

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**WEDNESDAY, 11 OCTOBER 1899**

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Telegram from Secretary of State respecting adoption by Legislative Assembly of Address to the Queen praying for establishment of the Commonwealth.  
Apportionment of loan appropriations and expenditure to 30th June, 1899.

## SUPREME COURT BILL.

## COMMITTEE.

The several clauses of this Bill were put from the Chair, and passed.

The Council resumed; and the CHAIRMAN reported the Bill without amendment.

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

## REGISTRATION OF DEEDS BILL.

## COMMITTEE.

Clause 1 put and passed.

On clause 2—"Certain instruments not to be registered under Registration of Deeds Act"—

The POSTMASTER-GENERAL said he might mention, with regard to the remarks made by the Hon. Mr. Gregory on this clause on the second reading, that he had consulted the Attorney-General and the head of the department who attended to those matters; and they were of opinion that the clause as drafted was satisfactory, and that no amendment was needed.

HON. A. C. GREGORY said he merely drew attention to the matter, thinking it desirable it should be looked into.

The POSTMASTER-GENERAL said he wanted the hon. gentleman to know that he had not neglected the matter, and that he had made inquiries with the result as stated.

Clause put and passed.

Clause 3 and schedule put and passed.

The Council resumed; the CHAIRMAN reported the Bill without amendment.

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

## LOCAL WORKS LOANS ACTS AMENDMENT BILL.

## COMMITTEE.

The several clauses and schedules of this Bill were put from the Chair, and passed.

The Council resumed; the CHAIRMAN reported the Bill without amendment.

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

## ABORIGINALS PROTECTION AND RESTRICTION OF THE SALE OF OPIUM BILL.

## COMMITTEE.

Clauses 1 to 6, inclusive, put and passed.

On clause 7—"Females and children not to be allowed on ships"—

HON. W. FORREST drew the attention of the Postmaster-General, on the second reading, to what he considered a grave omission in subsection 3, of which the hon. gentleman had taken no notice. He pointed out that under that subsection an aboriginal woman or child could not go on board a ship at all. He thought some amendment of the section was necessary.

The POSTMASTER-GENERAL trusted the hon. gentleman did not think he had taken no notice of his remarks. He had consulted with the Home Secretary on the subject. As he stated on the second reading, the Home Secretary had taken a great deal of interest in the condition of the aboriginals, and he had personally visited the different stations and informed himself as to what was best to be done in connection with their comfort and employment. He had showed him the observations of the Hon. Mr. Forrest, and he said if any alteration was made in that

## LEGISLATIVE COUNCIL.

WEDNESDAY, 11 OCTOBER, 1899.

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

## PAPERS.

The following papers, laid on the table, were ordered to be printed:—

Report of conference of commandants concerning proposed united Australian contingent for the Transvaal.

direction it would spoil the Bill. If a permit was obtained from the protector, there would be no difficulty. There was a great deal going on in the North in connection with the aboriginals that people knew very little about. He very much preferred not going into particulars, but he would say that the matter had been fully considered by the department, and the Home Secretary trusted the Bill would not be interfered with in the direction indicated by the Hon. Mr. Forrest.

HON. W. FORREST thought the Home Secretary had been very badly advised when he inserted a clause to prevent aboriginals going by boat from one point to another. It was going too far to say that an aboriginal should not go on board a steamer in Brisbane and proceed to the North without the interference of the Home Secretary or anyone else. It was, in fact, monstrous. He moved as an amendment that after the word "boat" the words "unless as a passenger" be inserted.

The POSTMASTER-GENERAL would be glad to meet the Hon. Mr. Forrest, if it were possible; but if the amendment were carried it would lead to very grave dangers. It would be the easiest thing in the world for the captain of a vessel who wanted to get an aboriginal boy or girl on board to say that he or she was a passenger.

HON. W. FORREST: He would have to prove it.

