Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 6 OCTOBER 1914

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LEGISLATIVE COUNCIL.

TUESDAY, 6 OCTOBER, 1914.

The PRESIDING CHAIRMAN: (Hon. W. F. Taylor) took the chair at half-past 3 o'clock.

STAMP ACT AMENDMENT BILL—FERTILISERS BILL.

ASSENT.

The PRESIDING CHAIRMAN announced the receipt of messages from the Lieutenant-Governor conveying His Excellency's assent to these Bills.

PAPER.

The following paper, laid on the table, was ordered to be printed:—

Vital statistics for 1913.

ROYAL AGRICULTURAL SOCIETY OF QUEENSLAND LAND MORTGAGE BILL.

SECOND READING.

HON. C. CAMPBELL said: This Bill is similar to measures which have been asked for by many other societies, so that this is not an isolated case. We think we are entitled to a little more consideration than we have received hitherto. It has been the custom of the society to defray the cost of of all improvements to its grounds out of revenue, but now we think it is time that we should have some better buildings than we have at present, and the society has approached the Government and asked for power to mortgage a portion of its lands to enable it to put up more permanent improvements. The society has purchased some land out of revenue, but it is only proposed to mortgage the land originally granted by the Crown for show purposes, and on which the principal part of the money of the society has always been expended. We think it is only a fair thing that we should have buildings as up-to-date as it is possible for a town and district of our size to have, but we think that the cost of those buildings should be left for posterity to meet. I beg to move that the Bill be now read a second time.

Question put and passed.

COMMITTEE.

(Hon. T. M. Hall in the chair.)

Clauses 1 and 2 put and passed.

On clause 3, as follows:—

> "The trustees may mortgage the whole or any portion or portions of the said land for any sum or sums of money not exceeding at any one time the sum of five thousand pounds."

HON. F. T. BRENTNALL said that the clause practically gave to the trustees an unlimited power of borrowing. There should be some restriction placed upon the power of borrowing even for a good object, such as this undoubtedly was. As the clause stood, the trustees might go twenty times and borrow £5,000 each time. It was worth considering whether it was a prudent thing to put practically absolute powers of borrowing into the hands of any body of trustees. It was not an unusual thing to impose some sort of limitation upon such a power.

HON. A. G. C. HAWTHORN: There was something in what the Hon. Mr. Brentnall said. He understood the intention was that the total amount borrowed was not to exceed £5,000. If that was so, it was an easy matter to insert qualifying words making it clear that the total amount borrowed should not exceed £5,000. He thought it was a very good thing to pass the Bill, and he was glad to see that Toowoomba was in such a position that it felt justified in asking for power to borrow £5,000 to make improvements to its show grounds.

HON. E. J. STEVENS: Looking at the clause from an entirely business point of view, he did not see that any risk would be entailed by passing the clause, providing that the society could borrow an amount not exceeding, at any one time, the sum of £5,000. If they required more than £5,000 to improve the land thoroughly, and they could borrow it, surely they should be allowed to do so; but if the land was not worth more than £5,000, they would not be able to borrow more than that sum. It was a business transaction between the trustees and those who lent them the money, and lenders would not be likely to lend more than the value of the land.

HON. A. H. BARLOW: It appeared to him that the objection of the Hon. Mr. Brentnall was that the society could borrow £5,000, and, after paying it off, borrow another £5,000.

Hon. F. T. BRENTNALL: They could borrow £5,000 on top of the first £5,000.

HON. A. H. BARLOW did not think the clause would allow them to do that. The only way to amend the clause to meet the views of the Hon. Mr. Brentnall would be to put in the words "not exceeding in the whole the sum of £5,000."

Hon. F. T. BRENTNALL: That would make it perfectly safe.

HON. P. MURPHY: It would be a pity to limit a society in one of the most important inland centres in Australia to the sum of £5,000 to improve their show grounds. A society such as the Toowoomba Royal Agricultural Society wanted to have their buildings and grounds right up to date, and if there was any limitation at all, it should be for a very much larger sum than £5,000. If the clause was to be amended, the Committee should increase the amount to a sum not exceeding £20,000.

HON. A. DUNN: It seemed to him that they should have no hesitation at all in granting the society permission to borrow as much as could be borrowed on the property. The value to that property had been given by the people of Toowoomba, and he did not see that the Committee should put any further restrictions upon them than that which was set forth in clause 5, which specified the purposes to which the money borrowed could be applied. He agreed with the Hon. Mr. Stevens that it was quite safe to allow the borrower and the person from whom the society borrowed to fix the amount, and so long as the money was properly applied there was no need to limit the amount.

HON. P. J. LEAHY did not think it made much difference whether the Committee passed the clause as it stood or amended it in the direction indicated. It was very probable that the people of Toowoomba connected with the society knew the provisions of the Bill before it was introduced, and they were quite satisfied to limit the amount to £5,000. If that was so, he did not see any reason why the Committee should extend the amount beyond the £5,000, which the society thought was sufficient for their requirements. If they wanted more than £5,000, he (Mr. Leahy) did not object to them getting it, because, as pointed out by the Hon. Mr. Stevens and others, nobody was likely to advance more than the property was worth. The thought struck him that, if the amount were increased, some injustice might be done to the members of the society. If the trustees were given power to borrow a large sum of money, and the value of the land and buildings was not sufficient to cover the amount borrowed, would the common law come in and the individual members of the society be held liable? If there was no possibility of the individual members being held liable, then no harm could be done by increasing the amount.

