Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
29th August 1860
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Extracted from the third party account as published in the
Moreton Bay Courier 1st September 1860

The Speaker took the chair at twenty-five minutes past three o'clock and read prayers.

PETITION.

Mr. WATTS presented a petition from James Canning Pearce, which set out that the petitioner was resident in Queensland nineteen years before the colony was proclaimed: that he was the first to introduce the inland river navigation between Brisbane and Ipswich, whereby the colony was much benefited; that in the enterprise his vessel was sunk, involving petitioner in a loss of £2000. The petitioner prayed the house to take into consideration the benefits he was the first to introduce, and also his misfortune in that attempt.

Petition received.

SELECT COMMITTEE.

Mr. RAFF brought up the report and evidence on the government departments, and moved that the same be printed.

POSTPONEMENT OF MOTION.

Mr. MACALISTER would, by leave of the house, postpone the motion standing in his name, until Tuesday next, and would also reduce the sum mentioned therein to £3000. He was induced to do this, as he believed the report upon inland communication had some bearing upon the subject, and he had not yet had an opportunity of reading it.

Leave granted.

REAL ESTATE OF INTESTATES DISTRIBUTION BILL.

Mr. MACALISTER, at the request of the Attorney-General, would beg to postpone the second reading of this bill until Tuesday next.

The ATTORNEY-GENERAL thought that he ought to give his reasons for wishing the postponement. He believed the bill would upset the present law relating to real property. At present this was his opinion, and the question was of such great importance in his mind that he much desired further time to consider the bill.

Mr. MACALISTER would just remark that the effect of the bill would not be such as the hon. member feared, it simply dealt with the question as to who should be entitled to an intestate's property, and this he considered of vital import to the country.

JUDICIAL ESTABLISHMENTS.—RESUMED DEBATE.

Mr. BLAKENEY said that it devolved upon him to resume the debate so abruptly cut short on Friday last by a "count out." He would mention that in his opinion it was highly discreditable in hon. members to attempt to avoid a question by such a subterfuge. This course had been a curse to the legislature of the sister colony, and the business of the country had been greatly obstructed; he trusted they should escape the odium which attached to New South Wales, and

that it might be a very long time before he should again witness an attempt in that house to smother the question before it. In reference to the report, he believed that himself and the hon. Attorney-General were generally agreed upon it. There were, however, certain parts upon which he dissented from the hon. member. That there was no court of appeal all must admit was a most serious difficulty. He believed that the interests of the colony demanded a tribunal of this character, and that, without it, severe hardship and positive injustice would be the result. He did not, and he thought no hon. member had, or would throw a slight upon any judicial functionary in this colony, but he contended that the highest authority was liable to error; it was so in England, and for this cause there was always tribunals of appeal in that country. He had yet to learn that such a court or tribunal was not necessary here. In reference to the present regulations, they were all aware that the Judge (His Honor Mr. Justice Lutwyche) was often away from Brisbane for several days and weeks together, and he would very shortly have to leave this city for a period of six weeks at least. Now it was no argument that because no acts or wrongs had been done in consequence of the absence of his Honor, that none would be. That injury had not accrued to the public was so far fortunate, but he could tell them that a man might sell his goods, dispose of all his effects, snap his fingers at his creditors, and leave the colony with ease, because a judge's warrant could not be obtained, the judge being perhaps hundreds of miles away at the time. With regard to insolvents, a creditor might walk in and protect himself to the prejudice of all others, because there was no judge to sequester the estate; or a magistrate might in error commit a man to prison where he would remain for weeks until the judge's return. Were they in this manner to trifle with the liberty of the subject? He deplored the fact that such things might at any moment take place, and hoped the interests of the country would not be jeopardised, when everything pointed to the absolute necessity of having one or two more judges. The hon. member then went through the report, defending it, and replying to the objections which had been urged against it—his remarks tending to show the public inconvenience and loss likely to accrue if it were not adopted, and the value of its recommendations for the full and equitable administration of justice throughout the colony.

Mr. GORE might say that he was professionally entitled to express his opinion upon this report, although it was true that twenty years had passed since he left the bar, and consequently, on the store of competence would not put himself on a par with other hon. and learned members of that house. Although he was generally opposed to select committees, he thought that the house and country were indebted to this committee for the report now under consideration, but he would rather have seen the ministry introduce a bill having for its objects the effects intended by the report. After alluding to some of the items of the report, and remarking that the hon. member for Fortitude Valley had made out an extremely good case for doing nothing, he (Mr. Gore) thought that under their present constitution the present judge was entitled to £2000 a year, and whether they rejected or adopted the report before them, the amount of salary could not be interfered with. He should wish the report to be postponed to next session.