The POSTMASTER-GENERAL: If the hon. gentleman thought for a moment [4 p.m.] he would see that his amendment would let in the very abuse which the Bill was intended to prevent. The object of the Bill was to protect the aboriginals from the machinations of interested persons who up to the present time had managed to keep boys and girls on board ship for immoral purposes.

HON. W. FORREST: Can you give a single instance?

The POSTMASTER-GENERAL: Mr. Foxton had found that out in the North, and represented that it was a very great danger, and the clause had been framed to suppress the evil. If the hon. gentleman's suggested amendment were accepted it would defeat the very object of the Bill.

HON. W. FORREST: It is perfectly clear to me that the Postmaster-General does not understand the Bill.

The POSTMASTER-GENERAL: I am sorry to hear you say that.

HON. W. FORREST: Well, he did say it. In the first place no one could send an aboriginal away without first getting a permit and giving certain guarantees. Then with regard to the practices mentioned by the Postmaster-General, he did not know where they were carried on. He had been up North and down south as frequently as the Home Secretary, and he had never known of blackfellows or gins being carried on board of ships except as passengers. If people committed offences against the law why not punish them, but why was everyone to be punished simply because one person broke the law, either legal or moral? A permit must be obtained before a black person can be employed, and then when the permit was obtained that person would not even be allowed on board a boat as a passenger.

HON. A. J. THYNNE had listened to the discussion, and it appeared to him that the difficulty under the clause would be that if an exception about passengers were put in it would be almost impossible to get a conviction for a breach of the clause. Assuming that a case was brought against a man for infringing that clause, the responsibility would be thrown upon the prosecution of proving whether the aboriginal

was a passenger or not. How could that be done? It might be done on large steamers that had a regular system of checking their passenger lists, but how could it be proved in the case of a fishing boat in the North? It was better, he thought, to take the risk of inconvenience than to run the greater risk of having the law defeated by technical difficulties in securing the necessary evidence for conviction. They had to choose between those two difficulties. Either they had to run the risk of boatowners driving through the Act of Parliament or cause some temporary inconvenience by requiring persons who desired to remove aboriginals from one place to another to obtain official sanction. Which of the two evils was the lesser one? His own impression was that the lesser evil was the one which would have the effect of preventing, except under authorisation, the carriage of those children from their homes in any boat at all. He had heard of instances in which gentlemen had carried young aboriginals for a sea trip, and a very humane and good thing it was, but surely that would never be prevented? There would be no prosecution under those circumstances.

HON. B. D. MOREHEAD: There might have to be. He would be at the mercy of whoever informed.

HON. A. J. THYNNE: It was quite possible it might deprive a few aboriginal children of a trip, to put it at the worst, but it would prevent the greater evil of enabling owners of pearl-fishing boats to employ those young people illegally on board their boats.

HON. W. ALLAN said it was not only a matter of a few young children going from one place to another. In the North and West there were many people who employed aboriginal nurses for their children. Under the subsection as it stood it would prevent any such nurse going on shipboard with her charge. A lady coming from the North with her children and an aboriginal nurse would have to leave the nurse at Cooktown or Townsville, and would perhaps be unable to engage a white woman. Then, again, a squatter coming from the Gulf country to Brisbane with cattle might bring with him his aboriginal boys. He would not want them to go back all the way to Carpentaria by land. He would like to send them as passengers by steamers, which, under the subsection, he would not be permitted to do. In his opinion the difficulty could be got over by inserting a provision to the effect that such aboriginal be allowed to travel by sea as a passenger on a permit signed by a police magistrate or some other Government official. All they wanted to do was to stop the illegitimate traffic.

HON. J. DEANE said he could see a great hardship would be inflicted on the aboriginals in passing the subsection as it stood, and he quite sympathised with the suggestion of the Hon. Mr. Forrest. In the part of the country he came from he knew instances of blackboys having been reared amongst white people. They knew the value of money, and the amount they were entitled to at the end of the year; and many of them preferred to spend it on a sea trip instead of spending it at the public-house. It was a great treat to them to take a trip on a steamer, and there could be no two opinions as to which was the better way of spending their money.

