Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 5 OCTOBER 1898

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WEDNESDAY, 5 OCTOBER, 1898.

The PRESIDENT took the chair at half-past 3 c'clock.

THE LATE PREMIER.

FURTHER MESSAGES OF SYMPATHY.

The PRESIDENT: I have to announce to the House that I have received the following telegrams relative to the death of the late Premier :—

Perth, 28th September, 1898.

We, the members of the Legislative Council in Parliament assembled, having learned with sorrow of the untimely death of the Hon. T. J. Byrnes, Prime Minister of Queensland, desire to express to the Parliament and people of that colony our sympathy with them in the sad loss they have sustained.

GEO. SHENTON,
President of the Legislative Council.

Hobart, 28th September, 1898

The Right Hon. Sir Hugh Nelson.

Sincerest sympathy with Queensland and Queenslanders in loss of Byrnes

E. BRADDON.

I have replied to those telegrams on behalf of the Council, which action I have no doubt will meet with the approval of hon. gentlemen.

PRESENTATION OF ADDRESS OF CONDOLENCE.

The PRESIDENT: I have further to inform the House that, accompanied by several members of the Council, I presented to Miss Byrnes the address of condolence passed by this House on the 28th ultimo.

MINISTERIAL STATEMENT.

CHANGES IN THE GOVERNMENT.

The POSTMASTER-GENERAL: At the last sitting of the House the melancholy duty devolved upon me of announcing to the House the death of the late Premier, the Hon. T. J. Byrnes. Since that time His Excellency the Governor sent for the Hon. J. R. Dickson, who was then Home Secretary, to form a Ministry. That gentleman has done so, and I notify to the House the arrangements that have been made. The resignation of the Hon. J. R. Dickson, C.M.G., as Home Secretary, and of the Hon. W. Horatio Wilson, as Postmaster-General, have been accepted by the Governor, and His Excellency appointed the Hon. J. R. Dickson to be Vice-President of the Executive Council. The Governor also has been pleased to appoint the Hon. J. R. Dickson to be Chief Secretary and Home Secretary, and the Hon. W. Horatio Wilson to be Minister of Justice and Postmaster-General. Those are the principal changes that have been made. All the other members of the late Ministry retain their portfolios. I lay the *Gazettes* on the table containing those announcements.

JURY BILL.—INTESTACY AND INSANITY (LOCAL ADMINISTRATION) BILL.

THIRD READING.

These Bills were read a third time, passed, and ordered to be returned to the Assembly.

TRUSTEES AND EXECUTORS ACT OF 1897 AMENDMENT BILL.

SECOND READING.

The HON. P. MACPHERSON: This Bill is the outcome of a suggestion of his Honour the Chief Justice, whose eminent services to legislation include the consolidation and amendment of the law with reference to executors and trustees. By the 48th section of the Trustees and Executors Act of 1897 a trustee may, with the sanction of the court, whether allowed to do so by the instrument creating the trust or not, mortgage the whole or any part of the trust property for the purpose of the preservation or improvement of the trust estate, or its insurance

