

LEGISLATIVE COUNCIL.

DOUGLAS, TUESDAY, APRIL 8, 1919.

Present: The Governor (Major-General Fry), Deemster Moore, the Attorney-General, the Receiver-General, the Vicar-General, and the Archdeacon. Mr B. E. Sargcaunt, clerk to the Council, was in attendance.

WELCOMING THE NEW GOVERNOR.

Deemster Moore: Before the Council proceed to business, I have great pleasure, as the senior member of the Council, in welcoming here his Excellency, and I hope during his term of office in the Isle of Man he will have an exceedingly happy time, and that we in the Council shall be a happy family—which we generally are.

The Governor: I thank you very much for your kind expression of feeling which you have just given on my appointment, and I have every confidence that, with your able assistance and advice, we shall be able to work for the benefit of the Island. I know that is at the bottom of all your hearts.

EDUCATION ENDOWMENTS.

The Archdeacon. I move the second reading of this Bill, which is to enable the Council of Education to act as trustees of educational foundations. The Council cannot be compelled to act unless they wish, and, on the other hand, the Council cannot compel any existing trustee or trustees of an education foundation to resign the trusteeship. We provide for the investing of educational endowments, and we provide that the trustee or trustees of an educational foundation shall, on the 31st December in every year, send the Council a statement specifying the real and personal estate constituting the foundation, and also an account showing the income thereof during the previous twelve months. By this means the Council of Education will in time obtain a complete record of all educational foundations in the Isle of Man, and the income thereof, and by this means also the chances of any loss to the trust property by non-investment or otherwise will be considerably lessened, if not altogether eliminated. In

the blue book issued in 1897 we have a complete record of all educational foundations, but we have nothing to show the income that is being received or if it is being applied for the purposes of the trust. We wish to make sure that no more of these old endowments shall be lost to the Island. Many of them have already been lost. In some cases there has been no trouble, and in other cases the trustees have had trouble about the income. In some cases the income has been accumulating, as in my own parish, since 1882, and has not been applied. You may say that it is owing to the default of the trustees or the public to see that the money is being properly dealt with. On account of that we wish to have this return made year by year of the income, and in case the trustees do not take reasonable steps to apply the income to the purposes for which it is intended, we should have power to stir them up, and, if necessary, make an appeal to the Court. We do not wish to interfere with the action of the trustees—we only wish to know that they are doing their duty. It may be said if a man leaves money in trusts, what right have you to interfere? The testator has had confidence in the trustee. But he may have been dead many years, that was the case in my own parish—Archdeacon Mylrea left a bequest so far back as 1832. One of his endowments has been dealt with, but his daughter's endowment has not been dealt with for the last 27 years. We do not wish to interfere in any way with the trustees; we only wish to see that some proper use is being made of these ancient endowments. Clause 6 gives power to the Council to compel trustees to comply with the provisions of section 5. Clause 7 specially exempts King William's College from the operation of the Act. It is not necessary to ask for any return from King William's College; that return is made to the Tynwald Court every year, and in the case of the other endowments we are not asking for anything but what is already done in the case of King William's College in any way, but only says

that the report and accounts shall be submitted every year.

Deemster Moore: I have pleasure in seconding this Bill. I think it is a very necessary one, and it is only giving to the Council of Education in the Isle of Man exactly the same powers as are possessed by the Charity Commissioners in England, in finding out how the income of these endowments is disposed of. At the same time, it is not in any way harassing the trustees.

The Attorney-General: I would like to know the view of the Council of Education as to the powers which they already possess under the Act of 1907—the Educational Endowments Act. They have certain powers which are set forth in section 36 of that Act. The Council may require written accounts and statements, and answers to inquiries relating to any endowment or the property or income thereof to be rendered or made to them respectively by any of the following persons—that is, trustees or persons concerned in the administration of the endowment or the property or income thereof, or in receipt of any money payments thereunder, etc.

Deemster Moore: I had not seen that before.

The Attorney-General: I was just going to say that I had the pleasure of drafting this Act myself. It was at the time of the rejection of the Bill unifying the education authorities in the Isle of Man that this Bill was introduced, when the four Boards for higher education were established, and this was based, as far as my memory goes, upon the English law at the time.

The Vicar-General: But it had no relation to the Charity Commissioners.

