Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
2nd July 1861
...
Extracted from the third party account as published in the
Courier 3rd July 1861

THE SPEAKER took the chair at a quarter past 3 o'clock, and opened the proceedings with prayer.

MR. JUSTICE LUTWYCHE.

The ATTORNEY-GENERAL laid on the table a copy of a letter from Mr. Justice Lutwyche, and moved that it be printed. Carried.

TRAMWAY COMPANY.

Mr. COXEN presented a petition from Messrs. H. BUCKLEY and W. COOTE, representing the existence of the Moreton Bay Tramway Company, and praying leave to introduce a bill for its incorporation. The usual rule of laying copies of the *Government Gazette* and other papers on the table of the house, signifying the intention of the company to apply for an act of incorporation having been observed, the petition was read and received.

CUSTODY OF PARLIAMENTARY RECORDS.

Mr. FERRETT, without notice, asked the hon. the Speaker, who was the keeper of parliamentary records, including the evidence taken before select committees, and all other documents having reference to the proceedings of the house.

The SPEAKER said he could answer the question very shortly. It was the duty of the clerk of the house to take charge of all such documents.

MESSRS. NORTH'S CLAIM TO PRE-EMPTIVE RIGHT.

Mr. BLAKENEY moved—

"That the report of the Select Committee, appointed on the 3rd day of August last, to enquire into the application of Messrs. William and Joseph North to exercise the right of pre-emption over the Wivenhoe station, and laid on the table of this honourable house on the 24th day of August, 1860, be now adopted." He explained that the report was the only printed document to be produced in connection with this matter, and as it was very short, he would read it to the house as follows:—

"Your committee deeming that their function was to examine the facts of the case and to decide, firstly, whether any legal claims to pre-emptive purchase or other rights ever were in existence; secondly, whether the Messrs. North ever were entitled to the pre-emptive rights as put forward in their claims, or whether Mr. John Smith ever was entitled to the claims as made by him; and thirdly, whether after such right had been in existence it had ever been forfeited or abrogated by either party, have after a very careful examination of the very full and voluminous correspondence and of the parties themselves, arrived at the following conclusion:—Firstly—That such rights did exist. Secondly—That the Messrs. North had a pre-emptive right to the lands in

question. Thirdly—That they claimed the pre- emptive right at the proper time, and that they ever after maintained it, and never forfeited or abrogated it. That therefore the Messrs. North are legally entitled to their pre-emptive right over the land in question, and that it is out of the power of any one to impose conditions on them in the sale of the land in question. That as this determination involves the whole matter in dispute, they have nothing farther to say respecting Mr. J. Smith's claim."

It appeared that when this report was brought up last year, there was a certain amount of evidence and documents attached to it, which, by some unaccountable means, had disappeared. The case, however, touching the chief features in the report, was fully borne out by the correspondence between the government of Queensland and the government of New South Wales. For the loss of the documents in question it was no intention of his to cast blame on the clerk of the house, more particularly as there did not seem to be any reason for believing that that officer had charge of them at the time they were lost. He remarked further that the loss of the evidence to a certain extent, had been compensated for by the short-hand writer for the government, who had taken the trouble to retranscribe his notes as written during the progress of the enquiry, and furnish a copy. Whether the evidence thus offered should be printed or not was another question. His own idea was that the conclusions of the committee were so fully borne out not only by the law but by the correspondence, and evidence received through the government as to remove all doubt upon the question of the pre-emptive title claimed by the Messrs. North. Owing to an unforeseen circumstance, this report last session fell through, but he hoped that on the present occasion the house would adopt it unanimously.

The COLONIAL SECRETARY remarked that a compromise had been offered between Messrs. North and Smith, which he was in hopes would prove satisfactory to both parties. There could be no doubt that the arrangements between the parties had been very much complicated through the land policy and regulations of the New South Wales government, under which the affair had its origin; and there could be no doubt, also, that Smith was entitled to considerable compensation for his improvements on that portion of the run occupied by the Messrs. North. Under these circumstances, one of the Messrs. North had called upon him to state that he had compromised the matter, so far as to arrange for the payment to Mr. Smith of a certain amount of compensation to be determined by arbitration; and as there did not appear to be any prospect of the matter being otherwise settled in a satisfactory manner, he hoped the hon. member would withdraw his motion for the adoption of the report, and thus allow of the arrangement suggested being carried out. He believed the amount of compensation for the improvements, &c., would not be more than some two or three hundred pounds. It was further suggested that the Commissioner of Crown Lands might act as umpire.

