Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
19th June 1860
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Extracted from the third party account as published in the
Moreton Bay Courier 21st June 1860

The SPEAKER took the chair at a quarter past 3 o'clock and, in accordance with the resolutions lately carried, proceeded to read the form of prayer decided upon.

MESSAGES.

Messages Nos. 3 and 4 were received from the Governor, stating respectively, that he would take the earliest opportunity of forwarding to Captain Denham a copy of the resolutions agreed to by the House in reference to that officer's services, and that steps had been directed to be taken in order to give effect to the resolutions lately passed recommending an augmentation of the Governor's salary, for which the message proceeded to state his Excellency's acknowledgments. On the motion of the COLONIAL SECRETARY the mesages were ordered to be printed.

BILL TO PROVIDE FOR AN ADDITION TO THE GOVERNOR'S SALARY.

The COLONIAL SECRETARY obtained leave to introduce a bill providing for an increase to the Governor's salary, which was read a first time, and ordered to be printed, its second reading to stand an order of the day for Thursday next.

LIBRARY COMMITTEE.

The ATTORNEY-GENERAL brought up a report from the Library Committee, and stated that the committee had come to resolutions affirming the necessity of £1000 expenditure to commence with, and the annual appropriation of £300 for expenses connected with the maintenance of the Library. At the motion of the ATTORNEY-GENERAL, seconded by the COLONIAL SECRETARY the report was ordered to be printed.

STIPENDIARY MAGISTRATES.

Mr. FERRETT asked the Hon. the COLONIAL SECRETARY (1.) Whether the Government demanded a qualification from a person before appointing him a Police or Stipendiary Magistrate. (2.) If so, what is that qualification?

The COLONIAL SECRETARY replied that in making appointments of the great importance of those referred to it was the duty of the Government to endeavour to secure gentlemen, not only of high moral character, but also possessed of certain legal qualifications.

TEMPORARY ACTS.

The ATTORNEY-GENERAL, in pursuance of leave granted, brought in a bill to provide for the continuance of Temporary acts, which was read a first time, its second readIng being made an order of the day for Thursday week next.

IMPOUNDING ACT.

Mr. WATTS asked the Honorable the Colonial Secretary,—If it is the intention of the Government to amend or repeal clauses ten and eleven of the present Impounding Act?

The COLONIAL SECRETARY replied that the attention of the Government had been directed to the necessity of amending the Impounding Act, more especially in reference to the two clauses alluded to. He hoped that before long they would be able to introduce a bill to effect this object.

PRE-EMPTIVE RIGHT.

