Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 18 SEPTEMBER 1888

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LEGISLATIVE COUNCIL.

Tuesday, 18 September, 1888.

Message from the Legislative Assembly—Library Privileges to Ex-Members.—Prisons Bill—Committee.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

LIBRARY PRIVILEGES TO EX-MEMBERS.

The PRESIDENT announced the receipt of the following message from the Legislative Assembly :—

"Mr. PRESIDENT,

"The Legislative Assembly having this day agreed to the following resolution :—'That, in the opinion of this House, former members of both Houses, who have been members thereof for not less than three years, and who may be invited by the Joint Library Committee, should be allowed to obtain books from the Parliamentary Library on such days and under such conditions as may be approved by the committee,' beg now to invite the concurrence of the Legislative Council therein.

"A. NORTON,
"Speaker.

"Legislative Assembly Chambers,
"Brisbane, 13th September, 1888."

The MINISTER OF JUSTICE (Hon. A. J. Thynne) moved that the message be taken into consideration to-morrow.

Question put and passed.

PRISONS BILL.

COMMITTEE.

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

Clauses 62 to 71, inclusive, passed as printed.

Clause 72 passed with a verbal amendment.

On clause 73, as follows:—

"Every unauthorised person who, in any ship, boat, or other craft—

(1) Approaches any hulk in which any prisoner is confined, or any island upon which a prison is erected, and by so doing comes within the prescribed limit or boundary within which unauthorised persons are hereinbefore forbidden to enter, unless driven within the same by stress of weather;

(2) Boards or attempts to board any hulk in which any prisoner is confined; or

(3) Lands or attempts to land upon any island upon which a prison is erected, or embarks or attempts to embark from any point of land, bay, inlet, cove, or other place which has been proclaimed by the Governor in Council as the place of embarking or landing prisoners to or from any such hulk or island, or enters any place which is enclosed or marked off in any other manner for any of such purposes, or for the confinement or employment of any prisoner;

shall, upon conviction, be liable to a penalty not exceeding thirty pounds nor less than five pounds, and in default of payment, or in the discretion of the court, to be imprisoned, with or without hard labour, for any period not exceeding six months. Upon any such conviction the ship, boat, or other craft, and her tackle, in which such person shall have committed the offence aforesaid, shall be forfeited to Her Majesty.

"Any person offending against the provisions of this section may be forthwith apprehended, without warrant, by any constable or prison officer, and kept in safe custody until he can be brought before the justices, and the ship, boat, or other craft seized and detained in the meantime by such constable or prison officer."

The HON. W. HORATIO WILSON said he thought the word "wilfully" should precede the word "approaches" in the 1st subsection, otherwise it might apply to pleasure parties approaching the island. The word "wilfully" should also be inserted in the other two subsections of the clause. The penalty was heavy, and it ought to be shown that a person "wilfully" offended before he could be punished.

The HON. SIR A. H. PALMER said he must recommend the Minister of Justice not to accept the suggested amendment. The insertion of the word "wilfully" in the Brands Act had rendered that Act a nullity. Unless it could be proved that an offence was committed under that Act "wilfully"—and it was very hard to prove the offence when a man "wilfully" branded a calf which was not his own—a conviction could not be obtained. It must be presumed that if a person approached a ship he approached it wilfully.

The MINISTER OF JUSTICE said he had given due consideration to the matter since the second reading of the Bill, and had come to the conclusion that if the clause were amended in the direction proposed it would do away with the principal safeguard for keeping prisoners. In places like St. Helena it would be impossible to say who came to the island properly and who came improperly, and if there were any encroachment on the hard-and-fast lines laid down it would give people the opportunity of getting to the island by making the excuse that they got there by accident; and the result might be a large number of escapes. In a place like St. Helena, particularly, it was absolutely necessary that heavy penalties should be imposed on persons approaching there unless they were fully justified in doing so. People were fully protected under the clause, because when driven there by stress of weather, that would be sufficient excuse; but no other excuse would be or ought to be taken.

The HON. SIR A. H. PALMER said that under the Brands Act the word "wilfully" not only applied to branding animals, but also to altering brands. Before a person could be convicted of altering a brand, it must be shown it was wilfully done. He would like to know how a brand could be altered unless it was wilfully altered. That offence was worse than branding an animal with a clean skin, and yet benches would not convict on account of the word "wilfully."

Clause passed as printed.

Clauses 74 to 77, inclusive, passed as printed.

On clause 78, as follows:—

"In every case in which justices of the peace, upon conviction, sentence any offender to be imprisoned with hard labour for any term not exceeding fourteen days, it shall be lawful for the justices to direct the hard labour to be performed on any public road, or any public street or place of any town in the neighbourhood of the prison or lockup to which the offender is committed.

"Every such offender shall be put to hard labour accordingly, under the direction and control of such person or persons as the justices in petty sessions at the place of conviction may appoint in that behalf.

"If any offender refuses or neglects to perform hard labour according to such directions as the said justices in petty sessions may have given in that behalf, or escapes, or attempts to escape, he shall for every such offence be liable, upon conviction before any justice of the peace, to be imprisoned and kept to hard labour for a further period of not more than fourteen days."

The HON. SIR A. H. PALMER said that the words "in the neighbourhood" were too vague, and might mean anything. He suggested that the clause be amended by the substitution of the words "within three miles" for "in the neighbourhood.

