Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 19 AUGUST 1886

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LEGISLATIVE COUNCIL.

Thursday, 19 *August*, 1886.

Emu Park Railway Deviation.—Pacific Island Labourers Act of 1880 Amendment Bill—third reading.—Pearl-shell and Bêche-de-mer Fisheries Act Amendment Bill—third reading.—Local Authorities (Joint Action) Bill—second reading.—Elections Tribunal Bill—second reading.

The PRESIDING CHAIRMAN took the chair at 4 o'clock.

EMU PARK RAILWAY DEVIATION.

The HON. W. H. WILSON moved—

1. That the plan, section, and book of reference o the proposed Emu Park Railway Deviation from 17½ miles to 28½ miles, as received by message from the Legislative Assembly on the 4th instant, be referred to a Select Committee, in pursuance of the 111th Standing Order.

2. Such Committee to consist of the following members, viz.:—Mr. F. T. Gregory, Mr. W. F. Lambert, Mr. H. C. Wood, Mr. W. Pettigrew, and Mr. Macdonald-Paterson (Postmaster-General).

Question put and passed.

PACIFIC ISLAND LABOURERS ACT OF 1880 AMENDMENT BILL — THIRD READING.

On the motion of the HON. W. H. WILSON, this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly by message in the usual form.

PEARL-SHELL AND BECHE-DE-MER FISHERIES ACT AMENDMENT BILL —THIRD READING.

On the motion of the HON. W. H. WILSON, this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly by message in the usual form.

LOCAL AUTHORITIES (JOINT ACTION) BILL—SECOND READING.

The HON. W. H. WILSON said: Hon. gentlemen,—The object of this Bill is to enable two or more local authorities to act together for their common advantage, and accordingly provision has been made for joint action on the part of local authorities in cases where they have to deal with matters which affect the collective interests of their different districts. The Bill is divided into five parts—the first being preliminary, the second and third providing for the constitution and powers of local authorities, the fourth relating to expenses of joint boards, and the fifth dealing with their joint action. In order that the Bill should be comprehensive in itself, the two Acts which are mentioned in the schedule—45 Vic., No. 11, the United Municipalities Act, and 48 Vic., No. 3, the Act to amend the United Municipalities Act—are entirely repealed. The Act of 1881 provided for the formation and maintenance of main roads, bridges, and such like, and also for the regulation of traffic. This question of joint action has, since the passing of that Act, occupied a good deal of public attention, because it has been found that since the passing of the Act the machinery provided by the United Municipalities Act has been cumbersome and unworkable to a very great extent. There have only been two joint boards appointed under the Act—the City of Brisbane United Board and also, I think, a board at Maryborough. Those are the only cases in which the Act has been taken advantage of, and it has been discovered that the actual working of it is faulty. It is trusted that this Bill will, to a large extent, deal with and solve the difficulties which have hitherto surrounded the question. I would refer hon. members to Part II., which relates to the constitution of joint local authorities. That is a most important part of the Bill, and it is provided for by clause 6, which enacts—

"A joint local authority may be constituted under the provisions of this Act for the purpose of exercising or performing any of the powers, duties, or authorities conferred by the Local Government Acts upon local authorities in respect of all or any of the matters following (that is to say)—

(1) The formation, construction, and maintenance of boundary roads, main roads, or boundary bridges;

(2) The establishment or maintenance of a ferry across a river, creek, or other watercour e which forms the boundary between the districts of two local authorities;

(3) The carrying out of any public work, or the making and enforcement of any by-law, for the common benefit of the district of the joint local authority."

In this Bill we have definitions of the terms "boundary road," "main road," and "boundary bridge," which are all to be found in clause 4, which I will read:—

"'Boundary road'—A road which, or one side of which, forms the boundary between the districts of two local authorities;

"'Main road'—A road which, being a main thoroughfare, passes through the districts of two or more local authorities, or is a boundary road abutting upon the districts of more than two local authorities, or fulfils both these conditions;

"'Boundary bridge'—A bridge over a river, creek, or other watercourse which, or one side of which, forms the boundary between the districts of the two local authorities, or a bridge over any such river, creek, or watercourse situated at a point where the districts of two or more local authorities, not being all on the same side of such river, creek, or watercourse, are conterminous."