Mr. BLAKENEY agreed with the suggestion of the Colonial Secretary regarding the withdrawal of the motion, but on the condition that each side should appoint an arbitrator, and that the arbitrators so appointed should elect an umpire.

Mr. R. CRIBB contended that there had been an under or sub-letting on the part of the Messrs. North to Mr. Smith, and that such being the case, the lease of the former was rendered null and void according to the law existing at the time. He contended, further, that in pursuance of the proclamation of the township by the New South Wales government, Messrs. Smith and Perry, who at the time had a joint interest in the matter, were guaranteed in the occupancy of the land against any disturbance whatever. Thus the proclamation referred to deprived the Messrs. North of any pre-emptive right they might have previously enjoyed, and thus Messrs. Smith and Perry were entitled to purchase any land they might think proper within the area proclaimed. He should therefore object to the withdrawal of the motion.

Mr. WATTS observed that the last speaker had strayed from the subject when he thought proper to introduce into the debate the name of Mr. Perry—a person who was wholly unconnected with the matter, and whose claims had been long since satisfied. He agreed with the suggestion thrown out by the Colonial Secretary, to the effect that the dispute should be arranged by compromise between the parties, the result be to confer on the Messrs. North their fair title to

the land, and at the same time to retain for the public use some two or three hundred acres of land, including of course the public house belonging to Mr. Smith, which he admitted was one of the best, and, in point of situation, one of the most eligible in the colony.

Mr. O'SULLIVAN was disposed to let the matter be decided by arbitration, on condition that the arbitrators should be permitted to appoint their own umpire.

Mr. GORE agreed that a public house was necessary in the locality referred to, and that the rights of the public, as well as of the individuals interested, would be best consulted by the proclamation of a township therein under the Queensland government.

The ATTORNEY-GENERAL said the first question for them to decide was, whether Mr. Smith had a right to purchase that portion of the Messrs. North's run on which he had erected a public house and made other improvements. According to law every squatter had the power of granting a permissive occupancy to any person who might choose to put up a public house on his run, but he did not thereby forfeit his claim to the pre-emptive right of the ground so occupied. It was under a permissive occupancy of this kind that Mr. Smith had erected the hotel in question, and the proclamation as a township of the land thus occupied, and the subsequent withdrawal of the proclamation, as was the case in the present instance, did not give Mr. Smith any claim beyond the permissive right which he enjoyed previously. The next question was, whether the Messrs. North were really entitled to exercise the pre-emptive right in reference to the land in question. He believed that this matter had been fully made out by the report and other documents bearing on the subject. At the same time he thought the suggestion of the Colonial Secretary offered the best means of settling the matter. Mr. Smith, had no doubt, a right to claim compensation for the improvements he had made on the land, but he was not entitled thereby to demand a purchase of the land. Consequently, he thought the best mode of settling the matter was to submit it to arbitration. As to whether the government should take any part in the appointment of an umpire appeared to him to be perfectly immaterial. The main object was, of course, to do justice to both parties, and seeing that the land policy of the New South Wales government, if it had been carried into effect, would have given Mr. Smith a claim to a fee simple in the land, he imagined that few persons would deny his right to compensation. Why the name of Mr. Perry should have been brought into the debate he was at a loss to know, seeing that the individual in question was long since dead and gone, and that his right, title, and interest had been purchased by the Messrs. North.

Mr. LILLEY was under the impression that he must have misunderstood the Attorney-General. He wished to know from the learned gentleman whether any portion of a squatters run which was reserved for a township by proclamation must necessarily, after the proclamation had been withdrawn, revert to the squatter originally possessing?

The ATTORNEY-GENERAL replied in the affirmative, remarking that according to the old Land Orders the land so released by the withdrawal of the proclamation reverted to its ancient occupancy.

Dr. CHALLINOR objected to the report, mainly on the ground that the evidence upon which it was based was not forthcoming.

Mr. TAYLOR agreed with those who thought the report should be withdrawn altogether. His opinion now, as last session, was adverse to Smith's claim; at the same time he felt disposed to concur in the land policy of New South Wales to the extent of saying that a public-house put up on a run should go exclusively to the party putting it up.

Mr. WARRY was of opinion that much valuable time had been wasted in this discussion. Smith, the person most concerned, had offered to give up all his right, title, and interest in the matter, on condition of receiving 25 acres of the land in dispute; and, seeing that the government had so many millions of acres of land unappropriated, it did appear to him that there could be very little difficulty in arranging the matter. He hoped the motion would be withdrawn.