Mr. GORE rose with feeling of considerable difference to address the house on a subject nearly concerning the future well-being of the colony. It was a subject which he had had much at heart for a considerable time, and, although he would have been better pleased had its treatment fallen into abler hands, he must endeavor to do his best by it. The subject related to what was called the pre-emptive right of the squatters topurchasing portions of their runs. The Orders in Council, on which the right was founded, were very little understood, many of those, who talked a great deal about them, not having been at the trouble of mastering their provisions. He believed that previously he had been considered a thick and thin supporter of the Government, and it had been insinuated in the press that he was their whipper-in. As he was now coming forward in a somewhat different character, he requested the indulgence of the house for a few minutes to explain the motives on which he professed to act. His wish was to promote the public business, and finding the present Government in office, and at the same time seeing no party that was likely to occupy their position better, he thought it was his duty to give them his support, and he could tell the hon. member for Fortitude Valley that, should he succeed in ejecting the present Ministy, and taking their place, he would find him (Mr. Gore), as ready to pursue the same course of action with regard to him, as he intended to pursue with regard to those now in office. When he had first thought of bringing forward his resolutions, he had consulted the members of the Government but had not found them altogether so willing to adopt his views as he had hoped they would have been. The Colonial Secretary appeared to wish that the Government should remain unfettered in the matter; the Attorney-General considered it a legal question, from the discussion of which no good could arise; the Treasurer thought it would be desirable to leave well alone. Gentlemen out of doors talked rather strongly of danger of introducing the thin end of the wedge, &c., in reference to upsetting former enactments. But as his resolutions were founded on the strict letter of the law, no apprehensions need be entertained on that score. He would now read his resolutions, which were as follows :—(1.) That in the opinion of this House the privilege of purchasing lands on pre-emptive right granted to the tenants of the Crown, commonly known as “Squatters,” by Her Majesty the Queen’s order in Council of the 9th day of March, 1847, should be exercised only to enable such squatters to obtain on equitable terms the fee simple of lands on which permanent improvements have been made, or are intended to be made, and not for the purpose of making them virtual masters of considerable tracts of agricultural land by the purchase of water frontage or other exceptional natural advantages. (2.) That in the opinion of this House “an undue command over water required for the beneficial occupation and cultivation of lands adjoining either side of any stream or water-course” is given by permitting any purchase on pre- emptive right of lands bounded by any stream or water-course, except where such lands shall lie in one block on each station, or reputed station, and shall be equal in area (if more than 320 acres) to the square of the water frontage measured from point to point by which they are so bounded, or co-incident on the side opposite to such water frontage with the boundary of the run on which they are situate. (3.) That in the opinion of this House it is the duty of the Executive of Queensland to “refuse to sell” on pre- emptive right any lands situate on any stream or watercourse, except under the provisions pointed out in the foregoing resolution. He believed it was a good plan to test the truth of a proposition by stating its converse. (The hon. member here proceeded to read the converse of the resolutions.) That was the converse, and he thought it was a logical conclusion that both propositions could not be true; it was for hon, members to say which they could support. In respect to the terms “pre-emptive right,” the right alluded to was simply that of the recipient of half a crown, given in charity, in respect to the donor—the former could have no right but by the will of the latter. The Orders in Council were merely permissive, the Government having an absolute right of reserving land without assigning any reason. The hon. member then read from the Orders in Council, drawing attention to the fact that they gave to the

Governor or the officers for the time being representing the Government, the right of refusing to sell in any case where sale might give an undue command over water required by the occupants of adjoining lands. That provision, if carried into effect, would grant what the most ardent opponents to pre-emptive right required. No one opposed the occupation of a run, acre by acre, but what was objected to was that, by buying to the extent of a mile back from the water frontage, purchasers should be able to obtain the absolute command of immense districts where no other water might exist. He conceived that the principles of the government entirely agreed with those he advocated, and he thought they would be strengthened by the adoption of his resolutions. What was commonly called the pre-emptive right affected very few squatters indeed. Very few had availed themselves of the right, or desired to do so; it would not be worth their while, in general, to purchase the small quantity of land allowed them without the run attached to it, whether they could do so on their own terms, or not. If no one else got the run, the squatter would have a claim for the value of his improvements, and if the claim were not allowed, a section with a few slab-huts would be valueless, without the run, the squatter in this case hereby losing the sum sunk on the buildings. There was only one exceptional case, and that was where the improvements endeavoured to be secured consisted in wells, which were very valuable from the uncertainty of procuring water, excepting from considerable distances. In such cases blocks of a hundred and sixty acres containing wells would be greedily brought up. His resolutions would effect very few squatters indeed, in fact merely those occupying land likely to be selected for sale for agricultural purposes. It was the object of such squatters to purchase as much water frontage as possible, and so make themselves masters of the country lying to the back. This assumed pre-emptive right was inconsistent with the general benefit. They must look to the future, and although there might be some temporary inconvenience arising from the falling off of revenue hitherto obtained from the sale of these lands, the public should be willing to put up with this, rather than sacrifice the birth-right of future generations to the profit of the present hour. At present a squatter might purchase the whole water frontage of his run, or any portion of it, by purchasing land to the distance of a mile back. Instead of this, he thought it should be allowable only to purchase square blocks, excepting where the back extent of the run was not equal to the extent of water frontage. On these terms a purchaser would have the right of buying the whole of his run, and he would also be able to purchaseas many blocks of 160 acres, having wells on them, as he chose, his resolutions affecting the water frontage only. Even the most zealous supporters of the squatting interest agreed that it would be the duty of the Legislature to grant no pre-emptive rights after the expiration of the present leases, but, during the time these had to run, they were desirous of buying up as much land as possible. He would give these their pound of flesh, but would accord them no particular favour. There were those who said it ought to be the object of the country to encourage agriculture, while others asserted that that was a hopeless speculation. He held that if people chose to do so, they should be free to ruin themselves by buying farms. The money would go into the treasury meantime, though they might cut their own throats. He might remark, in passing, that the legal phrase, ‘Caveat emptor,’ was one that had a forcible application to the case of agricultural speculators. It was perfectly inconsistent with the future existence of townships that, immediately outside of their boundaries, the most eligible land should be held by any monopolist, whether squatter, or absolute proprietor. Let them look at the difference between the cases of Brisbane and Ipswich—no- body having located themselves in the neighbourhood of Brisbane, in the manner alluded to, there were no bickerings arising out of alleged acts of trespass. In Ipswich, on the contrary, as far as he could learn from the public press and private conversation, there was a continual heart-burning between the townspeople and the occupants of adjoining runs. He contended that the Crown did not by the Orders in Council intend to sacrifice the general good to any particular interest. He was only desirous that the provisions of these orders should be generally known, and the opinion of the house brought to bear upon them. He was of opinion that all bases of contention between the squatters and the townspeople should be got rid of, and he could not at all sympathise with the delicacy of his friends in the Government on this occasion. In bringing forward his resolutions he thought that the vote of the house in their favour would considerably strengthen the hands of the Government, and, should any future Ministry hold different opinions on the subject, would restrain them from