HON. W. FORREST said all he aimed at was to get some provision inserted whereby a black-fellow or a gin might be enabled to travel by sea as a passenger. Under the subsection as it stood that was impossible.

HON. F. CLEWETT thought the difficulty might be got over by inserting at the end of the subsection the words "except as a passenger, and with a permit from the protector or a justice of the peace."

HON. B. D. MOREHEAD : While admitting that there might be some necessity for a measure of the sort before the Committee, it appeared to him that they were perhaps going a little far in interfering with the liberties of the aboriginal inhabitants of the colony. With every desire to do all he could to make the latter days of the doomed race as comfortable as possible, he did not think they should trammel them with restrictions which, though evidently well intended, might defeat the object they had in view.

HON. A. C. GREGORY said that according to the subsection as it stood it would be illegal to allow an aboriginal to go across the Brisbane River in a ferry-boat. The real difficulty was as to the interpretation of the word "boat," which had been held to mean anything from a steamer of 4,000 or 5,000 tons to a dinghy which would barely hold one individual. The term ought to be defined. The same difficulty arose some years ago when a similarly well-intentioned Bill was passing through the Council, and it was found impracticable to put it into operation. He would ask hon. gentlemen to consider the case of the aboriginals at Wide Bay, where numbers of them were employed in fishing. That would be impossible under the proposed provision. The aboriginal could neither fish from his own boat and with his own nets, nor could he be employed to do so by the owner of a boat. It would be absurd, under those circumstances, to say that the Bill was one for the better protection of the aboriginals.

HON. G. W. GRAY would remind the Committee that the Bill was to a large extent the outcome of a recent visit to Torres Strait by the Home Secretary, Mr. Foxton; and its special object was to remedy abuses he had discovered in that district in particular, more especially with regard to the pearling boats. Mr. Foxton, who took a deep interest in the welfare of the aboriginals, laid great stress upon the importance of that subsection, his object being to prevent the young blacks being taken on board those boats in any capacity.

HON. W. FORREST : If the clause said so, that would be all right.

HON. G. W. GRAY said he thought the difficulty would be overcome by the issue of a permit which would show whether the young aboriginal was a passenger or under employment. He would ask hon. gentlemen to be very careful in amending the clause not to materially alter its meaning.

HON. W. FORREST said that, while giving the Home Secretary every credit for his investigations amongst the blacks in Torres Strait, he believed that hon. gentleman did not know half what went on in other parts of the country, certainly not so much as the Hon. Mr. Deane, the Hon. Mr. Aplin, the Hon. Mr. Allan, or himself. The Home Secretary had missed the essence of the whole thing, and in trying to meet one evil it was very probable he would inflict a much greater evil.

HON. G. W. GRAY said that although he had only referred to the Torres Strait the Home Secretary had really given the same close attention to the condition of the Southern blacks.

HON. B. D. MOREHEAD said the Bill might be termed, to a certain extent, spasmodic legislation, and it might be wise on the part of the Government to withdraw it until the Government were in a position to give the Committee full information on the question now before them. There was not one who was not desirous to do all he could to benefit that perishing race. At the same time it did not appear to him that the Bill before them was a properly digested measure, or that the Government themselves had got a full grasp of the situation.

The POSTMASTER-GENERAL said the subsection had been inserted deliberately from information which had been obtained by Mr. Foxton on his trip north. He held in his hand the recommendation of Dr. Roth, who, as they all knew, had had very great experience amongst the aboriginals, and who had come to the conclusion that the provision was absolutely necessary for the protection of the young boys and girls who were often inveigled on board those boats.