HON. W. STEPHENS read the clause to mean exactly the opposite to what was stated by the Hon. Mr. Brentnall, who said the society would be able to borrow an unlimited amount. The way he (Mr. Stephens) read the clause was that the society must not have the property mortgaged at the one time for more than £5,000. If it was a fair thing to allow the society to borrow money, and they could get anyone to lend them £10,000, why not let them get it, as they were compelled to see that the money was properly spent? It was not a personal matter at all; it was for the benefit of the district, and he had no doubt that, if they borrowed £5,000 and erected substantial improvements, the society would go ahead, and after a year or two they would have to come to Parliament and ask for another £5,000, and he was not so sure that it would not be as well to give them that power at once.

HON. C. CAMPBELL: The society had asked for a limit of £5,000, and he would not like to go beyond that limit. If things were prosperous, and it was necessary to get more money, it would be an easy matter to come to Parliament and ask for power to borrow another £5,000. It would be just as well to let the Bill go through as printed.

Clause put and passed.

The remaining clauses of the Bill and the preamble were put and passed without discussion or amendment.

The Council resumed. The ACTING CHAIRMAN reported the Bill without amendment, and the report was adopted.

The third reading of the Bill was made an Order of the Day for the next sitting of the Council.

WORKERS' DWELLINGS ACTS AMENDMENT BILL.

MESSAGE FROM ASSEMBLY.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly, intimating that the Assembly had agreed to the Council's amendments in this Bill.

BRANDS ACTS AMENDMENT BILL.

RETURNED FROM ASSEMBLY.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly, returning this Bill without amendment.

FACTORIES AND SHOPS ACTS AMENDMENT BILL.

FIRST READING.

On the motion of HON. A. H. BARLOW, this Bill, received by mesage from the Assembly, was read a first time.

The second reading was made an Order of the Day for the next sitting of the Council.

AGRICULTURAL BANK ACT AMENDMENT BILL.

COMMITTEE.

Clauses 1, 2, and 3 put and passed.

On clause 4—"Amendment of section 16"—

HON. A. H. BARLOW moved the omission on lines 24 to 26, of the words, "has been entirely free from prickly pear for at least two years prior to the date of application for the advance," with a view to inserting the words, "is entirely free from prickly pear at the date of application for the advance." The clause as it stood was too stringent, and would discourage a man from clearing his land. The trustees had an absolute discretion as to whether they would advance money or not, and he could see no reason for postponing an advance until the land had been free of prickly pear for two years.

HON. P. J. LEAHY was not particularly opposed to the amendment, but he thought they were getting very near the danger line. He had often seen land that [4 p.m.] appeared clear of prickly pear at the particular moment, but there was a very healthy crop of prickly pear on it within six or twelve months. He recognised that the clause as it stood might inflict hardship on a very deserving class of selectors, and one hon. member suggested that they might reduce the time from two years to twelve months. That would be an improvement, but he thought they were going rather far in providing that an advance might be made if the land was clear of prickly pear at the time the application was made. On the one hand, they sympathised with the prickly-pear selector and desired to help him, provided the State did not lose; but on the other hand, there was the danger, if they accepted the amendment, that the State might lose. If the Government were prepared to face that danger, he did not know that it was for him to press the matter. He merely rose for the purpose of drawing attention to it.

Amendment (*Mr. Barlow's*) agreed to.

Clause, as amended, put and passed.

On clause 5—"Amendment of section 17"—

HON. E. W. H. FOWLES said he did not know whether the same difficulty presented itself to other hon. members to understand what was meant by that clause. The first paragraph read—

"In the third paragraph of subsection one of section seventeen of the principal

> Act, the words 'twelve shillings' are repealed, and the words 'thirteen shillings and four pence' are inserted in lieu thereof."

Could anybody having that before him know what they were legislating about without having the Act which it was sought to amend before him? It took him about twenty minutes to turn up the statutes and find out for himself what it was proposed to amend, and he suggested that when they were proposing to amend sections in Acts that the whole of those sections should be printed in the Bills under consideration, so that hon. members would see exactly what they were doing. The section 17 referred to in the clause was originally section 17 of the principal Act of 1901, but in that section there was no third paragraph to subsection (1). On referring to the index of the statutes, however, he found that there was an Act of 1904 which amended in a very mysterious way section 17 of the Act of 1901, and put in another paragraph, which was to be found in another volume of the statutes, in just as mysterious a way. That section inserted the words "twelve shillings." They had to read an Act of 1905 into an Act of 1901. Subsection (2) of section 3 of the Act of 1904 read—

> "No advance under the principal Act, and no advance under this Act for any other purpose than the purposes last-mentioned shall exceed 12s. in the pound of the fair estimated value of the holding with the improvements made and proposed to be made thereon."

He submitted it would expedite the business if, in a case like that, the sections they were asked to amend were put before them in a printed form, so that they would know the exact effect of what they were legislating about.

HON. A. H. BARLOW: That puzzled him quite as much as it had the hon. member; but, if he looked at the statutes for 1911, he would find a Consolidated Act in which was incorporated the particular paragraph which it was now sought to amend. He would like to see a brief attached to every amending Bill with the sections printed in full which it was proposed to amend. (Hear, hear!) He had often been puzzled himself by these amending clauses, and he quite agreed with what the hon. member had said.

HON. A. G. C. HAWTHORN: This matter had been spoken of before, mainly by the Hon. Mr. Murphy, who on several occasions suggested that something should be done in the direction indicated by the Hon. Mr. Fowles. They wanted their legislation to be as simple as possible. He noticed in the Railless Traction Bill, and in one or two other Bills, that there was a practice arising of putting in provisions in schedules instead of embodying them in the Bill. He thought that was a mistake. They ought to make the schedules as small as possible and make the Bill itself as full as possible.