inflicting a lasting evil on the people of Queensland. His third resolution, to which he had neglected to advert, was merely a necessary inference from the other two.

Mr. BLAKENEY seconded the motion.

The COLONIAL TREASURER said that, although the Government agreed in the main with the principles on which the resolutions were based, they could not support them, as, if passed, they would lead to an infringement of the rights of the present Crown lessees, which would induce a distrust of the Government and Legislature. The adoption of the resolutions would also interfere with the function exercised by the Executive in the disposition of lands. The hon. member then read from the Orders in Council, and observed that there was nothing in them to justify the restriction of purchase, by the pre- emptive right, to lands on which improvements had been, or were intended to be made. Steps had been taken by the Government for the extension of reserves, particularly on the Darling Downs,—the only part of the colony where the pre-emptive right had been exercised. The effect of taking the discretion, in the matter of reserves, out of the hands of the Executive and vesting it in the Legislature, as proposed by the resolutions, would be the alteration of a law without legal enactment. The hon. member then explained at some length the manner in which the squatters had obtained their present pre-emptive right, dwelling upon the benefit reaped by the colony at large from their prosperity. The effects of the Orders in Council had been to bring the colony into its present flourishing condition, irrespective of the gold discoveries, and they must be jealous of any interference with the squatters' rights, as conferred by them. Let them look at a map of the Darling Downs districts, and see the small amount of land bought, or likely to be bought by pre-emptive purchase. The large amount of land required to be taken with them would be a sufficient check on the purchasing up of water frontages. In 5 or 6 years the squatters' leases would terminate; in the meantime it must be borne in mind that in 19 years they had raised the colony from a penal settlement to the condition of a flourishing colony, and if they had benefited themselves it would not be denied that they had benefited others also.

Mr. WATTS expressed surprise at the resolutions brought forward by the hon. member for Warwick, which he must have known would be likely to provoke an acrimonious debate. He protested against any interference with the rights of the squatters, and against the hon. member's refusing to those who might wish to purchase portions of their runs the right to do so, because he (Mr. Gore) had no desire to buy. Such interference would quickly subject them to the tender mercies of the banking and mercantile communities in New South Wales. Although not personally interested in the purchase by pre- emptive right, he objected to the resolutions on principle. He would ask the hon. member for Warwick why, if land was in such demand, he, in conjunction with others, had withdrawn it from public sale. The price put upon the land sold to pre-emptive purchasers would prevent the squatters from standing in the way of agriculturists, and the Government had the power to prevent agricultural lands from being sold, and of withdrawing at any time such land as they thought most advantageous for those purposes. The borough which he represented extended over an area of 45 square miles, and he would ask them to see how much of that had been sold to the squatters. The wrong done was not due to the squatting interest, but to the shortcomings of the survey officer—to the system of holding lands back, instead of bringing them into the market. Thousands of acres could be sold, if only offered to sale, and he was satisfied that every man would thus obtain all he wanted or could require. He believed that a vast portion of the Darling Downs was unfit for agricultural purposes. He had at all events endeavored during the last 14 years to grow a cabbage there, without success. (Laughter.) The sale of lands to the squatter brought money into the Treasury, which would otherwise have been kept out, enabled Government to open up roads, and gave stability to the country. From the run which he occupied no less than nine square miles had been taken out of the front, and, while the Government possessed the power to deal with land in this way, he would ask what harm was the squatters likely to do? The hon. member for Warwick could be no practical sheep farmer, or he would not tell one who was, that the lands to the back of the water frontages would be valueless without them. It was his opinion that these lands were some of the very best. Although he would be one to resist any attempt to confer a pre-emptive right after the expiration of the present leases, on that occasion he felt himself bound, on principle, to move the