against fire, for the payment of debts charged upon the estate, or for the payment of any sums for which the estate is liable. That section is a re-enactment of one, with a slight difference at the end, which has proved most beneficial to the administration of trusts in the colony. It has been thought advisable to extend its operations by enabling trustees to sell any part of the trust property—of course always with the sanction of the court, and always to satisfy the court that such sale would be beneficial for the purposes which are mentioned in the 48th section. We all know that in the administration of trust estates there may happen to be pieces of property which are absolutely unproductive, and which instead of being a benefit are a drag on the estate. Such lands might well be sold for the purposes mentioned in the section. It might also be advisable to give trustees power to sell land for the purpose of discharging debts or discharging any liabilities owing on the estate. There is no doubt that wills sometimes provide for the payment of debts, but sometimes they do not; and it is to cover this omission, as well as to cover the other purposes for which the 44th section was passed, that I now propose this amendment. A case in point has come very forcibly within my own notice—a case that will be cured by this Bill. Not very long ago a testator who owed nothing at the time of his death—who, in fact, had money in the savings bank—left his property to two classes of devisees, one class represented by a daughter by the first wife, and the other class represented by young children by the second wife. He provided for them, as he thought, according to the best of his ability, by will and codicil. The daughter disputed the validity of the codicil, and the result was an action to establish the will. The executor was bound to bring it, because he was mentioned in the will as executor. The will and codicil were sustained, and heavy costs were incurred by the executor. The daughter, having a small interest under the will, had no money to pay the costs, and the result is that the estate is now saddled with those costs. As the law now stands, to enable payment of those costs to be made, an administration suit would have to be instituted, which would result only in swamping the whole property. The provision in this Bill will enable those costs to be paid at a very small expense indeed. There are other cases I might mention where this power, if given to trustees, will be exceedingly beneficial; but they will be sufficiently evident to those members of the House who are accustomed to deal with trust estates. The 3rd clause of the Bill, which, I may say, is drawn by the learned Chief Justice himself, provides for rather peculiar cases. It is an improvement, I consider, on the 49th section of the Act of 1897—a most beneficial section, which was introduced by the Hon. Mr. Norton. Under that section application was made the other day by two infants who were entitled to a presumptive interest in land. There was a third infant whose interest was also involved. That third infant did not require maintenance because he was maintaining himself, but he consented, as far as he possibly could, to the application for the disposal of the property for the benefit of the other two infants. There were also four other beneficiaries interested, who were of age and who also consented. But the infant who did not require maintenance, and who adequately maintained himself, not being able to consent, the court was powerless to deal with that infant's property under the section. The 49th section reads—

> When any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before that age, the court, on the application o the infant or any person on his behalf, if satisfied that the infant's income is inadequate, may authorise the trustees to raise by sale, collection, or appropriation of the property, or any part of it, such amounts as shall be necessary for the maintenance, education, or advancement of the infant . . or otherwise apply the same to the infant's benefit.

In this case the Chief Justice, with the greatest possible desire to do substantial justice so far as regarded the other two infants whose circumstances really required the assistance of the court, found that he could not do it because there was no means of binding the other infant who actually was willing to assent to the application. Hence this suggested amendment contained in the 3rd clause, which reads—

> When any property of an infant consists of an undivided share in land, the court may for the purpose of exercising the powers conferred by the forty-ninth section of the principal Act authorise the sale of any other undivided share in the same land which is the property of any other infant notwithstanding that the income of such other infant is not inadequate.

This I must admit is perhaps legislating for an exceptional case, and in the matter to which I have referred justice will be done if Parliament sanctions this provision. The 4th clause provides that the Act shall apply to trusts created either before or after the commencement of the Act, which is simply following out the language of the 48th and 49th sections of the principal Act. Speaking for myself I may say that the law with reference to trustees is one in which I have always taken the deepest interest. In this colony, I am happy to say, we are to a considerable extent in advance of legislation on this matter in other places. My opinion is that we should render the position of trustee one as easy to hold as possible consistently with the observation of those safeguards which the due administration of the office eminently requires. It only wants a little thinking out, and I believe that before we have done with it we shall have in Queensland a code which may be worthy of being copied elsewhere. I move that the Bill be now read a second time.

The HON. E. B. FORREST: The House is very much indebted to the Hon. Mr. Macpherson for bringing this Bill forward. There is not likely, I fancy, to be any opposition to it. My only regret is that it does not go far enough. This, no doubt, will be a great improvement on the legislation at present in existence. At the same time there are many other matters in connection with the Trustees and Executors Act of 1897 that might with very great advantage be amended. Those of us who are mixed up with these trustee and executorships are perfectly well aware that many estates are impoverished by the want of means of realising property for the manifest advantage to the estate. That has been my own experience over and over again. In the courts we see frequent applications made, and in most cases they have to be rejected for want of power. But apart from that this Bill is really a step in the right direction. I only regret, as I said, that it does not go further; and I have very much pleasure in supporting it.

