under the provisions of this Act, it shall be lawful for the Governor in Council to reserve a right of resuming for road purposes an area equal to that comprised in the closed roads in the new deeds of grants to be issued in lieu of the titles surrendered as aforesaid on payment of a sum per acre for the land resumed equal to that paid per acre for the closure of the said roads."

That was certainly a fair and equitable way, not only for the public but also for the owner of the land. If he got a road closed, and a road was found necessary through his land, it was only fair that the rate of compensation should be the same as was obtained by the Crown. He thought that the Bill was one that would meet with no opposition in that Chamber. As he said in the commencement of his remarks, it was in no way a compulsory measure, and therefore would be availed of only by those who wished to take advantage of its provisions. He moved the second reading of the Bill.

The Hon. J. TAYLOR said he had a great deal of pleasure in supporting the Bill. He had a similar case before him to that which had been instanced by the Postmaster-General. The Jondaryan Divisional Board, of which he was chairman, had applied to the Government for the closure of one road and the opening of another, which entailed a very large amount of expense in surveys and new deeds. The land was held under two or three deeds, and several more would have to be issued. That was an excellent Bill, and he had much pleasure in supporting it. No doubt it would take a great deal of work

and professional business from the hands of surveyors, and likewise solicitors, whom he should not be surprised to see opposing it; but it was a very great boon to the public in every sense of the word, and a great deal of work would be saved by it in the Lands Office. He did not think a better Act could possibly be brought before that Chamber with regard to such lands.

The HON. F. T. GREGORY said the necessity for the measure before the House had been becoming more and more apparent during the last five years, and there could be no doubt in the minds of hon. members as to the desirability of such a measure being brought in. It had fallen to his lot, during a professional career of many years in Queensland, to become thoroughly acquainted with the number of serious errors which arose out of the great inaccuracies which existed in the original surveys of many portions of land throughout the southern part of the colony, especially in the older settled districts. As had been already pointed out, there had been a great many instances, not only of severances which would result from roads being made through one single estate amounting to a few perches, but of blocks amounting to hundreds of acres of all imaginable shapes and forms, rendering it very difficult indeed for the owners of lands after they had got the titles to do anything with them, unless they surrendered them up and got a fresh deed from the Real Property Office. And that was not the greatest difficulty they had to contend with. The difficulty was not alone in having that multiplicity of subdivisions, with separate titles for small fragments of land, but when the errors had been very great the Real Property Office frequently refused, when the new survey had been brought in, to issue new titles, and he was not at all surprised at it. He would name one case which was still fresh in his memory. The road from Toowoomba to Warwick extended nearly the whole way through pre-emptive purchases, taken up by pastoral lessees under the old Orders in Council. The surveys of the country were so erroneous that actually the Survey Department, with all the means they had at their disposal, were unable to produce surveys that would satisfy the Real Property Office. The further they went in trying to correct the surveys the further they found the errors extended, until it became impossible to correct one block of country without extending into every conterminous block throughout the district. Under those circumstances there was but one way to deal with it, and that was to surrender up the land to the Crown and then there was an end to the original grant. The Real Property Office could not then raise any question as to what was the original error, because the deeds were surrendered up and the original grant practically terminated, and the Crown being then in possession it would be in a position to issue a fresh title according to the new and corrected survey, and get rid of what had been a stumbling-block in the Real Property Office. He did not blame the Real Property Office for raising the difficulty, because they were the conservators to a great extent of the rights of property; and if they were not very careful and very jealous of alterations in issuing titles to two blocks of country, say of 510 acres each, when the original block was only 1,000 acres, it was clear they would place themselves in a very invidious position. By this process, if a block of country which was supposed to contain 1,000 acres contained 1,020 acres when it was surrendered up to the Crown, the Crown could issue a fresh title which could not be questioned. He looked upon the Bill as a very great advantage—he was referring more especially to the 2nd clause. The Postmaster-General had pointed out the more salient points, and alluded to the benefits

to be derived from it, so that it was no use his enlarging upon it. He was very much taken up with the Bill when it first came out, and he took the trouble to read it very attentively to see whether there was any point in it to which he could either take exception or elaborate upon. He thought that as it stood it would meet all requirements, although when it got into committee there might be some trivial matters to attend to. The Bill would be a great boon to the public.