previous question, as an amendment on the motion.

Mr. MOFFATT seconded the amendment. In answer to a question from Mr. Gore, the Speaker informed that gentleman that he could reply by speaking to the amendment.

Mr. HALY made a few observations, expressing it as his opinion that the squatter had a pre- emptive right only over those portions of his run, on which he had made permanent improvements, and calling attention to the injustice that would be done, by granting such right, without limit, in the ease of a gold-field breaking out on a squatter's run.

Mr. BROUGHTON thought that most of the hon. members who had spoken on the motion had missed the real gist of the argument, which was whether the squatters preferred any right properly so called, or not of pre-emption. If they read the Orders in Council, they would see that they gave to the Executive the right to allow, but not to the squatter, the right to demand the sale of any portion of his run. The hon. member then referred to the circumstances out of which the permission arose, stating himself of opinion that it was never contemplated by the orders to give any power to purchase, excepting in the case of land on which improvements had been made. He did not think a single sentence could be found in them, from which it could be argued that a right was given to purchase land excepting on such conditions. There should have been, in his opinion, instances adduced by the hon. member for Warwick, showing, as might very easily have been done, that the pre-emptive right had been abused. He knew such an instance on the Darling Downs, where the land had been virtually monopolised to twenty miles round by the purchase of a few acres.

The ATTORNEY-GENERAL would confine himself, in his remarks, to the legal bearing of the question which had come before the house. He then proceeded to read the first resolution, which he said amounted to an assertion that the pre-emptive right existed, and went on to dictate the manner in which that right was to be exercised. He agreed with the hon. member for West Moreton that the right, as interpreted, did not exist. The orders in Council gave a pre-emptive right to the lessee against all other purchasers, but not in respect to the Crown. But granted that the right, in the moral acceptation of the work, existed, and suppose that the Government thought fit to allow the squatters to exercise it, in what way was the right to be exercised. This the resolutions took upon themselves to declare and on this point he joined issue with the hon. mover. He would show that they were contrary to the letter and spirit of the enactments contained in the 18 and 19 of Victoria, chapter 104, section 6. This the hon. member proceeded to do, by quoting from the act referred to, and comparing with it the resolutions. He trusted that one of their first acts would not be to set aside Imperial legislation. In section 7 of the Orders in Council, certain regulations were made, by which the Government was to be guided, and these were not subject to alteration. In the section referred to there was a saving Clause which allowed the Government to reserve certain land from sale at their own discretion. If the Executive was to be entrusted with the affairs of the country, they ought not to be interfered with in the exercise of their discretion by the house. But if the house were to be permitted to dictate to the Executive in this matter, it was not in the power of the latter to act independently of the provisions made in the Orders in Council. A certain land order of the 28 of June, 1860, would be found page 58 of the Laws and Regulations of the Waste Lands of the colony, setting out how the pre-emptive right was to be exercised. These land regulations were in force when separation took place, and would remain in force till otherwise provided by the legislature. Did these regulations say that the pre-emptive right was to be exercised only in reference to the sale of land on which improvements had been made? No, but that persons desiring a portion of land, for raising produce or any other purpose, should be allowed to purchase it by the right in question. Was a resolution of the house to be allowed to upset an Imperial Act. The first resolution would interfere with an Imperial Act, and the second proposed that the house should form itself into a general Executive, with the object of pointing out to the Government how they were to exercise their discretional power in reference to the pre-emptive right. The third resolution was equally dictatorial, and implied an attempt on the part of the hon. member to impose a certain line of conduct on the Ministry, which if they did not pursue, they would, he supposed, receive a vote of censure, and have to vacate

the Treasury benches.