The MINISTER OF JUSTICE moved that the clause be amended by the substitution of the words "within three miles" for the words "in the neighbourhood," in the 26th line of the clause.

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

Clauses 79 to 82, inclusive, passed as printed.

Schedules passed as printed.

On clause 19, as follows:—

"Nothing in this Act contained shall affect the jurisdiction or responsibility of the sheriff in respect of prisoners under sentence of death and confined in any prison, or his jurisdiction or control over the prison where such prisoners are confined, and the officers thereof, so far as may be necessary for the purpose of carrying into effect the sentence of death, or for any purpose relating thereto."

The MINISTER OF JUSTICE said he had considered all that had been said in favour of amending the clause, but could not see his way to any alteration. The provision had worked satisfactorily in the past, and he did not see any reason why it should not work well in the future. Hon. gentlemen would see that the sheriff was only authorised to act as far as might be necessary for the purpose of carrying into effect the sentence of death, or for any other purpose relating thereto.

The HON. SIR A. H. PALMER said that when any difficulty arose a strong-minded sheriff would take the matter into his own hands and

supersede the comptroller-general of prisons, and it would be better to amend the clause. It was not necessary to give the sheriff the power proposed to be given in the clause. He moved the omission of all the words from "death" to "thereof." The clause would then read thus :—

"Nothing in this Act contained shall affect the jurisdiction or responsibility of the sheriff in respect of prisoners under sentence of death, so far as may be necessary for the purpose of carrying into effect the sentence of death, or for any purpose relating thereto."

The MINISTER OF JUSTICE said he would be glad if he could see his way to accept the amendment, but he was afraid the omission of the words would make matters a great deal worse. It would deprive the sheriff of the right to enter a prison or do anything in it. He must have some jurisdiction to enter a prison and exercise his functions. If not, the gaoler might bid him "good morning" and refuse to turn a lock or do a single act to facilitate his work. If there was a strong-minded gaoler instead of a strong-minded sheriff there would be very great difficulty, and the sheriff must have some right or standing in the prison, that he might fulfil his duties, as it would be absurd to expect him to bring with him a number of men for the purpose of carrying out his duties. Why should he not avail himself of the assistance of the gaol officers? The amendment would deprive the sheriff of that assistance, and of any right of taking any step or action inside the gaol, except at the goodwill of the gaoler. The object of the clause was to give the sheriff a footing in the prison for the purpose of work in connection with the execution of a prisoner under the Act, and unless that was given the object of the clause was gone.

The HON. SIR A. H. PALMER said he could not agree with what the Minister of Justice had said. The amendment he proposed would not weaken the sheriff's power to carry into effect the sentence of death, but would prevent him from interfering with the prison in other ways. If hon. members read the clause as he proposed to amend it, they would see that it took no power from the sheriff; he would still have the inherent power belonging to a sheriff—a power which must be already in force, or the clause would not say, "Nothing in this Act contained shall affect the jurisdiction or responsibility of the sheriff." He took it that a sheriff had no responsibility under the clause except to see that a prisoner was kept in the charge of the gaoler, and see that he was hanged. The jurisdiction of the sheriff must exist independent of the clause, or else the words "Nothing in this Act contained shall affect the jurisdiction" would not be necessary.

The HON. T. L. MURRAY-PRIOR said that perhaps the Minister of Justice would say where the power came in. He believed it must be an inherent power given to the sheriff, and, if that was the case, the clause, as proposed to be amended, would be quite sufficient.

The MINISTER OF JUSTICE said the functions of the sheriff, of course, came from the common law, modified by statutes from time to time. It would take a considerable time to describe, one after the other, the various statutes which modified the powers of the sheriff, or to give a definition of the common law functions of the sheriff. But it seemed to him that, whatever might have been the functions of the sheriff in regard to his entrance into a prison before the passing of the Bill, the proposed amendment would take them away. The sheriff at present had jurisdiction and control over a prison and the officers of that prison, and he would thereby be enabled to carry into effect the sentence of death. But if the right or jurisdiction over a prison and prison officers were taken away, the sheriff's hands would be tied, and he would be disabled from carrying out the sentence of the court.

The HON. T. L. MURRAY-PRIOR said he thought the Minister of Justice had explained that at present the sheriff had certain jurisdiction which that clause would alter. The sheriff had certain jurisdiction with regard to sentences of death, and he thought the clause as proposed to be amended would give him all the jurisdiction he required.

The HON. SIR A. H. PALMER: Is there not an Act showing what the sheriff's jurisdiction is?

The HON. J. SCOTT said that the Act of 1865 defined the duties of the sheriff.

The MINISTER OF JUSTICE: This is taken from the English Act.

The HON. J. SCOTT said that Bill did not take away the power of the sheriff, but that clause gave further power.

The HON. A. C. GREGORY said the fact was that that clause did not do anything except declare that the sheriff was not to be interfered with in any part of his jurisdiction which he had under any previous Act or under that Bill. His powers were just the same; nevertheless he thought it desirable that the amendment proposed should be adopted. The clause implied that he had the power, and that it was not given to him.

The HON. SIR A. H. PALMER said he would point out that no power was given under that Bill, and no power was taken away, because the Acts giving that power to the sheriff were not being repealed; but that clause would have the effect of giving a dual control, which was not desirable.

