

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 25 AUGUST 1886

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LEGISLATIVE COUNCIL.

Wednesday, 25 August, 1886.

Employers Liability Bill.—Pacific Island Labourers Act Amendment Bill.—Patents, Designs, and Trade Marks (Amendment) Bill.—Leave of Absence.—Members Expenses Bill.—Elections Tribunal Bill.—committee.—Elections Act of 1885 Amendment Bill—second reading.

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

EMPLOYERS LIABILITY BILL.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly, forwarding this Bill for the concurrence of the Council.

On the motion of the HON. W. H. WILSON, the Bill was read a first time, and the second reading made an Order of the Day for Wednesday next.

PACIFIC ISLAND LABOURERS ACT
AMENDMENT BILL.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly disagreeing with the amendments of the Council in this Bill, and substituting another amendment in which the concurrence of the Council was invited.

On the motion of the Hon. W. H. WILSON, the message was ordered to be taken into consideration to-morrow.

PATENTS, DESIGNS, AND TRADE
MARKS (AMENDMENT) BILL.

The PRESIDING CHAIRMAN read a message from the Legislative Assembly agreeing to the amendments of the Legislative Council in this Bill with amendments.

On the motion of the Hon. W. H. WILSON, the Presiding Chairman left the chair, and the House went into committee to consider the Legislative Assembly's message.

The Hon. W. H. WILSON, in moving that the Committee agree to the amendments made by the Legislative Assembly, said they really were all of a formal nature, and would still further improve the Bill.

The Hon. A. C. GREGORY said, as the mover of the amendments, he certainly thought the amendments of the Assembly were an improvement, and therefore should be agreed to.

Question put and passed.

The House resumed, and the CHAIRMAN reported that the amendments had been agreed to.

The report was adopted, and the Bill ordered to be returned to the Legislative Assembly with the usual message.

LEAVE OF ABSENCE.

The Hon. W. FORREST said: Hon. gentlemen,—I beg to move, without notice—and I presume there will be no objection—that leave of absence be granted to the Hon. J. C. Smyth for three weeks.

Question put and passed.

MEMBERS EXPENSES BILL.

On this Order of the Day being read,

The Hon. W. H. WILSON said: Hon. gentlemen,—I move that this Order of the Day be postponed till Wednesday next. I fully expected that the Postmaster-General would have been in his place this afternoon, but he is not sufficiently well to attend to business. It is expected that he will be here either to-morrow or on Wednesday next at the latest.

Question put and passed.

ELECTIONS TRIBUNAL BILL—
COMMITTEE.

On the motion of the Hon. W. H. WILSON, the Presiding Chairman left the chair, and the House went into committee to consider this Bill.

Preamble postponed.

Clauses 1 to 6 passed as printed.

On clause 7, as follows:—

“An election petition must be presented to the Supreme Court of Queensland, at Brisbane, and must be addressed to the Judges thereof, and shall be presented by lodging the same in the office of the registrar.

“The petition must be presented within eight weeks after the day of the return of the writ to which the petition relates, unless the petition relates to a charge of bribery or corruption alleged to have been committed at an election, in which case it may, with the leave of the Assembly, be presented at any time within twelve months after the day of the return of the writ.”

The Hon. F. T. GREGORY said upon careful perusal of the measure it struck one very forcibly that while the petition must be presented within eight weeks after the date of the return of the writ, which was apparently a very reasonable time to give anyone who had reason to object to the return of the member—yet he thought the time allowed for the presentation of the petition in charges relating to bribery or corruption, as provided for in the latter part of the clause, was altogether too long. Twelve months were allowed in such cases, and that seemed to leave the door open to a very considerable amount of vexatious persecution of members who had been returned, and their opponents might raise a number of very trumpety objections. In some instances, of course, it was possible that the objections might be based on real acts of bribery, such as the member was cognisant of; but in many instances the petitioners were liable to act in a vexatious spirit, and it seemed to him that twelve months was a very unreasonable time to give in those cases. The amendment which he would propose would be to return to the time which was originally adopted in one of the former enactments, and reduce the period to four months. If any reasonable objection was to be raised against the return of a member, any petitioner could get his case up fairly and justly within that time. He did not know that he need say anything more than that he moved the amendment with the view of avoiding vexatious prosecutions taking place at a time when the persons who could have been available to the member might be dispersed in all directions and be inaccessible, and the member would be unable to rebut the evidence which might be brought together by an opponent. He therefore moved that the word “twelve” be omitted with the view of inserting the word “four.”