Mr. RAFF must say that he had noticed the introduction and progress of the discussion with some regret. Admitting that the resolutions of the hon. member for Warwick put a fair interpretation on the Orders in Council, and that the house had a right to fetter the Executive in the interpretation of those orders, it was at least incumbent on the hon. member to have shown that the Executive had abused their powers in reference to the reservation of land—(oh, oh; hear, hear)—and that they had put a wrong interpretation upon the orders. The hon. member for West Moreton had stated that the power had been abused; but he believed that had been by the Government of New South Wales. (Yes, from Mr. Broughton). It would be establishing a bad precedent to allow meaningless motions to be brought forward merely for the object of creating a little excitement, and tending only to waste the time of the house. He considered these remarks necessary to explain the vote he intended give for the previous question.

Mr. MACALISTER considered that the question involved very important interests, and for that reason did not wish to give a silent vote. The hon. member (Mr. Watts) who had spoken in opposition to the resolutions, had contended, as far as he had been able to understand him, that a contract existed between the squatters and the Crown which entitled them to exercise a pre-emptive right. The squatters had a right to the enjoyment of their runs for fourteen years, and during that time no individual could step in and deprive them of these runs ; but he was not aware that under the Waste Lands Act it was incumbent upon the Government to sell them any portion of their land. If there were any doubt on this question it could be set aside at once by the express regulations referred to, which stipulated that the Government should not be held bound to sell any of such lands. Therefore it could not be said that anything like a contract existed. There could be no contract without two contracting parties. In this case there was simply a power to apply and a power to sell. He was rather astonished to hear his hon. friend the Attorney-General call into question the right of the House to instruct the Executive. Could there be a doubt but that House was the Supreme Executive? If it saw the Government failing in its duty, the house was called upon to instruct it. While he went thus far with the hon. member for Warwick, he was bound to state his opinion that he had not shown any grounds for interfering with the question because there was scarcely a word in the resolutions which was not to be found in the Waste Lands Act. He contended, too, that before the hon. gentleman came forward with his resolutions, he should be prepared to point out violations of the orders on the part of the executive. Nothing of that kind had been done, and he should therefore vote for the previous question.

Mr. JORDAN would have felt it his duty to vote for the resolutions, if it had appeared to him that any damage would result from their not being carried, but inasmuch as the hon. mover had not made out his case, he would feel bound to take an opposite course. He thought it was not the intention of the orders in Council to limit the exercise of the pre-emptive right to such cases as those referred to in the resolutions, but that they gave power to lessees to exercise the right in other cases, for instance if they desired land for the purposes of raising produce for sale. The first resolution would therefore interfere with the orders in Council. The second resolution was objectionable because therein the hon. member gave his own definition as to the conditions under which purchasers should or should not be allowed to buy—this definition, moreover, not being borne out by the orders in Council. For these reason he must vote against the resolutions.

Mr. GORE replied, expressing it as his opinion that the Government agreed with the principles of his resolutions, and assigning as a reason for not mentioning any particular cases in proof of the abuse of the exercise of pre-emptive right, his impression that such were sufficiently well known to the house, and adding that it was not necessary to bring before the house any special instances of abuse in order to affirm a general principle.

The ATTORNEY-GENERAL explained, in answer to some observations of the last speaker, that he had not affirmed his concurrence with the provisions of the second resolution, but had complained of it as pointing out to the Government the way in which they were to allow the exercise of the pre-emptive right. A division ensuing, the motion was negatived by a majority of 17 to 2, Messrs. Gore and O'Sullivan alone supporting it.

TURNPIKE AND ROAD RETURNS.

