Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
24th August 1860
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Extracted from the third party account as published in the
Moreton Bay Courier 25th August 1860

The Speaker took the chair at a quarter past 10 a.m., and read prayers.

MESSAGE FROM THE LEGISLATIVE COUNCIL.

The SPEAKER announced and read a message from the Legislative Council, accompanying the Libel Bill, and requesting the concurrence of the Assembly in the measure.

EXPLANATION.

Some desultory discussion then took place with reference to certain remarks that had fallen from Mr. O'SULLIVAN on the previous day, that gentleman contending that he was in order, that the particular words to which exception was taken were not personally applied, and that they were harmless in themselves; while other hon. members said they considered the words disorderly at the time they were used, and that the explanation should have been tendered before. The matter then dropped.

OCCUPIED CROWN LANDS LEASING BILL.

On the motion of the COLONIAL TREASURER, the order of the day for the second reading of this bill was postponed till Wednesday next.

SUPPLY.

On the motion of the COLONIAL TREASURER, the Speaker left the chair, and the house resolved itself into a committee of the whole for the consideration of the supply to be granted to Her Majesty for the year 1861.

The COLONIAL TREASURER then moved that the following item be passed:—

Travelling expenses of the Governor on Tours of Inspection	...	...	...	...	£300

He said that although this sum was asked for, it did not follow that the whole of it would be expended, as only the sum actually required would be charged upon the revenue.

Mr. FORBES hoped that, before going into the estimates, the Colonial Treasurer would afford some explanation of the financial policy of the government for the year 1861.

The COLONIAL TREASURER, in reply, stated that the explanation would be afforded at the proper time.

Mr. THORN objected to the system of allowing travelling expenses altogether. The commissioners and other government officers received good salaries, and he did not see why they should be allowed additional sums for travelling expenses.

Mr. BUCKLEY thought that in some cases it was necessary to provide for the travelling expenses of government officers.

Mr. BROUGHTON considered that when travelling expenses were required for the whole

year, they should be included in the salary of the officers requiring them, but in the case of those who only occasionally travelled the sums should be voted, but only the actual expenses paid.

The item was then put and passed.

The COLONIAL TREASURER moved the following item, which was put and passed:—

Stationery and incidental expenses for His Excellency the Governor	...	...	£100

On the motion of the COLONIAL TREASURER, the chairman reported progress to the house, and the committee obtained leave to sit again on Thursday next.

WAYS AND MEANS.

The CHAIRMAN of COMMITTEES reported that the committee had agreed to a resolution which he brought up with reference to Ways and Means.

The report having been read by the Clerk, was agreed to by the house.

JUDICIAL ESTABLISHMENTS.

Mr. MOFFATT, as chairman of the select committee appointed to enquire into the Judicial Establishment of Queensland, moved the adoption of the report. It was not his intention to say very much, for the evidence afforded more information than he could give on the subject of the report. When he applied for the appointment of the committee in the first instance he felt that as a layman he might be considered presumptuous in interfering in a matter that could be more ably handled by members of the learned profession. He considered, however, that there might be a feeling of delicacy on the part of those gentlemen that would prevent them from taking the initiative in this matter, and as he considered it necessary that the subject should be taken up, he had ventured to take upon himself the responsibility of the first step. The evidence that had been taken was copious and reliable. Nine witnesses had been examined, four of whom were members of that house, and seven were members of the legal profession. The testimony was valuable in itself, and the opinions that had been expressed by the various witnesses were ably stated by gentlemen whom he believed gave that evidence with no other object than that of elucidating the truth, and of assisting the committee as much as possible. The committee stated in their report that “they had ascertained that the working of the judicial establishments throughout the colony did not afford due certainty and efficiency in the administration of justice, and as at present constituted was not calculated to secure that confidence necessary for the discharge of its high and important functions.” In expressing this opinion, in which they were fully borne out by the testimony of the witnesses, the committee did not intend to impute inefficiency or incompetency to take the judge, whom they believed to be fully able for the discharge of his duties; they simply desired to state that the arrangements in force, and the whole system in operation were not such as to inspire the public with confidence in the administration of justice. In his evidence the hon. member for North Brisbane stated, in reply to the question No. 5 in page 12—“Do you think that as justice is at present administered (by one Judge) there is due efficiency in its administration? Certainly not. My opinion is that the administration of justice in every department requires improvement, for there can be, in my opinion, no confidence felt in the judgement of a magistrate or any other judge, however high, unless there is some mode of appeal provided. None exists at present, from the highest to the lowest Court, in this colony.” Mr. Rawlins and the Hon. D. F. Roberts, Esq., bore similar testimony, while all the witnesses concurred in the opinion that as the Judge was also commissioner of insolvency, it was highly improper that suitors should be compelled to appeal to himself in one court against his own decisions in another. Although the judge might be sincerely desirous of giving satisfaction to all, still it was impossible for him, under existing arrangements to do so. He was obliged to be repeatedly absent from the Supreme Court, in some cases for three weeks at a time, when the whole business of the Supreme Court was suspended, causing thereby great inconvenience to the public, and affording matter for the serious consideration of the house. He would leave the