Amendment agreed to; and clause, as amended, put and passed.

On clause 8, as follows:—

“The registrar shall forthwith publish a copy of the petition in the *Gazette*, and the returning officer of the electoral district shall publish a copy thereof in some paper circulating in the district.

“The petitioner shall cause the petition to be served upon the sitting member, if any.”

The Hon. A. J. THYNNE said there were a few amendments which he proposed to move in the Bill. They would not affect the principle of it, but they were amendments intended to facilitate the working of the measure. In the preceding section 7 it would be seen that the petitioner had to lodge his petition in the Supreme Court office, and then section 8 was to a certain extent contradictory, because it said that the petition had to be served upon the sitting member. The amendment which he proposed to move, which was merely verbal, was to insert the words “a copy of” after the word “cause.”

Amendment agreed to; and clause, as amended, put and passed.

On clause 9, as follows:—

“The sitting member or any person who voted or who had a right to vote at the election to which the petition relates, or any person complained against in the petition, may, within four weeks after presentation thereof, by notice in writing to the registrar, be admitted as a party to support or to oppose the same or to defend the return of the sitting member, as the case may be; and every person so admitted shall be deemed to be a party to the petition.”

The Hon. A. J. THYNNE said that no provision was made for the case of a sitting member who might happen to be at a distance from the colony at the time of an election; and he therefore moved that after the word “member,” in

the 1st line of the clause, the word "or" be omitted with a view of inserting the words "within four weeks after service of the petition on him and."

Amendment put and passed.

The HON. A. J. THYNNE said he had a further amendment to propose. It might happen that a person supporting a petition might have no knowledge of its having been presented unless the fact were afterwards made public, and in his opinion the time for the parties to appear ought to be counted from the date on which the presentation of the petition was made public by publication in the *Gazette*. He therefore moved that the words "presentation thereof" be omitted with the view of inserting the words "publication thereof in the *Gazette*."

Amendment agreed to; and clause, as amended, put and passed.

Clauses from 10 to 35, inclusive, passed as printed.

On clause 36, as follows :—

"Two or more candidates may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time, but such petition shall be deemed to be a separate petition against each respondent."

The HON. A. J. THYNNE said it appeared doubtful whether the petitioner would have to pay a double sum of £100 or only one sum of £100. As the payment was merely intended to insure the *bona fides* of the petitioner, it was better to solve the doubt at once by inserting an amendment. He therefore moved the addition of the following words at the end of the clause :—

Except that the petitioner shall not be required to pay into court more than one sum of one hundred pounds, as hereinbefore provided.

Amendment agreed to; and clause, as amended, put and passed.

Clauses from 37 to 44, inclusive, passed as printed.

On clause 45, as follows :—

"If before the trial of an election petition any of the following events happen in the case of the respondent, that is to say—

- (1) If he dies;
- (2) If the Assembly resolves that his seat is vacant;
- (3) If he gives, in and at the prescribed manner and time, notice to the court that he does not intend to oppose the petition;

notice of such event having taken place shall be given by advertisement in the electoral district to which the petition relates.

"In the two first-mentioned cases such notice shall be given by the Clerk of the Assembly, and in the last-mentioned case it shall be given by the registrar.

"Within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the elections judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there is a respondent, or in place of the respondent; and any number of persons not exceeding three may be so admitted."

The HON. A. J. THYNNE said the clause did not seem to carry out the intention of clause 9, which required the sitting member to give notice in writing of his intention to support or oppose the petition, or defend a seat; and he proposed to make proper provision by inserting a new subsection. The amendment would provide that, if the sitting member failed to give notice that he intended to oppose the petition, any voters at the election would be in a position to step in and test the petition in lieu of the sitting member. But a month's notice must be given, so that voters and others might have

reasonable time to take up the cudgels for whatever party they considered to be in the right. He moved that the following new subsection be inserted after subsection 2 :—

If he fails within the time hereinbefore provided to give notice to the registrar that he intends to oppose the petition.

Amendment put and passed.

On the motion of the HON. A. J. THYNNE, the words "two last-mentioned cases" were substituted for the words "last-mentioned case" in the 2nd paragraph of the clause.