The Attorney-General: Of course, the Charity Commissioners have a jurisdiction with regard to all charitable endowments of every sort. Whether it is necessary to pass a Bill of this sort, throwing upon everyone concerned with every petty little charity for educational purposes the obligation to make returns annually, I should very much doubt. It is a very large and comprehensive demand. It seems to include a Sunday School—some money that had been left to a Sunday School or some purpose such as that. Would not that be educational? Or is it confined to education in the secular sense? I would not like to venture an opinion on the matter of exegesis, but I doubt whether it is necessary. You have perfect power under

Clause 36 of the former Act to call upon them, and they are bound to make a return and verify it on oath. I should have thought it is quite enough power to give. I do not think we should give a power which might be regarded as vexatious and burdensome. I think what the Council of Education have had in mind is a number of small charities which have been left all over the Isle of Man from time to time—very often to the vicar and wardens of parishes and so forth—for certain purposes connected more or less with education, sometimes for other purposes as well—such as to pay a schoolmistress for teaching, sewing or a schoolmaster for doing so-and-so. Some years ago a commission appointed by one of your Excellency's predecessors sat on education generally, and we had a most comprehensive investigation made of these small charities. There is a published book setting them forth in detail. Now, that puts information in possession of the Council of Education which would enable them at any time to root out these little charities and see that the money is being properly applied. But the difficulty is—it is a historic one in the Island—directly an attempt is made to deal with any of these charities, local feeling becomes so strong about them that it is hardly worth while to deal with them at all. It is a thorny subject. A little wretched charity may have been lying by for years, and of course it would be highly desirable to apply it for the general purposes of education, but immediately you try to deal with it, all the patriotism of the parish is in the fray, and in the end you drop it. However, that is beside the mark. I would suggest that there is hardly a necessity for carrying this Bill, considering the powers that exist are ample.

Deemster Moore: Does the Archdeacon, as Chairman of the Council of Education, know that clause is in existence?

The Archdeacon: We know there is that clause.

Deemster Moore: What distinction do you draw between that Act and what you put before us?

The Archdeacon: By the clause we propose now, every trustee would be bound to make a return on 31st December every year. According to the former Act he is only to make a return if we call upon him.

The Attorney-General: All you have to do is to write a letter to each body of trustees.

The Archdeacon: It would simplify the matter very considerably. We have these powers, but it would enable us to exercise these powers more easily. That Act has been a dead letter.

The Attorney-General: You do not put it in force.

The Archdeacon: The cost would be too great and it would stir up too much feeling. I remember £3 a year left to the schoolmaster, so long as he would teach in the Church Sunday School under the direction of the Vicar. Some tithe-payers said, "You have no right to this money." He took a suit and won the suit, but never collected a penny of tithe after that, and that £3 a year is lost now. I do not think it would be possible to collect it now.

Deemster Moore: Under this clause you have only to write a letter and ask them to make a return.

The Receiver-General: I think this goes further than that. As a former member of the Council of Education, I know the difficulties that have existed in reference to these matters. I think the Legislature should see that no sum set aside for this specific purpose should through carelessness of the people be lost for the purpose for which it is left. A large sum, in the aggregate, is being lost at present. The Act of 1907 has been found unworkable. In case the trustees of any charity refused to act, there was no power to put other trustees in. Under this Bill the Council of Education may be constituted trustees of any fund. One difficulty at present is that there is no body constituted in whom the funds could be vested in case the trustees are not doing their duty.

The Vicar-General: The difficulty is, you cannot apply the trust moneys to this purpose.

The Receiver-General: I admit you cannot apply trust moneys for purposes other than those for which they are left, but if these trusts got into the hands of a body like the Council of Education, they would see at once that the money was applied to the right purposes. Here you have a body elected by the Legislature to carry out all the purposes of education, and they, after the fullest consideration, come to the conclusion that this Bill is necessary. We throw it back at them and say, "No, you have ample powers already." I think that is wrong. I doubt if the

powers given under the Act of 1907 are as wide as the Attorney-General would lead us to believe. I think clause 6 of this Bill is a very necessary one, too.

The Attorney-General: I was putting it to the Archdeacon--supposing they would take clause 6 and knock out clause 5?

The Receiver-General: Clause 6 is a very important one, but what difficulty could there be about clause 5? I admit there would be a trivial hubbub somewhere or other, but not in every case. I do not think, because there is a little bit of hubbub on the part of one or two, that should prevent us legislating in a proper way. Twenty years ago, before the Act of 1907 was passed, we had those difficulties raised, and we did think the Act of 1907 would deal with them.

The Attorney-General: I am not going to oppose the second reading. I shall deal with it on the clause.

Deemster Moore: The difficulty does not arise from want of legislation. It is to get people to carry out things.

The Vicar-General: I think this Bill will operate vexatiously in many cases, and I have personal knowledge of small trusts bringing in two or three pounds a year. It would be hard to call on vicars and wardens to provide books and make a return every year.