question of District versus Circuit Courts to be discussed by the learned gentlemen whom he saw around him, and would merely remark that the hon. member for Fortitude Valley and Mr. Rawlins preferred the establishment of District Courts to the others, the former gentleman because of their greater advantages, and the latter because of their greater economy. It was doubtful, however, whether or not the District Courts would be a more economical means of providing for the wants of the public than the appointment of additional judges. If district courts were agreed to, four judges would have to be appointed, with salaries at 900 to £1000 each. Crown prosecutors and a large staff would be required in addition, and still, as it would not be advisable to bring up the judges from the inferior courts to sit in Banco with the Chief Justice, the colony would be in no better position than before, as regarded appeals to the Supreme Court. The report, therefore, recommended that three judges be appointed, one as Chief Justice at £1500, and two as puisne judges at £1200 per annum each. To fill the first-named important office it was proposed to send to England for a gentleman learned in the law, who would know nothing about the place or the people, and would therefore be swayed by no local influences. The committee also recommended the holding of Circuit Courts at various central localities throughout the colony, and mentioned Rockhampton and Maryborough amongst other places. The duties of these courts could be discharged by the judges of the Supreme Court, one of whom the committee proposed should be Chief Commissioner of Insolvency. The present Judge was also Commissioner of Insolvency, but the appeals laid to himself in his own court were from himself in another. If additional judges were appointed, however, the appeals would lie to the full court, and hence greater confidence would be entertained in the decisions. It was further recommended to the consideration of the house that the police magistrates should exercise the functions of Registrars, and that the offices of Registrar of the Supreme Court and of the Registrar-General should be amalgamated, as the duties could easily and conveniently be discharged by one officer with clerical assistance. The attention of the house was also called in the evidence of Mr. Darvall to the miserable accommodation afforded for the keeping of the documents usually in the possession of the registrar. There was a large number of valuable deeds and the only place for keeping them in was unsafe and insecure, being constantly liable to take fire in consequence of the faulty construction of the buildings and position of the chimneys. Attention was also drawn to the inconvenience experienced by purchasers of Crown lands in consequence of the delay they were obliged to submit to before obtaining a possession of their deeds. He (Mr. Moffatt) did not see why, if the purchasers were allowed 30 days to pay their purchase money, the government should require a longer time to prepare the deeds. In private transactions the purchase money was usually paid and the deeds handed over at the same time, and a similar arrangement with reference to deeds from the Crown would give general satisfaction to the public. Again, about 900 deeds for land sold before separation were still in New South Wales, and it was to be desired that the government would take steps to procure these documents as speedily as possible. Another proposal made by the committee was deserving of the consideration of the house. Hon. members were aware that insolvent debtors could leave the colony under present arrangements without satisfying their creditors. This was therefore proposed, in order to obviate this evil, that police magistrates at Brisbane, Rockhampton, Wide Bay, and other important sea-ports, as well as at the towns on the southern frontier, should be empowered to issue warrants to prevent such insolvents from leaving the colony. The hon. member then urged the report upon the favorable consideration of the house, and concluded with moving its formal adoption.

Mr. BLAKENEY seconded the motion.