Clause, as amended, put and passed.

Clauses 46, 47, 48, schedule, and preamble, passed as printed.

The House resumed, and the CHAIRMAN reported the Bill with amendments.

On the motion of the HON. W. H. WILSON, the Presiding Chairman left the chair, and the House went into committee for the further consideration of clause 7.

The HON. F. T. GREGORY said the object with which he asked the representative of the Government to be good enough to recommit clause 7 of the Bill was in consequence of an oversight on his part in moving a previous amendment reducing the time within which a person might petition against the return of a member, in cases of bribery and corruption, from twelve months to four months. It became necessary, after that amendment was carried, that the words "with the leave of the Assembly" on lines 44 and 45 should be omitted, as the House might not be in session, and the term of twelve months must necessarily cover the period during which the House was in session. To make the amendment perfectly clear, he now moved the omission of the words he had referred to.

The HON. A. J. THYNNE said he could not quite agree with the amendments of his hon. friend Mr. Gregory in that section. On looking at the clause more closely he noticed that, if the words "four months" were left in as the amendment stood, that part of the clause might in many instances be quite inoperative, inasmuch as after eight weeks the petition could only be presented by leave of the Assembly, and very often it would happen that the Assembly would not sit for four months at a time, and therefore, in cases of bribery and corruption, the petitioners would practically be restricted to petitioning within eight weeks. Now, it was proposed to correct that mistake in another way, by striking out the words "with the leave of the Assembly," so as to give the petitioner an absolute right to present a petition within four months. His own opinion was that the period of twelve months was not too long a time within which to allow charges of bribery and corruption to be brought forward. He was inclined to think that twelve months would in no case be too short a time to get at the bottom of whatever dishonest practices had been indulged in in the course of an election. The amendment was one which probably ought to be left entirely to the Legislative Assembly. He must say that he neither approved of the amendment now proposed nor of that which had previously been carried, making four months the time within which a person could petition against the return of a member on the grounds of bribery and corruption.

The HON. F. T. GREGORY said he was sorry his hon. friend did not raise his objection at the proper time, because it was open, of course, to any hon. member to point out any objection he had, but he could not see the force of the hon. gentleman's argument—that was, the latter part of it. With regard to obtaining the leave of the

Assembly he did not see in what way that could affect the previous amendment, because even in cases of bribery and corruption it would have to be shown in the petition that there was a case of bribery and corruption. A petition otherwise could only relate to other causes which a petitioner might have for objecting, such as some irregularity in the mode in which the election had been carried out, some mistake made in the returns of the returning officer, and numerous other causes which invalidated elections; but if there was a charge of bribery and corruption then it would be very desirable to extend the period from eight weeks to four months. There was no necessity whatever that there should be leave from the Assembly, because the session might have come to an end. There was another clause in the Bill providing that no petition could be considered or carried on after the prorogation of Parliament, but in cases of bribery and corruption it would merely hamper the proceedings if it was necessary to obtain leave from the Assembly. As strongly as ever he thought that it was fair and reasonable that there should be a restriction, but he failed to grasp the argument of his hon. friend in which he proposed to leave in the words which it was now proposed to omit. If any hon. member could suggest sufficient reason he should be glad to listen to it, and if satisfactory he should give way, but otherwise he should certainly not do so.

The Hon. W. H. WILSON said when the previous amendment was before the Committee the question was whether the word "twelve" should be omitted with the view of inserting the word "four," and it was really a matter of opinion as to whether four months was better than twelve months. The amendment having been carried, there would be an opportunity of further considering the question, and for that reason he did not oppose it. With regard to the amendment now before the Committee, it seemed to be a consequential amendment; therefore he should not oppose it for the same reason. The two amendments would then be considered together.

The Hon. A. J. THYNNE said after what had been pointed out by the Hon. Mr. Wilson—that the matter was simply being sent back to the Assembly for further consideration—he should not pursue his objection.

Amendment agreed to; and clause, as amended, put and passed.

The House resumed, and the Bill was reported with a further amendment. The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

ELECTIONS ACT OF 1885 AMENDMENT BILL—SECOND READING.