The districts are said to be conterminous when the districts of two or more local authorities are so constituted that the district of each one is adjacent to the district of another local authority, or is only separated from it by a river, creek, or watercourse. Those definitions are very valuable, because in the Acts that are at present in force there is no such definition attempted. By section 7, power is given to the Governor in Council to—

"(1) Constitute a joint local authority by the union of any two or more local authorities whose districts are conterminous;

"(2) Join, for the purposes of this Act, the whole of the district of one local authority, or a subdivision or other part of such district, to the whole or a subdivision or other part of the district or districts of another local authority or other local authorities, provided that the districts of all such local authorities are conterminous;

"(3) Constitute a joint local authority for the management and control of any district consisting of districts or parts of districts so joined;

"(4) Determine and alter, subject to the provisions of this Act, the constitution of any joint local authority;

"(5) Alter or vary the area of a district under the management and control of a joint local authority;

"(6) Dissolve a joint local authority;

"(7) Rescind, alter, or vary any such Order in Council;

"(8) Settle and adjust any rights, liabilities, or matters which in consequence of the exercise of any of the foregoing powers require to be adjusted."

Hon. gentlemen will see that these two sections, 6 and 7, form the basis and structure of the Bill. Section 10 is another important section, and it is taken from the Act to amend the United Municipalities Act of 1881, which is repealed by this Bill, with the exception of subsections 7, 8, 9, and 10, which are new, and which read as follows:—

"7. When an elected representative ceases to be a member of the local authority by which he was elected, he shall cease also to be such representative.

"8. If a representative fails to attend three or more consecutive duly convened meetings of the joint board, extending over a period of not less than three months, without leave of absence obtained from the joint board, he shall cease to be such representative.

"9. Subject as aforesaid an elected representative shall remain in office for such period, not exceeding two years from the date of his election, as is declared at the time of election by the local authority by which he is elected, or, if no such period is declared, for the period of two years.

"10. A representative appointed by the Governor in Council shall hold office for the period of one year from the time when the power to appoint him accrued."

By section 11 power is given to the Governor in Council to dispense with any of the provisions of the last preceding section, relating to the number and relative proportions of members of the joint board. Experience of the past working of united municipality boards has shown that large boards, formed for administrative purposes only, are cumbrous and defective in their working, and that a small compact board would be more likely to succeed in administering efficiently the affairs of districts. This section has been drafted to meet such cases. Two or three divisions may join in electing one representative between them; that is the important feature of the section: and if they fail to do so, the Governor in Council has the power to appoint some ratepayer to act as such member. The term "administrative purposes" is important, and is defined to mean and include any of the following:—

"(1) Regulating traffic;

"(2) Licensing and regulating porters, public carriers carters, water-drawers, and vehicles plying for hire;

"(3) Imposing and collecting license fees for any of such purposes, and expending the moneys raised by means of any such fees;

"(4) Making and enforcing by-laws relating to any such purposes;

"(5) Such other purposes as all the component local authorities concur in referring to the joint local authority so constituted."

By section 12 two or more joint local authorities may be constituted having authority over the same district or part of the same district, provided that the purposes are different and do not conflict. That is also a new clause, and I think it will be found more convenient than the existing law, which provides that a united municipality which comprises only part of the surrounding district must comprise it all. In this Bill there may be joint boards constituted for different purposes. Sections 13, 14, 15, and 16 are taken from the existing Act, and section 17 provides for the dissolution of a joint local authority. Part III. shows what the powers of joint local authorities are to be, and they are to exercise the powers specified in orders of council. Those powers are similar to those contained in 45 Vic., No. 11, sec. 21. Part IV. deals with the expenses of joint boards, and provides that they are to be defrayed out of a common fund; and general rules for governing those expenses are set out in section 23, the principle being similar to the law now in force. The limit of rate is fixed by section 25, and is not to exceed 6d. in the £1 of the annual value of the rateable property, which is the same provision as that contained in the present Act; and section 25 says that the component local authorities may provide the cost of a work executed by a joint board out of moneys raised by way of loan, and the proportion of cost to be defrayed by them respectively is to be determined before the execution of the work. The other sections down to Part V., section 34, are taken from the old Act, and I need not refer to them. Part V. relates to the joint action of local authorities for other purposes, such as the following:—

"For the construction, maintenance, or management of local works for the joint use or benefit of the contracting parties;

"For the employment of engineers, clerks, or other officers or servants for the joint service of the contracting parties."