HON. P. MURPHY was in entire sympathy with the sentiments expressed by the Hon. Mr. Fowles. They were very often asked to make amendments in Acts previously passed, and they had not always time to look up the principal Act. He had pointed out on several occasions that there were only one or two copies of the statutes on the table. One or two members might look at them; but if hon. members generally wished to consult them, they would require to have as many copies as there were members in the Chamber, and that would be very inconvenient. The Minister said he was in sympathy with the remarks of hon. members, but he made no promise that he would see that anything was done in the matter.

Hon. A. H. BARLOW: I cannot promise what other Ministers will do.

HON. P. MURPHY: If the hon. gentleman would assure them that he would recommend the Government to do something in the matter, it would be something.

Hon. A. H. BARLOW: I certainly will recommend it to the Cabinet.

HON. P. J. LEAHY: At the commencement of the Fish and Oyster Bill there was a kind of summary of the contents of the measure showing the alterations that were proposed to be made in the existing law and also the additions that were to be proposed. Remarks were made by several hon. members which showed how highly they appreciated that summary. If a similar thing were done in this Bill and in all other Bills, it would entirely meet the objection raised by the Hon. Mr. Fowles, and it would not cost a great deal of money. Indeed, in a short Bill like this, it would probably be just as simple if they repealed the existing law and then re-enacted certain portions of it, together with the additions which were proposed. On several occasions he had experienced the difficulty mentioned by the Hon. Mr. Fowles and others. Sometimes he had the time and the inclination to look up the principal Act, but probably more frequently he did not take the trouble to do that, and he presumed other hon. members were just the same, and followed the line of least resistance. They were supposed to legislate with the full knowledge of what they were doing, but how were they going to do that if they did not know what it was they were amending? It would cost only a paltry amount, and he was glad to hear the Hon. Mr. Barlow intimate his intention to recommend to his colleagues that they should reprint the sections which it was proposed to amend by any Bill.

HON. F. T. BRENTNALL: From the remarks of the Hon. Mr. Fowles, it must be clear that if it took that hon. member, skilled in the law as he was, so long to find out what he wanted to find out by wading through several Acts of Parliament, it would take the common layman very much longer, even if he had not to go and pay a fee to some lawyer to find it out for him. If they were legislating for the public benefit, they should give the public the best kind of legislation, and give it to them in the simplest form. They had probably all passed through similar experiences to those which had been described by the Hon. Mr. Fowles. It was a difficult thing for the layman to follow from one statute to another to ascertain what was being done, and he thought it would be better to wipe out these references to previous Acts and insert in the Bill under consideration the particular features of the earlier statutes with which it was proposed to deal. Surely that could be done without very much difficulty. He hoped some good would come out of the discussion, and then they would feel indebted to the Hon. Mr. Fowles for having raised the question.

HON. A. H. WHITTINGHAM: The Committee was indebted to the Hon. Mr. Fowles for bringing the matter up, and it must be

gratifying to the hon. member to hear from the Hon. Mr. Barlow that the matter would be looked into. Just shortly before the Hon. Mr. Barlow moved what was probably a most important amendment, but he (Mr. Whittingham) did not know what the amendment referred to, and he thought they were entitled to have a copy of the amendment or of the section which it was proposed to amend before them to show what they were to consider. He was very glad to have the promise of the Minister that he would lay the matter before his colleagues.

HON. E. W. H. FOWLES pointed out that the position was a little more intricate even than he had suggested, as the third paragraph of subsection (1) of section 17 of the principal Act of 1901, which they might be supposed to be amending at the present time, had already been repealed by section 6 of the Consolidated Act.

Hon. A. H. BARLOW: That is part of the consolidation.

Clause put and passed.

Clauses 6 to 10, both inclusive, put and passed.

On clause 11—"Amendment of section 39"—

HON. P. J. LEAHY said he would like the Minister to explain what they were asked to amend in subsection (iv.) of section 39 of the principal Act. Were they amending the power which at present existed to make regulations? What were they committing themselves to in passing the clause?

HON. A. H. BARLOW: Under section 39 of the Consolidated Act, the Governor in Council had power to make regulations for various purposes, and under clause 11 of the Bill they were giving the Governor in Council additional power to make regulations providing for the rate of insurance and the form of insurance policies.

Clause put and passed.

HON. A. H. BARLOW, in moving the Chairman leave the chair, said that he would certainly submit to his colleagues a formal memorandum that a sort of brief should be affixed to each Bill so that the Council could see what they were asked to do. The thing had bothered him for a quarter of an hour until he got hold of the Consolidated Act.

The Council resumed. The ACTING CHAIRMAN reported the Bill with an amendment, and the report was adopted.

The third reading of the Bill was made an Order of the Day for the next sitting of the Council.

FISH AND OYSTER BILL.

COMMITTEE.

Clauses 1 to 28, both inclusive, put and passed.

On clause 29—"Selling oysters under specified size"—

HON. A. H. PARNELL: That clause provided a penalty if any person removed oysters the shells of which were [4.30 p.m.] less in length than 2 inches. Did that refer to rock oysters or only to cultivated oysters, as the shells of rock oysters generally measured less than 2 inches?

The ATTORNEY-GENERAL (Hon. T. O'Sullivan): The clause merely re-enacted the present limitation with regard to oysters, and did not make any distinction between rock oysters and other oysters. It vested the power to discriminate in the Governor in Council, who could make the size more or less than 2 inches, and could discriminate between one kind of oyster and another. He thought all the power that was necessary to meet the point raised by the hon. member was to be found in the clause.