The Hon. W. H. WILSON said: Hon. gentlemen,—This is a very short Bill, and it is brought in for the purpose of amending the Elections Act in respect to the form of claim, with a view of simplifying that form, and to provide another one in lieu of it. The new form is contained in clause 3, and I think hon. gentlemen will find it very simple. It simply sets out the notice of the claim, and all that the elector has to do is to write his christian name and surname, his residence, and the particulars of qualification. There are very full particulars given to the elector in the subsequent part of the clause, showing exactly how the form is to be filled up, such as "residence for six months," "possession for six months of a freehold estate," "householder," "holder of a leasehold," "holder for six months of a license from the Government to depasture land," etc. It is only necessary to set out the situation of the property, instead of as in a

former Act having to set out in full the number of the allotment and other particulars which were found very inconvenient indeed. It was very frequently found to be almost impossible for the person who wished to have his name put on an electoral roll to find out the exact particulars from his deeds so that he might be entitled to vote. That has given rise to a great deal of trouble—perhaps unnecessary trouble—and it was thought better to bring in a short Bill for the purpose of simplifying, to as great an extent as possible, the duty of an elector that he might be able to vote with as little trouble to himself as possible. The 5th section is simply inserted for the purpose of correcting a clerical error in the principal Act, and substitutes the words "electoral registrar" for the words "clerk of petty sessions." I think it will be found that the Bill will be a great improvement upon the Act of 1885 in the way of simplifying the voting of persons qualified to vote. I move that the Bill be now read a second time.

The Hon. F. T. GREGORY said: Hon. gentlemen,—The amendment to the Electoral Act of 1885 set forth in this Bill is one which is too obviously necessary for anyone to take exception to as a matter of principle. It has come within the knowledge of many members, myself amongst others, that in the working of the Act, the uncertainty connected with the form of putting in an electoral claim has been so great that I think I am not exaggerating when I say there was not above one person in five who knew the right way to go to work. I saw lying on the table in one of the offices where the claims were being collected no less than eighty or ninety electoral papers, and there were only six amongst them that were, strictly speaking, filled up correctly; and these were not received from uneducated men, but they were from men of fair ordinary intelligence and cultivation. If under these circumstances the forms were incorrectly filled up, I am not at all surprised that the bulk of the electors should be exceedingly perplexed in finding out the way to deal with them. Indeed, I have no doubt that no less than twenty or thirty of these forms would have been filled up incorrectly in the district in which I reside had not the electors referred to me for the meaning, and in many cases I filled up the forms so far as I could. This certainly should not be necessary, and every elector should be able to get his form and see the way to fill it up without reference to anyone else. I am not, of course, referring to very illiterate people—they will make mistakes; but the electors to whom I refer were men of fair intelligence, and in ordinary matters of business quite capable of doing things for themselves. To illustrate another defect in the original form, it is distinctly stated "I am a natural-born subject." Now, some persons want to know what a natural-born subject is, and if they were unnaturally born, what would that mean? Then, again, a natural-born subject of what country? According to the old form a Chinaman could conscientiously and legally assert that he was a natural-born subject of His Imperial Majesty of China. How the form ever got through without being corrected in the original Bill I am at a loss to conceive. However, it only shows how necessary it is, in every measure of this sort that comes before us, to carefully scrutinise every clause of the Bill before being satisfied that the original drafters of the Bill have really made all necessary provision. I shall cordially support the amendment which this Bill provides for.

The Hon. W. F. TAYLOR said: Hon. gentlemen,—I am very pleased indeed to see that an attempt has been made to make the Elections Act a little clearer. Some three or four years

ago I attempted to be placed on the electoral roll for North Brisbane, and I had to make three separate attempts before succeeding. There was always some ambiguity about the form of application—some little thing which had been omitted by me; so that the justices of the peace who presided thought there was an informality, and on three separate occasions my application was returned with simply the word “informal” marked upon it. At last in sheer desperation I went down to the clerk of petty sessions, and got him to fill up the form for me, and ultimately I succeeded in getting my name placed on the roll. I am glad to see that these explanations are very full and complete, and that there will be no difficulty whatever in persons wishing to get on the roll accomplishing their object. The word “natural,” which appeared on the other form, gave rise to a considerable amount of laughter, the term usually being applied in Ireland to persons who are somewhat demented. Consequently it was construed in different ways by different people. This present amendment is very clear, and I believe is a great improvement.

Question put and passed, and the committal of the Bill made an Order of the Day for tomorrow.

The House adjourned at half-past 5 o'clock.