The HON. W. D. BOX said that the Bill, from what they heard from men competent to judge, was a very desirable one, and he had no doubt there was a great necessity for it; but it struck him that in committee hon. members would have to be very careful about the 5th clause, which said:—

“In cases when roads through freeholds are proposed to be closed under the provisions of the Crown Lands Alienation Act of 1876, and the titles of the lands through which the said roads pass are surrendered to the Crown under the provisions of this Act, it shall be lawful for the Governor in Council to reserve a right of resuming for road purposes an area equal to that comprised in the closed roads in the new deeds of grant to be issued in lieu of the titles surrendered as aforesaid, on payment of a sum per acre for the land resumed equal to that paid per acre for the closure of the said roads.”

It struck him that the man might have a large piece of land, and the right of the Governor in Council to open a road hanging over a man's head would be a very dangerous one, because he might take a road three chains wide through 1,000 acres; it might be over a hill or along a flat; that road would be closed for ever. The Government then reserved the right to resume a road two chains wide across that property, and the only compensation the owner of the property would have was a sum per acre for the land equal to that paid on closing the road. That was a point the Postmaster-General did not elaborate upon; but no doubt they should hear more about it in committee. Landed property did not affect him very seriously, but the clause as it was seemed to him dangerous.

The HON. J. F. McDUGALL said that the gentleman who had just preceded him had taken exception to the only part of the Bill with which he (Mr. McDougall) could find any fault. What that hon. gentleman had pointed out was the only danger that he saw in the measure; in every other respect he entirely agreed with it. He had seen the working of the present system more particularly in his position in connection with divisional boards, and he knew the difficulties they had experienced in the closing of roads. He thought in committee a provision should be inserted that the roads should be defined, or else in years hence the Government might take a road through a man's garden or house. A man would never know where the Government would take a road, and that was scarcely a position in which they should place themselves. He should have much pleasure in supporting the Bill.

The HON. A. J. THYNNE said he did not think there was much in the objection raised by the two hon. gentlemen who had just spoken, because he believed he was correct in saying the present practice in issuing deeds of grant was to reserve in country places a certain area for road purposes. That area was rarely defined, and could scarcely ever be defined at the time the grant was being made, because the locality for which the grant was being issued might not be sufficiently settled to enable surveyors to indicate what would be the best direction for a road. When the time came that the road had to be utilised the practice was that the proprietor applied to the Government to exercise

their right of resumption, and they simply had the plan endorsed at the Real Property Office. He thought, as that practice had been so long in existence with regard to ordinary lands, there need not be much difficulty in passing the right to resumption under this Bill.

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

#### SALE TO LOCAL AUTHORITIES LAND BILL.

On the Order of the Day being read for the further consideration of this Bill in committee, the House went into Committee accordingly.

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

The Hon. F. T. GREGORY said he was unable to be present when this clause was under discussion at the last meeting of the Council; he had, however, paid considerable attention to the remarks which fell from various members upon the subject of the clause, some imagining that it was too restrictive, and gave too much power to the Executive in dealing with the property vested in a corporative body in regard to any default on their part in the payment of moneys due. Looking over the clause very carefully, and the consequences which would ensue on its being carried out in its integrity, he could not help thinking that nothing more would be done by leaving the clause intact than reasonably and rightly should be done, and that the powers vested in the Executive were not more than necessary. It had, unfortunately, come to his notice on more than one occasion in connection with the working of the municipal institutions that there was a very great tendency on their part to take advantage whenever they could of the Government. There appeared to be a sort of idea that the Government was an antagonistic body, and whenever the Executive—which was the Government of the day—did anything it was always looked upon as being something hostile to them; and he was not surprised at their thinking so sometimes—that was, from their own point of view—and that they would take a point on the Government whenever they could. Therefore he thought it was only reasonable that in a measure of this sort they should, as far as possible, take every precaution to give the Government of the day power to prevent any body so inclined taking the advantages to which he had referred. He thought he could put the effect of the clause to the Committee in very few words. A corporation or municipal body had, say, a wharf leased or granted to them. They incurred considerable debt and liability upon it; there might possibly be some mismanagement, and finding through their own bungling that they were heavily handicapped, and unable to meet the payment of money due upon it, they could quietly go and lease it to someone else. The leasing might be legal enough, and the corporation would in that way shirk its responsibilities, because, when the Government stepped in to claim the arrears of interest due upon that very property, they would merely say it was subject to the conditions of the lease, and by that means circumvent the Government, who would not be able to get directly the interest on the money to which they were entitled. And this was not a suppositious case. Although he had spoken of a wharf, he had a case in his own mind where a similar thing had been done, and where a local body endeavoured—to make use of plain language—to defraud the Government of the interest on the money lent; and he could plainly see one or two instances in connection with other classes of public works where public moneys had been expended on behalf of

the corporation, and they were doing their very best to shuffle out of payment. There was more than one instance in connection with waterworks. He could particularise a locality where the corporation wilfully and knowingly let the Government go on spending money uselessly, only saying, "Oh, it does not matter; we have not taken the works over, and they are responsible for any misapplication or waste of money in the case." With that staring him in the face, he saw no reason why this clause should not stand at least as stringent as it did in the Bill; and he should be very sorry to see any relaxation which would enable corporate bodies to take advantage of it in the way to which he had referred. He hoped the clause would pass as it stood.