Mr. FITZSIMMONS, without disputing the title of the Messrs. North, as made out by the report, was strongly of opinion that Mr. Smith, who had invested his all in the creation of an

important business on the land in dispute, should receive a reasonable amount of compensation.

Mr. RAFF expressed a similar opinion, in pointing out that Smith was entitled to compensation not only for his improvements, but also for the loss he would sustain by the sudden breaking up of his business.

Mr. EDMONDSTONE pointed out that, according to the proposed arrangements, Mr. Smith might get some compensation for his improvements, but none for the loss of his business, which to him was the most material consideration. He (Mr. E.) therefore thought that the government should follow out the New South Wales plan, in so far as to proclaim a new village on the run in question, which would give Mr. Smith and others the privilege of purchasing ground in fee simple. He did not agree with those who seemed to think that the government should be called on to compensate Mr. Smith, by granting him a certain portion of land. The dispute was not between the government and Messrs. North and Smith, but between the latter gentlemen exclusively. He contended that a house of accommodation, such as Mr. Smith possessed, was absolutely necessary in the locality, and that the squatters in the neighbourhood must reap the advantage of it, inasmuch as it relieved them from the visits of many travellers and others whose victualling and accommodation proved a serious tax on their income, not to speak of the personal advantage in point of self-respect which an hotel afforded to those who felt particularly inclined to pay for their accommodation.

Mr. FORBES had perused the correspondence in the Colonial Secretary's office, and had come to the conclusion that Mr. John Smith possessed a superior claim to that of the Messrs. North. He agreed to the proposition to settle the matter by arbitration, but only on condition that the parties should be allowed to appoint their own umpire. In conclusion he expressed his opinion that the report should be regulated altogether.

Mr. B. CRIBB explained the connection between Perry and Smith, and concluded by expressing a hope that the motion would be withdrawn.

Mr. BLAKENEY briefly replied, and the motion was put and negatived without a division, it being understood that the suggestion of the Colonial Secretary, with regard to arbitration would be carried into effect.

Mr. FERRETT, before speaking to the motion which stood in his name, wished to propose an amendment, by inserting the sum of £600 in lieu of £550. There appearing no objection to the proposition, he would read his amended motion to the house, namely—"That this house will, to-morrow, resolve itself into a committee of the whole, to consider of an address to his Excellency the Governor, praying that he will cause to be placed on the supplementary estimates for the year 1861 a sum of £600, to defray the expenses of a police officer and three troopers to patrol the Maranoa district, in order to prevent cattle stealing and sly grog-selling. The object of this motion was to secure a body of police for the protection of an isolated district. The house might not be aware that there was no Court of Petty Sessions, nor police, for the protection of this district, the nearest place to Culgoa, on the Warrego River, at which a Court of Petty Sessions was held being at Condamine, which was 300 miles distant. The consequence of this was, that the population of a large portion of the district comprised among them some of the most lawless characters in the colony, who lived by cattle stealing, horse stealing, and sly grog selling. These persons caused the district to be much complained of, and rendered it dangerous to live in; for those who were inclined to do that which was lawful and right, were frequently threatened with violence by the class he spoke of, should they attempt to make known to the authorities the villainous proceedings carried on in the district. He (Mr. Ferrett) knew that the motion would be opposed by some hon. members on the score of its expense, but the Maranoa district, without receiving anything from the government, returned a larger revenue than any other district in the colony.

The COLONIAL SECRETARY quite agreed with the remarks made by the hon. member Mr. Ferrett, he himself having received communications from gentlemen in the district complaining of the lawlessness of the large number of the inhabitants. He knew also that there

were no Courts of Petty Sessions in the district. But were a sufficient number of them established to be of any practical service, he was afraid that the appointment of such benches, with all the necessary paraphernalia, would entail a much larger expense than would be sanctioned by the house. If a patrol were appointed, with some officer at its head who was fit to be put on the commission of the peace, he believed it would be more effectual in preserving the peace of the district than the establishment of several Courts of Petty Sessions. He had been informed by several gentlemen that they had known of several cases in which persons had seen cattle knocked down before their eyes, and had been threatened with their lives if they gave information. He also knew that there was a great deal of sly grog selling. Under these circumstances he should not oppose the motion. Applications having been made to the government for the formation of Courts of Petty Sessions in six or seven places far seated in the interior, which they were unable to comply with, he would not be able to grant any for this district. At the same time, he thought that a patrol travelling over a large tract of country, if properly constituted, would be productive of more good.

