Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 9 OCTOBER 1884

Electronic reproduction of original hardcopy

LEGISLATIVE COUNCIL.

Thursday, 9 *October*, 1884.

Skyring's Road Bill—third reading.—Appropriation Bill No. 2—second reading.—Immigration Act of 1882 Amendment Bill—second reading.—Oaths Act Amendment Bill—committee.—Maryborough Racecourse Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

SKYRING'S ROAD BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL (Hon. C. S. Mein), this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly with message in the usual form.

APPROPRIATION BILL No. 2—SECOND READING.

On the motion of the POSTMASTER-GENERAL, this Bill was read a second time, and its committal made an Order of the Day for Tuesday next.

IMMIGRATION ACT OF 1882 AMENDMENT BILL—SECOND READING.

Upon the Order of the Day being read for resumption of adjourned debate on motion of the Postmaster-General—"That this Bill be now read a second time"—

The HON. W. H. WALSH said: I simply rise to say that the hon. member who moved the adjournment of the debate yesterday is not here to-day, nor will he, because I met him a short time ago, and he informed me that he would not be able to take part in the proceedings of the House this afternoon. I mention this, so that, if it is considered desirable under the circumstances, some other hon. member may move the adjournment of the debate until Tuesday next.

The POSTMASTER-GENERAL said: I have had a conversation with the Hon. Mr. Forrest, who moved the adjournment of the debate yesterday, and he certainly informed me that he did not feel well enough to address the House this afternoon; but he did not express any desire to have the debate adjourned to suit his convenience. I have no desire to unduly force the Bill upon the attention of hon. gentlemen; but I would point out that it has been on the paper for several weeks, and only two speeches were made last night upon it. I then consented to an adjournment, because the House was rather thin; and I am quite willing to adjourn now if it is the wish of hon. gentlemen to do so. The Hon. Mr. Forrest did not, as I have said, express any desire for an adjournment. Had he done so, I should probably have agreed to it. I do not know any other hon. gentleman who is anxious to speak on the subject. I am entirely in the hands of the House.

The HON. P. MACPHERSON said: I think the consideration of the Bill ought to be further adjourned. The Bill is one of very great importance indeed, and the House is very thin at present. I would therefore ask the hon. the Postmaster-General to consent to an adjournment.

The HON. W. H. WALSH: As the hon. the Postmaster-General is simply waiting for someone to move the adjournment of the debate, I——

The PRESIDENT: Has the hon. gentleman spoken on the Bill?

The HON. W. H. WALSH: No. I move the adjournment of the debate, if it meets with the concurrence of the hon. the Postmaster-General.

The HON. W. PETTIGREW said: I see nothing in the Bill that we should adjourn for, and no reason has been given. We have come here to do business this afternoon, and let us do it. What is the use of coming here, adjourning the debate on the Bill, and wasting time? Let the Bill be passed, and have done with it.

The HON. W. H. WALSH: I want to stop it.

The HON. W. PETTIGREW: I do not see why you should stop it. At any rate, give your reason and I will listen to it.

The HON. G. KING said: I see no reason whatever for adjourning the debate. The Bill is a very simple one. By parliamentary action the sugar-planters of the colony have been deprived of coolie labour; the supply of kanaka labour is quite inadequate to meet the demand, and will in all probability be lost altogether. This Bill provides the only substitute—the only remedy which presents itself under the circumstances. It will enable the planters to indent labour from Europe—from England, Ireland, Scotland, and other parts of the Continent—in fact, from wherever it may be obtained. The opponents of the Bill predict that it will be a failure, and that its only effect will be to lower the rate of wages in the colony. I do not think it will have that effect at all. I think that is a fallacy, because I have noticed that during all the period when immigration to New South Wales was carried on on a large scale wages invariably advanced, because with the command of labour in the market enterprises were entered upon which gave employment, and, so far from lowering the rate of wages, the effect was to raise it. That has been the experience of New South Wales at various periods when immigration has been resumed after a period of cessation. I think the statement that Europeans are not able to work on the plantations must be received with a great deal of allowance, because it has not been tried yet. I have spoken to a great many persons on the subject, and they say that in some parts Europeans could work very well. I have been in correspondence also with sugar-planters and persons interested in the industry, and they say that as an alternative measure they would decidedly have this Bill when the other sources of supply of labour are cut off. Then why should we oppose the passing of a measure which will be of relief to them—which will be the means of enabling them, as it were, to keep together an industry which is now, from circumstances of various kinds, almost extinguished? If the experiment—for it is after all experimental legislation, because we cannot tell what the effect may be; whether men will be imported under this measure or not, but if it should prove a failure it will be discontinued. Again, if the climatic effects be as dangerous as has been predicted, men will not come out under the measure, because the rumour of the sufferings from climatic influences which people will have to undergo will speedily reach their friends at home, and they will not be easily tempted to come out here under indenture. I believe that the Bill, under all the circumstances, will prove a very useful measure, and I think we should pass it as the best alternative, or the best thing that we can do for the sugar industry in its present state. I do not think there is any need for an adjournment, and we might as well proceed to discuss the Bill, because in any case it can do no possible harm.