Mr. WATTS, in rising, said that he regretted the strong terms made use of by the hon. member for North Brisbane (Mr. Blakeney) when referring to the count out. He thought the remarks were inappropriate and out of place, and he would caution that gentleman against imputing motives again. He was glad to say that a "count out" did not have the effect of shelving the question here as it did in other colonies. Their standing orders prevented it. He certainly was not a lawyer, but as he understood the matter, it was as to how cheap justice could be secured to the colony. They were not so much to take the expense into consideration as the necessity for it, but he contended that to go into the expense recommended by the report, would be absurd, as the evidence showed the present judge was not fully employed, and such being the case they certainly did not require the other judges to help him. It looked very much like a job to get a billet for some briefless barrister at home. He much regretted that his Honor Mr. Justice Lutwyche had not been examined before the committee, for he surely could have given valuable evidence, and he (Mr. Watts) should like to know the reason, if one indeed existed, why that gentleman had not been called. But instead of the committee doing this, he found that they had ignored that gentleman altogether, and if their report were adopted, a gross injustice would be done him, for it

said, in effect, that he should not have the chance of being Chief Justice. Some allusion had been made to his Honor's social position, but he considered they had nothing to do with that, it was as a public man they were to deal with him and he believed that his Honor had never stained the ermine. He thought that, so far as the evidence showed, it was to their credit as a colony, that one judge could do the whole of the work, and then not be fully employed. Should it be necessary to give greater facilities to the public, let the magistrates have an increased jurisdiction, and the end would be obtained. He should vote against the adoption of the report.

Mr. O'SULLIVAN felt that the hon. member (Mr. Blakeney) had been too severe in his remarks in reference to the house being counted out, while he was speaking upon the report now under debate. For himself he would state that he left in order to ensure a passage to Ipswich. On the whole he disagreed with the report, and would urge one objection that perhaps other hon. members would lose sight of. He would ask why the subject of juries had not been touched upon. He was not aware that any principle of right existed by which a certain section of the community was excluded from the special jury list.

The ATTORNEY-GENERAL would inform the hon. member that he had a bill prepared relating to juries which he intended to bring in, and which would, he thought, remove any cause of complaint, as alluded to by the hon. member.

Mr. O'SULLIVAN thought that any man who was a common juryman was also entitled and qualified to be a special juryman. (Cries of "Oh! Oh!") Hon. members might say "Oh! Oh!" but he would show them the justice of what he said. For instance, a common juryman had to decide questions in which human life was involved; a special juryman had to decide upon a butcher's bill, and he would now ask hon. members which of the two cases was the most important. He should be very sorry to see the jurisdiction of magistrates enlarged, unless a very different set of men were made magistrates. A knowledge of the law was no doubt a very great qualification in a magistrate, but he held that moral character was not less so. He had known injustice done by men who sat upon the bench, and this injustice often arose from ignorance and sometimes from prejudice and personal feeling. He believed that no doctor, auctioneer, or retail storekeeper, ought to be in the commission, and that as long as men of these positions were, so long would justice be improperly administered. The hon. member then alluded to some pettifogging limb of the law in his town, who went about fomenting causes of quarrel in order to make cases. He certainly did not allude to Mr. Macalister—(laughter)—for whom he entertained high respect, and whose client he had been for years. After commenting upon several points in the report, the hon. member concluded by expressing his intention of voting against its adoption.

Mr. TAYLOR believed that the house had determined upon the rejection of the report. He was afraid that the hon. member for Ipswich (Mr. O'Sullivan) had been a severe sufferer at the hands of some magistrate, but as far as his experience went, he could state that magistrates generally were upright and honorable men, and he was only sorry that Mr. O'Sullivan was not in the commission. From the evidence attached to the report, it was quite clear that no additional Judges were required, there was in fact nothing to do, and this argued well for the honesty and general morality of the people of Queensland. He would suggest the appointment of police magistrates, and that they should be authorised to try cases under £200, and that the Supreme Court should be a court of appeal from their decisions if necessary. Some such plan as this would meet the difficulty mentioned in the report in reference to appeals. He must really compliment his worthy colleague (Mr. Moffatt) upon the speech he had made when bringing the report before the house. He regretted he did not hear it, he thought—if quoted right—that it was a first rate speech; he did not think it was in his hon. colleague to make such a one. It was no doubt fortunate that the speeches in that house were not reported as they were spoken— that they were improved in print. (Laughter.) But if he was surprised at the speech of his hon. colleague (Mr. Moffatt) he certainly was more surprised at the report, which was far superior to that hon. gentleman's productions; the lawyer peeped out in every part of it. (Hear, hear.) There was no love lost between Mr. Justice Lutwyche and himself; he was certainly not on good terms with that gentleman, but he would say a great injustice had been done his Honor in the report before the

house. He (Mr. T.) considered it most undignified and insulting, and the paragraph recommending that a Chief Justice should be got from England, would alone condemn it in his (Mr. Taylor's) estimation. Why did not the committee show something to Mr. Lutwyche's detriment, why did they not (if they could) impeach his ability or capacity for acting as Chief Justice? And why, again, had not his Honor been examined? He should like to have an answer to these questions. The hon. member for North Brisbane (Mr. Blakeney) had expressed great alarm and indignation, because a man might be wrongfully committed to gaol, but they must recollect that such cases were very exceptional, and the injured man had his remedy by an action for false imprisonment. This report sought to increase an already large item of expenditure, and he hoped hon. members would keep down expenses. There was no evidence to show that the law department of the colony was not equal to its present requirements, and he should vote against the adoption of the report.