Mr. WATTS conceived that it was the duty of that house to afford some protection to the inhabitants of the outlying districts, especially the one referred to in the motion, in which there was a very lawless community. At the present time drays were passing overland from Maitland, to the district, which were laden entirely with grog; so that a large system of contraband traffic was carried on. He could also bear testimony to the lawlessness of many of these people; one of his own men and his brother, who had seen a heifer slaughtered in a gully near his place, having been threatened with their lives should they visit the district in which the men lived. The sum of £600 was by no means a large one, when they considered the district to be travelled by the patrol, nor did he believe that it would prove a tax at all, as the grog seized would in all probability more than cover this amount.

Mr. GORE was not opposed to the motion, but would like to know if the troopers would be invested with peculiar powers in dealing with sly grog sellers, and whether it would be in the power of the government or the house to authorise the officer to deal with such persons on behalf of the revenue, by seizing the grog, and destroying it on the spot.

Mr. FITZSIMMONS thought the hon. member (Mr. Ferrett) had made out a good case on behalf of his motion. He thought that something of the sort was much wanted in the thinly populated places of the far interior. It had been remarked by an hon. member that the officer in command must have power conferred on him to act on the spot; but this, he thought, should not be entrusted to one man who might deal arbitrarily or justly. Such property, he thought, should be brought before a bench of magistrates. As the vote stood for 1861, he should oppose it, but if altered to 1862, would certainly vote for it.

Mr. MOFFATT did not think that the hon. member, Mr. Ferrett, had made out a case for such a demand. But even if he had, the force asked for would be insufficient for a district abounding so largely, as had been stated, with such characters. He also thought that if a system of patrol was to be carried out in this particular locality, it must also be carried out in other districts, and thus a large extra expense would be saddled on the country. While on this subject he would remark that the cost of maintaining the police forces in this country amounted to a larger sum per head in proportion to the population than did the maintenance of the whole army, navy, and police force in England. He did not think that such a force would be effectual in preventing cattle stealing or suppressing sly grog selling.

Mr. COXEN believed the measure to be one that was much required. He had received letters from many quarters, informing him that a most unexampled system of villainy was carried on in the Maranoa district, more especially in horse stealing and sly grog selling. He was even informed that some of these people herehave seen cattle boiled down, and the tallow sent back for sale by the grog drays. In many places there were plenty of magistrates, who, from their being no sufficient police force, were unable to act in the suppression of crime. Believing that a patrol would be more useful than the establishment of courts of petty sessions, he would support the motion which was a very desirable one.

Mr. TAYLOR would oppose this motion, on the grounds of economy. He maintained that one officer and three troopers would be entirely useless, for even should they come upon a dray laden with grog, they would not be allowed to seize it, as the whole of the storekeepers and others in the neighbourhood would be at the call of the crown to prevent such an attempt. Last year, the hon. member Mr. Ferrett was very severe upon Mr. Boyle, the Commissioner for Maranoa, but that gentleman was in the commission of the peace, and when he lived at Surat, held a court of petty sessions there. (Cries of no, no.) So far as he understood all commissioners did so. (The Colonial Secretary here explained that a court of petty sessions was formerly held at Surat but it was afterwards removed to Condamine.) The sum asked for in 1861—half of which year had expired—was £600, so that the cost of the force would be £1200. As he believed the force would be useless, he must object to the motion. Notwithstanding all that had been said, he would not believe that such a system of crime was carried on in the Menango District. If so, why not employ the native police?

Mr. O'SULLIVAN would also oppose the motion, as he considered it to be a most bare-faced request. He did not believe that three or four troopers would do much for the prevention of sly grog selling or cattle-stealing, but on the contrary, believed that they would be the greatest promoters of sly- grog selling and drunkenness in the district, because they would go from district to district, and unless they could get drink, they would lend every encouragement to sly-grog sellers. At the same time he thought that a system of border police, with a central station at which the court was held, would do much to prevent the contraband trade in spirits which was carried on across the border from New South Wales.

