

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 8 JULY 1869

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LEGISLATIVE COUNCIL.

Thursday, 8 July, 1869.

Corporal Punishment in Penal Establishments.—Premiums on Cotton.—Native Industries Bill.—Trustees of Public Lands Bill.

CORPORAL PUNISHMENT IN PENAL ESTABLISHMENTS.

The Hon. E. I. C. BROWNE said that reports were rife—the truth of which he was not prepared to vouch for—that flogging the prisoners at St. Helena was a somewhat common practice. If that were so, it showed that the discipline and the conduct of the penal establishment there could not be properly carried out. It seemed to him that every one must admit that if such punishment were found to be continuously necessary, there must be some fault, not only in those upon whom it was inflicted, but on the part of those in authority over the unfortunate prisoners. Whether the reports, which had been brought before him in a very striking manner, would be confirmed by evidence, he could not pretend to say; but he hoped the returns he was about to move for would be laid before the House. He presumed he

should meet with no opposition from the honorable the Postmaster-General. When the House got the returns, they would be in a position to judge of the merits of the case; and if the reports were true it would be necessary to institute some inquiry. From what had reached his ears, he thought that the flogging was, to a great extent, caused by the improper conduct of the warders on the island. By a system of irritation and tyranny with the prisoners under their charge, they roused in them a spirit of rebellion and insubordination and insolence, no doubt, which was construed into mutiny, and reported up in Brisbane to the authorities. Down went the visiting justice to hold an inquiry—which the House were quite aware was not a public inquiry—and, as a result, punishment in the form stated ensued. He (Mr. Browne) was glad to have an opportunity of expressing his opinion upon the punishment of flogging. He wished, at once, to state that he had no morbid sympathy with criminals of any class; he also believed that the punishment of flogging, which had been re-introduced within the last few years, was salutary in certain extreme cases. At one period of colonial history, flogging was a very common punishment, but had been almost discontinued, and with beneficial results, on the whole. The revival of that form of punishment, the most degrading of all, was, for such offences as lowered a human being to the level of a brute—offences upon women and children, and other crimes which he need not more particularly allude to—and it was found to have a most deterrent effect, at home. For such criminals, he (Mr. Browne) considered flogging a fit punishment; but for mere rebellion on the part of inmates of a prison, or for attempting to escape confinement, especially when it was in the power of the authorities to inflict other modes of punishment which had been found by experience to be equally effective but not so degrading, flogging was not a proper punishment. He had noticed in the papers that, on one occasion, a prisoner had tried to escape, and for that, so many lashes were inflicted upon him. He did not know whether the opinions of other honorable members would be with him; but he contended that a man who attempted to escape was not morally a greater criminal therefor—nothing was thereby added to his original crime;—to attempt to regain his liberty was natural to a man;—and he (Mr. Browne) would even go so far as to say it was justifiable in a man to try to get out of confinement, and, rather than think it put him in a worse position morally, he should be inclined to have a higher opinion of him if, seeing an opportunity to escape, he had energy and talent to avail himself of it. He did not mean to say that a man should escape punishment altogether for prison-breaking; but there were other modes of punishment than flogging. In the case of long-sentence men attempting to escape, let there be added to their terms the time

remitted under the rules, for good conduct; or let them have solitary confinement, which was one of the most effective punishments that had been devised. The inquiries in which certain honorable members had been engaged lately, and in which the colony was very much interested—as to the management of the Lunatic Asylum at Woogaroo—had shown him that the House ought not to be satisfied, as they had too long imagined that all was going well, because a visiting magistrate was sent down the bay to visit the penal establishment at St. Helena, and reported periodically. In the instance of the Lunatic Asylum, it was now found that instead of that institution going on well, everything there was in such a state that it could not be worse. Inquiry would be judicious in respect of all public institutions, especially such as were so far removed from inspection as those named. He (Mr. Browne) asked for the returns in a form which he hoped would be convenient. He should be glad to leave out the names of the prisoners upon whom the punishment had been inflicted, if it could be avoided, and the information otherwise conveyed. His reason for requiring the names was that he should be able to get out how frequently any particular man had been subjected to the lash, and thus have grounds for framing an opinion of the effectiveness of the punishment. There were certain regulations under which flogging was inflicted, and he should be glad to get information on that point from the honorable the Collector of Customs, who was one of the gentlemen who had drawn up those regulations. They ought, he thought, to be laid on the table of the House. There were many regulations laid on the table of both Houses of Parliament for inspection, and to give validity to their operation; and those should be amongst them, so closely affecting, as they did, the conduct of our fellow creatures. He moved—

