

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 13 AUGUST 1885

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LEGISLATIVE COUNCIL.

Thursday, 13 August, 1885.

Marsupials Destruction Act Continuation Bill—third reading.—Local Government Act of 1878 Amendment Bill—committee.—Charitable Institutions Management Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

MARSUPIALS DESTRUCTION ACT
CONTINUATION BILL—THIRD
READING.

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

LOCAL GOVERNMENT ACT OF 1878
AMENDMENT BILL—COMMITTEE.

On the Order of the Day being read, the President left the chair, and the House went into Committee to further consider this Bill.

On clause 6—"Amendment of 42 Victoria, No. 8, section 177"—

The HON. W. D. BOX said that when the House was in committee yesterday he endeavoured to show that clause 6 was not an acceptable clause. He had since had, however, time to study it, and thought that perhaps, on the whole, it had better be left alone. He would therefore withdraw his opposition of yesterday.

Clause put and passed.

Clauses 7 and 8 passed as printed.

On clause 9, as follows :—

"1. When a road passes through the limits of three local authorities, so that for the purpose of passing over it from end to end it is necessary to pass through the limits of each local authority, any two local authorities having jurisdiction over portions of the road may, if such portions are in fair repair, request the local authority having jurisdiction over the remainder thereof to put it in fair repair or to enter into an agreement with them for that purpose. And if the local authority so requested refuses or neglects to enter into a reasonable agreement in accordance with such request, within a reasonable time, the local authorities making the request may apply to the Minister to exercise the powers hereby conferred.

"2. The Minister shall thereupon proceed in the same manner as prescribed by the last preceding section but one in the case of boundary roads, and may make the like order, which shall have the like effect as in that case, and may be rescinded, altered, or enforced in like manner.

"3. No proceedings shall be taken under this section to compel the repair of any portion of a road which does not lie between the limits of one of the local authorities and a town or centre of population."

The HON. F. T. GREGORY said it was very likely that the question which he was about to bring before the notice of the Committee might not necessarily lead to the amendment of the clause, but he wished to elicit some information from the Postmaster-General. In the 3rd subsection of clause 9 he found these words :—

"No proceedings shall be taken under this section to compel the repair of any portion of a road which does not lie between the limits of one of the local authorities and a town or centre of population."

He had allowed those expressions to pass by without comment in one of the other clauses, but he wished now to ascertain the meaning of the words from the Postmaster-General. It struck him that there was no such thing as a road to be found anywhere in the colony but would lie within the limits of some local authority and a town or centre of population. There was, no doubt, some qualified meaning in the subsection, and perhaps it was not intended to be literally understood as it was. He therefore should like an explanation on the subject.

THE HON. SIR A. H. PALMER said before the Postmaster-General replied to that question he would ask him what was the meaning of the 1st line of the clause—

“When a road passes through the limits of three local authorities”—

and why the number should be limited to three? He would point out that a road they all knew of passed through a great many more than three districts represented by local authorities. The road to Gympie first passed through Brisbane, then Ithaca, Booroodabin, and Caboolture, and he did not know how many more. Why should not all those local authorities contribute to the maintenance of the road?

THE POSTMASTER-GENERAL said in replying to the question of the last speaker he would say it was not considered desirable to increase the number of local authorities. Three was considered to be a fair limit. There might be several local authorities at the other end of the road mentioned. There might be as many as three, say, at the northern end of the road, and three again at the southern end, and in that case there would really be six authorities who would share the responsibilities of maintaining the road. The limit of three appeared to him to be a very liberal one, because practically six local authorities were involved. The Hon. Mr. Gregory had said he was unaware of any road that would not come under subsection 3. Well, he (the Postmaster-General) apprehended that the clause referred particularly to roads in the country, and by the country he meant in those parts of the territory where there was not a town or centre of population. The hon. gentleman, on reading the clause again, would, he thought, see that that was the meaning of it.

THE HON. F. T. GREGORY asked if the hon. gentleman would point out such a thing as a road which did not lie between some local authority and a town or centre of population? Was there such a road in the colony? He had thought the matter over, and he failed to discover where a road could be found. It might be that the clause referred to some reasonable distance—a road, for instance, that might lie between the municipality of Ipswich and the municipality of Brisbane—then there could be no doubt about the question. They might go on refining, but where was the matter to end?