He said a little while ago that he [4:30 p.m.] did not wish to enter into particulars, but he found now that it was necessary to quote what Dr. Roth, the Protector of Aboriginals, said on that subject. Dr. Roth said—

I have hitherto refused permission to males under puberty or to any aboriginal women to be on the boats, but now find that I have been acting *ultra vires*. The women are made to act as prostitutes for the crew.

He would not have read that but for the discussion which had taken place, and because a real necessity had been shown for legislation of that kind. He was sorry to be charged with not understanding the Bill, but it was not always wise to give particulars through *Hansard* in connection with proceedings that were taking place, and which the Government were *bonâ fide* attempting to suppress. He thought the clause as it stood would meet the case, and there would be no difficulty in obtaining the necessary permits. He therefore trusted that the hon. gentleman would allow the clause to pass.

HON. W. FORREST : He would withdraw the amendment with a view of inserting the words "without permit from a protector or a justice of the peace."

The POSTMASTER-GENERAL : So far as a protector is concerned I have no objection, but I object to justice of the peace.

HON. J. DEANE : Make it police magistrate.

HON. W. FORREST thought it had been suggested that a police magistrate was not always available.

Amendment withdrawn.

HON. W. FORREST moved that the following words be inserted at the end of the subsection :— "without a permit of a protector or of a police magistrate."

HON. C. H. BUZACOTT : It seemed to him that there was a considerable amount of confusion over the clause. Although he sympathised with the arguments of the Hon. Mr. Forrest, yet he feared that, if the amendment was passed, it would have an effect which he had not foreseen. The issue of a permit would allow a person to do exactly what the clause was intended to prohibit. While the discussion had been going on, he had endeavoured to discover for himself how the objections of hon. members could be met, but he really had failed to find any solution of the difficulty. He was quite sure that the amendment would go a great deal further than was intended, and that, therefore, it would be best to leave the clause as it stood. He sympathised thoroughly with what the Hon. Mr. Morehead had said about the inchoate nature of the Bill. The Bill amended an Act passed within the last two years, and it would be known to members that the greater portion of that Act had never been attempted to be enforced. Not only that, but a Minister of the Crown had stepped in, and on his sole authority had given instructions that it should not be enforced. He had intended to have spoken earlier, but the speed with which the first two or three clauses were carried through quite took him by surprise. He ought to have said what he was saying now on clause 1. If the Committee would pardon him, he would read a few words

from the report of the Government Resident at Thursday Island, who showed indisputably that the greater portion of the Act which the Bill was intended to amend had been deliberately suspended without even Executive authority. Mr. Douglas, the Government Resident, said—

As for the restriction of the sale and distribution of opium, which has been most explicitly provided for under the Act, I have already pointed out in my report of last year that the Act has been ignored, and practically repealed by the instruction issued under Executive authority by which the sale of opium has been sanctioned. The aboriginals of this portion of Australia are very little given to opium smoking—the practice can scarcely be said to exist among them. We know, of course, that it prevails inland, and that it has the worst possible effect upon the natives. The Act, however, clearly contemplated that it would be applied not only to the aboriginals, but also to “certain other inhabitants of the colony, to whom great and widespread injury is being caused by the consumption of opium.” Here, the Chinese and Malays are regular consumers of opium. The example spreads, and sometimes even contaminates Europeans. After the passing of the Act it was found that the stringent provisions of the Act were likely to make the sale and consumption of opium difficult if not impossible. The Act was exceedingly unpopular among the Chinese at Cairns, as it was likely to be. At this place the police were enabled, under the provisions of the Act, to close the opium dens, which had become the seed-plots of idleness and immorality. Sufficient pressure, however, was brought to bear upon the Executive, and the Act itself was suppressed. The collectors of Customs at the different ports were directed to invite applications for the sale of opium, and these applications were authorised on the condition that a monthly return should be made to the police of the wholesale and retail dealers.