That there be laid on the table of this House, a return showing the corporal punishment inflicted upon the prisoners at St. Helena, from the time of its occupation as a prison to the present date, with the name of each man so punished, the offence, and the number of lashes on each occasion.

The POSTMASTER-GENERAL said the Government had no objection to furnish the returns; indeed, they felt it was their duty to convey all the information they could upon a subject of so much interest as that of penal discipline. He thought some slight alteration might be made of the form in which the motion was worded; for it would appear that the penal establishment at St. Helena had been singled out by the honorable gentleman—it was presumed from information of a reliable nature—as the only prison where the practice of flogging prevailed to a certain extent, or that he was of opinion that it prevailed there to a greater extent than at the Brisbane gaol or any other of the gaols of the country.

The Hon. E. I. C. BROWNE; Yes.

The POSTMASTER-GENERAL: If that were so, it could only be brought out by instituting a comparison with the other penal establishments of the colony. If the return showed the whole information bearing on the question of penal discipline, it should comprise all the prisons of the colony. Again, the question arose, whether it was desirable to have the return extending over a lengthened period; or merely a return for last year and the present year. He agreed with the honorable mover, that the mode of punishment in question ought to be reserved for peculiar offences; for flogging, generally, was degrading and ineffective. At any rate, it was found to be so under the old system of penal discipline. It was never found to be so effective as the application of the solitary system, in the penal establishments that had arrived at the highest development of effective discipline. He believed that flogging was seldom resorted to, because it had been found that after the application of the lash men were made worse than before. He had nothing before him to lead him to believe or admit that there had been any excess in that matter at St. Helena. He admitted, however, that public opinion had a right to demand to know the facts. He would take this opportunity to add that his own personal convictions—he did not speak for the Government—were that penal discipline could be better and more effectively applied in gaols, within four walls, than at an establishment like St. Helena. Any one could see that, from the admirable manner in which a large number of prisoners were managed at Darlinghurst Gaol, Sydney: no one could but be forcibly struck with the discipline there maintained. At St. Helena, men were removed from all sources whatever of social influence. The magistrate and the clergyman were the only persons who occasionally visited the establishment; as there were great difficulties and few facilities for others to travel thither, influence from the outside world was absolutely inaccessible to the prisoners, and the effect on them must be bad. He suggested, again, that the motion should be so altered as to apply to all the penal establishments of the colony, from 1st January, 1868, to the present time.

The Hon. W. THORNTON said, that having been officially connected with the prisoners at St. Helena for a period of two years, he desired to offer a few remarks upon the motion. It was very convenient for his honorable friend, Mr. Browne, to bring forward the question; but he had not had much to do with penal establishments, and that one in particular, or he would not be an advocate for the abolition of the lash. He believed that for hardened criminals no other punishment could be effectually substituted; but he believed that flogging should be inflicted in extreme cases only. While he, as water police magistrate, was in charge of St. Helena, the lash was only so used; it was