The POSTMASTER-GENERAL said: Speaking to the question of adjournment, I may mention that some hon. gentlemen who have been very regular in attendance to their duties in this House have intimated their wish that they should be at liberty to absent themselves next week. This Bill, as I have said before, has been on the paper for many weeks past, and only one gentleman has expressed his desire to address the House upon the subject. That gentleman was within the precincts of the Chamber to-day, but said he did not feel quite well enough to address the House. If he had expressed a desire to me to adjourn the debate to suit his convenience, I should have been quite willing to give his request consideration; but although he had the opportunity of doing so he did not avail himself of it. I know no other gentleman who has expressed a desire to speak on the subject; and, after all, although we may affirm the second reading of the Bill to-day, the question, in accordance with the usual practice of the House, may be reopened when the Bill goes into committee. And as the Hon. Mr. King has pointed out, the

Bill is, to a certain extent, a matter of importance to large property holders who pursue the sugar industry in the colony. It is to be hoped that it may be of valuable assistance to them in the prosecution of their labours; and the longer the passing of the measure is deferred the greater the uncertainty that will exist in their minds and the minds of those who are supporting them as to what the state of the labour market is likely to be in the colony. Under these circumstances, I would impress upon hon. members the desirability of speedily arriving at a conclusion upon this very important subject.

Question—That the debate be adjourned—put and negatived.

Question—That the Bill be now read a second time—put and passed; and committal of the Bill made an Order of the Day for Tuesday next.

OATHS ACT AMENDMENT BILL—COMMITTEE.

On motion of the HON. P. MACPHERSON, the President left the chair, and the House went into Committee to consider this Bill in detail.

Preamble postponed.

Clause 1--"Repeal of sections 1 and 2, 40 Vic., No. 10"—put and passed.

On clause 2, as follows:—

"If any person tendered for the purpose of giving evidence in respect of any civil or criminal proceeding before a court of justice, or any officer thereof, or on any commission issued out of the court, objects to take an oath, or by reason of any defect of religious knowledge or belief or other cause, appears incapable of comprehending the nature of an oath, it shall be the duty of the judge or person authorised to administer the oath, if satisfied that the taking of an oath would have no binding effect on the conscience of such person, to declare in what manner the evidence of such person shall be taken, and such evidence so taken in such manner as aforesaid shall be valid as if an oath had been administered in the ordinary manner. And if any such person wilfully and corruptly gives false evidence he may be indicted and tried for perjury, and upon conviction thereof shall be liable to the same punishment as if he had taken an oath."

The POSTMASTER-GENERAL said he had a small amendment to propose, which he thought would satisfy some of the objections expressed by hon. gentlemen. He moved that after the word "person," on the 6th line, the words "and that he understand that he will be liable to punishment if his evidence is untruthful" be inserted. By inserting these words they would attain that which was the desire of the Legislature, in 1876, when it insisted that before the evidence of those persons who did not know the nature of an oath should be taken, they should be compelled to make a solemn declaration to the effect that they knew that if they did not tell the whole truth, and nothing but the truth, they would be liable to punishment for perjury. The Bill in its present shape provided that, when a judge satisfied himself that an oath would have no binding effect on a witness, he had nothing more to do than decide in what way the evidence should be taken; but in his opinion the judge should be satisfied that a man knew that if he swore falsely he would be liable to punishment. That was the object of the amendment.

The HON. P. MACPHERSON said he had no objection to the amendment, but he should have thought that its meaning was expressed in the word "conscience."

The HON. W. H. WALSH said it was his impression that the Bill would do away with the act of taking oaths in courts of law, and would reduce the system to a perfect farce. He would rather be a party to passing a Bill to utterly do away with the necessity for taking an oath, and hold everybody responsible for speaking the truth in a court of law, than put such a blot upon the Statute-book. He did not know what they had done that such a stigma should be cast upon them as a Christian and rational people; nor did he see any necessity for the measure—except that some whimsical judge had expressed a desire, probably to some member of the legal profession, that he would like to fashion the oath he administered.