The ATTORNEY-GENERAL said although it was not his intention originally to speak to the question before the house immediately after the hon. member for Darling Downs had introduced his motion; still, as he had been pointedly called upon to state his views on the question, he would at once proceed to make a few remarks upon the report. With some parts of that report he cordially concurred, while to others he was opposed. With its leading principles he found no cause to disagree, while the minor points to which he took exception were unimportant, being mere matters of detail. The question involved in the report was one of vital importance to the general interests of the country, and he considered the thanks of the whole colony were due to

the hon. member (Mr. Moffatt) for the pains he had taken in presiding over the committee, for the mass of important information he had accumulated, and for the able manner in which he had introduced his motion for the adoption of the report. Whether the report was adopted by the house or not, the information collected would be of invaluable service to the country, and would serve as a guide to the government in framing any measure for the better administration of justice in the colony, which they might feel themselves called upon to introduce. It was of the utmost importance to the country that the judicial establishments should be in a sound and healthy state, so as to inspire the public with confidence in their efficiency. A system that would not inspire such confidence would prove detrimental to the interests of the colony; and would materially retard its rise and progress. It could not be doubted that the system at present in operation was open to grave and serious objections, and that justice was not efficiently administered in Queensland. In making this admission he by no means intended to impugn the capacity of the Judge, or to doubt his ability to discharge in an able and impartial manner all the duties he undertook. The want of efficiency was to be looked for and found in the meagreness of the judicial establishment, and not in any want of ability in the administrators of the law. Before separation, the court of Queensland was only a district court or branch of the Supreme Court of New South Wales. Then appeals could be made from the court here to the three judges in Sydney who decided upon the appeals promptly and immediately without causing any large expenditure on the part of the appellants. Now, however, there was no Court of Appeal and no person to decide in cases of appeal except it be the Judge in one court who has already pronounced his opinion in another. The appeal court in Sydney was shut against this colony by separation, and it therefore became necessary to establish a new one. The preliminary part of the report had been already ably discussed by the hon. member for the Western Downs, and it was not necessary to dwell upon it again as all the arguments adduced and statements made were fully borne out by the evidence that had been accumulated by the committee. He would therefore proceed to take up those points which the hon. member had left, and endeavour to propose to the house a plan which he thought preferable to the one propounded in the report. In giving his evidence before the committee he had made several assertions with reference to the establishment of county courts which would appear inconsistent, as he admitted they were, with the proposition he was about to make. He had been called on hurriedly to state his views, and having done so, he had on thinking over the matter felt it his duty to change them in one or two particulars. He stated that, if the country could afford the necessary expense, then judges should be appointed. If the house and public generally thought we were not in a position to maintain or to require the services of these judges, then by all means let the judicial establishment remain as it is at present; but, if otherwise, let three judges be appointed. The Supreme Court was a court of record, like the Court of Common Pleas, the Exchequer Court, and the Queen's Bench, those principal courts of record in England. In that court all pleadings must be filed, and all preliminaries arranged outside must be duly entered and recorded there. In the Circuit Courts, on the other hand, questions of fact and not of law were tried, and they were only courts of record to a limited extent as they merely recorded the verdicts of juries. Therefore if Circuit Courts were established throughout the colony and judges appointed to work them in every small case of £40 the pleadings would have to be filed in Brisbane, sent again to the district courts, perhaps 500 miles off, and afterwards forwarded to the Supreme Court again. Such an arrangement would cause great inconvenience and expense to suitors. Although he felt these objections to the Circuit Court system he would not abolish it altogether, but considered that two or three a year should be held in the principal towns throughout the colony to try cases that would be better in the hands of Judges of the Supreme Court than of the District Court Judges. As to expense he proposed that the government should take advantage of the District Court Act now in force, and proclaim districts where courts should be held. The Act was already passed by the New South Wales legislature empowering the Governor with the advice of his Executive Council to make this proclamation and it would now be only necessary for him to avail himself of the provisions of that act to establish District Courts throughout the colony, and to appoint where they should be held. The Courts of Petty Sessions could be used as District Courts and no fresh expenditure would be necessary for buildings. Again the Clerks of Petty Sessions could act as registrars of the District Courts, the Sheriff's bailiffs could perform the