not resorted to except in such cases, and he could say it was most effective. No doubt, looking at it from a purely moral point of view, an attempt to escape was not very much open to blame; but, looking at it practically, in connection with the circumstances of the prisoners confined at St. Helena, it was a very different affair altogether. The annoyance, the labor lost, the cost entailed by an attempt on the part of a prisoner to escape, were very considerable. The other prisoners had all to be locked up, when one was missing, work had to be suspended, the police had to be sent for from town, and then the search for the runaway commenced throughout the island. The inconvenience occasioned was thus very great, and, as far as the prisoners were concerned, the effect was very bad. He (Mr. Thornton) did not believe that attempts to escape could be stopped by merely solitary confinement. The prisoners did not care anything for it, nor did they care anything about shot-drill, or anything of that kind. There never had been, fortunately, a rebellion; there might have been, but for the system adopted of flogging for insubordination. When he first had charge of the island, there were some of the most hardened criminals retained there, men who had served sentences and undergone punishments not only in the gaols of this colony, but in other colonies—notorious characters; and, if the lash had not been held *in terrorum* over them, they could never have been controlled or kept in subjection by other discipline. There were great temptations in the way of those prisoners: tools were lying about for the purpose of constructing the buildings and the other works on which they were employed, and it was necessary to adopt means to keep the prisoners in the most perfect order, for if they once got the upper-hand, or insubordination was not promptly checked, there was no knowing at what they would stop. If the House considered, for one moment, that corporal punishment was being agitated very much of late years, and that, although an effort had been made to abolish it in the army and navy, yet it was found impossible to do so in the gaols and penal establishments at home; that garroters, and offenders of that stamp, were flogged; that it was manifestly the only way to put a stop to that abominable species of crime; and, having regard to the character of the men confined at St. Helena, honorable members could not be surprised that the lash had been necessarily resorted to there. It was, no doubt, hard for prisoners to get away from the island; but they might be helped by friends from the outside. He did not know where the honorable Mr. Browne got his information; but he had seen, in one of the newspapers, a letter from one of the convicts who had been there, in which misrepresentations about the state of affairs on the island were made. He could not agree with the honorable member's conclusions, as he was not well informed upon the subject. He believed St. Helena was

one of the best institutions of the kind in all the colonies. He knew it was well managed—as well as any in the colonies—and he believed that in the course of time it would pay its expenses. There was a considerable amount of sugar under cultivation, and as much maize could be grown as would supply all the prisoners in the colony. Besides, many of the men were learning trades, there. He could not see what worse use a man could be put to than to be confined within the four walls of a gaol. On the island, he might have a change: he could be put to make boots, or to sugar-growing, or some other description of labor, where he could be of beneficial use. He (Mr. Thornton) was very glad the motion had been made, if only to show the public that the reports about the island were exaggerated and erroneous. As far as religious instruction was concerned, he did not see why a national schoolmaster could not be stationed on the island to teach the prisoners; and as for religious teaching, he did not see why clergymen could not go there once a week with advantage, or why quarters should not be erected in which a clergyman might reside, and be prepared to give religious instruction at all times, as in the gaols elsewhere.

The Hon. E. I. C. BROWNE, in reply, said that for the very reasons urged by the honorable W. Thornton, the evils of St. Helena should be avoided. The men must be flogged to be kept in subordination and order, there! Then, he asked, was it fair for the Government to send them there?

The Hon. W. THORNTON: Look at Port Arthur; look at Spike Island.

The Hon. E. I. C. BROWNE: The honorable gentleman was quite right in saying that he could not have had any experience of convicts; neither had he any experience of ex-convicts, nor had he the slightest idea of whom the honorable gentleman referred to as having written to the papers. The gentleman who first gave him (Mr. Browne) information on the subject was very far removed from an ex-convict, and was a very great personal friend of the honorable gentleman's. He should very gladly accept the amendments suggested by the honorable the Postmaster-General, and would alter his motion accordingly. He might remark, as to clergymen going down to the island once a week, that the means of conveyance was a perfect farce. A gentleman going down by the Government steamer, would have just one hour to spend at St. Helena; then he must go off with the steamer to Dunwich, where he could spend half-an-hour. Of what benefit an hour was to devote to such persons as a clergyman had to deal with, there—the greatest scoundrels in the colony, according to the honorable Mr. Thornton—he would leave the House to judge.

The motion was, by leave, amended, as follows:—

That there be laid on the table of this House, a Return showing the corporal punishment

inflicted upon the prisoners at the gaols and penal establishments of the colony, from the 1st January, 1868, to the present date, with the name of each man so punished, the offence, and the number of lashes on each occasion.

Question then put and passed.

PREMIUMS ON COTTON.

The following message from the Legislative Assembly was received and read—

“PREMIUMS ON COTTON.