HON. A. H. PARNELL said he was quite satisfied with the explanation, because he took it that the inspector who had to administer the Act would have a very wide discretion and that discretion would be used wisely.

Clause put and passed.

Clauses 30 to 33, both inclusive, put and passed.

On clause 34—"Persons unlawfully in possession of oysters"—

HON. A. DUNN moved the omission in line 40 of the word "ten" with a view of inserting the word "fifty." It was felt by the licensees of oyster banks that they were insufficiently protected. Oyster-pilfering obtained to a very large extent. One licensee in Wide Bay within the last six months had lost somewhere about £300 worth of oysters from his banks. In July of last year he took up one oyster bank on which it was certified by the Inspector of Fisheries that there were some sixty bags of oysters. He expected to harvest those oysters about the present time, but he had been advised by an officer of the Inspector of Fisheries that there were no oysters there now. That alone was a loss of about £100 to him. It was almost an impossibility to obtain a conviction, and it was felt that there should be a very severe penalty when guilt was sheeted home to anyone. If a man refused to account for oysters found in his possession, it might reasonably be assumed that he was guilty of stealing them; and, if he was guilty of stealing them and was not willing to give an account of where he obtained them, a penalty of £50 was not too heavy.

The ATTORNEY-GENERAL would like to take the sense of the Committee as to whether it was desirable to increase the penalty or not. He would like first of all to draw attention to some rather stringent clauses in the Bill dealing with the subject of oyster-stealing. Clause 32 provided that oysters within the limits of any oyster ground under lease or license were to be the absolute property of the lessee or licensee, and were to be deemed to be in the actual possession of the lessee or licensee. Clause 34 was a new provision so far as the oyster law of Queensland was concerned. At present it was not an offence for a person to have oysters in his possession for which he could not account. The clause under discussion, however, would alter the law in that respect, so that a person having oysters in his possession for which he could not account could be fined £10. Of course, if he could be charged with stealing oysters, he could be convicted under the Code, section 390 of which defined, amongst things capable of being stolen—

> "Oysters and oyster brood . . . . capable of being stolen while in oyster beds, layings, or fisheries, which are the

property of any person, and which are sufficiently marked out, or are known by general repute as his property."

Then section 398 of the Code provided that—

"Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment with hard labour for three years."

So that, under the present law, the position was, that if it could be proved that a man had stolen oysters, he could be convicted and sentenced to imprisonment with hard labour for any period not exceeding three years. That seemed sufficiently drastic. As the Hon. Mr. Dunn had pointed out, there was very often a difficulty in getting sufficient evidence to obtain a conviction. Oysters could not be identified as having been stolen from any particular bank, and it was therefore thought advisable to insert a clause providing that if a man had oysters in his possession for which he could not account, he could be convicted, and the penalty for the offence was fixed at £10.

Hon. A. G. C. HAWTHORN: It changes the onus of proof.

The ATTORNEY-GENERAL: The clause was inserted for the purpose of dealing with cases which would be cases of larceny if the offence could be proved. But the offence could not be proved, because oysters could not be identified. If the Committee thought that the Hon. Mr. Dunn had made out a case for increasing the penalty to £50, he would not oppose the increase; but looking at all the drastic provisions they had in the Bill already to deal with oyster-stealing, he was doubtful whether the penalty should be increased. He would be glad if hon. members would assist him with their views on the matter.

HON. A. H. WHITTINGHAM said he was, unfortunately, unable to be present when the Hon. Mr. Dunn was speaking, but he had been asked by one of the largest licensees in the oyster trade to move an increase in the penalty for stealing oysters. That seemed to be a very common practice. Men stole oysters and got off with a very small penalty, and then they went and committed the offence again. He might be allowed to quote one or two statements from some correspondence which had been sent to him. The writer said—

"I advocate raising the minimum fine and giving the bench power to inflict imprisonment, in addition, also, to deprive persons convicted of stealing from obtaining a renewal of their licenses for bank or working. Under the present Act, oyster thieves, when convicted have been fined sums as low as £1, when they may have stolen oysters greatly exceeding in value this amount."

That was no penalty at all. He further said—

"On one of my banks in Sandy Straits I lost 100 bags of oysters since last December. These I value at 20s. a bag. In the Burrum River oyster thieves were caught in the act of taking oysters from a dock after the oysters had been gathered and were ready for bagging up. At the time they had a stolen fishing net in their boat, and all they were fined was £5."

Then, here was a copy of a letter sent by the subinspector of fisheries, Maryborough, to a lessee—

"I beg to state, with reference to Bank No. 460 in Burrum, that when it was marked in July, 1913, there were at least sixty bags of young oysters on it which would now be three parts grown."

A later report of the Inspector of Fisheries, Maryborough, regarding that bank, said—

"All the oysters that were on it when marked in July, 1913, had disappeared."

The owner of the bank said that he had not removed the oysters. He (Mr. Whittingham) was not interested in the oyster trade, and he did not know how the stealing was done, but he certainly thought that a severe penalty was necessary.

HON. P. J. LEAHY did not think there was any new principle in the clause.

The ATTORNEY-GENERAL: It is not a new principle, but it is new law in connection with oysters.