The second reading was agreed to, and the Council went into committee on the Bill.

The preamble and clauses 1 and 2 were postponed.

Clause 3.—The Council of Education may be constituted trustees of any educational foundation, and shall have power to accept and hold any property, whether real or personal, as an educational foundation.

The Archdeacon, moving the clause, said: At present, it is impossible for any person to give a gift to education generally in the Isle of Man, and I am told that in the past we have lost money in consequence. I have very good expectations of something nice coming to the Island, if we have this body of trustees constituted, so as to be able to hold it. I cannot say at present what it is, but we have expectations.

The Attorney-General: I second that. I see no objection to that whatever. It is a fault in regard to the Church that there is no central body that could take endowments.

Clause passed.

4.—Any personal estate which may become vested in the Council of Education by virtue of this Act may be invested by the Council of Education upon the security of real estate in the Isle of Man, or upon the debenture stock of the Isle of Man Railway Company, or upon any investments in the Isle of Man or elsewhere upon which trustees may be authorized by the law of the Isle of Man or of England for the time being to invest trust moneys, and the Council of Education may vary such investments at discretion.

The Archdeacon: Clause 4 deals with investments. It is a clause which appears in many of our trust bills. It authorises investments in real estate in the Isle of Man or the debenture stock of the Isle of Man Railway Company.

The Attorney-General: This is not the clause in the Act of 1911. It seems rather invidious to specify certain things.

It was decided to omit the words "or upon the debenture stock of the Isle of Man Railway Co."

Clause 4 as amended stood part of the Bill.

Clause 5 was as follows:—

The trustee or trustees of every educational foundation shall, on the 31st day of December in every year, or on such other date as the Council of Education may from time to time prescribe, forward to the Council of Education:

- (1) a statement, in such form as the Council of Education may from time to time prescribe, specifying the real and personal estate constituting the educational endowment, and how such personal estate is invested; and
- (2) an account, in such form as the Council of Education may from time to time prescribe, showing the income earned by the educational foundation during the preceding twelve months, and the payments made thereout by the trustee or trustees.

The Archdeacon: I move clause 5. I think it will simplify matters very considerably, and avoid friction, and enable us without further trouble to obtain returns. We can receive perhaps a hundred on one day in the year, instead of having to write to them all individually and get them at different times. It will make our work easier and more effective. We shall not abuse the power.

The Vicar-General: It is not a question of you abusing a power. It is a question of a burden thrown on other people.

The Archdeacon: We have that power at present, but we do not want to exercise it in that way. This is to avoid having to put cumbersome machinery in operation. We can do all this under the Act of 1907, but it would be very troublesome and expensive compared with this.

The Attorney-General: I do not know where great expense would come in. A little printing matter with blanks provided is all. This casts on people all over the country every year the duty to send in returns about some trifling little charity—sending it in time after time. The Council of Education may go to sleep in the meantime and do nothing—as they have been doing since 1907. Still the obligation would be on all people throughout the country to be sending in these little returns. I do not think it is necessary. You have powers at present to send to everybody you like. There is already in a printed book a detailed list of these little charities, so there would be no difficulty in finding them out.

The Vicar-General: I agree with the Attorney-General's view on this matter. I feel that in very many cases it would operate in a vexatious and harassing way, and I cannot think it is necessary. It appears to me, from what the Archdeacon has said for the introduction of this clause in the Bill, that it has been due to some timidity on the part of the Council of Education to put in force the provisions of the Act of 1907. I do not think a burden should be cast on trustees because the Council of Education have hesitated in putting in force the powers they now possess.

The Receiver-General: I do not see that this clause would increase the burden of difficulty upon the part of these persons who hold the moneys. If the powers of the 1907 Act were put in force the same difficulties would arise as would arise under this Bill. They would be compelled to make a return.

The Attorney-General: Yes, but not an annual return.

The Receiver-General: As often as the Council might require it. I do not think the Council is likely to do anything which will harass anybody. You place in the hands of an authority certain duties. They tell us that to fulfil those duties it is necessary these powers should be given them. To say it is going to harass some Sunday School committee or clergymen to make a return of income of two or three pounds during the preceding year—to talk about that being harassing is paltry. I do not think any man who is treasurer of any fund should be against making a return. A guardian has to do that to the Court of Chancery.

The Attorney-General: It is not done; except very rarely.