“MR. ACTING PRESIDENT,

“The Legislative Assembly having agreed to the following resolution, viz.,—‘That it is expedient that a premium of land orders, after the rate of fourpence per pound, be granted for every bale of good clean cotton, the growth and produce of Queensland, which may be exported to Great Britain during the year 1869,’—beg now to present the same to the Legislative Council for their concurrence.

“GILB. ELLIOTT,
“Speaker.

“Legislative Assembly Chamber,
“Brisbane, 7th July, 1869.”

The POSTMASTER-GENERAL said he trusted the House would discuss the question, at once; and, with that view, he moved—

That this House do now concur in this resolution.

The matter was important, for the Government could not issue land orders on the cotton bonuses without authority from the Legislature. There was a Bill on the paper to give the effect of law to resolutions of this character; and he held that there would be no objection, on the part of honorable members, to the resolution. It would be merely giving the authority of the Council to what it had been the practice, up to this time, to do without their authority. He might point out that there was some slight variation in the mode of payment adopted: whereas, hitherto, it had been the practice to pay at the rate of £5 per bale of 300 lbs., it was now proposed to pay at the rate of 4d. per pound of cotton, which was the most equitable arrangement. 300lbs. of ginned cotton was held to mean a bale; but, as he had been informed, that might be rather strained in the interpretation of the resolutions. Bales of cotton were sometimes over three hundred pounds, and sometimes under that weight. There was, therefore, nothing in the resolution except what was necessary to give validity to something that had been equivocally done.

The Hon. ST. G. R. GORE suggested that the House should go into committee on the resolution.

The POSTMASTER-GENERAL: On a previous occasion, when a resolution was before the House, that practice was followed, for convenience; but it was not necessary now.

The Hon. T. L. M. PRIOR thought it would be desirable to resolve into Committee of the Whole, especially if honorable members

wished to speak more than once. On a former occasion, the honorable Postmaster-General had occasion to speak no less than six times.

The Hon. J. BRAMSTON explained the object of the resolution, in terms similar to those used by the honorable gentleman representing the Government.

The Hon. ST. G. R. GORE said he had spoken strongly against the previous resolutions, and he held strong opinions on the question of the bonus for cotton cultivation and export. He believed that, up to the present period, it was a wise and salutary measure to grant that bonus; but the time had arrived for discontinuing it. The resolution, he understood, was to give legal effect to what the Government had heretofore done, and to enable them to keep faith with those who had engaged in a particular industry under the authority which the action of the Government had given them to receive the bonus. There could be no inconsistency in his voting for the resolution, and he should vote for it. It had certainly been understood that the cotton bonus was to extend over 1869, and the resolution would so extend it.

The Hon. E. I. C. BROWNE said he understood that the Land Act of 1868 repealed all former regulations; and therefore, since that, all the land orders which had been signed, and all the cotton bonuses which had been given, up to the present date, were illegal. The resolution was to cover that illegality.

The question was put and passed, and a message was ordered to be transmitted to the Legislative Assembly, informing them of the concurrence of the Council in the resolution.

NATIVE INDUSTRIES BILL.

The POSTMASTER-GENERAL moved the second reading of a Bill for the encouragement of Native Industries. He said it referred to the subject just discussed by the House. It had been deemed necessary to introduce the measure in consequence of the illegality which at present attached to the issue of land orders under resolutions of one or both Houses of Parliament, because of the repeal of all regulations affecting their issue by the passing of the Crown Lands Alienation Act of 1868. The purport of the Bill was to legalise all issues of land orders which had taken place under resolutions of the House heretofore, if any doubt attached to their legality; and, further, it proposed to give the authority and force of law to resolutions of both Houses of Parliament, authorising the grant of waste lands of the Crown in land orders for the encouragement of industrial pursuits within the colony of Queensland. He imagined that no objection could be taken to the measure. It was a very necessary measure;—it was retrospective in regard to the action of the Government—as it was desirable to encourage native industries, and equally so to have a general Act to authorise the granting of land orders there-

for, as, otherwise, on each occasion of the Government making a grant they would have to apply to the Legislature for a fresh enactment.