HON. P. J. LEAHY: If a man had meat or hides in his possession, he could be called upon to account for them; and he could not see why he should not equally be called to account if he had oysters in his possession. He recognised that there was a great difficulty in identifying one oyster from another. There was no question that there had been a good deal of oyster-stealing going on, and he did not think it was any part of their duty to make the punishment of transgressors too light. Penalties were generally too light. Another objection he had was that there was no minimum penalty provided. The Hon. Mr. Whittingham mentioned fines of £1 having been imposed. That was no deterrent to the man who wanted to steal oysters. He might steal oysters worth £5 and only have to pay a fine of £1. He was not sure that £50 was not somewhat too drastic. He would be inclined to go as far as £25, but he thought £10 was inadequate, and he also thought there should be some minimum, say £5.

HON. F. T. BRENTNALL: Clause 27 provided that, if a person was found taking away oysters from any oyster ground not under lease or license, he was liable to a penalty not exceeding £20.

Hon. A. DUNN: That would only be stealing from the Crown. (Laughter.)

HON. F. T. BRENTNALL: Stealing "from any oyster ground not under lease or license." Of course, if it was from freehold land, it would be a different thing; but, in clause 34, it was provided that, if a man was found in possession of oysters—he was not seen stealing them—and refused to account for them, or was unable to account for them, he was liable to a less penalty than the other man who had taken oysters away and about which nobody knew anything. As far as his (Mr. Brentnall's) perception went, the offence under clause 34 was quite as grievous as the one under clause 27, and there should, at any rate, be an equal penalty in the two cases. In the case of clause 34, there should be a minimum penalty of £5, and a maximum penalty not exceeding £20. To make a distinction of £10 between the two offences was drawing a very invidious distinction.

HON. A. G. C. HAWTHORN said a penalty of £50 would not be out of the way when they took into consideration clause 35, which provided that any person who burned oyster shells or collected oyster shells below high-water mark was liable to a penalty not exceeding £50. It seemed to him that stealing oysters was a much greater crime than the burning of oyster shells.

The ATTORNEY-GENERAL: There may be some special reason for that.

HON. A. G. C. HAWTHORN: The report of the Fisheries Committee said—

> "Considerable difficulty is experienced in getting convictions for breaches of the Act in the direction of oyster-thieving, which it is alleged is common throughout the oyster districts. When a conviction has been obtained, the inadequacy of the punishment is apparent, as in one case brought under the notice of the Committee the value of the oysters stolen was at least ten times the amount of the fine inflicted, and the cost to the lessees of working up a prosecution amounted to £40."

It was a fair thing, if a man was caught stealing oysters, that he should be made to pay a pretty heavy penalty; and if the maximum penalty was fixed at £50, it would act as a deterrent far more than if the penalty was fixed at £10 or £20.

HON. A. DUNN: It would be better to provide a penalty of £50 in connection with that clause, because, if a person was found in possession of oysters, he could get off with a £20 fine by stating that he had taken them from a bank not under license or lease. If he could not show that they were taken from such a bank, or would not tell where he had got them, then it would be assumed that he had taken them from a leased bank, and he would be liable to the heavier penalty.

The ATTORNEY-GENERAL thought the suggestion of the Hon. Mr. Brentnall to make the penalty £20 would be the best way to meet the case. As the Hon. Mr. Dunn had pointed out, if a man was charged with having oysters in his possession for which he could not account, the penalty under clause 27 was only £20, and he could very easily give an explanation that he had taken the oysters from some Crown land, so that making the penalty more than £20 in clause 34 would be asking too much. As to putting in a minimum penalty, that was a very dangerous thing to do, and the policy of a minimum penalty had been practically knocked on the head by the Justices Act. A man might not know he was doing any harm in taking oysters from Crown land. He might take a dozen, and an inspector might catch him with the oysters in his possession, and he would not be able to give a very satisfactory account. He might even in his fright tell a lie, and under such circumstances it would not be a reasonable thing to take away the discretion of the justices in the matter of inflicting a minimum penalty.

HON. C. S. McGHIE: The difficulty hitherto was to find the man who had stolen oysters. Whatever they made the penalty, a discretion must be left with the magistrate who was trying the case, because, if the magistrate thought a £5 or a £50 penalty was not sufficient, he could commit the man for trial. Hon. members would recognise the difficulty in finding the thief where there were forty or fifty miles of banks, and no one going near those banks for weeks at a time; but if they fixed a minimum penalty, there might be a considerable amount of injustice done.

Hon. P. J. LEAHY: How much would you make the maximum?

HON. C. S. McGHIE: You could make it £50 if you liked, but the magistrate before whom the case was tried was the best judge as to what the penalty should be.

HON. B. FAHEY did not think in the whole range of dishonest practices in Queensland there was anything more difficult to sheet home than the stealing of oysters, and it must be remembered that in Queensland to-day there were men who made their living by stealing oysters—men who went at night to the beds, probably the wetter and the darker the night the better—and stole bags full, and made a very profitable living in that way. Then there was another class of oyster-stealer, who became a lessee, and took an oyster bed with oyster banks on either side, which had been considerably developed and improved. That man by means of a rake raked oysters from the beds on either side on to his own. One instance was known where a man sold eighty bags of oysters in one season, and it was known that at the beginning of the season he had not sufficient oysters on his bank to fill forty bags. Anyone who knew anything about the facilities there were for stealing oysters would not object in the least to a penalty of £50, and he would certainly support a minimum penalty of £20, because when any oyster thief was caught it was such a difficult thing to obtain a conviction. Oysters were generally cultured in very remote places, and a man would have stolen probably £100 worth before being caught. The Committee would be acting very [5 p.m.] wisely if it took steps to protect men who were honestly devoting their time and their money to the cultivation of this industry. He had much pleasure in supporting the amendment, and he hoped that the sense of the Committee would be in favour of it.