The Receiver-General: I do not think for one moment there is going to be an outcry when the Manx people realise that this is being done in the general interest of the community, and knowing as I do the source of trouble this has been to this Island in working the Education Act, I think this Legislature should give the Education Authority this power, and trust them. I have every confidence that the members of the Council of Education would do this in such a way that there would be no harassing of anyone. If there was, the Legislature would take it up at any moment; we would have a debate in the Tynwald Court, and the matter would be settled. But do not let us withhold from the settled authority in these matters the powers which they seek and which they think necessary.

The Vicar-General: I cannot see how this confers any power on the Council of Education. The harassing part of the provision is that it throws a burden on every trustee, however small the amount of the trust property, of making an annual return.

The Receiver-General: It gives the Council power to call for a return each year, and the next clause gives them power, if the return is not made, to compel it to be made.

The Vicar-General: The clause in the 1907 Act gives the same power. If we put clause 6 into this Act they will have this power to work the Act of 1907, so that clause 5 is not necessary.

The Receiver-General: Then the objections you have to clause 5 do not stand because the power is already in existence.

The Attorney-General: The Receiver-General won't even do us the compliment of appreciating our arguments. What we are complaining about is that there is no need for this at all. All the difficulties that are explained are difficulties that can be dealt with by the existing law. They say they know of certain irregularities here and there, yet nothing has been done with regard to those charities. If they had dealt with those that they know about I could understand, but there is no pretence that they have. We say it is a harassing measure to be sending in returns annually about trifling matters. Trustees have to give accounts when called upon. Executors have to give accounts to regis-

tries when lawfully required; that is the form of their oath. According to the Act of 1907, trustees of charitable funds are under the same obligation when lawfully required. We are asked by the Council of Education now to take the exceptional course of throwing unnecessary burdens on a lot of people, and in most cases the people are properly applying the funds in their hands.

The Archdeacon: The Council have far more difficulties than you imagine. It has taken seven years to take one set of endowments through the courts of justice.

The Attorney-General: This clause will not enable you to get through a specific endowment more rapidly.

The Archdeacon: It is the experience of those who have to do the office work that this would make it very much easier. Where Guardians are sworn, they have to return accounts on 31st December, and verify their accounts by affidavit. That is a new rule which the Court made. Why should not the Legislature make a new rule now?

The motion that clause 5 stand part of the Bill was negatived.

For the purpose of compelling the trustee or trustees of an educational foundation to comply with the provisions of section 5 hereof, the Council of Education shall have all the rights and remedies which a cestui que trust has against a trustee in order to compel the trustee to disclose the state of the trust property, and to render an account thereof.

The Vicar-General: It hangs on clause 5.

The Attorney-General: We would require to alter it.

The Archdeacon: I do not think it is any use. We have the same power.

The Attorney-General: You can always set the Attorney-General in motion as relator.

The Receiver-General: Supposing the Trustees set the Council of Education at defiance, and won't do anything?

The Attorney-General: They apply to the Attorney-General, and the Attorney-General will file an action in Chancery to have the trusts carried out.

The Receiver-General: That will be a greater expense for a little matter of £3 a year. You will say it is not worth doing, and the money will be lost.

The Vicar-General: They will have far greater power than cestui que trusts. They will have far greater power by putting the Attorney-General in motion.

Clause 6 was struck out.

Clause 7 was also omitted (exception of King William's College).

The Receiver-General: The only thing the Bill does now is, to give power to the Council to act as trustees, and to name the investments.

The Attorney-General: Perhaps, the Bill will require re-consideration, to see what modifications are required, especially in the interpretation clause.

At a later stage the discussion was resumed.

The Attorney-General: It was adjourned in order to see what drafting amendments would have to be made. I have consulted with the Archdeacon, and we agree now that section 2 may go out entirely. The Council of Education does not require defining, and as this Bill is to be read with the Act of 1907, and the expression there, "endowment," is defined, there is no advantage in defining "educational foundations."

The Bill was read a third time and passed.

DESTRUCTIVE PESTS BILL.

The Keys' amendments to the Destructive Insects and Pests Bill were considered.

The Attorney-General: The Keys have put the costs on the revenue. This Bill was based on the English Act of 1877. In the same way, compensation for destruction was placed upon the local rates. We followed that exactly. It is also following the analogy of the Cattle Diseases Act in this Island, section 28. Here it is put on the revenue. I cannot advise the Council to agree with that. In the first place, your Excellency would have to consider that from the point of view of the Chancellor of the Exchequer, as to what the charge was likely to be. The view of the Council was, that here, as in England, it ought to be a charge upon the local rates, and in that way there is a wholesome check exercised over the authority responsible for putting the Act into operation, which there will not be if the money is to come out of the revenue. Perhaps, we had better have a conference upon it, and explain the position to the Keys.