The Hon. T. L. M. PRIOR said this was the first he saw of the Bill, and, as he had not had time to peruse it, he protested against being asked to pledge himself to a measure the effect of which he had not had time to look into. There had been many mistakes made through hasty legislation; and he asked that the second reading of the Bill should be deferred.

The Hon. ST. G. R. GORE said the principle of the measure was one that the House had long discussed, and the whole subject was long familiar to the House. The only question was, whether it was expedient to pass such a measure. If it were passed, each House would have but one opportunity of discussing the subject of any resolution under it, instead of several intervals for consideration, and several opportunities for discussion, as was the case with Bills brought before Parliament, which had to pass their several readings in each House. That was a point worthy of attention. He did not think it was by any means desirable that the Bill should become law; the principle was a very objectionable one, and he thought that what occurred the other evening was quite sufficient to support his views—when certain of his honorable friends were taken by surprise at resolutions being passed in their absence, and they were thereby deprived of the opportunity of having a voice in the matter. He by no means said that the resolutions with respect to the encouragement of industries were bad. He should not move any amendment, that the Bill be read a second time this day six months; but he should give the negative to the motion.

The POSTMASTER-GENERAL was not desirous of proceeding with the measure, if the honorable member pressed his objection; but he left it in the hands of the House.

The Hon. J. BRAMSTON said he did not see why they could not proceed with the Bill. The question was one that any honorable member could make up his mind on at a moment's notice.

The Hon. T. L. M. PRIOR said his honorable friend, Mr. Bramston, with his legal acumen, might see what the Bill was, but he required time to make up his mind.

The Hon. J. F. McDUGALL said he felt very much inclined to go with his honorable friend Mr. Gore. He never looked upon resolutions of either House as having the force of law; for it was often a perfect waste of time to pass them, because the Government might not be bound by them or could otherwise over-ride them. The House should be careful before they entered upon a system of passing crude ill-considered measures such as the one proposed, and such as resolutions having the force of law in virtue of it might be; and therefore he should certainly oppose it altogether.

The Hon. W. THORNTON: It occurred to him that resolutions could not have the force of law, inasmuch as a special Act was required to give them effect. He could not see what advantage would arise from postponing the Bill. Everybody must understand it in a few moments; it was merely rectifying an omission in the Land Act of 1868. The House had seen resolutions passed giving grants for woollen cloth manufactured in the colony; and the Bill, if passed, would give the force of law to them. There was a great accumulation of business on the paper, and the House would, no doubt, have very much to do; so that they ought to dispose of what they could now.

The Hon. T. L. M. PRIOR moved, by way of amendment, that the second reading of the Bill be an Order of the Day for Wednesday next.

The amendment was put and negatived.

The original question was then put, and the House divided:—

Contents, 4.	Not-Contents, 3.
Hon. J. Douglas	Hon. T. L. M. Prior
" E. I. C. Browne	" St. G. R. Gore
" W. Thornton	" J. F. McDougall.
" J. Bramston.	

Bill read a second time.

TRUSTEES OF PUBLIC LANDS BILL.

The POSTMASTER-GENERAL, in moving the second reading of a Bill to repeal the Trustees of Public Lands Act, 28 Victoria, No. 22, and to make other provision in lieu thereof, said, that in 1863 an Act was passed authorising such trustees to borrow money on the security of the lands they held in trust. The authority was given for the purpose of affording facilities to them to carry out the objects for which the grants of land had been made. In a considerable number of cases it was found that the Act was a dead letter. Trustees had borrowed money on the security of the lands, and had found it a convenience, and been thereby enabled to recover their position, by securing to the public the advantages and objects of their trust. In a few cases, the borrowing powers of the trustees had been exceeded; and thereby, unfortunately, the lands and the buildings on them, which had been intended for public purposes, had passed away, or were in danger of passing into the hands of the mortgagees. One instance, was the School of Arts, Brisbane; and there were others, such as the School of Arts, Ipswich, which he believed had passed out of the hands of the original trustees, into other hands, for the benefit of the mortgagee. At any rate, the original intention of the Legislature in passing the Act had to some extent been set aside; and it was now thought expedient to check that evil. The object of the Bill was to repeal the Act, but not to interfere with anything done under it.

Question put and passed.