The MINISTER OF JUSTICE said that the Act at present in force in this colony relating to the management of gaols was the Act Vic. No. 29; and the whole of that was being repealed. That would be found in the first schedule. There were also some subsidiary Acts which were being also repealed—16 Vic. No. 26, and 18 Vic. No. 7. All those Acts were being repealed.

The HON. SIR A. H. PALMER said that did not allude to the power of the sheriff—nothing of that sort was repealed.

The MINISTER OF JUSTICE said hon. gentlemen must remember that on the second reading he had stated that the Bill was drawn from various sources—the English, Victorian, and South Australian Acts. The clause, as mentioned in the marginal note, was taken from the English Act, which was not in force in Queensland.

The HON. W. FORREST said that he thought all that was necessary would be to state that with regard to the prisoners under sentence of death the sheriff would have the powers he at present had, and which were quite sufficient. The clause should read something as follows:—

"Nothing in this Act contained shall affect the jurisdiction or responsibility of the sheriff as at present exercised in respect of prisoners under sentence of death."

That would do away with the difficulty.

The MINISTER OF JUSTICE said that the provisions in force with reference to the power of the sheriff were to be found in the Act of 1867. The 43rd clause described the duty of the sheriff to "execute all writs, summonses, rules, orders, warrants, precepts, commands, and processes" of the court, and to "receive and detain all such persons as shall be committed

into his custody, and to discharge such persons as he may be by law empowered." Then the 45th clause provided that—

"The sheriff, during the time of his continuance in office, shall, in and for the district for which he shall have been so appointed, have and execute the same powers and duties, and enjoy the same privileges, and be subject to the same liabilities in all respects as by law belong to the office of a sheriff, and the powers, duties, privileges, and liabilities of the Sheriff of Queensland shall within such district cease and determine."

That referred to deputy-sheriffs; but the duties of the sheriff were duties imposed upon him by common law from time immemorial. Hon. gentlemen would see that the purpose of that section was that no alteration whatever was to be made with regard to the jurisdiction of the sheriff, or his control of the gaols of the colony, which were proposed now to be taken from his custody, but he was still to be able to make all arrangements necessary to carry out a sentence of death. He was still to retain all his functions to enable him to do that, as at present. He did not see how the matter could be provided for in any better way. If the amendment proposed were carried he would submit that the sheriff would be deprived of his jurisdiction, and he could not enter a prison for the purpose of carrying out an execution. Preparations had to be made beforehand, and serious inconvenience would accrue if he had not preserved to him the powers he had at present with regard to entering the prison and getting the assistance of its officers. He would accept the amendment if he could possibly do so, as he had already accepted other amendments, as he wished the Bill to be as perfect as possible; but he saw a great difficulty in the way, and preferred the original clause. They might have a strong-minded sheriff sometime, but it was far better to have a strong-minded sheriff than a strong-minded gaoler, who might thwart the sheriff in carrying out his functions. Of the two evils he preferred to choose the less.

The HON. SIR A. H. PALMER said he thought the arguments, when boiled down, just amounted to this—that if they allowed the clause to remain as it was, one part took away the sheriff's powers, and gave the control of the prisons to the comptroller-general, while, on the other hand, it took the authority from the comptroller-general and gave it to the sheriff. If the amendment he last proposed were carried, it would be quite sufficient. The clause as it stood took all the powers of the comptroller-general back during the time a prisoner was under sentence of death, and that was an absurdity. Hon. gentlemen could judge for themselves. He did not expect to be in prison; but he did not think they should give a dual control. He was perfectly certain that would give a dual control.

The MINISTER OF JUSTICE said the amendment would not take away the dual authority, because it would still give jurisdiction to the sheriff, only the jurisdiction would not be so clearly defined if the amendment were carried.

The HON. T. L. MURRAY-PRIOR said the comptroller-general had some duties to perform; and it was not at all likely that the sheriff would interfere with those duties. He could not see how the sheriff would interfere with the comptroller-general if the amendment were carried.

The HON. W. FORREST said, as far as he could see, the whole difficulty arose by attempting to relieve the comptroller-general of a disagreeable duty, and as he was primarily responsible for the management of the gaols, he should also see the sentences carried out. They should make him responsible, and give him power to appoint his officers and give them certain duties to perform.

Question—That the words proposed to be omitted stand part of the question—put, and the Committee divided:—

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The Hons. A. J. Thynne, J. D. Macansh, J. Cowlishaw, F. H. Holberton, J. Lalor, W. Aplin, F. T. Brentnall, J. S. Turner, W. G. Power, J. C. Smyth, J. T. Smith, W. Forrest, P. Macpherson, and W. H. Wilson.

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The Hons. Sir A. H. Palmer, W. F. Taylor, A. C. Gregory, T. L. Murray-Prior, F. T. Gregory, J. Scott, F. H. Hart, and W. D. Box.

Question resolved in the affirmative, and clause put and passed.

On clause 22, as follows:—

"The comptroller-general shall, at certain intervals, frequently visit and inspect all the principal prisons throughout the colony.

"On every inspection the comptroller-general shall hear all applications, and inquire into all complaints, made by prisoners, investigate all irregularities, take evidence on oath or otherwise as to the conduct of the superintendent or any prison officer, or as to any alleged abuses, and ascertain if the regulations of the prison have been properly observed and enforced."