THE POSTMASTER-GENERAL said he might state frankly that it would be impossible for him to answer the hon. gentleman's question without having a map before him containing all the different divisions of the colony, but he could imagine a road in the great western districts that did not lie between a local authority and a centre of population. The hon. gentleman would have no difficulty in calling to mind some portions of the colony that had no centres of population.

THE HON. SIR A. H. PALMER: There is a local authority there though.

THE POSTMASTER-GENERAL: Yes; certainly.

THE HON. A. C. GREGORY said there was another difficulty that he saw arose out of the point that had been raised. The clause provided for a case where a road passed through the limit of three local authorities—that was, from some local authority towards a town. Take the city of Brisbane, and then go out to Booroodabin, and Toombul, and Caboolture. Caboolture would be the fourth, but it could make Booroodabin and Toombul help make the road. Then they would have Toombul and Booroodabin forcing the matter on Brisbane, and, in fact, they might understand that the first three would work against the other.

Then the next three would come behind and they would attempt to force their neighbours; and they would find that, like “the house that Jack built,” the thing would extend all the way from Brisbane up to Somerset or the Gulf of Carpentaria. As to there being roads that did not lead to centres of population, he really failed to see where such a thing was to be found. He did not even see the use of the restriction with regard to three local authorities, because the fourth could force the next two, the fifth could force four and three, and the sixth could force five and four.

Clause put and passed.

Clause 10 — “Short title” — and preamble, passed as printed.

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair and reported the Bill to the House with amendments.

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

CHARITABLE INSTITUTIONS MANAGEMENT BILL—COMMITTEE.

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

Preamble postponed.

Clauses 1 to 5 passed as printed.

On clause 6, as follows —

“In the case of public charitable institutions which are established for the reception, maintenance, and care of indigent persons, and are declared by the Order in Council to be established for that purpose, the curator shall undertake the general care, protection, and management of the estates of all inmates of the institution and may—

- (a) Take possession of, retain, sell, or dispose of any property of an inmate, whether real or personal;
- (b) In his own name sue for, recover, or receive, any money or other property due or belonging to an inmate, or damages for any conversion of, or injury to, any such property;
- (c) Apply any money so recovered or received or the proceeds of any such property in defraying the cost of the maintenance of the inmate in the institution;
- (d) Exercise in the name of an inmate any power which the inmate might exercise for his own benefit;
- (e) In the name and on behalf of an inmate, appoint any person to act as attorney or agent for the inmate for any purpose connected with property of the inmate.”

THE HON. SIR A. H. PALMER said there was a very great deal to be said upon subsection (a) of the clause, which read that the curator was entitled to—

“Take possession of, retain, sell, or dispose of any property of an inmate, whether real or personal.”

It was quite possible that an inmate might go into one of their asylums under such circumstances as, for the time, rendered him perfectly helpless in money matters, but he might have property or an estate that he was heir to, or the reversionary interest in property, and it was manifestly unfair that the curator should have the power to “retain, sell, or dispose of that property,” whether real or personal. They had seen instances of men who had been inmates of asylums and who had come into large fortunes. If the curator was allowed to dispose of the property of inmates—whether real or personal—it would come very hard indeed in a great many cases. If it was provided that he should have the right to dispose of so much as would pay for the keep of the inmate, that he would consider perfectly fair; but the clause as it stood gave a great deal too much power to the curator. Those who had known the colonies for so many years knew that the reversions of fortune were something terrific,

and men who had not a penny in their pockets to day, and were glad to hide their heads anywhere, might next week have ample means. He thought the Postmaster-General would see the force of his argument, because the clause as it stood was manifestly unfair. The man who had only been a week as an inmate of an asylum might have the whole of his property sold.

The HON. W. D. BOX said he hoped the curator would not be allowed to dispose of real estate. Through an accident, a man might become an inmate of the institution, and while there the whole of his real estate might be sold. He thought personal estate should be made liable, and no doubt the Postmaster-General could arrive at some plan by which real estate would be chargeable, but not disposed of at the sweet will and pleasure of the curator. He hoped the word "real" would be struck out.

