Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 2 AUGUST 1864

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LEGISLATIVE COUNCIL.

Tuesday, 2 *August*, 1864.

Reformatory Boys.—New Parliamentary Buildings Commission (Resumption of Debate). — Matrimonial Causes Bill, read 2°.—Deceased Wife's Sister Bill.

REFORMATORY BOYS.

The Hon. J. WATTS moved,—"That a select committee be appointed, with power to call for persons and papers, and with leave to sit during any adjournment, to learn how many reformatory boys have been sent to this Colony, and by whose authority they were granted land orders; such committee to consist of the Honorable W. Wood, the Honorable H. B. Fitz, the Honorable St. G. R. Gore, and the mover." He did not wish to detain the House by any observations of a lengthy nature, but he thought the way in which he had brought the matter before the House was not liable to objection. He had been informed that those to whom the name of reformatory boys had been given were not such, but boys of an inferior class, whom it had been decided to send out, as soon as an opportunity offered, in consequence of an apprehension that they might commit crime at home. Certain allegations had been made that some of the worst kind of reformatory boys had been sent out and received land orders. He therefore thought it would be well that a committee should be appointed to enquire into the truth of those allegations.

The Hon. J. BRAMSTON did not intend to oppose the motion, but still he thought that some more cogent reasons than those advanced by the honorable gentleman should be shown before a committee was appointed. With reference to what had been stated as to the boys themselves, he (Mr. Bramston) could assert that subsequent enquiry had shown that they had been sent, not from a

reformatory school, but from an institution supported from philanthropic motives, with the idea of rescuing youths from a long career of crime. However, he thought that it was too much to send them out in batches of twenty, and should, therefore, support the appointment of the committee, whose enquiries would certainly assist in obtaining an exact knowledge of the whole of the circumstances. He might state that the Government had no official notice with reference to the class of persons referred to.

The Hon. ST. G. R. GORE cordially supported the motion, as did also the Honorable H. B. Fitz.

The resolution was put and passed.

NEW PARLIAMENTARY BUILDINGS COMMISSION (RESUMPTION OF DEBATE).

The Hon. E. I. C. BROWNE said that although he had moved the adjournment of the debate on the above subject, he had not had time since to prepare himself for entering into the debate, and he would be glad if it were taken up by some other honorable gentleman.

The Hon. J. WATTS agreed with nearly the whole of the amendment proposed by the honorable the President, but thought that the third clause in it should be somewhat modified. It was, in his opinion, an unconstitutional practice to appoint a committee to supervise the report of another committee. The report of a committee, should either be adopted, or sent back to the persons who framed it. He would propose that the matter should be left in the hands of the Government, and would move that after the word "concur" in the third clause, words should be inserted which would have the effect of empowering the Executive Government to select one of the plans furnished, viz., that of Mr. Tiffin, Mr. Stanley, Mr. Backhouse, or Mr. Ellerker, as being most eligible for the buildings, and call for tenders for the immediate erection of buildings according to the plan selected.

The Hon. ST. G. R. GORE agreed with the amendment of the honorable gentleman, but would suggest that it should be so altered as not to give the Government the power of interfering with the action recommended in the report of the commission.

The Hon. W. WOOD was of the same opinion as the honorable gentleman who had just sat down.

The Hon. F. E. BIGGE did not, from his knowledge of building operations generally, consider that the plans which had been handed round were at all of a satisfactory nature; in fact, he did not consider that any fresh buildings at all were required.

The Hon. E. I. C. BROWNE quite agreed with the two first resolutions moved by the honorable the President, but was opposed to the third; and he considered the amendment of the honorable J. Watts to be anything but an improvement.

The PRESIDENT said, that as some discussion had taken place with reference to the third resolution, he had no objection to alter it, so that the Government should not be enabled to interfere at all with the choice of the commission; but that they should be called upon at once to procure tenders for the erection of the buildings, according to Mr. Tiffin's plan.

The Hon. W. WOOD objected to the amendment. He did not think it was desirable that the Executive should be bound to one particular design.

The Hon. H. B. FITZ also objected to the hands of the Government being tied to one particular plan.

After a few observations from the Honorable F. E. Bigge,

The PRESIDENT said that it would perhaps be preferable that the resolutions should be taken *seriatim*.

The suggestion was agreed to, and the two first resolutions were adopted.

The Hon. W. Wood objected to the third, as amended by the honorable the President.

The Hon. J. BRAMSTON suggested the propriety of omitting the third resolution altogether.

After some discussion, it was agreed that the resolution should be passed, amended so that the Executive should be empowered to call for tenders upon the plans recommended by the commission, and it was further resolved that the resolutions as amended, should be transmitted to the Legislative Assembly for approval.

MATRIMONIAL CAUSES BILL.