The MINISTER OF JUSTICE said he had circulated an amendment which he proposed to make in that clause. He begged to move that the second paragraph be omitted with the view of inserting the following:—

"On every inspection the comptroller-general may hear all applications and inquire into all complaints as to the conduct of the prison officers, or any other persons charged with the performance of any duty under this Act, or any regulations made thereunder, or as to any alleged abuses or irregularities, or as to the proper observance and enforcement of the regulations of the prison, and in any such case may take evidence on oath or otherwise."

He thought that would meet the objection taken to the clause as it stood.

The HON. W. F. TAYLOR said perhaps the Minister of Justice would explain why the word "shall" was used in the original paragraph, while in the proposed amendment the word "may" was used.

The MINISTER OF JUSTICE said the reason was that it was thought that the clause as it originally stood would make it compulsory upon the comptroller-general, upon any complaint being made, to try it and take evidence from everybody who could say anything upon the subject, and that would mean that he should be at the beck and call of prisoners. Under the amended clause he might, if he thought it necessary, and if he were satisfied that there was a *bonâ fide* case of complaint, cause inquiry to be made.

The HON. W. D. BOX said he would like to point out that under the amended clause there was no statement whatever by whom a complaint would be made. In the original clause a complaint was to be made by a prisoner; but the word "prisoner" did not occur in the amended clause, and unless the prisoners complained there would be no complaints at all.

The MINISTER OF JUSTICE said that had been purposely left out of the clause to make its scope wider, so that the comptroller-general should entertain complaints from, say, the visiting surgeon, or the visiting justice, who did not come under the head of prison officers; or he might receive complaints from people outside the gaol if they saw reason to make a complaint. Under the original clause the comptroller-general had not power to investigate such cases; but under the proposed amendment he could investigate all cases of complaint, no matter by whom they were made.

The HON. W. D. BOX said the hon. gentleman had not met his contention, which was that a prisoner would lose the power of complaint. In the eyes of the law a prisoner had no rights, and under that clause he would lose the power to make a complaint.

The HON. W. F. TAYLOR said he thought the effect of using the word "may" instead of "shall" would be that they would have no guarantee that every complaint would be heard by the comptroller-general. It was not necessary for him to read all the evidence, or to take any evidence at all under that clause. It would be quite discretionary whether he took any notice of a complaint or not. He thought that all complaints should be listened to, whether they took any further action or not.

The MINISTER OF JUSTICE said a formal investigation of a complaint would be made. He did not know whether the hon. gentleman had had any experience as a visiting surgeon, or whether he had had experience of complaints, as he had no doubt the hon. the President had had; but it would be impossible for the comptroller-general in the course of an ordinary visit to investigate all the complaints that would be made. Under the 27th clause it was proposed to give the visiting justice power to inquire into all complaints, and it ought not to be left for the comptroller-general to inquire into every complaint that might be made by prisoners, which would probably take the greater part of the year.

The HON. SIR A. H. PALMER said the amendment was a great improvement on the original clause.

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

On clause 27, as follows:—

"(1.) It shall be lawful for the Governor in Council to appoint a fit and proper person, being a justice of the peace, to be the visiting justice of each prison, and from time to time to remove any such visiting justice and appoint another in his place, and every visiting justice shall be required to visit such prison once at least in every week, unless prevented by sickness or other sufficient cause.

"(2.) The visiting justice shall, at least once a month, see every prisoner at such time as may least interfere with labour and discipline, and shall ascertain if any prisoner desires to make any complaints, or if any person is improperly or unnecessarily detained in prison. In any case the visiting justice shall make such inquiry as he may think fit, and if it appears to him expedient so to do he shall at once bring the matter under the notice of the comptroller-general or Minister.

"(3.) He shall inspect the prison in all its parts; examine the clothing, bedding, and rations, and generally satisfy himself that the prison is properly conducted, and that due facilities are afforded for the religious and moral instruction of the prisoners. He shall, when required, be accompanied by the visiting surgeon, that he may satisfy himself as to the health of the prisoners and the sanitary state of the prison.

"(4.) He shall inquire into all charges or complaints against prison officers other than the superintendent, and from time to time report to the comptroller-general the result of his investigations.

"(5.) He shall hear and determine in a summary manner all complaints in respect of any of the minor offences committed within the prison and specified in the next following section of this Act, and shall inquire into all complaints made to him by prisoners, and into all abuses alleged to exist in the prison.

"(6.) He shall inspect the record of punishments inflicted by the superintendent, but shall not be at liberty to vary or alter any such punishments.

"(7.) He shall forthwith transmit to the Minister any complaints made to him by prisoners which he is unable to deal with, or upon which he may think it inexpedient to adjudicate.

"(8.) He must satisfy himself that the prison regulations are duly enforced, and that copies of such portions thereof as the Minister may think it necessary to exhibit, are kept exhibited in conspicuous places within the prison for the information of the prisoners.

"(9.) He shall make, on or before the sixth day of each month, a report in writing to the Minister in respect of the following matters:—

(*a*) The state of the buildings and such repairs, alterations, or additions thereto as may appear necessary;
(*b*) The sanitary condition of the prison and the prisoners;
(*c*) The discipline of the prison;
(*d*) The conduct of the prison officers;
(*e*) The classification of the prisoners;
(*f*) The means of employing them;
(*g*) The enforcement of hard labour;
(*h*) The treatment and conduct of the prisoners;
(*i*) The infliction of corporal punishment;

and such other matters as he may think fit or the Minister may require. A return of all punishments inflicted by his order and by the order of the superintendent during the preceding month shall be attached to such report.