Mr. FERRETT in rising to reply, said he certainly must say that the observations made by the hon. member Mr. Taylor, plainly showed that he was talking about what he knew nothing about, and therefore he hoped the house would not be influenced by what he said of a district which he had never visited. He must inform the house that many years ago there was a Court of Petty Sessions at Surat, which was afterwards removed in consequence of most of the settlers having been driven from that district by the depredations made upon them by the blacks. It was no use for him to tell Mr. Taylor that the iniquities he complained of were committed, inasmuch as he had told him as plainly as possible that he would not believe him. Such a course as this he could not consider courteous; nevertheless the statements made by himself were perfectly true. It was true that a vote was passed last year for the payment of three troopers in the Maranoa district, but they were never seen in the district, as they did not act as policemen, but for the assessment of runs and other such work in connection with the Crown Lands Office. If the Commissioner were appointed Police Magistrate, and had time on his hands, no doubt he would act; but when his time was fully occupied he could not be expected to do so. If the officer appointed by the government were also placed on the commission of the peace and instructed to act with other magistrates in the district, no doubt he would do so, and be able to carry out the system efficiently. An hon. member had said that if the number of men appointed for this patrol were not sufficient, they would be able to call in the assistance of the native police, but he said this would be wrong, as the native police force was not constituted for such a purpose, but for the protection of the inhabitants against the attacks of the blacks. It was not for want of common sense that many hon. members had opposed his motion, but, he thought, for the purpose of hearing themselves talk. As to the remark that had been made with reference to the necessity of carrying out such a patrol system in other districts the house had nothing to do, but simply to consider the vote before them. For himself he knew of no other district in which such proceedings were carried on. It was not many years since he was appointed one of a committee in New South Wales to inquire into the system carried out at Cockatoo Island, and from the evidence there obtained, it appeared that there were very many persons outlaws from New South Wales and Victoria who were settled in the district he referred to, carrying on a system of depredation on the cattle in the neighbourhood, which cattle were driven to and sold in the markets of the neighbouring colonies. Although he asked for £600 for 1861, he only asked that it should be spent at that rate, the remainder, of course, being returned to the general revenue. He believed that the sum named would be quite sufficient for the purpose. He had been particularly requested

by one gentleman to state that he would give every accommodation to the officers and troopers of such a force, so sure was he of the value such a force would be to the district. One hon. member had alluded to the large quantity of tallow sent down by drays. That he knew to be true, as he had in his possession letters from most respectable gentlemen, stating that they had seen cattle slaughtered, boiled down, and the tallow sent away on drays for sale; and these were not cattle belonging to those killing them, but what were known on the run as strangers. As to such a force propagating cattle stealing and sly-grog selling, he could not see how that could be the case. Although the house might do so, he could not understand it, and therefore would not withdraw his motion, hoping that the sum he asked for would be granted.

The motion was then put to the house and carried by the following division:—

Ayes, 15.			Noes, 6.		
Col. Secretary			Mr. Raff		
Attorney-General			B. Cribb		
Mr. R. Cribb			O'Sullivan		
Blakeney			Taylor		
Gore			Col. Treasurer	}	Tellers.
Fleming			Mr. Moffatt	}	
Lilley					
Watts					
Richards					
Coxen					
Challinor					
Warry					
Forbes					
Ferrett	}	Tellers.			
Royds	}				

FENCING BILL.

On the motion of Mr. BLAKENEY, this bill was read a third time, passed, and ordered to be transmitted to the Legislative Council with a message.

COMMONAGE REGULATIONS.

On the motion of the COLONIAL SECRETARY, the Draft Regulations for Commonage were ordered to stand an order of the day for to-morrow.

MUNICIPALITIES ACT.

On the motion of the COLONIAL SECRETARY, leave was given to bring in a Bill to Amend the Municipalities Act. The bill was subsequently brought in, read a first time, and its second reading ordered to stand an order of the day for Tuesday next.

MEDICAL BILL.

This bill was read a second time, and its committal ordered to stand an order of the day for to- morrow (this day).

PRIVILEGES BILL.

On the motion of the COLONIAL SECRETARY the Speaker left the chair, and the house resolved itself into a committee on this bill.

The COLONIAL SECRETARY in moving that the preamble be postponed, took the opportunity of laying a copy of the South Australian measure from which this bill was copied upon

the table of the house. The measure before the house was a copy of this South Australian Act, which was passed in the year 1858.

The COLONIAL SECRETARY proposed clause 1 as part of the bill.

Mr. LILLEY saw no objection, as he had said on the second reading, to the clause, which was put and passed.

Clauses 2, 3, and 4, were then put and passed.

In moving clause 5, the COLONIAL SECRETARY stated that he intended to propose that the word “derogatory” be omitted. Perhaps, however, some hon. member had an amendment to propose before this.

Mr. R. CRIBB proposed that all the words after the word “enumerated” on the 35th line be omitted, with a view to the insertion of the words “committed by any person not a member.” He thought that members should be exempted from the operations of this clause, as the house had power to deal with them already in other ways.

