

**Record of the  
Proceedings of the Queensland Parliament**

...  
**Legislative Council**  
**23<sup>rd</sup> May 1861**  
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Extracted from the third party account as published in the  
Courier 24<sup>th</sup> May 1861

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The PRESIDENT took the chair at seven minutes past three, and opened the proceedings with prayer.

**NON-ATTENDANCE.**

The PRESIDENT read a letter from the hon. John Balfour, intimating his inability to attend that day, in consequence of illness.

**CONSTITUTION OF THE LEGISLATIVE ASSEMBLY.**

Mr. YALDWYN asked the hon. member representing the government,—

“(1.) Is it a fact, as would appear from the late English news, that the present Constitution of the Legislative Assembly has been declared by Mr. Justice Lutwyche, to be illegal, and the acts passed by it to be null and void? (2.) Has any communication been addressed to the Home Government by Mr. Justice Lutwyche to that effect. If so, was it before or after the first sessions of the Queensland Parliament.”

Dr. HOBBS replied, in answer to the hon. member's questions, that the facts of the case were simply these. At the close of the last session of parliament, Mr. Justice Lutwyche addressed a petition to the Queen praying her Majesty to disallow the Supreme Court Amendment Bill, and in the same petition he stated that it was his opinion that the constitution of the Assembly was illegal, and that consequently all the acts of the Queensland Parliament were null and void. The petition was transmitted by the Governor at the request of the judge on the 4th October, 1860. And, a copy of the petition referred to was yesterday laid on the table of the Legislative Assembly, and would in due course be laid on the table of that house also. Seeing that Mr. Justice Lutwyche was the sole judge in the colony, and might cause great confusion, by refusing to execute the acts of the Queensland Parliament, it had been thought safer to pass an act of the Imperial Parliament to remove his Honor's doubts, by declaring the order in council creating this colony and every act done under it prospectively and retrospectively to be valid, notwithstanding such doubt. The Act of the Imperial Parliament was doubtless law before now, and would arrive shortly in the colony; and the Secretary of State had informed the Governor in a private letter received by the last mail, that the Act would have been sent out already, but for the Easter recess of the Imperial Parliament. This bill would also empower the Queen to deal with those portions of the Australian continent which were not appropriated to any existing colony.

**WESTERN BOUNDARY.**

Mr. GALLOWAY asked the hon. member representing the Government—

(1.) If he can inform me whether the Honorable the Executive Council were aware that this House decided in committee, on the 20th June, 1860, after considerable discussion, that it would be unwise to moot the question as to the position of the Western Boundary of this Colony, because it was considered that, by raising a doubt in the matter, it would be virtually giving up a large and valuable portion of the territory of Queensland, which was cut off from New South Wales agreeably with the Constitution Act, 17 Victoria, No. 41, and also agreeably with Her Majesty's Order in Council, dated the 6th day of June, 1859; and that this House, consequently

refused to address His Excellency upon the subject. (2.) If the Honorable Member can inform me, whether the Honourable the Executive Council have advised His Excellency the Governor to the effect that the "Queensland Parliament" had unanimously adopted an Address upon this subject (as may be inferred from His Excellency's Despatch, No. 79, to the Right Honorable the Secretary of State for the Colonies), and thus completely ignore, in this particular case, not merely the proceedings, but even the existence of this Honorable House?

Dr. HOBBS replied in answer to the honorable member's first question, that the government were aware of the fact to which he alluded, and that they felt some surprise that the honorable member should complain of the omission to which he referred; for it certainly appeared, at first sight, that he should rather rejoice that the attention of the Secretary of State had not been called to a decision arrived at in ignorance of the opinion of the law officers of the Crown (as stated at page 5 of the papers on the table of the House) respecting the western boundary of Queensland. It was in consequence of the publication of the opinion of the law officers that the other House of Parliament took up the subject. And it might be further remarked, that it appeared from the Duke of Newcastle's despatch, at page 8 of these papers, and from other sources of information in the public journals that the course taken by the hon. member on this subject might possibly have had the effect of depriving Queensland of much valuable territory. Had the hon. member and the gentleman who acted with him on this occasion allowed the question of our western boundary to be officially brought forward early last session the issue of the case might have been different; but they caused a delay of four months so it seemed, and gave time to South Australia, Victoria, and New South Wales to put in claims for portions of the territory in question. In answer to the second question he begged to observe that, there was not then, or now, the slightest desire on the part of any member of the government "to ignore the proceedings or existence of this honorable house." It was obvious that the word "Parliament" in page 1 of those papers was a clerical error for "Assembly," and that the mistake arose from a similar clerical error in the address of the Assembly, where "legislature" was put instead of "Assembly." The fact was that a vast mass of work was thrown on the Governor's office in the last week of September, when his Excellency had to prepare the reports and despatches on all acts and proceedings of the session—having previously engaged to visit the northern ports at the beginning of October. The wonder was that there were so few clerical errors of the same kind. The government believed that the house would agree in deprecating mere verbal criticism of this kind, seeing that it might possibly have the effect of preventing the despatches of the Governor and the Secretary of State from being laid before the house, and consequently of depriving the house of much valuable and interesting information.

Sir CHARLES NICHOLSON dissented from the terms employed by Mr. Galloway in so far as they appeared to reflect on the procedure of the Government. He could not understand how any motion of theirs which was not agreed to could imperil their claims to territory which they never possessed; nor could he see how the Government were to blame for not having recognised a decision of the House which never existed.

Mr. GALLOWAY here proceeded to make some explanation, but was interrupted by the President, who pointed out that no debate could arise, according to Parliamentary practice, on a mere question.

The matter, therefore, dropped.

#### MR COMMISSIONER HALLORAN.

Mr. WOOD, in the absence of his honorable friend Mr. Brown, declined to bring any motion forward for printing certain papers in the above case, with respect to which he had taken action on the previous day.

#### MEDICAL BILL.

On the motion of Dr. FULLERTON, the report of the Committee on this Bill was adopted, and the third reading was fixed for the 12th June next.

The House adjourned at 20 minutes to 4 until 3 o'clock on the 12th June next.