The HON. W. FORREST said he thought that an inmate who had means should contribute for his maintenance as far as his property would go, and he therefore could not agree with the Hon. Mr. Box that real estate should be struck out. The amendment suggested by the Hon. Sir Arthur Palmer would meet the case. A dangerous power was proposed to be put into the hands of the curator, and that power did not end with subsection (a), for the curator might "exercise in the name of an inmate any power which the inmate might exercise for his own benefit." But the inmate at that time might not wish to sell his property, and the curator might do so in spite of him. He thought the Bill required some consideration; they were not in such a hurry as to pass it through committee at once.

The HON. W. PETTIGREW said the clause was very necessary. He did not know as a positive fact, but he had been told, that there were people at Dunwich at the present time who had property, but would not contribute towards their support; and he considered that was a state of affairs which ought not to exist. If a man took advantage of Dunwich he ought to pay for his support the same as he would anywhere else; and it was necessary that the curator should have power to take possession and sell property belonging to such inmates. Clause 7 would overcome some objection that might be taken to clause 6.

The HON. F. T. GREGORY said there was a further difficulty in regard to real estate. Unless the clause provided for the mode it was to be arrived at, he could not see how the title under the Real Property Act would be obtained. All property was transmitted directly from the original owner, the executor, assignee, or by a sheriff's sale, and there might be other means; but the clause seemed to make no provision at all for transferring the title—there was simply the bald statement that the curator could dispose of the property. He fully agreed with the Hon. Sir Arthur Palmer that the proposed power, without any protection to the inmates, would be unjust in the case of persons who were inmates under temporary misfortune; and it would be far better if, before any steps were taken beyond taking possession of personal property to the extent required for meeting the cost of maintenance, that the interference of the Supreme Court should be required. Inquiry would then be made as to the circumstances under which the inmate was there, and if the court deemed it justifiable to sell the property they could give their order accordingly. If the Postmaster-General would introduce an amendment to that effect the difficulty would be remedied, or if he were disinclined to do so he might give other hon. members time—he would do it himself—to prepare an amendment.

The POSTMASTER-GENERAL said the course suggested by the last speaker would involve an inmate, having property of any kind, in expense, which was a thing to be avoided. The proposed method would also be cumbersome. At the first blush he was inclined to delay the Bill as long as hon. members might desire, because he was convinced that the more they looked into it the better they would be pleased with it. He would now refer to one or two matters suggested by previous speakers. The clause, in fact, appointed an attorney for a person who was practically incapable to manage his own affairs because he was an inmate of a charitable institution. No inmate of Dunwich was physically capable of being present to attend to his or her property matters; therefore the provision was a wise one. The curator was accountable to the Government of the day for the performance of his duties under the clause which the marginal note gave in a concise form—"Curator to manage estates of inmates of certain institutions." It was hard that if persons owning property resorted to charitable institutions their property should not be carefully preserved and managed by Government officers. And no charge whatever was made for doing so. If an inmate wished he might appoint someone as his attorney, because Dunwich was no place for people bereft of their senses—the insane would go elsewhere; and if a person had property of sufficient value to justify him in appointing a relative or some other person to be his or her attorney the difficulty would be got over at once. The clause was not compulsory, but was a power given to the curator in reference to persons of property who declined to contribute to their own support. As would be seen in a previous part of the Bill, the Government had power to make regulations, and he could not conceive of a Government who would not prescribe the proper mode of dealing with such cases. The curator would be under the supervision of the Minister, and would not be in a position to play ducks and drakes with the property of any unfortunate man or woman in such an institution. The Bill was intended to undeceive those who were possessed of a discreditable wish to live at the expense of the public while possessed of property of their own, and he thought hon. gentlemen would at once agree that it was very desirable to give the power in question. An inmate of Dunwich was practically out of the colony for business purposes. Anyone leaving the colony for a few months and possessing property requiring to be managed and dealt with would, as a man of common sense, appoint someone in whom he reposed confidence to deal with that property during his absence; and to meet instances where inmates might not have the sense to appoint an attorney, or might not know anyone in whom they could trust, it was for cases like those that the clause was intended. The practice was common, and the phraseology the same as was used in any authority given by one person to another to deal with and manage property. The inmate might have no personal property but only real property, and why should not that be dealt with for the purpose of keeping body and soul together, and making the inmate comfortable? A person went to Dunwich to get good food, pure air, and medical treatment; but he was not obliged to go there. Being there, however, it was only reasonable that he should pay for his support if able to do so; and the Hon. Mr. Box's contention that real property should not be sold for that purpose, while personal property might be sold, was laughable. Happily, all property in Queensland was alike in the eyes of the law. When a man died intestate his real property