And then it is provided that if a local authority refuses or neglects to enter into a reasonable agreement, the local authority making the request may appeal to the Government to exercise the power conferred upon them by this Bill. Those are the principal provisions of this Bill to which I wish to draw the attention of the House. I have no doubt that when the Bill becomes law it will be largely availed of by districts, both in the town and country; and seeing that the difficulties of the past have been met by the provisions of this Bill, it may be regarded as an important contribution to the popular principle of local self-government. I will not detain the House further, but will move the second reading of the Bill.

The HON. A. C. GREGORY said: Hon. gentlemen,—The Bill now before us is, in fact, a consolidation of two previous Acts, together with some additional improvements which were passed through both Houses last session, but which lapsed through disagreement upon a single clause touching upon another question. There are some new features in this Bill, and the first item that I see which will require very careful attention in passing it through committee will be the designation of a main road. Now, under the old Act the term "main road" is intended to mean something very different to what is meant by this Bill, and we must carefully keep that before us in dealing with the question under consideration. Under the existing Act a main road is referred to as a road to be maintained by the Government. Very few of those have been found within the limits of the jurisdiction of the divisional boards, and there has been a good deal of contention upon the question why the Government, having decided that they would contribute to the maintenance of main roads, have never declared any roads to be main roads, or in very, very few instances have done so. Under this Bill a main road means a main thoroughfare which passes through the districts of two or more local authorities, and there is hardly a road in the colony that will not be a main road under such a designation; so that I think something more will be required to put a limit to its meaning or to explain the term. The next point that requires attention is the constitution of joint local authorities. Hitherto joint boards have been constituted upon petition, but now, though petitions may be lodged, there is no reference to any recommendation on their being received, the power being entirely in the hands of the Governor in Council. This, I think, is an improvement, because great difficulty must arise from petitions and counter-petitions got up on the spur of the moment which do not always represent the real voice of the people. It is far better to leave the constitution of new local authorities in the hands of the Executive, who will be able to act free from purely local influence and for the general good. In clause 10 it is provided, among other things, that a district shall not be disfranchised for two years when an appointment is made by the Governor in Council, but for one year only. That, I think, is an improvement. Clause 11 contains a provision which will give rise to a considerable amount of difficulty. Joint local authorities may be constituted for administrative purposes in such a manner that two or three local authorities may join together to send one representative. It is easy to understand how any one local authority can agree upon what representative to send, but there may be very serious difficulties in the way of two conterminous authorities being able to select one to suit both; and though power is given to the Government to make the appointment if they fail, still this is a difficulty that will be found to practically interfere with the working of the Bill. It has been remarked that under existing laws the boards are too large and do not get through their work, because, I suppose, they all want to talk, and it takes them too long to do their business. The fact of the matter is that the delay in business arises very much more from having two or three members on a board who do all the talking while the others sit by and listen. I am afraid that the reduction in the number will not be attended with such very great advantages. Clause 23 provides that, where the expenses in connection with a joint local authority are incurred for work of general and equal benefit for the whole district, the amounts to be contributed shall be in proportion to the value of the rateable property in those parts of the district. I do not see any objection there, because that is the best basis, especially as there is a provision for adjusting the rateable value so as to make the basis as nearly as may be uniform where there is not a uniform scale, and also throwing special charges upon certain portions where those portions only of the district are benefited. So far so good, and I do not see any objection to clause 23 as it stands; but in clause 31 we find that the division of profits, if any, is to be in such proportions as the joint board determines, and, in default of any such determination, in proportion to the amount of the rates collected by the local authorities respectively. It is quite possible that in one division the rates may be 6d. in