The Hon. W. HOBBS, in moving the second reading of the above Bill, said that honorable gentlemen would doubtless remember that that was the third time the Bill had been before them. Its provisions did not therefore require much comment at his hands. He might state that it was merely a transcript of a Bill that was passed in England in 1857, and in the Colony of Victoria during 1861. It was very desirable, if possible, that the laws of the colonies should be assimilated, as nearly as possible, to those of the mother country, in order that no confusion might arise in the minds of persons going from one part of the British empire to another. A commission, composed of the greatest lawyers and master minds of Great Britain, had been appointed to draft the Bill in England, and their recommendations had all been copied into the Bill, which after all was little else than a consolidation of the laws on the subject which had previously been in existence. He did not consider that he was asking too much when he desired the Legislature to pass into law enactments which were in force in England and the neighboring colonies. The honorable gentlemen proceeded to go through the various clauses of the Bill—especially referring to clause six, which provides for a judicial separation, to be obtained on the

ground of adultery, or cruelty, or desertion, and quoted from "M'Keen's Divorce and Matrimonial Causes in Victoria." Clause eight provided for the protection of a wife's property against a husband who has deserted her, and there was no doubt but that many honorable gentlemen who had officiated as magistrates would concur in the necessity which existed for such a provision. Another important clause was clause fourteen, which provided that under certain circumstances dissolution of marriage should take place. Honorable gentlemen must be aware to what an extent desertion was carried on, and the absolute helplessness of a wife whose husband has gone beyond the seas. The other clauses of the Bill were not of a nature that he considered would provoke discussion, and he might state that any suggestions for alterations in committee would receive his utmost consideration.

The Hon. E. I. C. BROWNE said the same objection which he had urged against the Bill when it was brought in last session still existed, namely, that it was against the precepts of the Bible, in providing that divorced persons should be allowed to marry again. If the Bill merely provided for the protection of married women, he would not object to it. As it was, he should move, as an amendment, "That the Bill be read a second time that day six months."

The Hon. ST. G. R. GORE expressed his intention of supporting the motion for the second reading of the Bill.

The Hon. H. B. FITZ believed it was the duty of honorable gentlemen to legislate for the many, and not for the few, and he thought that if they carried the measure then before the House, they would afterwards be willing to cut their right hands off to undo it again. He would, therefore, support the amendment.

The Hon. J. WATTS believed that the honorable gentleman who moved the amendment was conscientious in his objection to the Bill, but still he (Mr. Watts) thought that, as the mother country and the Colony of Victoria could not but be far advanced in legislation, no disadvantage could accrue to the Colony of Queensland by following their example. He proceeded to illustrate his arguments in support of the second reading of the Bill, by quoting a case in which a woman, moving in a respectable sphere of life, had been completely impoverished by the drunkenness of her husband. The honorable member also instanced cases in which persons were living in open adultery, but who might, perhaps, by the passing of a divorce law, be able to get married.

The Hon. W. WOOD was in favor of the second reading of the Bill, but in committee he would advocate the altering of the clause providing for the dissolution of marriage, so that on no other ground but that of adultery should a marriage be dissolved.

The Hon. G. HARRIS was inclined to support the Bill, reserving to himself the right of making alterations in committee.

The Hon. J. BRAMSTON said that he had, after a great deal of consideration on the subject, at length made up his mind to vote for the second reading of the Bill. He would, however, promise his cordial opposition to a portion of the fifteenth clause, believing, as he did, that except on the ground of adultery, no divorce should be granted. The forty-fifth clause, also, he thought would provoke a great deal of discussion in committee. For his own part, he did not consider that the religious portion of the celebration of marriage was compatible with the marriage of persons who had been divorced.

The amendment was then put and negatived, and the motion for the second reading of the Bill was passed. The Bill was read a second time, and its committal was made an order of the day for to-morrow.

MARRIAGE WITH DECEASED WIFE'S SISTER BILL.

The Hon. J. WATTS moved that the above Bill be read a second time. He said that he felt some doubt as to his ability to carry his motion, but still he felt it to be his duty to propose it. It might appear to be what was called fast legislation, but still there were arguments on both sides of the question, which he trusted honorable gentlemen would well consider; and he trusted they would allow the Bill to go to a second reading.

*The Hon. W. WOOD opposed the second reading of the Bill on religious, constitutional, and social grounds. The honorable gentleman stated that, in the old Apostolic Canons, which were drawn up some time certainly during the first 300 years after Christ, any person marrying a deceased wife's sister was prohibited from ever obtaining holy orders, and was cut off from the church,—no more could be done then, by a feeble, persecuted, and unrecognised body. But when the Christian religion became a dominant state religion, in 355 A.D., a decree of Constans and Constantius declared these marriages unlawful, and the issue spurious. In the fourth century, the great Basil, writing to Diodorus, who had consulted him on the subject of these marriages, says as follows:—

"First of all we have to allege that which is of the greatest weight in such matters—the custom established amongst us, which is equivalent to a law, inasmuch as such ordinances have been handed down to us by holy men, and the custom is: if a person, at any time mastered by an impure passion, shall have fallen into a lawless union with two sisters, neither to account this a marriage, nor to receive such at all into the body of the church before that they are separated from one another. So that, even if we had nothing else to say, custom had sufficed as a safeguard of what is right."