The HON. W. GRAHAM said he agreed with the Hon. Mr. Walsh in what he had just said. According to the clause, people who had no conscience—who had no knowledge of the nature of an oath, or the consequences of swearing falsely—those persons, who were not fit to take an oath, were liable to be indicted for perjury, and subjected to its pains and penalties. To him the thing seemed ridiculous.

The HON. P. MACPHERSON said it was a great pity that the Hon. Mr. Walsh did not take his objections eight years ago, when the Legislature passed the Oaths Act Amendment Act of 1876, by which an aboriginal was made capable of sincerely promising in a solemn manner that he would speak the truth.

The HON. A. C. GREGORY said he thought the amendment would serve the purpose very well; but the difficulty was that the person authorised to administer an oath could determine the form in which the oath should be taken or a declaration made. Though he was quite prepared to allow that judges—and even police magistrates—might do so, there were many persons on the Commission of the Peace who were not conversant with legal proceedings, and the result would be the invention of some of the most extraordinary forms of declaration. The persons authorised to define the declaration should be restricted.

The HON. J. C. HEUSSLER said that according to his experience the administration of an oath in courts of law in the colony was far from being solemn. When he first came to the country he thought it was a regular laughing-stock. Instead of being the solemn act it ought to be, in order to make any impression at all, it was gone over in a very irreverent manner. As the matter had been mentioned by the Hon. Mr. Walsh, he would say that he would willingly see the taking of oaths abolished in the colony. In South Australia a Bill had been before Parliament—with a negative result, however, as yet—for that purpose; and in Queensland there was an agitation, eight or ten years ago, in favour of explaining to witnesses that if they did not tell the truth, the whole truth, and nothing but the truth, they would be subject to the punishment awarded those who perjured themselves. And perhaps if they made people understand that the punishment for telling an untruth would be severe, that would be the best way of getting them to give true evidence. The Hon. Mr. Walsh had alluded to a whimsical judge. But there were whimsical people of all professions; and no doubt the judges, in following out the forms to which it was their duty to adhere, were only administering the law as it stood. He thought that with the amendment proposed by the Postmaster-General the measure would be a very good one as far as it went.

The HON. W. GRAHAM said he supposed the Hon. Mr. Heussler, in referring to the irreverent way in which oaths were administered in courts of justice, meant that the oaths so administered were but little binding on the conscience, and that people were quite as likely to speak the truth without taking such an oath. But he thought evidence was very much against that. It was a subject that had been well considered, and on which no doubt the Postmaster-

General could give the Committee some information. There were many people, who would get into a witness-box, without taking an oath, and give false evidence, who would hesitate a good deal before doing so while under the influence of an oath.

The POSTMASTER-GENERAL said he held the same opinion as the Hon. W. Graham; and he should be sorry to abolish the taking of oaths in courts of justice. His experience was that they would find persons whose word was as good as their bond, but that there were a large number who were prepared to state what was not true, when they were not sworn; but who would hesitate to tell a falsehood in the witness-box after the oath had been administered to them. If ever the proposition were brought forward in his time he should resolutely oppose the abolition of oaths in courts of justice. The tendency of late had been to make allowance for tender consciences. For many years persons who had a conscientious objection to taking oaths were absolutely debarred from giving testimony in courts of justice, and were for that reason subjected to great misfortune, preferring to suffer loss rather than act against their conscience. Additions had repeatedly been made to the Statute-book to enable persons, whose religious belief convinced them that it was wrong to go through the form of taking an oath, to make a solemn assertion that they would tell the truth, knowing that if they did not do so they would be liable to punishment. The object of the Act passed in 1876, and of the Bill now before the Committee, was to go a step further, and enable ignorant persons, who did not understand the nature of an oath, to be capable of giving evidence, if the presiding authorities were satisfied that they understood they would be liable to the same punishment as those who swore falsely, if they gave false evidence. But the Act of 1876 was imperfect, because it exacted from the proposed witness a declaration incapable of being explained to him, and had, therefore, become a dead-letter. Now it was proposed to allow the judges to determine, when they were satisfied that a man could not be indoctrinated in the knowledge of the nature of an oath, how the testimony of the witness should be taken. He wished to provide also that the witness must understand the result of giving false evidence, which was the intention of the Legislature when the Act of 1876 was passed.