The POSTMASTER-GENERAL: I cordially agree with the remark of the last speaker that this attempt to extend the operations of the 48th and 49th sections of the principal Act is a stop in the right direction. There are many cases where it might be found that it is not a good thing to mortgage an estate, and without the 2nd clause of this Bill there is no power to sell any portion of a trust property. This clause gives that power, and it is a very necessary power to have as long as it is only exercised under the sanction of the court; that is the only safeguard necessary. The 3rd clause is also a valuable one, because it is very difficult to dispose of an infant's undivided share in land. Power is given here to

authorise the sale of an undivided share the property of any other infant; but if the court has power to sell the whole of the shares, with the necessary safeguards, it will be certainly beneficial. This is a very short Bill, but it is an important one, and it moves, as I said, in the proper direction. I would call the hon. gentleman's attention to what I think is a clerical omission in clause 2. The words appear "any sum or sums." In the principal Act the words are "any sum or sums of money." Perhaps the hon. gentleman may think fit to move a verbal amendment in committee. I have much pleasure in supporting the Bill, and I am glad the Hon. Mr. Macpherson has introduced it.

The HON. A. H. BARLOW: I do not pretend to any legal lore, but the 3rd clause of this Bill does not meet with my views at all. The hon. gentleman who introduced the Bill may feel assured that there is no personal opposition to it on my part, but we have had such a lot of legislation of this sort that there is no knowing where it may lead to. I trust that in committee the hon. gentleman will give us some very cogent reasons for passing that clause.

The HON. A. NORTON: I give my entire support to the Bill as brought forward by the Hon. Mr. Macpherson. I have no desire to take from trustees the slightest responsibility they have to incur; but in my opinion the court is a very much better judge in many cases of the way the property left by a testator should be disposed of than the testator himself. The testator makes his will under special circumstances, not knowing what may occur after he is dead. Circumstances arise which, could he have foreseen them, might have entirely altered the disposition of the property. That is a difficulty which often arises in a colony like this. The value of property is subject to continual changes, and the position in which infants are left who are dependent on the property is also subject to constant changes. In some cases the value of a property may sink almost to zero, and in others it may yield more than ever the testator imagined. But in the majority of cases the court is a better judge of the interpretation which should be put on the wishes of the testator as to the disposal of the property than the testator himself was at the time he made his will. That is a point which deserves very serious consideration. I would not for one moment take from a testator his right to the disposal of his property, but numerous cases might be quoted where a testator has disposed of his property in such a way that the beneficiaries, or those who are not beneficiaries but who think they ought to be, have to go before the court and incur heavy expenses, which are generally taken out of the estate, in order to obtain a decision as to whether the testator, at the time he made his will, was in a condition to dispose of his property in a fair way. There are naturally considerations in those cases which ought not to be overlooked. In cases such as that referred to by the Hon. Mr. Macpherson, where infants are left in such a position that they must be absolutely dependent upon others, if the estate of which they are beneficiaries possesses a large amount of property, it is very desirable that the court should be empowered to say whether, under the circumstances which may be brought forward, that should not be given to the infants when there was every reason to believe the testator would have given to them had he known those circumstances would arise. I have very much pleasure in supporting the Bill.

Question put and passed; and the committal of the Bill made an Order of the Day for Tuesday next.

BRITISH PROBATES BILL.

COMMITTEE.

Clauses 1 to 3, inclusive, put and passed.

On clause 4—"Sealing in Queensland of British probates and letters of administration"—

The POSTMASTER-GENERAL said the Hon. Mr. Cowlishaw had pointed out on the second reading of the Bill that it would be necessary to make some provision for the insertion of advertisements in order to inform next-of-kin of what was going on. He might inform the hon. gentleman that that would be provided for by rules of court.

Clause put and passed.

Clauses 5 to 7, inclusive, put and passed.

The House resumed; the CHAIRMAN reported the Bill without amendment, and its third reading was made an Order of the Day for Tuesday next.

The House adjourned at a quarter past 4 o'clock.