Mr. LILLEY had an amendment previous to this. He should propose, after the word “direct,” in the 33rd line, to insert words “within the colony.”

Mr. FORBES had an amendment to propose previous to this one. He should move the omission of all the words after the word “punish,” on the 32nd line, to the word “Session,” inclusive, on the 34th line, with a view to the insertion of the words “by fine, to be recovered as hereinafter provided.”

The ATTORNEY-GENERAL proposed the substitution of the following words—“by fine, according to the standing orders of either house, or by imprisonment.” He pointed out that the standing orders provided fines for certain contempts. At the same time he thought in extreme cases the power of imprisonment should be reserved.

Mr. FORBES would withdraw his amendment in favor of that of the Attorney-General.

The amendment of the Attorney-General was then put and passed, as was also that of Mr. Lilley.

Mr. R. CRIBB’S amendment was then put.

Mr. LILLEY believed there was no inherent power in the house to punish persons outside the house, and quoted in support of this belief the Tasmanian case of Fenton v. Hampton. He objected moreover to this clause in its original shape, as far as it affected the members of the house. This clause taken in connection with clause 13 was highly objectionable. By clause 13 a member of that house might be sent for trial to the Supreme Court for contempts committed in the house. He pointed out that the Courts of Law in the olden time had endeavoured to get a power over members for their conduct in the house, but this endeavour had been resisted, and successfully resisted. In the first of William and Mary an act was passed declaring that a member’s conduct in Parliament could not be called into question by the Court of Law outside. The house, if they passed these two clauses, viz., the one before the house and the 13th, would be taken out of their own hands a very valuable power, and be transferring it to the Courts of Law. He contended that cases, in which the conduct of members in the house was concerned, should not be remitted to a court of law, seeing that the parliament at home had been so careful to curb the powers of courts of law in this respect.

The ATTORNEY-GENERAL thought that at this stage he might as well read the rough draft of an amendment which he had drawn up, and intended to propose on the 13th clause, and which would, perhaps, meet the objections of the hon. member for Fortitude Valley. He agreed with that hon. member that members of that house should not be remitted to the Supreme Court. He believed that the 13th clause as printed in the bill was defective, and he thought it very probable that when the royal assent was given to the bill, the notice of Her Majesty’s advisers had never been drawn to the particular point to which he referred. According to law the house could not commit one of its members for a longer period than until the termination of the session. The

house, it is true, could re-commit the member next session, but they could keep him in custody only whilst the session lasted. According to this clause in the bill before the house, a member could be imprisoned for two years for contempt. Viewed in the light of English precedent, and taking as example the British House of Commons, he thought that this clause was contrary to the *lex et consuetudo loci*. He should, when the clause came before the house, move that the first line in the clause be omitted entirely, and that words be inserted in its place, having the effect of making the publication of any false and scandalous libel upon any member, touching his conduct as a member, by any other person than a member of the house, a high misdemeanour. This would really give no additional power to the government in cases of libel, as at present he, as Attorney- General, had power to prosecute any one for libel. At the same time, this would give the Legislature power to direct the Attorney-General to prosecute in certain cases, should he evince remissness in doing so of his own accord.

Dr. CHALLINOR observed that the amendment of the Attorney-General would have this effect. At present the Attorney-General must take upon his own shoulders the responsibility of prosecuting, whereas by the clause referred to by the Attorney-General, the house would, in certain cases, be relieving him of that responsibility.

The COLONIAL SECRETARY pointed out, with reference to the question of the power of that house at present over the members of it, that on more than one occasion in that Chamber, doubts has been raised whether by the Constitution Act and Orders in Council, sufficient powers were given to the house to enforce fines or any other punishment which they might enact by their standing orders. He would not give an opinion one way or the other, but would content himself with pointing out that doubts had been raised with reference to the powers of the house in that respect, and it was, therefore, very desirable that these doubts should be set at rest.

The ATTORNEY-GENERAL said that the Orders in Council gave the house power to make standing orders for the orderly conduct of both houses, but these, at present, could be merely declaratory of the wish of the house, unless some power were given to the house to enforce their observance. With reference to this last portion of the fifth clause, making the publication of a false and scandalous libel upon a member, touching his conduct as a member, or contempt, he (the Attorney-General) thought that the only effect of this portion of the clause would be to give the house power to punish such offences in a mild way, as were this portion of the clause expunged, the house would be compelled to prosecute the publisher before the Supreme Court, whereas, were this portion of the clause allowed to remain, the house would have power to deal summarily with a man, and in certain cases would, no doubt, inflict but a slight fine or a similarly trivial punishment.