Then, going on to speak of this kind of marriage not having been particularised in Leviticus, he says—

"How many other unclean passions are there which the teaching of devils have invented, but

the Divine Scripture hath omitted to mention, not choosing to defile its own delicacy by the mere warning of things shameful, but condemning impurities in general terms."

"But," says Basil again,—

"I maintain that this point is not passed over in silence, but that legislation hath prohibited it in the very strongest manner,—for the expression 'None of you shall approach unto any that is near of kin to him,' embraceth also this species of relationship. What can be more akin to a man than his own wife, or rather his own flesh?—'for they are no longer two, but are one flesh.' So that by means of the wife, the sister also passes into the kindred of the husband; so that as he shall not take the mother of his wife nor the daughter of his wife, because he shall not take his own mother, or his own daughter, so in like manner he shall not take his wife's sister, because he cannot take his own sister. And, on the other side, the woman shall not marry the kindred of her husband, for on either side the rights of kindred are common to both."

Such remained the law, and such the practice of the church, until the end of the fifteenth century, and even as late as half a century before that, Cardinal Turrecremata, sent by Pope Eugenius as legate to the Council of Bale, wrote thus to one who had maintained the lawfulness of such marriages :—

"We have not seen this way, on the contrary, when the King of France was reigning, Charles VII. was Dauphin; he applied that, his wife being dead, he might contract marriage with her sister. The matter was examined before me by the command of the Lord Eugenius, to whom the cause was committed, and it was judged that the Pope could not dispense *(quod non poterat Papa dispensare)*. That, supposing it had been sometimes done, should it be done by any Pope, either ignorant of the Divine law, or blinded by money which is wont to be offered for such irregular dispensations, supposing it to have been done to please men, it does not follow that he could do it rightly; the church is ruled by laws and rights, not by such acts and examples."

In addition to this it may be added that the Council of Trent, being placed in a difficulty by this decision of A. VI., and enquiring about these marriages in 1613, Estius could only find three instances. However, in 1540, 32 Henry VIII., c. 16, was passed, which provided that marriages should be only according to the Levitical decrees, and in 1603 the canon confirmed the table of prohibited degrees of Archbishop Parker. Previous to this date, Bishop Jewell, on whose authority every one will believe, wrote as follows :—

"Yet will you say, although this manner of reason be weak, and the words make little for you, thus far the reason is good enough, for these words make not against you—for there are no express words in the Levitical law whereby I am forbidden to marry my wife's sister—*ergo*, such marriage is lawful. But notwithstanding the statutes in that case make relation unto Leviticus 18, as unto a place wherein the degrees of consanguinity and affinity are touched upon at large, yet you must remember that certain degrees are there left untouched within which, nevertheless, it was never thought lawful for a man to marry. For example, there is nothing provided there by express words but that a man may marry his grandmother, or his grandfather's second wife, or the wife of his uncle by the mother's side. No more is there any express prohibition in all this chapter but that a man may marry his own daughter. Yet will no man say that any of these degrees may join together in lawful marriage; wherefore we must needs think that God, in that chapter, has especially and namely forbidden certain degrees, not as leaving all marriages lawful which he had not there expressly forbidden, but that thereby, as by infallible precepts, we might be able to rule the rest,—as when God saith, 'no man shall marry his mother,' we understand that, under the name mother, is contained both the grandmother and grandfather's wife, and that such marriage is forbidden. And when God commands that no man shall marry the wife of his uncle by the father's side, we doubt not but that in the same is included the wife of the uncle by the mother's side. Thus you see God himself would have us expound one degree by another."

On these, as well as on social and constitutional grounds, he must oppose the second reading of the Bill.

The Hon. ST. G. R. GORE combated the opinion of the honorable gentleman who moved the amendment, and mentioned, in opposition to the authorities quoted by him, the names of Luther, Whately, and John Wesley. He (Mr. Gore) would support the second reading of the Bill, although he did not think it would be much use, seeing that he did not expect it would receive the sanction of the home authorities.

The House divided on the amendment, with the following result :—

Contents, 5.	Non-contents, 3.
Hon. F. E. Bigge	Hon. J. Watts
,, D. F. Roberts	,, St. G. R. Gore
,, J. Bramston	,, W. Hobbs.
,, H. B. Fitz	
,, W. Wood.	

The amendment was therefore carried.