duties of the District Courts' bailiffs without additional salary and with very trifling additional expense. The judges of the Supreme Court could discharge the duties of the District Court judge and also of the Circuit Courts; for if a District Court were held at Drayton for instance, on a certain day, it could be arranged that a Circuit Court could be held in the same place two days previously or two days afterwards as the case might be: And thus no time would be wasted and no additional travelling expenses incurred. Then it would be necessary that the clerk of records at the Supreme Court of Brisbane, while retaining in his possession the original pleadings, should forward certified copies of them to the various courts to be acted upon as at present in the case of the original documents. There was one other important point to which he desired to draw attention. By the arrangement proposed there would be sufficient judges to form a Court of Banco for the re-hearing of motions and appeals, and for other business which could not be satisfactorily disposed of by a single judge. With regard to the first recommendation in the report relative to the appointment of a Chief Justice, that was a matter which in his position he could neither assent to nor dissent from. Referring to the appointment of a Crown Prosecutor, he thought it would be better to adopt the English system. Under that system the Crown handed over the brief to some professional gentleman, accompanied by the usual fee. Hence the gentleman acting in this capacity was only paid for the actual amount of service performed. The hon. and learned gentleman then proceeded to describe in detail the minor alterations recommended in the report, and concluded by stating that he had no desire to force his own opinions on the house. He pointed out, however, that there was a multiplicity of evidence in favor of the proposed changes, and he, therefore, hoped hon. members would give that evidence their most mature consideration. (Hear, hear.)

Mr. LILLEY said that inasmuch as he differed materially from the hon. and learned gentleman who had preceded him with regard to the immediate necessity of adopting this report or the system embodied in it, he felt bound to state some reasons to the house for the course he intended to pursue on this occasion. He admitted that the question was one of great importance, and called for considerable reform; but he denied that, under present circumstances, additional judges were required. Allowing, however, that they were required, he denied that any one of them ought necessarily to be selected from England as suggested in the first recommendation. The hon. mover, in support of this recommendation, had most injuriously—he would not say tortured—quoted a portion of his (Mr. Lilley's) evidence, and omitted to quote that portion which explained the whole matter with regard to his opinion of the colonial bar. The portion of his evidence omitted on this point was as follows:—"I allude to New South Wales and Moreton Bay. I cannot say anything of Victoria, but judging from the newspaper reports, I should form the same opinion of that colony. I believe the men are inferior—very far inferior—not but that there are many exceptions, and no doubt there are eminent men among them. But I believe there are many men in the county courts in England, both on the bench and among the bar, superior to those in the supreme courts here." He must say that the hon. member for the Western Downs, in treating this part of the subject, had displayed an amount of legal acumen for which few were prepared to give him credit. (Laughter.) But to revert to the real question under consideration, he believed that in the present state of legal business there was no necessity for the appointment of additional judges. He found from statistics on the table of the house, that during the last twelve months there had only been 39 criminal cases, of which about one-third resulted in acquittals, and of the whole number there were only two that might not have been tried by district courts. With regard to the cases submitted at the criminal sittings during the same period, he found that the number was only 22, and of this only 13 obtained verdicts; whilst on the other hand, the cases were of such a nature that the whole of them, with the exception of one, could have been tried at district courts. According to these figures it would be seen that, even taking the whole of these cases together, and allowing only one trial per diem, there was not at the very utmost more than two months' work in the year for one judge. Such being the case, he asked what possible reason could there be for appointing additional judges. Then, again, he asked, why was not Mr. Justice Lutwyche examined by the committee upon this point, especially after the admission of the Attorney-General as to his Honor's competency. In fact, he could not conceive any better authority upon a