the £1 and in another 1s.; but if there is any surplus at the end of the year the latter will only get it in the proportion of 6d. I look upon this as inequitable, and the clause should be reframed so that the net profits should be divided in the same proportions as the local authorities are liable to contribute. That will carry out the real meaning and intention of the clause. The reason for the provision being as it stands is that the clause is a transcript from the two Acts at present in force, which do not quite agree with one another. I also think that it should not be left to the joint board to determine how the surplus should be divided, because a majority of members of a powerful board might decide that the whole should be paid to themselves, or appropriate it in some particular way. It will be far better to leave it on the basis either of the rateable property or the rates collected—I think, on the rateable property. As the clause stands at present it may create quarrelling and divisions, and it will be better to remove from the joint board the power of dividing the profits. The provision relating to boundary roads is a very good one, because, I think, the Ministry should have power to adjust cases in which it would be unfair to make two bodies contribute equally. The provision is a great improvement on the present uncertain state of matters, and the necessity for the Minister having absolute power to decide what shall be the division is unquestionable. I can instance a case not far from Brisbane in which a boundary road has along its side a railway that utterly cuts it off from the district of the adjacent local authority, and the local authority on the other side of the railway might require them to contribute towards the maintenance of the road, though they could get no benefit from it on account of the railway. The railway divides them from the road more than the Brisbane River would divide them if it were so situated. It would be, in such a case, inequitable to make the local authority which does not use the road at all contribute towards its maintenance; but in other cases, where a boundary road is for the benefit of both, we have seen the importance of having something well defined, and there is no doubt that the two local authorities should be bound to contribute towards its maintenance. Clause 36 touches upon that exceedingly doubtful question of main roads, and I think something ought to be done to define better what a main road is, seeing that the definition—a main road is a road that leads towards a centre of population or town—is as vague as it well can be. I can refer to one town which consists of just one public-house. We have other towns which are undoubtedly very important centres of population. Therefore, unless something is done to define what a town is, for the purposes of this Bill, it will either be a dead-letter or a source of confusion. Taking the Bill as a whole, I think it is an improvement, because it consolidates previous Acts, and the consolidation contains many improvements. It will be much easier for those who are likely to have to read and understand it, and I shall therefore support the second reading.

Question—That the Bill be now read a second time—put and passed.

Committal of the Bill made an Order of the Day for Wednesday next.

ELECTIONS TRIBUNAL BILL—SECOND READING.

The HON. W. H. WILSON said: Hon. gentlemen,—This is a Bill to constitute a tribunal for the trial of election petitions; and it is proposed that the Act shall commence and take effect from and after the end of the present session of Parliament, and that the provisions of Part VI. of the Elections Act of 1885 relating to the elections tribunal, and to the incapacities and disabilities to become consequent upon the report of the tribunal in certain cases, shall come into operation from and after the commencement of this Act. Hitherto, as hon. gentlemen are aware, the trial of elections and qualifications has been had before the Elections and Qualifications Committee of the Assembly; but that House has apparently satisfied itself that a change is desirable. The proposal now is, to confer upon a Supreme Court judge and six assessors the power to try election petitions, and this is provided for by clause 11, which states that election petitions shall be heard and determined by an elections tribunal, which shall consist of a judge of the Supreme Court and six assessors, being members of the Assembly, and who shall be chosen as hereinafter provided; and the general powers of the tribunal are also given in that section. By section 12 it is provided that in or about the month of January in each year the Chief Justice is to notify the name of the elections judge to the Speaker; and according to the 1st subsection of section 13, the assessors are to be chosen in the following manner:—

"In the first session of every Assembly, within seven days after the election of a Speaker, and in every subsequent session within seven days after the commencement thereof, or in either case at any later period with the leave of the Assembly, the Speaker shall, by warrant under his hand, nominate twelve members of the Assembly, against whose return no petition is then pending, and none of whom is a party to any petition complaining of any election or return, to form the panel of assessors for the trial of election petitions for that session."

The warrant, if not disapproved of by the Assembly, is to take effect as an appointment of the panel of the assessors. The succeeding subsections cover all the necessary details relative to the appointment of panels, vacancies therein, disqualification, resignation, or death of any assessor. Going back to section 6, it will be found that a petition complaining of the undue election or return of a member to serve in the Assembly may be presented by any one or more of the following persons:—(1) Some person who voted or had a right to vote at the election to which the petition relates; (2) some person claiming to have had a right to be returned or elected at such election; or (3) some person alleging himself to have been a candidate at such election. And an election petition must be signed by the petitioner in the ordinary way. Section 7 provides that the petition is to be presented to the Supreme Court, addressed to the judges and presented by lodging the same in the office of the registrar. The time within which the petition must be presented is also provided by that section. By section 14 the trial of an election petition is to be held in Brisbane at the Supreme Court-house, or at such other place in Brisbane as the elections judge may appoint. The time for the trial is to be appointed by the elections judge, and notice of the same is to be given to all parties to the petition. The elections judge has to appoint a day for choosing assessors, and the mode of choosing them is provided by section 17. The registrar must summon the assessors chosen to attend at the time and place appointed for the trial of the petition or reference, and the trial is to be proceeded with before the elections judge, as pointed out by section 19, and the six assessors as aforesaid, or such of them as shall from time to time attend, provided that not less than four assessors must be present at all times, but it shall not be necessary that the same assessors should be present during the whole of the trial.