"(10.) He shall not directly interfere with, or give instructions with regard to, the management or discipline of the prison, but will report to the comptroller-general or Minister from time to time on these or other subjects as he may think necessary."

The MINISTER OF JUSTICE said he had several amendments to propose in the clause, and he would indicate them before moving them separately. The first was the insertion of the words "from time to time" after the word "Council" in line 8, so as to make it read thus: "It shall be lawful for the Governor in Council from time to time to appoint a fit and proper person." Then he proposed to omit from lines 10 and 11 the words "and from time to time remove any such visiting justice and appoint another in his place." That was not necessary, because it was provided for in the Acts Shortening Act. Then at line 17 it was proposed to amend the clause so as to read thus:—

"Or if any person is improperly or unnecessarily detained in prison, and make such inquiry into any matter as he may think fit, and may report thereon to the comptroller-general or Minister."

Then later on there were some amendments with regard to the functions of the visiting justice, but since he had framed them the Hon. Dr. Taylor had given notice of an amendment which he had no objection to accepting. By that amendment it was proposed to leave out the words "when required," in lines 24 and 25, and insert the words "once at least in every month," so as to make it the duty of the visiting justice to visit the gaol at least once a month in company with the visiting surgeon. Lastly, in line 39, he proposed to insert the words "through the comptroller-general," so that the visiting justice should forward to the Minister, through the comptroller-general, the complaints indicated in subsection 7. He moved the insertion of the words "from time to time" after the word "Council," in line 8.

Amendment put and passed.

The MINISTER OF JUSTICE moved the omission of the words "and from time to time remove any such visiting justice, and appoint another in his place," in lines 10 and 11.

Amendment put and passed.

The MINISTER OF JUSTICE moved the insertion of the word "and," in place of the words "in any case the visiting justice shall," in line 17.

Amendment put and passed.

The MINISTER OF JUSTICE moved the insertion of the words "into any matter" after the word "inquiry," in line 18.

Amendment put and passed.

The MINISTER OF JUSTICE moved the insertion of the words "may report thereon to," in place of the words "if it appears to him expedient so to do he shall at once bring the matter under the notice of," in line 19.

The HON. SIR A. H. PALMER said he did not see the use of retaining the word "Minister," because that would give the visiting justice power to choose whether he would report to the comptroller-general or to the Minister. All reports should go to the comptroller-general, and to the Minister through him if necessary. The visiting justice should not be allowed to choose between reporting direct to the Minister and to the comptroller-general, or he might choose to ignore the comptroller-general altogether.

The MINISTER OF JUSTICE said there might be cases in which the visiting justice, who was charged with the function of criticising gaol management, ought to call the attention of the Minister direct to any defect of a serious nature requiring immediate attention. The visiting justice was not an officer subordinate to the comptroller-general, but an inspecting officer; and it was right that he should be empowered to report to the Minister direct in addition to the comptroller-general. He would not make a report to the Minister over the head of the comptroller-general unless he had good reason for doing so.

The HON. SIR A. H. PALMER said that under subsection 4 the visiting justice had only to report to the comptroller-general, and it seemed anomalous that under another subsection he should be allowed to report either to the Minister or to the comptroller-general, as he thought fit.

The MINISTER OF JUSTICE said that under the 4th subsection the report he had to make to the comptroller-general related to complaints against prison officers of a lower grade than superintendent. The Minister would not desire to be troubled with complaints regarding, or disputes between, subordinate officers; but the report which the visiting justice might make to the Minister under subsection 2 might relate to a person improperly detained in prison; and that was a matter which should be promptly reported to the head of the department.

The HON. F. T. BRENTNALL said there was some force in the objection taken by the Hon. Sir A. H. Palmer. He could not discover in the clause that the comptroller-general was to be in any sense or degree under the inspection of the visiting justice. He understood the Minister of Justice to say that he might have to make complaints to the Minister about the comptroller-general, and that occasions might arise in which the visiting justice would have to make complaints to the Minister about the action of the comptroller-general. It seemed to him, however, that the visiting justice had no function whatever to investigate anything relating to the comptroller-general or to the superintendent, and that all his functions were confined to charges or complaints against prison officers below the rank of superintendent. That being the case, there seemed to be a good deal of force in the argument that his reports should be made not to the Minister but to the comptroller-general.

The MINISTER OF JUSTICE said the visiting justice had functions to perform altogether independent of the comptroller-general. If the management of the prison was defective or wrong, the visiting justice was the person to whom was committed, by the country, the duty of calling attention to anything wrong. He might on occasions have to make a report which would be a severe criticism on the system of gaol management, and it was right that such a report should be made direct to the Minister, if the visiting justice thought necessary. If it was a matter which would affect the comptroller-general, and if the comptroller-general happened to be a man whom the visiting justice might not think would act properly on the complaint being sent to him, if the case was sufficiently serious, it should be brought before the head of the department promptly by the visiting justice. It might be that the comptroller-general would not be within reach at the time—he might be on his tour of inspection. Was the visiting justice to be prevented from making his report for weeks and months because the comptroller-general was absent, when a prisoner might be improperly detained, or some serious injustice might exist, which the visiting justice would think it incumbent on him to have set right at once? Of course it must be understood that the visiting justice would not send reports to the Minister over the head of the comptroller-general, unless he were justified by circumstances. If he did it would not do much harm, and he would probably get snubbed for his pains. Perhaps the medical officer might report that the gaol was in such a condition as to be unsafe for the retention of prisoners; and that ought to be brought under the notice of the Minister at once, especially if it followed a previous intimation to the comptroller-general from the visiting justice that he did not think proper attention was being paid to sanitary matters. There were many cases in which the visiting justice might report direct to the Minister with advantage. He did not, however, obstinately adhere to the clause as he proposed to amend it; what he wanted was to pass the clause in the most useful form.