The Hon. W. D. BOX said he had often heard municipalities abused, but he had never in all his life heard such a character given to them as had been given by the Hon. Mr. Gregory. He (Mr. Box) believed that, as a rule, the municipalities of Queensland consisted of a lot of respectable men, and he had never in all his experience heard any body of gentlemen abused as they had been on the present occasion. He had had the honour of belonging to the Municipal Council of Brisbane, and in his experience, extending over three years, he had never known any of the proceedings the Hon. Mr. Gregory had spoken of; and he was sorry that a gentleman of his position should have abused municipal bodies in the way he had done. With regard to the clause, he hoped that House would never consent to leave in the hands of the Governor in Council power to "seize and take possession of all buildings, materials, machinery, apparatus, and appliances" erected upon the land which, as the Postmaster-General had said, was given to the municipality. It had been said that land vested in the Crown was not so valuable as it would be if vested in a municipality, and the Government desired to sell that land to municipalities at a reasonable rate—possibly £1 per acre, which was a gift to a certain extent. A municipality under the Bill would take the land and utilise it, and the Government should have proper protection that what they agreed to sell should be paid for, which was properly provided for in the corporated Act. The marginal note to the clause was, "Additional remedies for default in payment"; and he thought if they desired it very much they might "appoint a receiver of the rent, income, or profit of the property," as provided by the last subsection. The Government had a perfect right if a corporation to whom they had sold land did not pay for it, or did not fulfil their bargain, to step in and receive all the income the land was earning, and in course of time they would have the land back again. But a corporation might have granted a lease for twenty-one years—which was a very long time at the rate of progress in the colony—and what was to become of the lessees? He had seen a great many changes in twenty-one years; in fact, he had seen property that was bought within the last four years at 15s. an acre, sold at £100 an acre within the last year. He alluded to the Southport land. To his mind, when such rapid changes were taking place, the Governor in Council should not have the power of taking possession of any land, or portion of it upon which payments were at any time in arrear, and seize and take possession of all buildings and machinery and appliances thereon. There might be enough machinery on one portion of the land to pay the whole debt due to the Government. He trusted the House would not consent to such power being placed in the hands of the Government.

The POSTMASTER-GENERAL said it appeared to him that the Hon. Mr. Box had a

somewhat upside-down way of looking at things. He could have quite understood the hon. gentleman's argument if he had said that land which was sold at a Government auction sale at £100 an acre was now worth only 15s. an acre; but when he told the Committee that land sold four years ago at 15s. an acre had recently brought £100 an acre it showed clearly enough that if that land were required by local authorities at the present time they would certainly be in a position to pay their interest, and therefore the dire results which might occur to sub-tenants under local authorities, whoever they might be, were not at all likely to arise even on the hon. gentleman's own contention. If the colony were in a decaying state instead of a developing state, he could understand what the Hon. Mr. Box had set forth, but it appeared to him that the argument told against the hon. gentleman himself. He held that the Government had a perfect right to exercise the powers contained in the clause. They were parting with property to local authorities, as they had done in two particular instances, at a very low price, and they insisted as trustees for the State in having the State protected in every possible way. That was what the Bill was introduced for; and he would say to the Hon. Mr. Box and others who were opposing the measure that no objections had come from those who were interested in the contract similar to that contained in the provisions of the Bill. The Municipality of Brisbane had not objected to the Government taking the position which the Government for the time being would occupy under this Bill. There had been no protest on their part, but they were quite willing to carry out the contract; and if other local authorities did not wish to obtain land in that way they need not do so. But supposing a local authority did take land in that way, a subtenant was not bound to go in for it, and if he did he would know well the provisions under which he did so; and his (Mr. Morehead's) experience of life had been that, as a rule, tenants knew pretty well how to look after themselves. He had never known them to be such an innocent confiding body of men as the Hon. Mr. Box would lead them to think they were, but he had found that they were just as keen in looking after their own interests as the landlord was, and if the Bill became law such a tenant would see distinctly what tenure he held. There was no deception, no attempt at evasion, but it was clearly set forth in the clause what would occur under certain circumstances; and knowing that the tenant would take good care to protect himself, and if he did not do so, probably he was an individual who was not likely to do well in any sphere of life. He thought the clause was not a bit too stringent, and if it were interfered with he would withdraw the Bill.