The HON. W. H. WALSH said that, after all, the result of passing the Bill would be to level down the quality of evidence taken on oath to that which was taken not on oath. There were hundreds of instances, as hon. gentlemen must be aware, in which persons had made complaints to magistrates, and made such statements as to induce the magistrates to go further into the matter. But the moment the magistrate administered the oath, and informed the witness that he was taking down the statement made on oath, how frequently the witness changed! How much was the nature of the complaint changed when made on oath! He did not hesitate to say that when a man was told by the judge—or the magistrate, for magistrates would be authorised by the Bill to do so—that there was no necessity to take an oath—the moment his conscience was relieved, he would give evidence as different as possible from that he would have given on oath. In such cases the evidence would be like that of every common informer who rushed to a magistrate to lay an information. He had in his possession a letter in which he was told that certain men would give evidence which was not true unless they were put upon oath, but that if put upon oath they would speak the truth.

The HON. G. KING said the difficulty appeared to be that all persons authorised to administer an oath were not qualified to exercise that discretion as to the evidence to be admitted with which that Bill, if passed, would endow them. If the power proposed to be conferred were limited to judges, or, as the Hon. Mr. Gregory had suggested, to judges and police magistrates, it would draw a line somewhere; but the clause under consideration conferred the power indiscriminately on all persons authorised to administer an oath, without reference to their qualification. If the Committee would amend the clause in the way suggested, it would meet the objection which had been raised.

The POSTMASTER-GENERAL said that in cases where a magistrate could mete out summary punishment the penalty was comparatively small, and with regard to civil matters justices could not adjudicate on matters above £30; and in all cases provision was made for appeal. Therefore he did not see that much injury was likely to ensue by giving to justices of the peace the power of discriminating as to the manner in which a person should give evidence. Really what was intended by the Bill was that the higher courts of record, Supreme and District Courts, in dealing with civil and criminal matters, especially with criminal cases, should have the opportunity of submitting to the jury the testimony of persons who could not have the oath explained to them. He did not think that any injustice was likely to result from that, because any person put upon his trial must be tried before a jury, and they were certainly not likely to take a blackfellow's word before the evidence of their own countrymen, unless it were corroborated by other reliable testimony. But it often happened that some link in the evidence against perhaps a notorious criminal, whom they were morally certain was guilty of the crime with which he was charged, was wanting, and could only be supplied by a blackfellow. It was to remedy a case of that kind that a Bill, of the character before the Committee, was required. Some amendment of the law in the direction of that measure was unquestionably desirable.

The HON. W. H. WALSH said he would again suggest to the hon. gentleman in charge of the Bill, the advisability of limiting the power proposed to be given to the judges by striking out the words "or person authorised to administer the oath." As the clause stood at present, a police magistrate or an ordinary bench of magistrates, or any magistrate in any court of law, could make the proposed change in the taking of evidence. It was a far more important matter than some hon. members seemed to imagine. He did not think that the hon. gentleman in charge of the Bill contemplated that the power conferred by the 2nd clause should be delegated to an ordinary bench of magistrates.

The POSTMASTER-GENERAL said the amendment suggested by the hon. gentleman who had just spoken would have the effect of debarring those persons whose testimony it was intended to make admissible from giving evidence in the preliminary proceedings before the magistrates. Before a man could be put upon his trial for a criminal offence the charge against him must be investigated by the justices. If the words proposed to be struck out were eliminated, the justices in the inferior court would be prevented from taking the evidence of persons upon whom an oath would have no binding effect, or who were too ignorant to understand an oath; and, as he had pointed out in his previous remarks, in cases where the magistrates had summary jurisdiction, the amount of money at stake, and the liberty of the subject at stake, were very

limited; and any person aggrieved by their decision had his redress in an appeal to the Supreme Court. So that any injury that could possibly be done by conferring that power upon magistrates was trifling as compared with the advantage conferred upon the public by not interfering with the clause in the manner suggested by the Hon. Mr. Walsh.

The HON. W. H. WALSH said that explanation was good enough as far as it went, but the hon. gentleman did not go far enough. The evidence taken by a magistrate might never reach a higher court, and it might utterly frustrate the course of justice, and prevent prosecutions that ought to be proceeded with. The clause was intended to give weight to evidence which, at that moment, carried no weight in any court of law. He wished the hon. gentleman would see that to allow magistrates to receive in extenuation of an offence, or in disproof of it, such loose evidence as that clause provided for, might frustrate justice as much as it would assist in the prosecution and conviction of an offender.

The POSTMASTER-GENERAL said the hon. gentleman appeared to have forgotten that the Grand Juror had to weigh all the testimony taken before the magistrates before filing a Bill. All depositions relating to cases triable before the Supreme or District Court went before the Attorney-General or Crown Prosecutor, who respectively represented the Grand Jury in this colony, and they were the persons who had to say whether a person should be tried or not. The depositions would disclose the fact whether the evidence of the witnesses was taken on oath or not, but the Grand Juror was not likely to refuse to file a bill because some statement given in the way allowed by the Bill tended to exculpate the person accused. No Crown Prosecutor would refuse to file a bill under those circumstances, but he would leave the case for a jury to decide. The invariable practice was to file a bill and allow the jury to determine whether the evidence disclosed any criminality or not.