was dealt with in the same way as his goods and chattels, and it was only right that all property should be in the same grade. If hon. gentlemen desired that the Bill should be postponed he should be happy to accede to that desire.

The HON. A. J. THYNNE said that the clause deprived the inmate of any say in the management of his own property, which must be vested in the curator, who was under no control in dealing with that property. It was a common, though mistaken, idea with some people who entered benevolent institutions, that if once their property got into the hands of the Government it would be impossible for them to get it again; and they ought to study the ideas of such people if they wished to make legislation effective. There were many people at Dunwich now who would be glad to be out, but who were forced by the stress of circumstances to avail themselves temporarily of the assistance which the State offered. The Postmaster-General said an inmate was charged nothing for the supervision of his property by the curator. He thought that was the dearest kind of supervision, and that it would be far better if some charge were made. If no charge were made for the management of property in different parts of the colony—it might be all very well in Brisbane—there would be very little trouble taken with the property, and very little would come into the possession of the curator. Under the Insanity Act, which was somewhat similar with regard to the management of the property of inmates, there were cumbrous and numerous provisions by which the curator must have the sanction of the Supreme Court; but the clause under discussion deprived an inmate of the power to sell his own property. If the power were left with him, and he refused to pay for his maintenance, the curator might very properly be empowered to step in and say that if he did not pay what he owed his property must be sold. Unless power were given to sell, the curator should get the sanction of a magistrate before taking proceedings; but that sanction would not be necessary if power were given to the inmate to deal with the property himself. He thought the Government were making the machinery of the Bill more cumbrous than was necessary, and that the suggestion to let the Bill stand over for further consideration was a good one.

The HON. W. FORREST said he was very glad to hear the Postmaster-General say he was willing to allow the Bill to stand over for further reflection. He would just intimate, without saying he would oppose clauses 7 and 8, that he should want some enlightenment on them. He did not see why a relative should be compelled to maintain an inmate when there might be many reasons why he should not do so.

The HON. SIR A. H. PALMER said that, while agreeing with the Hon. Mr. Pettigrew in the opinion that every inmate should be liable for his own maintenance if he possessed property, he still thought the clause went a great deal too far. If an inmate had property and refused to contribute towards his maintenance, the remedy was very simple—turn him out. With respect to the reports circulated in various newspapers, to which the Hon. Mr. Pettigrew alluded—that there were men of large means at Dunwich refusing to contribute to their own support—he doubted the accuracy of those reports. He had had something to do with Dunwich. As Colonial Secretary he had been in charge of the institution for seven years, off and on, but had never found instances of men of wealth being there. Men had been there whose relations were well able to support them, but who refused, and there was no power to make them do so; it was therefore proper, within certain limits, that people

of ample means should be made to support any of their relatives who happened to be at Dunwich. But to take the whole of a man's property, whatever it might be—to retain, sell, and dispose of it—and nothing said as to the balance—was an algerine provision which should not be included in the Bill. A select committee of that Chamber inquired last year into the management of the institution. Did it come before them that there were patients in possession of ample means? He had read the report, and saw no allusion to men of means being there. He had heard it stated that able-bodied men were kept there in idleness, and he confessed that to a transient visitor that appeared to be the case; but it was a mistake. He had himself been mistaken in that way, and after personal examination had become convinced of his mistake. He had made it a duty to inspect the whole of the patients, and had pointed out to the superintendent men who appeared to be in possession of splendid health; but on going nearer and examining them, he found that such patients were almost invariably paralysed in one limb or more, and utterly incapable of work. That the management required more power, and that the superintendent should be empowered to turn out men not fit to be there, was amply proved; and the Bill, which he considered to be on the whole a very good one, would give that power—a power which had not been possessed hitherto. Many people went to Dunwich, thinking they had a right to stay there at the expense of the colony, and the sooner they were undeceived and shown that the superintendent had the power to make them work, if they were able to do a little work, or turn them out if they refused, so much the better. But it was utterly unfair that the curator should be allowed to take possession of, retain, sell, or dispose of any property belonging to an inmate more than would cover the cost of his maintenance. He considered it desirable that the Bill should be postponed for further consideration; and the debate that had taken place would induce hon. members to give the subject more attention than it had received hitherto.