The Hon. P. MACPHERSON said the clause might be looked at from another point of view. The Government in cases of that sort occupied the position of unpaid vendors who agreed to accept their purchase money upon long terms, and if his hon. friend Mr. Box sold property upon long terms, no doubt he would take very good care to protect himself, and why should not the Government do the same? If the words "subject, however, to the provisions of any lease or tenancy thereof lawfully created" were inserted, it would simply mean eating the heart out of the clause.

The Hon. A. J. THYNNE said he did not think the objections to the clause had met with the full appreciation they deserved on the part of the Postmaster-General. Under the 5th clause that had been passed the Government were obliged to give their consent to any lease

before that lease became valid. That did away with the difficulty which the Hon. Mr. Gregory had mentioned of giving a corporation power to grant a lease which would absolutely defraud the Government by preventing them from stepping in afterwards. The Government need not give a lease unless upon fair terms. He understood the objection of the Hon. Mr. Box to be that the Government were reserving to themselves the power, after having once consented to and endorsed the lease, to repudiate that lease afterwards. He (Mr. Thynne) contended that they should not have that power.

Clause put and passed.

On clause 7—"Sales of land may be proclaimed void"—

The Hon. F. T. GREGORY said he had a small amendment that he thought would come in with advantage so as to prevent any misunderstanding, and also obviate the necessity of proposing an amendment which had been placed in the hands of hon. members. He proposed to substitute the word "insufficient" for "no," so that the clause would read—That where the land or other property seized yielded insufficient rent, income, or profit, and the local authority was unable or neglected to make the half-yearly payments, the Governor in Council might, by proclamation, declare the sale to be absolutely void, and so on.

The Hon. A. J. THYNNE said the amendment moved by the Hon. Mr. Gregory fully met the suggestion which he had made to the Postmaster-General, as far as regarded that part of the Bill.

Amendment agreed to.

The Hon. F. T. GREGORY moved a further verbal amendment, substituting "is" for "are," so as to make the clause grammatical.

Amendment agreed to.

The Hon. W. D. BOX said before the clause was accepted he should like to call attention to the change they had made in the Bill. To his mind his friends the lessees were now worse off than ever. As the Bill first stood those persons who occupied land under lease approved by the Governor in Council were not touched by the clause, because it referred to cases where the land yielded "no" rent, income, or profit, but that had been changed and lessees were brought under it; and although they had got a lease from the Governor in Council, and were willing to pay their rent, they might have their property seized and sold. Seeing that the clause had been altered in that way, he would like the hon. gentleman in charge of the Bill to say what the lessees were to do when the land was sold and their machinery seized.

The POSTMASTER-GENERAL: That is a matter for the lessee to consider.

The Hon. A. J. THYNNE said there was no provision in any shape for the recovery from local authorities of any expenses which might be incurred by the Government under section 7, nor yet any by which a claim could be made against a local authority for any deficiency in the amount agreed upon which might not be realised. He thought additional power should be given to the Government in that respect, and therefore moved that the following words be inserted after "and," subsection 2, line 5:—

All expenses incurred by the Treasurer in connection with such land, and recover the deficiency thereof (if any) from the local authority in the manner prescribed by the incorporated Act, and.

The Hon. P. MACPHERSON said he had much pleasure in supporting the amendment.

The Hon. F. T. GREGORY said he did not rise for the purpose of presenting any particular

objection to the clause beyond this—that he thought it was undesirable as a rule that they should encumber any statute with a greater amount of verbiage than was absolutely necessary. He would put it to the Committee, was it likely that they should have a Colonial Treasurer who would not take care to pay all expenses before he gave any balance or deficiency over to the parties who were entitled to any surplus? He thought they should only get the net proceeds; it was all they were at all likely to expect. He saw no harm in the proposed amendment, except with regard to the point he had raised.

The Hon. A. J. THYNNE said he would call the hon. gentleman's attention to the fact that in clause 8 there was a provision for the recovery of expenses under different circumstances. That suggested to him the desirability of making a similar provision under clause 7.

Amendment agreed to.

Clause, as amended, put and passed.

The remaining clauses of the Bill were passed.

The House resumed; the CHAIRMAN reported the Bill with amendments.

The report was adopted, and the third reading made an Order of the Day for to-morrow.

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

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