At the present time there are two wholesale dealers in opium at this place, and there are eight retail dealers. It is needless to say that the opium dens are now comfortably established, and can set the police at defiance. Section 13 of the Act for regulating the sale and use of poisons is also repealed, so that the sale of opium is absolutely unrestricted, and this, it seems to me, demands the attention of the legislature. If it is deemed desirable that the sale should be authorised, then those portions of the Act of 1897 which refer to the prohibition of it should be repealed by the legislature, and the Executive should be relieved of the responsibilities which they have, for good reasons, I presume, taken upon themselves.

That extract would imply that the Executive had authorised the action, but on inquiry he was informed that the Executive had not authorised it in any accepted way. If they wished to suspend the Act they should make regulations which would have the effect of preventing the mischief which the Act would cause if administered rigidly, but he maintained that their proper course was to bring in a Bill to repeal those provisions, and it seemed a monstrous thing to him that they should bring in a Bill now dealing with the employment of aboriginals, and leaving the other portion of the Act absolutely untouched. He had information on the best authority that in the Western districts the aboriginals could get opium very easily, in fact more easily than they ever could before; that the Chinese distributed it in large quantities, and that no man in the Western districts could get an aboriginal to work for him because he could not pay him in opium. What he had said might not apply to the clause under discussion, but he mentioned it to show that because the legislature passed certain laws it did not follow at all that they would be carried out, and that that particular clause, if carried out arbitrarily, or without the exercise of common sense, would do a great injustice. Seeing that it would be carried out by the protectors, and that no prosecutions would take place under it unless at their instance, they might leave the matter in the hands of the Government. He did not wish to take the responsibility of obstructing the Bill, but he asserted again that it was an inchoate Bill, and one that ought to be more carefully thought out before being submitted to the legislature. The

original Act contained a clause which enabled the Government to make regulations for carrying out the Act as they thought fit, but it gave them practically uncontrolled power, and they could amend anything which they found wrong in the Act by issuing regulations. The regulation clause gave the Executive powers which he thought went far beyond the powers contained in the Act itself or intended to be contained in it. So that under the circumstances, unless they wanted to have the Bill referred back to them, it would be well to leave the clause as it stood. He had no doubt that the draftsman, however anxious to confer absolutely necessary powers on the protector, had found out that he could not do it in a short clause without giving absolutely autocratic powers, and it seemed to him that, as they did in hundreds of other cases, they would have to leave the administration of the law very much in the hands of the Executive.

HON. A. C. GREGORY: In endeavouring to frame the clause according to their desires they had got into a confused state. As the Bill stood it would be far too comprehensive, and would prevent a blackfellow from going across a ferry in a boat or going out fishing. It would be a good plan if the Postmaster-General would move that the Chairman report progress and ask leave to sit again next Tuesday, by which time members could have thought over the matter.

HON. E. J. STEVENS did not see that there was any necessity to postpone discussion of the Bill. The position was a very distinct one. The Government wanted to make a hard-and-fast regulation; the Committee thought that it should be made easier, and he thought the amendment of the Hon. Mr. Forrest met the case admirably. It would be a great hardship if black boys and girls or half-castes were prevented from travelling by water. A permit from a protector or police magistrate would meet the case. He did not see why the amendment should not be accepted.

The POSTMASTER-GENERAL: If hon. gentlemen would permit him to postpone the clause they could go on with the rest of the Bill, in which there was no contentious matter, and in the meantime they could consider the best way in which to frame an amendment.

HON. W. ALLAN thought the Postmaster-General should postpone the whole of the remainder of the Bill, as any alteration in clause 7 would probably necessitate amendments in the other clauses.

The POSTMASTER-GENERAL said that in accordance with the wish of the Committee he would withdraw his motion and move the Chairman out of the chair.

Motion withdrawn accordingly.

The POSTMASTER-GENERAL moved that the Chairman do now leave the chair, report progress, and ask leave to sit again.

Question put and passed.

The Council resumed; the CHAIRMAN reported progress, and leave was given to sit again on Tuesday next.

The Council adjourned at eight minutes to 5 o'clock.