The HON. T. L. MURRAY-PRIOR said that what they were trying in the Bill to do away with was dual power, and if the visiting justice could report over the comptroller-general to the Minister, he merely took his choice of the two. If the comptroller-general should be away, a large prison in Brisbane, or elsewhere, would not be left without some head, and the head of the prison, or the person acting, would open all his papers and send them to the Minister. Suppose the visiting justice had any complaint to make against the comptroller-general, and the comptroller-general would not convey it to the Minister, then the visiting justice would take it upon himself to lay the complaint before the Minister without it being laid down in the Bill.

The HON. W. FORREST said that, so far as he was able to judge, the 7th subsection, with the proposed amendment, would not harmonise with subsection 2 of the clause. Under subsection 2 the report of the visiting justice could go straight to the Minister, but under subsection 7, as it was proposed to be amended, the report must go through the comptroller-general.

The MINISTER OF JUSTICE said he did not see, taking the whole clause into consideration, why there should be any objection to the Minister being the person to receive a report from the visiting justice. It was a clause merely authorising the visiting justice to make a report, if he thought necessary, to the comptroller-general or Minister, in any small or large matter which might be brought under his notice. He was required, once at least every month, to see every prisoner, ascertain their complaints, and see if any were improperly detained. If cases were not of sufficient importance to be brought under the Minister's notice, then he would bring them under the notice of the comptroller-general, but if they required the attention of the Minister it would be his duty to report to the Minister. Under subsection 9 he would have to make a monthly report of all matters connected with a prison. The clause merely gave the visiting justice power to refer the minor matters to the comptroller-general, which he did not think it necessary to refer to the Minister. It did not give any greater authority to the visiting justice, and did not interfere with the working of a prison, but enabled the visiting justice to do

what perhaps he might be able to do without the clause at all—namely, report direct to the Minister. The object in framing the clause so distinctly was that every person connected with prisons could see plainly what the functions of the visiting justice were.

The HON. SIR A. H. PALMER said his objections were pretty much the same as when they were dealing with clause 19; it was carrying through the whole Bill the dual authority. Under the 19th clause the sheriff was to have authority over the comptroller-general, and now the visiting justice was to report to the Minister over the head of the comptroller-general. They knew very well that in practice everything went to the Minister. He pitied the unfortunate comptroller-general who dared to keep back from the Minister, if the Minister knew his duty, anything of the slightest importance. The fact of the matter was they were over-legislating and cumbering the Bill with provisions which were not wanted. All reports from the visiting justice should go to the comptroller-general, and if he dared to keep back anything of consequence from the Minister, he will pay for it pretty quickly. The dual control, putting the visiting justice over the comptroller-general, was never intended, and he was sure it would not work.

The MINISTER OF JUSTICE said that instead of dual control he thought they were adopting a system which might be called a system of mutual checks.

The HON. F. T. BRENTNALL said the further they went into the subject the greater the difficulties seemed to be. Instead of mutual checks he thought the divided responsibility would eventuate in very serious trouble and difficulty. They were discovering, as they proceeded with the debate, that the comptroller-general was to be very much absent from Brisbane. He was to travel over the colony. He was to be general inspector of gaols and their management. His duties were to go so low that he was even to direct the industrial labour in which prisoners might be employed. How the comptroller-general was to do all that, and listen to all the complaints sent to him by visiting justices and visiting surgeons throughout the colony, and deal with them, he was unable to see. Unless there were a complete department capable of dealing with all correspondence during the absence of the comptroller-general there would be endless difficulties. The comptroller-general could not be at Rockhampton, Townsville, Charters Towers, and Cooktown, and conduct the business of his office in Brisbane if he had these petty details to attend to. He thought that attempt in the Bill to provide for local inspection would divide the responsibility of the comptroller-general, and it would be impracticable. The Bill seemed to comprise a series of difficulties which would in practice be found almost inoperative. He thought that the further they went the greater those difficulties seemed to be, and the confusion in that clause of what the Minister of Justice had called "moral checks," but what he would call "divided responsibility," would ultimately result in a great deal of collision and trouble.

Amendment agreed to.

The MINISTER OF JUSTICE proposed to further amend the clause by omitting the words "when required," in the 24th and 25th lines, with the view of inserting the words "once at least every month"; and by inserting the words "through the comptroller-general," after the word "Minister," in the 39th line.

Amendments agreed to.

The HON. W. F. TAYLOR said that he proposed to move that in line 50, after the word "prisoners," there be inserted the words "certified to by the visiting surgeon." It appeared that throughout the whole of that Bill there was a marked deficiency with regard to the sanitary condition of the prisons. The visiting surgeon, whose duty it undoubtedly was to look after the sanitary condition of the prisons, and who should be held responsible for that, had no such duty allotted to him by the Bill. The duty of reporting on the sanitary condition of the prisons was left to the visiting justice, who most likely had no knowledge of such matters; and in order to report upon their condition he must get either the opinion of the visiting surgeon or some expert in sanitation outside the prison. He thought it necessary, therefore, as they could not alter the Bill now, to make it incumbent upon the visiting justice to report at least once every month on the sanitary condition of the prison. He thought that at least the report of the visiting justice should be initialled by the visiting surgeon who had to attend the prisoners, and whose duty was not merely confined to curing the prisoners, but whose function it also was to try and get the causes of sickness remedied. If those words were inserted it would be a guarantee that the sanitary condition of the prisoners would be well looked after.