Mr. WATTS moved—That an address be presented to the Governor, praying that his Excellency will be pleased to cause to be laid on the table of this House—(1.) A return of all tolls collected at the Turnpike situate on the road leading from Ipswich to Drayton on the summit of the Main Dividing Range since February, 1858. (2.) A return of all the sums expended on the repairs and keeping in good order that part of the said road commonly known as the Main Range, on the ascent of the Main Dividing Range, since the same time. The hon. member called attention to the importance of attending to the condition of the Maine Range, as the line of traffic and thoroughfare from Drayton to the capital. A return had been asked for in the Assembly of New South Wales showing the sum received from the Toll-bar at the head of the Range till 25th of March, 1858, and he now wished for a return which should continue the information already supplied. The object that the country had in maintaining toll-bars was to keep the roads in repair. He saw that the toll bar referred to was yielding £160 a year in addition to £100, as the pay of a toll-collector. The hon. member then went on to show that an unfair proportion of the public money was spent on the Ipswich and Brisbane road, as compared with that spent on the main road although the latter was the chief source of the wealth and influence which those towns derived. It had been urged that there were no funds for the purpose of carrying out the works alluded to, but if such was the case how did it come to pass that gangs of men were to be seen constantly employed on the Ipswich and Brisbane roads. He concluded by stating that his object in bringing the motion forward was to procure a more equitable appropriation of money in the repair of the public roads.

Mr. MOFFATT seconded the motion.

Mr. BROUGHTON observed that the hon. member for East Moreton had a motion on the paper for the appointment of a Select Committee to enquire into the whole subject of internal communication. If that committee were granted it seemed to him that the question now before the house might be very well brought within the province of its enquiry.

The COLONIAL SECRETARY entirely agreed with the greater portion of the hon. mover's remarks who he thought had made out a very clear case for the consideration of the proposed committee.

Mr. BUCKLEY contended that the view taken by the hon. mover was one-sided, inasmuch as he did not seem to take into consideration the magnitude of the interests at stake, or the circumstances under which the money alluded to had been granted. When he (Mr. B.) had the honor of representing the county of Stanley in the New South Wales Legislature, he applied to various gentlemen in the northern districts for information as to the nature of the works required, and among others he applied to the hon. member. He received answers, and was promised information, but from some cause or other the information never reached him. With regard to the money expended on the Ipswich road—he was in a position to say that it was granted in answer to one of the most influential and numerously signed memorials ever presented to the Legislature.

Mr. TAYLOR agreed that the public money, so far as the repair of the roads was concerned, had been expended in a most disgraceful manner. The hon member (Mr. Buckley) had made out a good case for the Ipswich and Brisbane road, but he seemed to lose sight of the fact that nearly the whole traffic of the interior was dependent on the great line of thoroughfare adverted to in the motion.

Mr. RAFF thought the hon. member was scarcely in order when he alluded to the large amount of money spent on the Ipswich road as compared with that expended on other lines. As the public roads were maintained by funds derived from the sale of lands, so he believed that the true principle of apportioning the public expenditure was to be found in the amount of money contributed in this way by each locality. Judging by that principle he thought it would scarcely be denied that the Ipswich and Brisbane road had not received more than its fair proportion, the inhabitants in those towns and the neighbourhood being proportionally the largest contributors to the land revenue.

The motion was then put and passed.

BURDEKIN RIVER,

Mr. BUCKLEY postponed his motion with reference to this subject until the following day.

MOTION WITHDRAWN.

Mr. FERRETT withdrew the motion standing in his name No. 4 on the business paper.

SUPPLY.

On the motion of the COLONIAL TREASURER the order of the day for the resumption of the Committee of Supply on Thursday next, was discharged from the paper. He explained that the order had been made erroneously.

The house then went into committee and agreed to certain resolutions, the report of which was ordered to be received the next day.

WAYS AND MEANS.

The COLONIAL TREASURER moved that this house will to-morrow resolve itself into a committe of the whole, to consider of ways and means for raising the supply granted to her Majesty. Carried.

ACCOMMODATION.

The COLONIAL SECRETARY in moving the adjournment of the house, remarked that it was in contemplation to appropriate the back seat on each side, to the use of visiting members from the other house, and also to make fresh arrangements for visitors generally.

The house then adjourned until 3 o’clock the next day.