HON. P. J. LEAHY: The Attorney-General said that if they fixed a minimum penalty in the clause, it would not have any effect, because the Justices Act contained something to the contrary. If he knew anything about it, the latter Act always amended anything which existed prior to it; and if they chose to insert a penalty in the clause, he took it that it would override anything in the Justices Act. The next question was what number of oysters would it be necessary for a man to have in his possession to become liable to a penalty? He took it that he might have one oyster in his possession without incurring any danger of being fined; but if he had two oysters in his possession he might be fined as much as £50. Speaking in all seriousness, there would be some sense in having a limit as to the number of oysters; but it would be making a farce of legislation if they provided that a man who had two oysters in his possession and was not willing to tell where he got them should be liable to a fine of £50. On the other hand, he recognised the difficulty of saying how many oysters a man might take without breaking the law. He left the matter to the in-

genuity of the Attorney-General; and if the hon. gentleman could not see his way out of it he (Mr. Leahy) would not press the matter any further.

The ATTORNEY-GENERAL: There had been a good deal of discussion over the amendment, which was a comparatively small matter. The question was whether hon. members were in favour of a penalty of £20 or one of £50. Personally, he was willing to accept £20, the amount suggested by the Hon. Mr. Brentnall. So far as he could see from a superficial glance at the Bill, there were only two penalties imposed—£20 and £50—and the question was which of the two would be the more suitable in that case? He understood the Hon. Mr. Dunn would not accept £20, but wanted to press his amendment.

HON. W. V. BROWN did not think they should insert any minimum penalty, because that would be introducing a principle quite foreign to their legislation. He agreed with the Attorney-General that a penalty of £20 would meet the case, and he hoped the Hon. Mr. Dunn would accept the suggestion and alter his amendment accordingly.

HON. A. DUNN asked leave to withdraw his amendment for the purpose of substituting £20.

Amendment (*Mr. Dunn's*), by leave, withdrawn.

HON. A. DUNN then moved the omission of the word "ten," in line 40, with a view of inserting the word "twenty."

Amendment agreed to.

Clause, as amended, put and passed.

On clause 35—"Disturbing leasehold or oyster beds: dealing with diseased oysters; burning oyster shell, etc."—

HON. A. H. PARNELL said the maximum penalty for burning oyster shells for any purpose or collecting or obtaining oyster shells below high-water mark was £50. A large number of people collected oyster shells and used them for a good many purposes. He always had a large quantity of oyster shells on his own premises, and he burned them and used them for a variety of purposes. He would like to know the object in fixing such a high penalty.

HON. W. STEPHENS understood that the clause referred to the collection of oyster shells on the beach where the tide ebbed and flowed. Licensees of oyster banks collected stones, broken bricks, and pottery, old oyster shells and that sort of thing, and cast them into the sea because the young oysters attached themselves very readily to them. He thought the object was to prevent people removing material to which young oysters were attached.

The ATTORNEY-GENERAL quite agreed with the explanation given by the Hon. Mr. Stephens. Under the present law the burning of oyster shells was an offence. What was aimed at by the clause was to prevent the taking away of oyster shells to which young oysters might have attached themselves. The removal of oyster shells from oyster beds or from below high-water mark was considered detrimental to the industry. In any case, the clause was practically a re-enactment of the present law, and the penalty was only the maximum.

HON. W. V. BROWN thought the subclause was framed in rather a curious manner, because it said: "Burns oyster shells for any purpose." Was it intended that oyster shells should not be burned in Toowoomba, but must be brought back and put into the sea? Years ago oyster shells were burned to make lime, and he did not see why people should not be allowed to burn them for lime when they were of no use for any other purpose.

The ATTORNEY-GENERAL: They must not be burned, because it is injurious to the oyster industry.

HON. W. V. BROWN: Once the oysters were extracted from the shells and the shells happened to be in inland towns, no harm could be done by burning the shells. He supposed there were tons of oyster shells in Brisbane at all times.

HON. F. T. BRENTNALL said that he had seen people—and years ago he rather enjoyed the luxury himself—make a fire on a small island, and put oysters on a plate over the fire until the warmth of the fire opened them, and then the oysters were cooked. He never found oysters more delicious than when cooked in that way. If that could be termed burning oyster shells, then the penalty for doing that was £50.

The ATTORNEY-GENERAL: That would not be burning oyster shells—it would be cooking oysters.

HON. A. DUNN: How would the clause apply to destroying garbage by incineration, if they took oyster shells and threw them into the furnace?

The ATTORNEY-GENERAL: It would probably be held by any intelligent bench that the clause did not apply.

HON. P. J. LEAHY said he was at Cleveland some time ago, and he saw a big pile of oyster shells at one of the hotels. They knew that very good lime was made from oyster shells, but that paragraph seemed to prohibit the burning of oyster shells anywhere, and he thought that should not be allowed.

The ATTORNEY-GENERAL said that the destruction of large quantities of oyster shells for the purpose of converting them into lime had been found to be detrimental to the oyster industry, and it was the intention of this legislation to stop that. If a man had a large quantity of oyster shells on his land and burned them to convert them into lime, he would be committing an offence under the clause.

HON. P. J. LEAHY: There was a number of collections of shells such as he spoke of at Cleveland. Under the existing law, there was no power to compel anyone to throw those shells on the beach or into the water so that young oysters might attach themselves to the shells. Then, again, it was possible to make good lime by grinding the shells, without burning them at all. If the shells could be converted into lime without burning, it would not be an offence under the clause, and that was an absurd distinction.

The ATTORNEY-GENERAL: We can prohibit grinding oyster shells, too.