The HON. W. H. WALSH said the Postmaster-General did not comprehend his objection. He (Hon. Mr. Walsh) contended that, in consequence of the admission of a worthless amount of evidence, the case might never go beyond the police court; and then no Grand Juror, no Attorney-General or Crown Prosecutor at all—would have any cognisance of the case. That was the objection he had to the clause. If they allowed an ordinary bench of magistrates to exercise that power, and determine whether the evidence of a blackfellow, who did not know right from wrong, who certainly from a moral point of view did not know whether it was right or wrong to speak the truth, and who could not give his testimony on oath, the course of justice would be frustrated in the very beginning. Such a power would be as inimical and dangerous to the execution of justice as to the liberty of an accused person. If the Postmaster-General were as old a colonist as he was, the hon. gentleman would know that for forty years they had been contending against the course advocated by an ex-Attorney General of New South Wales, the late Mr. Plunkett, relative to the reception of blackfellows' evidence in courts of law. It was not a new subject by any means with old colonists, but one on which they had long fought; and they had done so in the interest of colonists, for the protection of their lives and the purity of justice. The whole legal profession had had to contend against that powerful gentleman on that question, and the hon. members were now asked to extend the provision contained in the existing law, so as to allow the most worthless evidence to be taken and used for the conviction or acquittal of accused persons.

The POSTMASTER-GENERAL said, if he understood the hon. gentleman aright, he meant that if magistrates were allowed to take evidence of the character proposed to be admitted they might refuse to commit. But that did not settle the question. If a magistrate refused to commit, a fresh information could be laid. If there were five or six magistrates on the bench hearing an interlocutory proceeding, and all but one were opposed to a committal, and that one wished to commit the accused person, he could do so.

The HON. W. H. WALSH: No.

The POSTMASTER-GENERAL said he had been a student of the law for the last fifteen or twenty years, and he said it was so.

The HON. SIR A. H. PALMER: Yes.

The POSTMASTER-GENERAL: And if all the magistrates investigating the matter refused to commit, then it was competent for the person who wished to put the law in motion to file a fresh information and have the case heard again. The hon. gentleman was therefore in error in saying that the exercise of the power given by the clause under discussion would prevent justice being secured. It might delay justice, but it would not do more than that.

The HON. W. H. WALSH said he thought the hon. gentleman was wrong in saying that one magistrate could commit against the decision of others sitting with him on a case. He (Hon. Mr. Walsh), however, remembered that it was so formerly, but he understood that an Act had since been passed taking away that power.

The POSTMASTER-GENERAL: No.

The HON. W. H. WALSH: Well, he had been informed that the power had been taken away, and that a person could not now be committed by a single magistrate. He had himself on two occasions committed a person when he was against the opinion of the other magistrates sitting with him—one case was for horse-stealing and the other for forgery—and in both instances the men were convicted. But he was under the impression that that power no longer existed. It now appeared that he had been labouring under a delusion.

The HON. W. GRAHAM said the Postmaster-General had told the Committee that in cases where an aboriginal gave evidence before a magistrate in favour of an accused person, when the depositions came before the Grand Juror he would weigh that evidence very carefully, and that he would know from the depositions whether the witness had been sworn or had simply made a declaration. He (Hon. Mr. Graham) thought the Grand Juror should not take upon himself to say whether that evidence should be taken or not. The Bill provided that such testimony was as valid as evidence given on oath, and that if the witness spoke falsely he should be liable to all the pains and penalties of perjury.

Amendment put and passed.

Question—That the clause, as amended, stand part of the Bill—put; and the Committee divided:—

CONTENTS, 8.

The Hons. Sir A. H. Palmer, C. S. Mein, W. Pettigrew, P. Macpherson, G. King, J. C. Heussler, A. C. Gregory, and J. Swan.

NON-CONTENTS, 4.

The Hons. W. H. Walsh, W. Graham, A. Raff, and W. G. Power.

Question resolved in the affirmative.

The remaining clauses of the Bill and the preamble having been agreed to,

On motion of the HON. P. MACPHERSON, the CHAIRMAN left the chair, and reported the Bill to the House with an amendment. The report was adopted, and the third reading made an Order of the Day for next sitting day.

MARYBOROUGH RACECOURSE BILL—COMMITTEE.

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

The clauses, schedule, and preamble having been agreed to,

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair, and reported the Bill to the House without amendment. The report was adopted, and the third reading made an Order of the Day for Tuesday next.

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