Mr. O’SULLIVAN pointed out that the Attorney-General had been mixing up two points in his address. They were now discussing the power which the Legislature should possess over its own members, and the Attorney-General had treated them to a long dissertation upon the question of the power which the legislature should exercise over persons outside the house.

Mr. RAFF thought that the whole of the last two lines of the clause, having reference to the press, should be struck out. He was an advocate for giving to the press the widest liberty in making comments upon the public conduct of public characters.

Mr. LILLEY could not see the matter in the light in which it had been placed by the Attorney-General. The house, according to the clause, would be enabled to act in a summarily manner. They need to take no evidence. A large Assembly, acting under the influence of the moment, might inflict great injustice, more especially should a time arrive, as possibly it might, when parts ran very high. Many members had read to what a great injustice Sir Richard Steele was subjected by House of Commons for writing a paper reflecting upon the ministry of the day. He was expelled from his seat in the House of Commons. He (Mr. L.) contended that every protection ought to be thrown around a member of that house in the fearless discharge of his duties. Considering that the house could possess quite sufficient powers over its members by the Orders in Council and by standing orders, he thought that members should be exempted from the operations of the fifth clause of this act.

Mr. WATTS could not see why the clause should be objected to upon the grounds set forth; as according to the arguments of those who objected to it, it merely defined in the clause of a bill certain powers which the house was admitted at the present moment to be in possession of.

The ATTORNEY-GENERAL was unable to perceive the force of the arguments advanced by the hon. member for Fortitude Valley. He (the Attorney-General) thought that, if a person outside that house were punished for publishing a libel, certainly it would be very unfair to allow a member of that house to commit a similar offence with impunity. He still intended that the last two lines of the clause were not oppressive, but enabled the house to deal more leniently with an offending publisher than the omission of them would do. If a publisher were summoned, and denied the particulars with regard to the publication of the libel, of course his case would be remitted to the Supreme Court to decide upon the facts. If, on the contrary, he admitted the libel, it would be in the power of the house, if the offence were not a serious one, to inflict but a very slight punishment upon him, instead of sending him to the Supreme Court.

Mr. LILLEY thought that the Attorney-General was labouring under a misconception, as he (Mr. L.) objected to the portion of the clause having reference to the publication of libels upon the public conduct of a member, not only as it applied to members of that house but also as it applied to the public generally.

Mr. FITZSIMMONS was proceeding to remark upon the last lines of the clause, relative to punishment for libel, when he was called to order by Mr. WATTS, and he was informed by the CHAIRMAN of COMMITTEES that an amendment on the 35th line was then being debated.

Mr. O'SULLIVAN did not see the necessity of further defining power which the house was said to possess. The Standing Orders he held to be law in the house, and as he interpreted them, the house certainly already possessed power enough to punish their own members.

Mr. GORE pointed out that, although the house could undoubtedly enact certain punishments for certain offences by the standing orders, it was a question whether they had power to enforce these punishments. The Sergeant-at-Arms for enforcing them might, at present, be liable to a prosecution. The hon. member quoted the case of *Stockdale v. Hansard*, in the course of which the Court of Queen's Bench and the Parliament came into collision.

Mr. SULLIVAN believed that in that case the Parliament gained the day.

The ATTORNEY-GENERAL would propose after the word "contempt" in the 32nd line, to insert some such words as the following—"by fine according to the standing orders of either house, or if the fine be not paid, by imprisonment in the custody of the officers of the house until the fine be paid, or until the end of the session."

Mr. O'SULLIVAN would suggest some such words as these—"by distress to be levied upon his property," in lieu of the words "by imprisonment."

The CHAIRMAN pointed out that these amendments were offered too late, as the portion of the clause to which they referred had already been passed.

It was then agreed, after some discussion, to re-commit the bill for the re-consideration of this clause after the rest of the clauses had been passed. The amendment of Mr. R. Cribb was then negatived without a division.

Mr. R. CRIBB moved the omission of the words "or insulting," in the 46th line. He contended that the words were too indefinite. The most trivial matter might be brought forward as an insult by some hon. members, as an insult, under this act, was to be treated as a "contempt" of the house, and punished as such.

The ATTORNEY-GENERAL and the COLONIAL SECRETARY opposed, and Dr. CHALLINOR supported, the amendment of Mr. Cribb, which was lost on the following division:—

Ayes (10.)		Noes (11.)	
Mr.	B Cribb	Col.	Sec.
	Forbes	Col.	Treas.