The Receiver-General: In the matter of the Cattle Diseases Act, the towns pay a smaller proportion of the rate than the country districts, and yet, even in that case, the towns have objected. The towns

would be rated to pay one-third of the cost and the country two-thirds of the cost.

The Attorney-General. I move that we ask for a conference with the Keys.—Agreed.

A conference subsequently took place, and the Keys agreed with the Council's amendments.

ADULT SUFFRAGE.

The Council held a conference with a deputation from the Keys on the subject of the House of Keys Election Bill. On resuming, it was agreed that the Council withdraw their amendments on the subject of the qualification for women.

The Bill as passed by the Keys was accepted.

WORKMEN'S COMPENSATION.

The Council took up consideration of the Keys' amendments to the Workmen's Compensation Bill.

The Attorney-General. In the third schedule, which contains a list of diseases in respect of which compensation is to be paid, there is a reference to the disease of anthrax, and the occupations in which the disease is likely to be contracted. The schedule contained the words, "handling of hides, hair, etc." but the Keys have inserted words which make the schedule include the handling of any living animal infected with the disease. I would point out that our Bill corresponds in every detail with the English Act, and that, if it was altered, difficulties may arise with the insurance companies with whom the Manx employer seeks to insure. I understand that it is not all clear that any real danger of infection is undergone through the man being brought into contact with the living animal. There is more certainty about the danger of handling carcasses.

It was agreed that the Council adhere, with a view to a conference

The Receiver-General. Ought we not to fix a precise day and hour upon which the Act comes into operation? We have made the Act operative when it receives the certificate of the Governor and the Speaker that the Bill has received the Royal assent, but it is quite possible that an accident might happen on the very day when the signature was given, but at an earlier hour, and it might be a case for a lawsuit whether that accident was covered under the Act. I should have preferred

fixing a definite date for the Act to come into operation, independent of the certificate of the Speaker and the Governor. In England, the Act was ten months on the Statute Book before it came into operation. However, as this course has been adopted, I would suggest that the time should be one o'clock on the day on which the certificate is given. That is a time when workmen are either just going to, or just returning from, dinner.

It was agreed that a note be taken of the exact hour on which the certificate was signed.

The Council adjourned for lunch.

EDUCATION (AMENDMENT) ACT.

The Attorney-General introduced a Bill to amend the Education Acts. Its object is to regularise the payment of the fee grant and aid grant in the Isle of Man.

The Attorney-General, in moving the second reading, said: We incorporated into our system the Minutes of the Education Department for the time being in force in England. We brought our schools under these regulations, and our grants are governed by the provisions issued from the minutes of the Education Department. Now, the whole system is altered in England, and the grant is regulated by quite a different system—that is to say, a certain proportion of the cost of the school—of the whole of the schools of the local district—is paid out of the Government grant. It is quite unworkable under our system, so we have to make some temporary provision to enable matters to go on in the Isle of Man in the same way as if no alteration had taken place in England. It is proposed to do that in a very simple way by providing that we shall be governed, instead of "by the regulations for the time being in force," in accordance with the regulations in force on the day prior to the passing of the English Act which made the change. It is proposed to accomplish it in a very simple way. We provide that these regulations shall be amended by the

insertion of a few words fixing the period as the day previous to the passing of the English Act. I move that the Bill be read a second time.

The Archdeacon seconded the motion, and it was carried.

The clauses were considered in committee and passed.

The Bill was read a third time and passed, and sent to the House of Keys.

INCOME TAX.

The Income Tax Amendment Bill was for second reading.

The Attorney-General: I am going to ask your Excellency to put this Bill for second reading, and to ask the Council to reject it. It arises in this way. A Bill was brought into the Council towards the end of last year, dealing with certain matters connected with Income Tax, making certain amendments to carry out undertakings which were given at the time of the passing of the original Bill. It was then discovered that negotiations with the Inland Revenue and the Treasury would be necessary before certain alterations could be made. Since then, interviews have taken place—I have myself had an interview, and the Assessor (Mr Williams) has had interviews and correspondence. We have obtained a great deal of information of value in dealing with this Bill, but it has become necessary to draft an entirely new Bill. The draft is in print, and will be circulated within the next day or two, after the proof has been finally approved. So I think the best course is entirely to slaughter the existing Bill. Therefore, if your Excellency will put it, with that explanation, I will ask the Council to vote against the present Bill. The House and the public will understand that, in the next few days, the print of the Bill which will be introduced next Tuesday will be in their hands.

The motion that the Bill be read a second time was then put and negatived.

The Council adjourned to April 15th.