Clause put and passed.

Clauses 36 to 46, both inclusive, put and passed.

On clause 47—"Lessee or licensee convicted to lose license"—

HON. A. DUNN said the lessees of oyster beds thought that they were not sufficiently protected against those who stole oysters, and they claimed that if no exception was made in regard to any class of stealing where the difficulty of obtaining a conviction was great, then the penalty should be great when the thief was caught. They held that the penalty for stealing oysters was not to be compared with the penalty for stealing cattle, where it was so much easier to trace the thief, and the penalties for oyster-thieving in the past had been very much lighter than those attaching to ordinary stealing. If the Committee could see its way to make the clause much more drastic than it was, the oyster lessees felt that it would be for the good of the industry. The honest oysterman had nothing to fear by that being done, but would be pleased, because he would then feel that he was likely to reap the reward of his labour when harvest time came. There were men who set out culture on oyster banks, staked the banks and fenced them round to protect them from the oyster fish, and then kept men cruising about looking after their various banks, and they expected in about three years' time to reap their harvest; but it was not an uncommon thing for them to find, after the lapse of that time, that half their oysters had been taken. It was held by some of those who were thoroughly familiar with the industry that, unless the thief was captured in the act of stealing, it was almost impossible to get a conviction. It was also a fact that there were some people who took a lease or a license for oyster fishing simply as a cloak to enable them to poach on other people's property. That should certainly be prevented, and, when a person was found guilty of plundering his neighbour's property, he should no longer be allowed to hold a lease or license, or, at any rate, his license should be cancelled for some time. As he considered that anyone found stealing oysters should cease to be a licensee, he moved the deletion on line 18 of the words "of an offence against this Act, or." He also proposed to move the deletion of the words "be liable, at the discretion of the Minister, to have his lease or license cancelled in addition to any other punishment that may be inflicted upon him," with the view of inserting the following words:—"have his lease or license cancelled and be liable to imprisonment for a term not exceeding three years, and or be liable to a penalty of £100. In like manner any person not being the holder of a lease or license who has been so convicted shall be liable to imprisonment for a term not exceeding three years, and or be liable to a penalty not exceeding £100."

The ATTORNEY-GENERAL did not think it would be wise to accept the amendment. The clause, in effect, provided that in the event of any offence against the Act, or of stealing fish or oysters—which was not an offence under the Act, but an offence under the Code—the Minister had the discretion to cancel the license. The hon. member wanted to strike out the reference to what he evidently considered trivial offences under the Bill, and make the clause only apply to stealing, and he also wanted to take away the Minister's discretion as to cancelling the license, so that, if a man was convicted of stealing under the Act, the Minister would be forced to cancel his license. The reason given for that was that it was hard to get a conviction in cases of oyster-stealing, and therefore the hon. member wanted to make an example of any man who was convicted. That kind of severity always defeated its own object. If the penalty, on conviction, was that the man must necessarily lose his license as well as suffer a term of imprisonment, the probabilities were that no convictions would be got. The penalties for stealing oysters were just as drastic as the penalties for stealing anything else. There were certain exceptions to the general rule; for instance, cattle-stealing and some other things were specialised, and a higher penalty provided. But to provide that a man's license must be cancelled, no matter how trivial the offence might be—a man might only steal one or two oysters—would be going altogether too far, and would be detrimental to the reputation of the Council as a moderate and reasonable House. It would be panic legislation of a very bad kind, and he therefore regretted he could not accept the amendment.

Hon. W. V. BROWN: What punishment would an oyster thief be liable to?

The ATTORNEY-GENERAL: Under the Code he would be liable on conviction to three years' imprisonment, if the judge wished to inflict it; but, of course, the judge could inflict a lesser term of imprisonment. The amendment suggested by the Hon. Mr. Dunn cut out the discretion of the Minister to cancel licenses in the case of any offence under the Bill, such as resisting an inspector or burning oyster shells, and many other offences a man might be convicted of under the Bill. In all those cases the Minister had the option of cancelling the license, and he also had the option in the case of a man stealing oysters; and the reason that stealing oysters was separated from the other offences was that stealing oysters was not dealt with under the Bill, but under the Code. He was quite certain that the amendment foreshadowed by the Hon. Mr. Dunn had not been drafted by the Parliamentary Draftsman, because it repeated what was already the law as to making a man liable to imprisonment for three years for stealing.

Hon. A. DUNN: I want to make it more certain.

HON. P. J. LEAHY was quite sure they all sympathised with the object the Hon. Mr. Dunn had in view, but it was quite another thing whether they agreed with the amendment. As the clause stood, the Minister had power to cancel the license of any man for any one of a number of offences; but if the amendment were carried the license could only be cancelled for one thing. It seemed to him that it would be in the interests of honest people to allow the clause to stand as printed. Was it not a greater protection to the community if the Minister had power to cancel a license for any one of half a dozen offences than only to have power to cancel it for one of them? In many instances no offence could be proved, and yet in such instances the offence might be worse than in the case of a man stealing one or two oysters. In the case of stealing it might

only be a first offence, and the offender might not be half as bad as a man found with oysters in his possession for which he could not account, and yet the license of the latter man could not be cancelled. If he thought the amendment would have the desired effect he would be glad to support it.

HON. E. W. H. FOWLES: This was a most important clause, and one that should not be passed in a hurry. So far from the amendment being too drastic, it was hardly drastic enough under the circumstances.