Questions of law are to be decided by the elections judge, and questions of fact by the assessors. By section 22 it is provided that the elections tribunal must not sit during the sittings of the Assembly. And the trial is to be public. Section 24 says that, upon the trial of an election petition or reference, the tribunal shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities; and the assessors present, or a majority of them, or, if they are equally divided, the elections judge may determine to receive or reject any evidence tendered to the tribunal. Power is also given to the tribunal to receive evidence by way of affidavit. That is the mode of trial prescribed; and an appeal lies to the Full Court. By section 30 any question may be reserved for the Full Court, and the Assembly on being informed by the Speaker of a certificate having been given in such cases shall order the same to be entered in their journals and give the necessary directions for confirming or amending the return. The mode of procedure is provided by the 35th, 36th, 37th, and 38th sections, which are formal. Witnesses may be subpœnaed in the ordinary way and sworn in the same manner as in the Supreme Court on a trial at *nisi prius*, and are to be subject to the same penalties in cases of perjury. The elections judge may summon and examine witnesses and compel their attendance on pain of the usual penalty attached to contempt of court. The provisions for withdrawal and abatement of election petitions are contained in the sections 42 to 46 inclusive. The general costs of a petition are provided for in section 47; but the total amount of costs which may be ordered to be paid by any one party must not exceed £200. By section 48 rules may be made by the court in the usual manner. I think those are all the provisions of the Bill to which I need draw attention at the present time. I think the scheme of the Bill is a very good one, and that the measure is entitled to the best consideration of the House. I move that the Bill be now read a second time.

The HON. F. T. GREGORY said: Hon. gentlemen,—I think it is a matter of congratulation for all parties concerned that this enactment has been brought forward—an enactment providing for a radical change in the method of dealing with disputed elections. It is notorious that very unfair and one-sided decisions have, on more than one occasion, been arrived at in dealing with such cases. It must be within the recollection of most hon. members that within a period of ten years at least three cases have occurred which have been utterly condemned by the public at large—not only by members of the Assembly—as being unjust and unfair in every way. To make this charge against any portion of the members of the Assembly—that they have been guilty of a misdirection of fairness and justness—appears a very strong statement, but it has been so generally confessed and recognised that it has been the case, which has been proved by the necessity for this measure, that I do not think I am using too strong language in reference to it, being borne out by the views expressed by the other branch of the Legislature. The various clauses of the Bill seem to have been very carefully drawn, and appear to reflect great credit upon those who have taken an active part in bringing them together in so small a space and yet so clear and comprehensive a form. There is a little ambiguity in one or two parts of the Bill, but they are hardly sufficient to require me to notice them at length. There is one in clause 45 which, I daresay, the legal mind will be able to explain in a different way to the view which the ordinary reader might take. I refer to the following words in the clause:—"If the Assembly resolves that his seat is vacant." Now, it is not quite clear how the Assembly is to resolve that a seat is vacant before the trial of the election petition has been submitted to the House. It is true that it would be possible that the seat might be declared vacant for some action quite irrelevant to the petition against the member's return, but the clause would otherwise imply that the Legislative Assembly still possessed some power to declare a seat vacant notwithstanding the creation of this elections tribunal. But I think, perhaps, upon further consideration, it may appear that I have drawn attention to a point of not much consequence. As the Bill itself provides for the way in which these matters are to be considered, I do not well see how the Assembly has to deal with the seat of a member even in an indirect way unless a case of insolvency occurred, when the seat would be declared vacant. I notice that the amount of expenses is limited to £200 in clause 47. Now, that might not be too large, but at the first glance it strikes one as being a very high amount. Of course no one petitioner would be mulcted in such a large amount unless he had really taken vexatious objections, but possibly, on the whole, it would be better to leave the amount as it stands. I have not had time to look through the Statutes to see what laws there might be besides these two which are to be repealed which may in some way come into collision with the Act; but if my memory serves me aright, I think there are one or two points in other enactments, although I cannot lay may finger upon them, which might affect the working of this Bill. Perhaps some other hon. gentleman who has time to look the matter up, or whose memory is better than mine, will be able to set me right upon this point. Taking the measure as a whole, I think I may congratulate the country upon so very important and desirable a measure being brought forward and I hope it will pass through both Houses, and come into operation as provided during the next session of Parliament. I trust also that it will prevent a number of very grave abuses which have hitherto crept in. I shall support the second reading of the Bill.

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

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