The COLONIAL SECRETARY ought not to give his vote upon this occasion without expressing his opinion. From the evidence taken before the committee he did not see how any other report than that now before them could be brought up. It was quite true that the amount of business was not so large that they would be warranted in going to great expense, but he denied that that was a sufficient reason for the rejection of the report. The Attorney-General had prepared a bill for the reconstruction of the Supreme Court of Queensland, and this bill would meet many of the difficulties that now presented themselves. He believed that at no distant date they would require two more judges, or perhaps three, and then a good Court of Appeal might be obtained. In his opinion the evidence was conflicting with regard to the amount of business now done, and he apprehended that there was no want of confidence implied in the present administration of justice. In reference to the judge's salary he held that it was fixed at £2000 by two Acts of the colony of New South Wales, and that, until they had repealed those Acts, his Honor was entitled to his present salary of £2000. He felt quite sure that no slight was intended to Mr. Justice Lutwyche in not examining him before the Select Committee, indeed he thought that the judge would have been placed in a false position. He believed that a right course was pursued in not calling that gentleman. His Honor was a most learned lawyer, and upright man, and he hoped to see him remain upon the bench of this colony for years.

Mr. BUCKLEY thought that the remarks of the hon. member for North Brisbane (Mr. Blakeney) touching the counting out of the house, were very appropriate. A course like this was most reprehensible. It had been the curse of legislation in New South Wales, and he did hope that hon. members would avoid such a course of conduct. The report now under debate was based purely upon the evidence, and being so ought to be received. He contended that the evidence given by the hon. member for Fortitude Valley, that the standing of the colonial bar was low, fully warranted the recommendations that a Chief Justice should be got from England. The hon. member then went through the evidence and the report, defending the latter against the objections which had been urged. He believed that no member of the committee had made any allusion to the judge to injure his position, and neither did he believe that any member of the committee had a friend in England for whom he was anxious to get a judgeship. For himself he had every confidence in the competency of the learned judge of their supreme court, and he was sure that his duties we are performed with honesty and ability. He (Mr. Buckley) had, when in Sydney, certainly protested against his appointment to the position he now occupied, because he looked upon it as a political appointment, to which he had a strong objection. His Honor was in a hotbed of political strife, and he (Mr. Buckley) believed that he would not be able to discharge those duties which his office demanded. These were his reasons for opposing the appointment at first. With reference to what Mr. O'Sullivan had said concerning some needy lawyer, he regretted that in Queensland there should be any of the firm of Dodson and Fogg, but the profession generally included honourable men and excellent lawyers. He must also defend the magistrates of the colony against the sweeping charge brought against them. They were as a body anxious to do right and generally succeeded.

Mr. BROUGHTON supported the report, and declaimed against the arguments that had been employed against it by some of its opponents

Mr. HALY declared his intention of voting for the report, because he believed it to be strictly in accordance with the evidence given before the committee.

Mr. RAFF would not question the correctness of the statement that the report was drawn up in accordance with the evidence, but he could by no means entertain the idea that the house was bound to support because it was so drawn up. He would admit that he might not comprehend the full scope of the report, for it would be difficult to do so, but he understood that the report recommended the appointment of three judges, and he must satisfy himself that the appointments were required, and that the circumstances of the colony justified such a course, before he could vote for the adoption of such a recommendation. When he first read the report, he thought the committee had made a mistake. He understood that they were appointed to enquire into the present administration of justice, and not as to the necessity of providing additional judges, but it seemed, from the whole tenor of the evidence, that the latter was the object of the committee.

The hon. member then went on to quote from the evidence of the Attorney-General in support of his statement, when Mr. Lilley exclaimed “Hear, hear,” and the Attorney-General also uttered a similar exclamation, adding “It is true.” Mr. Lilley, on the other side of the table, said “It’s not true,” whereupon the Attorney-General rose to a point of order and called the attention of the Speaker to the words of the hon. member.

The SPEAKER said that he hoped the hon. member’s good taste and good feeling would give him to see that the utterance of such words was unseemly, and totally out of order. He had frequently had occasion during the debate to rise to order on account of the interruptions to which hon. members in possession of the floor of the house were subjected, and he hoped that such interruptions would cease.

Mr. LILLEY thought that the Speaker was too apt to decide points of order without hearing what the hon. member against whom he was deciding had to say for himself.

Several hon. members here rose to order, amid cries of “Chair, chair,” and Mr. Lilley resumed his seat.

The SPEAKER thought that some apology was due to the house from the hon. member for Fortitude Valley, and he hoped the house would take some steps to support its own dignity. (Hear, hear.)

Mr. LILLEY: You may do what you like.

The ATTORNEY-GENERAL moved that the words just uttered by the hon. member should be taken down by the Clerk.

The words were accordingly taken down, and Mr. LILLEY withdrew from the house.

The words having been read,

Mr. MACALISTER moved, and the COLONIAL SECRETARY seconded, the adjournment of the house, and the house accordingly adjourned at a quarter past seven till three o’clock next day.