The MINISTER OF JUSTICE said that they had heard about a dual authority, but that was a case of establishing a dual authority, because, unless the visiting surgeon and the visiting justice happened to agree on the subject, the visiting justice would not be able to send in his report as required by the Bill, so that the amendment would be rather an obstruction than an improvement. The visiting surgeon was responsible. He had at least once a month to go on a visit to make an inspection of the sanitary condition of the prisoners, and there was nothing to prevent him making a report to the Minister if he chose to take that course. That function belonged to the visiting justice, though if he could get the sanction of the visiting surgeon it would be all the better; but he thought the clause very well as it stood. The Hon. Dr. Taylor said there was a marked omission from the Bill—a provision for securing the sanitation of the gaols. He did not think that was justified by the Bill itself. In the present law there was not a single word with regard to the inspection by surgeons. That was a matter which the Government from time to time, if they chose, had dealt with by employing medical officers or visiting surgeons; but there was nothing whatever requiring them to inspect the sanitary condition of the gaols. The consequence had been that the sanitary condition of gaols had been sometimes found defective; but under that Bill there was a portion of it making provision that the visiting justice should make a report as to the condition of the gaols, and he was to be accompanied by the visiting surgeon. He thought that was making a useful provision. He would have no objection at all to the amendment if it did not appear to him that the visiting surgeon was required by it to do what the visiting justice had to do monthly. However, a high-minded visiting surgeon would not risk his personal reputation, and, in order to protect himself, he would make reports.

The HON. W. H. WILSON said he sympathised with the Hon. Dr. Taylor in his attempt to lay down in some way that visiting surgeons should have some duties. The 26th section was the only one that referred to the visiting surgeon, and that simply gave the Governor in Council power to appoint a fit person to be a visiting surgeon, and then it did not appear to

him that his duties were in any way defined, with the exception that he must accompany the visiting justice. He could quite understand the Hon. Dr. Taylor's wish, that the visiting surgeon should have a power of some kind, and that he should be able to report to somebody. He thought the Minister should receive a report from the visiting surgeon, as it was a very important matter that an official report of some value should be sent in by some officer who knew something about it.

Amendment put and negatived; and clause, as amended, put and passed.

On clause 52, as follows :—

"Any prisoner may, by order of the Minister, be removed from a prison to any hospital for medical treatment, as occasion may require, and for the purposes of this section the expression 'hospital' shall be taken to include any asylum for the insane.

"Any prisoner so removed shall during his treatment in the hospital be deemed to be in the legal custody of the hospital surgeon, attendants, nurses, and other officers of the hospital; provided that the comptroller-general may, if he think fit, appoint any prison officer or officers to take charge of any prisoner while he is under treatment in a hospital.

"On the certificate of the hospital surgeon or other officer in charge of the hospital (which such surgeon or officer is hereby required to give to the superintendent of the prison) that a prisoner under treatment in the hospital may be discharged therefrom, such prisoner shall forthwith be returned to prison to complete the period of his sentence, or to be otherwise dealt with according to law.

"Any hospital surgeon or other officer in charge of a hospital who fails to furnish such certificate to the superintendent of the prison from which a prisoner was removed for treatment, or, upon the escape from the hospital of any prisoner under treatment therein, does not forthwith report the fact to the superintendent of the prison, shall be liable to a penalty not exceeding fifty pounds.

"Any prisoner escaping or attempting to escape from any hospital shall be deemed to have escaped or attempted to escape from a prison, as the case may be, and shall be dealt with accordingly."

The MINISTER OF JUSTICE said in line 42 he proposed to omit the words "attendants, nurses, and other officers," and insert the words "or other officer in charge." That provided that the individual at the head of the institution for the time being should be the legal custodian of the prisoner for the time being.

The HON. W. H. WILSON said he thought that clause required a little more consideration, especially in connection with the first part—"Any prisoner may, by order of the Minister, be removed from a prison to any hospital for medical treatment." Was it necessary that the order of the Minister should be obtained whenever it was considered that a prisoner should be removed?

The MINISTER OF JUSTICE said the Attorney-General had no authority over hospitals, and the gaoler could not require them to receive a prisoner. The Minister was the only person who could do it.

The HON. W. H. WILSON said that a visiting justice should have authority to order a prisoner to be removed to a hospital.

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

On clause 53, as follows :—

"No person other than a Minister of the Crown, judge of the Supreme Court, a member of the Legislative Council or Legislative Assembly, the comptroller-general, the sheriff, a police magistrate, or the visiting justice, shall, under any pretence whatever, and then only in accordance with the rules of the prison, be permitted to enter any prison, and converse with a prisoner, without a written order from the Minister, or comptroller-general."

The HON. SIR A. H. PALMER said he hoped the Minister of Justice would not try to carry that clause as it stood. He had understood that it was going to be withdrawn.

The MINISTER OF JUSTICE: No; only postponed.