subject of this kind than the gentleman to whom was entrusted the chief administration of justice. If there was no other reason than the omission of his Honor's evidence, he thought that would be sufficient to warrant them in rejecting the recommendation. It was amazing to observe how much had been made in the report of the labour devolving on a single judge. There were the ecclesiastical and admiralty courts, in which not a single case had as yet been brought, and the equity court, in which only some two or three cases had been dealt with. As for the issue of writs of capias for preventing the escape of fraudulent debtors, and the acceptance of insolvent estates during the three or four weeks the judge was supposed to be absent from Brisbane, he could see no reason why those duties, which were of a very simple character, should not be vested in the Registrar or other officer of the court. The gentleman who now filled the office of Registrar, although a layman, appeared to him to be quite qualified for the performance of such duties. With regard to the appointment of a judge from England, that was a recommendation in which he could not concur. Although he had expressed his opinion that the English bar was superior in tone to the colonial, he did not mean to imply that they should specially send home for a judge. On the contrary, he thought they should give colonial talent the reference wherever it could be found capable of discharging the duties of the office. Before proceeding any further, he would correct an error in the report. His name appeared at the beginning of the evidence as one of the committee, whereas he did not happen to be a member of the committee at all. He was anxious that this matter should be clearly understood, in order that it might not be supposed he had taken any part in agreeing to the recommendations contained in the report. In reference to the proposed establishment of a court of appeal, it was alleged as an argument against the present system of having only one judge, that there was no use in appealing from Jack in Chambers to Jack in Court. Now he maintained that this assertion was both insulting to the judge, and incorrect in fact. He knew from his own experience of more than one case of appeal in which his Honor had thought proper upon hearing further argument to reverse his decision. His hon. and learned friend (Mr. Blakeney) had stated in his evidence that the deficiency of appeal business was attributable mainly to a public want of confidence in the present mode of appeal. But he (Mr. Lilley) thought it was owing rather to the number of guineas required to fee counsel. (Laughter.) As an instance of this he might remark that up to the time of separation when there was a regular appeal court there was only one appeal submitted for the consideration of the bench. Some of the evidence taken to show how the administration of justice might be improved was certainly very amusing. Mr. Sheriff Brown when asked the question suggested the propriety of appointing three extra bailiffs and one hangman. (Laughter.) The chairman commenced with the following question:—"I believe you are the Sheriff of the colony? Yes. And you have an active knowledge of the administration of justice in this colony? Some knowledge inasmuch as I have to carry out the sentence of the law." Mr. Buckley not knowing exactly what an "active knowledge" in carrying out "the sentence of the law," meant, very innocently asked "the extreme sentence?" to which the Sheriff replied "Yes." The following question was then put by Mr. Blakeney:—"Is there any other suggestion you can make in reference to the administration of justice in this colony? I consider as the law stands now that an executioner should be appointed who should be one of the Sheriff's officers. It is difficult to obtain one when he is wanted. Up to the present time I believe you have sent to Sydney for an executioner, whenever you have had that unpleasant duty to perform? I have had one from Sydney, and I have obtained one in Brisbane by paying a high price for his services. The Government gave him a free pardon and £25. For the last criminals 'Chamery' and 'Dick,' Elliott the Sydney executioner was kindly lent to us by the Government of New South Wales. I would also beg to point out that the salary of the gaoler is too small." Such was a specimen of the evidence upon which it was proposed to make these very important changes in the administration of justice. His hon. and learned friend (Mr. Blakeney), had told the committee in his evidence that there were numerous appeals from the commissioner of insolvency in Sydney to the judges of the supreme court, but he (Mr. L.) Felt very much inclined to doubt the value of the hon. gentleman's experience, seeing that he was only six months in Sydney, and during the greater part of that time was engaged in electioneering. (Laughter.) They were then told that two entire insolvent estates had been swallowed up in costs in consequence of the temporary absence of the judge whilst on circuit. So far as his own experience went, he was entirely

ignorant of such a calamity, and he must say that he had had a great deal of experience in insolvency during his residence in Brisbane. The absence of the judge, moreover, was always very brief, and in some districts his attendance was not required at all. As an instance, he observed that at Rockhampton there had been no legal business at all requiring the intervention of a judge during the present year. Indeed, he believed that instead of the administration of justice being at a “standstill,” as was alleged in the evidence, the cases of suspension were remarkably few. Nor did it appear from the evidence of Mr. Darvall that any material increase had taken place in the general business of the Supreme Court, although in one branch the witness stated there were symptoms of an increase which might render clerical assistance necessary. The hon. member here entered into some details, to show that the ordinary routine of business of the Supreme Court with reference to insolvency, &c., might be very well performed by the present staff of officials, with perhaps some clerical assistance. He was as anxious as anyone to improve the administration of justice, and to bring it home to every man’s door; but he would not be one to pitchfork a man on to the bench, nor would he sanction the proposition for the importation of a chief justice from England, which in all possibility would be a job on the part of the home government. (Hear, hear.) If they were to have a chief justice at all, why not give the rank to the present occupant of the bench, who had never yet stained his ermine—who had uniformly discharged his difficult duties in a most efficient and satisfactory manner? Why insult him by placing a stranger over his head? He hoped the house would deal with this question in a spirit of justice, and in a manner becoming the high duties the country had called upon them to discharge. (Hear, hear.)

Mr. BLAKENEY was addressing the house at some length, when

Mr. WATTS drew attention to the fact that there was not a quorum present.

The SPEAKER accordingly adjourned the house at half-past one until three o’clock on Tuesday next.