The HON. A. C. GREGORY said that one objection to the clause might be met by making subsection (a) read thus—"Take possession of, retain, sell, or dispose of so much of any property of an inmate, whether real or personal, as may be necessary for his maintenance." He must acknowledge, however, that even with such an amendment the clause would be mandatory. It had been alleged that the inmate might look after his property if he chose, but he could not do so, because the clause said the curator "shall" undertake the care of the property. If a man possessing land returning an income up the country lost his eyesight, he might wish to go to Dunwich, but he could not appoint anyone to look after his land if he went to that institution, because the curator must take possession. The next clause provided that every inmate of sufficient means should provide for his maintenance, but that seemed totally unsuited to the case of an inmate of a benevolent asylum. He mentioned those things now in order that hon. gentlemen might consider them before the Bill came on again for consideration—supposing the Committee decided to postpone its consideration.

The POSTMASTER-GENERAL said he wished to point out that, in speaking of a possible inmate appointing his own attorney, the hon. gentleman forgot the context of his remarks. A possible inmate having property which would produce sufficient to pay for his keep would be very likely to appoint an attorney on his own account and instruct him to pay the Government the amount due.

The HON. A. C. GREGORY: He cannot do it.

The POSTMASTER-GENERAL said the hon. gentleman was thinking of an inmate, but he was thinking of a person who had not reached that stage. Individuals intending to go there, and being possessed of property, would appoint their own attorneys, and would arrange to pay the regular instalments. In that view he had made his observations, as would be seen in *Hansard* to-morrow morning. In respect to the mandatory operation of the clause, that was quite clear to anyone. However, he thought it was to be regretted that some discussion of the kind that had taken place did not occur on the second reading of the Bill. It was a great disadvantage to hon. gentlemen that that was not so, and that the nature of the debate that had been raised was not indicated. Under the circumstances, therefore, he would move that the Chairman leave the chair, report progress, and ask leave to sit again.

The HON. SIR A. H. PALMER said he should like to point out to the Postmaster-General that on the second reading of the Bill, in his position as President he was tongue-tied, and must reserve his opinions until the measure got into committee. He thought the Bill, as a whole, was a very good one. If the Postmaster-General, between the time the consideration of the measure was postponed and the next sitting of the House, would look into the matter he would find that clause 7 ought to come before clause 6; then, if the inmate refused to pay for his maintenance, clause 6 might be put into operation.

The POSTMASTER-GENERAL said: What he had said in reference to discussing a Bill on its second reading of course did not apply to the President.

The HON. W. FORREST said he agreed with the Postmaster-General that it would be better that discussion should take place on the second reading of a Bill, and he fully intended to have said on the second reading what he had said that day, but he was absent from the House for a few minutes, and when he returned the Bill had been disposed of.

The HON. T. L. MURRAY-PRIOR said it was true that the second reading affirmed the principle of a Bill, but that was all. There might be many points that were not seen at first, but which subsequent discussions might lead up to. It was in committee that the various points were brought before their minds from what others might say.

The HON. SIR A. H. PALMER said he wished to add that, although he had said the President was tongue-tied, he was aware that he could address hon. gentlemen by leaving his chair and coming down on the floor of the House. He had, however, always thought that practice very unseemly except when questions of great importance were being discussed. He had always endeavoured to avoid it and always would.

Question put and passed.

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

The POSTMASTER-GENERAL moved that this House do now adjourn.

The HON. A. J. THYNNE said, Wednesday being a public holiday and there being no probability of a quorum being present, he would move the addition of the words, "until Thursday next."

Amendment agreed to; and the House adjourned at eight minutes past 5 o'clock until the usual hour on Thursday.