The HON. SIR A. H. PALMER said he would like to know why anyone should be allowed to go into a prison without an order? Why should any individual be allowed to go in whether the officers in charge liked it or not? A gentleman who was appointed to that Council, or who was returned to the Legislative Assembly, had the power to enter a prison and converse with prisoners, contrary to the rules of the prison. He had known cases where members of Parliament had gone into prisons and had had private conversations with the prisoners, which they were not warranted in doing, and which had led to a great deal of trouble in more ways than one. Why should that power be reserved to anyone? It was the simplest thing in the world to get an order for admission, and he did not see why there should be any exception.

The MINISTER OF JUSTICE said it was usual to reserve that power to members of Parliament in other places, and he saw no reason why exception should be taken here to what was the practice elsewhere. He would point out, however, one thing, and that was that anyone admitted must act in accordance with the rules of the prison. Those rules must be observed, and if it were found impracticable, and the privilege were abused, it was a simple matter to remodel the rules of the prison so as to prevent those irregularities.

The HON. SIR A. H. PALMER said they could not remodel the rules of the prison contrary to an Act of Parliament.

The MINISTER OF JUSTICE said the clause itself restricted the right, and it was only if they acted in accordance with the rules of the prison that they would be admitted.

The HON. F. T. BRENTNALL said he would ask the Minister of Justice whether he rightly understood the clause—whether the qualification in the clause really applied to a Minister of the Crown or a judge of the Supreme Court, or to a member of the Legislature? Did the Minister of Justice mean that a Minister of the Crown, or a judge of the Supreme Court, or a member of the Legislature could only enter a prison in accordance with the rules of the prison? He did not read the clause in that way. Any other person would have to act in accordance with the prison rules; but those gentlemen were exempted from the rules. They could enter whenever they thought fit, and for any purpose they thought fit, and the rules of the prison did not apply to them in any shape or form. He thought the Minister of Justice was misreading the clause, and he had a good deal of sympathy with the objection taken by the hon. the President to the wide scope given to the visitors of gaols by that clause. He could not see why a member of the Legislature should have any special privilege in connection with gaols, simply because he was a member of the Legislature. A member of the other House of the Legislature was a member by popular election, but so was a member of a municipal council, why should he not have the same right as a member of the Legislature? Now that their Legislature was growing to large dimensions, it would be an injudicious thing to allow every member the right of free access to the gaols of the colony. A great deal of mischief might arise. Even supposing there were no precedent of the kind given by the hon. the President it was an easy thing to conceive that much mischief might accrue by the free admission to their gaols of members of the Legislature, or other persons besides those who, by their official position, like the Minister of Justice, or a judge of the Supreme Court, or the comptroller-

general, or the sheriff, ought to have the right of access. He thought those were the only people who should have free admission.

The HON. SIR. A. H. PALMER said he did not think the judges of the Supreme Court would want to go. He thought that if the words "other than a Minister of the Crown, judge of the Supreme Court, a member of the Legislative Council or Legislative Assembly, the comptroller-general, the sheriff, a police magistrate, or the visiting justice" were omitted it would be better. No person could then get in without obeying the prison rules. He thought it would be better to leave out the whole clause, as it was not wanted. Let the Minister for the time being in charge of the gaols, and the comptroller-general, or both of them, make rules for that purpose. He did not see why it should be in an Act of Parliament, as he did not think they should give anyone the right of free access to the gaols. He had never known a case where the Minister had refused admission if the person asked. He did not suppose there had been a single case where any respectable person, going for an honest purpose, had not been allowed admission.

The MINISTER OF JUSTICE said the judges of the Supreme Court had a special provision to enter gaols.

The HON. SIR A. H. PALMER: Then what is the use of duplicating that?

The HON. W. FORREST said he had some sympathy with the remarks made by the hon. the President, and also with those made by the Hon. Mr. Brentnall. He did not see any reason whatever why a member of the Legislature should by law have the right to enter a prison any more than any other person. It was necessary that the sheriff and the other officers should have that right, but there was no necessity why a member of the Legislature should go there unless he was sent there.

The MINISTER OF JUSTICE said there was nothing in that Bill to compel the superintendent to admit anyone. If hon. gentlemen thought members of the two Houses of Parliament ought not to be entrusted with that right, he was not going to propose the omission of that in the Bill. If hon. gentlemen thought it should be omitted, of course he could say nothing further, but he objected to the omission of the clause *in toto.*

The HON. F. T. BRENTNALL said the facilities for getting into gaol were great at present. If a man wished to get there, there were more ways than one of doing so, and he could not see why a member of Parliament should not follow the same course as anyone else. He would move that all the words after the word "than" in the 10th line as far as the word "Assembly" in the 12th line be omitted.

The MINISTER OF JUSTICE said that the proposed amendment would give the Minister power to extend to others a privilege which he would not possess himself. If the hon. gentleman would allow him he would move the chairman out of the chair, and the amendment could be discussed to-morrow.

The HON. F. T. BRENTNALL said it was an oversight on his part to exclude Ministers of the Crown.

On the motion of the MINISTER OF JUSTICE, the House resumed, the CHAIRMAN reported progress, and the Committee obtained leave to sit again to-morrow.

ADJOURNMENT.

The MINISTER OF JUSTICE moved that the House do now adjourn.

Question put and passed.

The House adjourned at two minutes past 6 o'clock.