[5.30 p.m.] They were dealing in that clause not with ordinary picnic parties, who did not know the law and who might be innocently convicted, but with a man who held a lease or a license, and who knew very well what the lease or license contained, and who was supposed to know the law. They were dealing also with a man who was in rivalry with his neighbour on the adjoining oyster lease; and, unless they imposed a sufficient penalty against oyster stealing by lessees and licensees, they would open the gates for any man to ruin his neighbour. Under section 398 of the Code, any person who stole anything capable of being stolen was guilty of a crime, and was liable, "if no other punishment was provided," to imprisonment with hard labour for three years. The punishment provided in this case was only cancellation of the license.

The ATTORNEY-GENERAL: That is not a punishment within the meaning of the Code. It is at the discretion of the Minister.

HON. E. W. H. FOWLES: It was a liability to a punishment in the same way as the offender was liable to punishment by a magistrate. A licensee would regard the cancellation of his license as a form of punishment. It is termed "punishment" in this very clause. Compare such punishment as the cancellation of a license, at the discretion of the Minister, for stealing fish or oysters with the punishment inflicted for stealing in other cases. For stealing cattle the penalty was imprisonment for seven years. Who would say that it was not harder to steal cattle than to steal oysters? Stealing cattle was a fairly difficult thing to do at the present time. Stealing oysters was as easy as stealing blackberries by moonlight. It was easy to steal oysters and hard to find out the thief. Where it was easy to steal and hard to find out, he submitted that the Committee should not make it easier by imposing too light a penalty. For stealing any property of the value of £5 from a dwelling-house, under the Code, the penalty was up to seven years' imprisonment. They were only asking for a penalty of £20 for oyster-stealing, where the thief might ruin a business that was worth thousands of pounds. If a thing was stolen from any kind of vessel or vehicle or place of deposit, if a thing was stolen from a public office in which it was deposited or kept, or if the offender, in order to commit the offence, opened any locked room, box, or other receptacle by means of a key or other instrument, he was liable to imprisonment with hard labour for seven years. If a man robbed an oyster bank and threw a man into the Insolvency Court, they proposed to fine him £20. He submitted that seven years' imprisonment or a fine of £500 would be too light a penalty for such an offence. The object of the penalty was to frighten the deliberate oyster-stealer, not to force a judge to give an offender seven years. The judge could give him anything from one minute to seven years. If they limited the power of the magistrate or the judge to impose a fine of £20, the oyster-stealer would simply snap his fingers at the law. If he knew that he might be fined up to £500, he might say that he was not going to steal £300 worth of oysters. They ought to make the penalty so high as to be a deterrent to rival oystermen. He did not know why they should throw upon the Minister the odium of cancelling a license. The court should take the odium, and the court was a better vehicle for dealing out punishment than any Minister. There would be no odium cast upon any court in coming to a decision upon the matter, and he would suggest that the discretion of the Minister should be wiped out, because it was an awkward thing for a Minister to be called upon to decide such a matter. He would suggest to the Hon. Mr. Dunn that he might add to his amendment that, in the case of any offence under the Act, the holder of a license should be liable to lose his license. There were cases in which £500 worth of oysters might be stolen in a week, and the only punishment that could be imposed upon the thief was a fine of £50.

HON. B. FAHEY: As the clause stood, there was no penalty provided for thieving, as the cancellation of the license was entirely at the discretion of the Minister. He was inclined to think that they should eliminate the word "Minister" from the clause. On one occasion it came under his notice that a commercial traveller was detected in smuggling £142 worth of jewellery. An officer serving under him (Mr. Fahey) seized it. He inquired into the case, which was as clear as daylight a case of attempted smuggling. The man was liable to a penalty, and also to the forfeiture of the jewellery; but the mayor of the town happened to be a friend of that man, and he communicated with Brisbane, nearly 1,000 miles distant, with the Minister in whose hands the forfeiture of the jewellery lay, and the result was that that mayor's political influence impelled the Minister to penalise the offenders to the extent of £10 and no more. If any man was detected in stealing oysters, with all the facilities afforded him, he could go to the Minister, or some friend with political influence could go to the Minister, and probably the Minister, bearing in mind votes at the succeeding election, might conclude that he would not cancel the license, and the result would be that the oyster thief would go scot free. It would not be the first time that Ministers had been approached in that way. They could not help being influenced by political supporters. He did not mean to say that every Minister would be influenced in that way, but instances of the kind had come under his notice more than once. He would be only too pleased to support the amendment.

The Council resumed. The ACTING CHAIRMAN reported progress, and the Committee obtained leave to sit again at the next sitting of the Council.

METROPOLITAN FISH MARKET ACT AMENDMENT BILL.

ATTENDANCE OF MEMBERS OF ASSEMBLY BEFORE SELECT COMMITTEE.

HON. W. V. BROWN: I beg leave to move, without notice—

> "That a message be sent to the Legislative Assembly requesting that leave be given to George Phillips Barber, Esq., and Thomas Welsby, Esq., to attend and give evidence before a Select Committee of the Council on the Metropolitan Fish Market Act Amendment Bill."

The PRESIDING CHAIRMAN: Is it the pleasure of the Council that the motion be put without notice?

HONOURABLE MEMBERS: Hear, hear!

Question put and passed.

SPECIAL ADJOURNMENT.

HON. A. H. BARLOW: I am glad to say that we need not meet to-morrow. The order of business on Tuesday next will be the Railless Traction Bill, which the Hon. Mr. Hawthorn kindly allowed me to postpone; then we will take the Factories and Shops Acts Amendment Bill, and after that we will have another dose of oysters. I move that the Council, at its rising, do adjourn until Tuesday next.

Question put and passed.

The Council adjourned at fourteen minutes to 6 o'clock.