Fleming			Mr.	Gore	
O'Sullivan				Fitzsimmons	
Raff				Taylor	
Lilley				Ferrett	
Edmondstone				Moffatt	
Warry				Richards	
R. Cribb	}	Tellers.		Watts	
Challinor	}		Att-	Gen.	} Tellers.
				Royds	}

On the motion of Mr. WATTS, the word "insulting" on the first line of the third page was omitted, and on the motion of Mr. LILLEY, the words "offering of a bribe to, or attempting to bribe a member," on the fourth line, were omitted.

On the motion of the COLONIAL SECRETARY, the word "derogatory" on the ninth line was omitted.

The clause was then put and passed, with the understanding that the bill should be re-committed for the final consideration of this clause.

Clauses 6, 7, 8, 9, 10, and 11, were put and passed, with merely verbal amendments.

In clause 12, the ATTORNEY-GENERAL proposed that after the words "Habeas Corpus," the following words be inserted—"issued out of the Supreme Court, and made returnable during the existing session of Parliament." As the warrant and committal could, as he had before pointed out, only have effect during one session of Parliament, this amendment was rendered necessary for the protection of the party imprisoned. The amendment was put and passed.

On the question that clause 12 as amended do pass was then put.

Mr. LILLEY objected to the whole clause. He contended that the Supreme Court ought to have power to examine warrants, and if a man were illegally imprisoned to release him. He would remind honourable members of the great jealousy which justly had always been felt by our forefathers of any infringement of the *Habeas Corpus* Act. He held that the Supreme Court, sitting in its judicial capacity, ought to have the power to enquire into imprisonments, and if an imprisonment were found to be illegal, to discharge the prisoner. He would quote the opinion of some very eminent judges who had most explicitly maintained that, where the causes of commitment appeared the warrant of committal, as they would do under this Act, it was competent for the court of law to decide upon the validity of the causes therein set forth. The hon. member then proceeded to quote the opinion of Mr. Justice Holt and other eminent authorities in support of his own view of the question. He (Mr. L.) believed that if the house passed the clause, they would be attempting to do that which they should eventually find they did not possess the power to do. He had no hesitation in saying that were a client of his own committed to imprisonment under this act, he (Mr. L.), if he thought the man were unjustly committed and imprisoned, would apply at once to the Supreme Court, and bring the matter before that court. He believed that this act before the house could never have been thoroughly examined by the law officers of the Crown in England, or else this clause would never have been passed.

The ATTORNEY-GENERAL would not enter into the question of the expediency or desirability of granting the powers set forth in the clause to a colonial Legislature. The hon. and learned member in a speech of considerable length here proceeded to contend that although the powers contained in this clause were not inherent in our legislature, yet such powers were undeniably possessed by the Imperial Legislature. He then proceeded to argue that it was quite competent for the Crown to confer those powers upon us as a local legislature which the Parliament of England possessed inherently.

Mr. WATTS thought that the question before the house was whether the clause should be passed or not. If the house committed any one to prison for contempt it would allow the Judge to revise their decision.

The ATTORNEY-GENERAL said that his arguments did not go the length of wishing the house to pass the clause, but even to prove the validity of the clause if passed by the house.

Mr. R. CRIBB, on the bill being brought forward, had expressed his objection to the clause. That view he had seen no reason to alter, and would therefore vote against the clause.

The clause was then put to the house and struck out without a division.

On the motion of the ATTORNEY-GENERAL, the first line of the thirteenth clause was struck out, and the following words substituted:—"The publishing of any false or scandalous libel on any member of the house, touching his conduct, as a member, by any other person than a member." In the tenth line the word "misdemeanour" was substituted for "contempt" and the word "such" inserted in the same line after the word "any."

Clauses 14, 15, and 16 having been passed without a division, on the motion of the COLONIAL SECRETARY, Mr. Blakeney left the chair, and reported the bill, with amendments, to the house.

The ATTORNEY-GENERAL then moved the re-committal of the bill for the re-consideration of clause 5, and the house again went into committee.

On the motion of the ATTORNEY-GENERAL, the first paragraph of the 5th clause was amended, so as to read as follows:—"Each house of the said Parliament is hereby empowered to punish in a summary manner, as for contempt, by fine, according to the standing orders of either house, and in the event of such fine not being immediately paid, by imprisonment in the custody of its own officers, in such place within the colony as the house may direct, or in her Majesty's gaol at Brisbane, until such fine has been paid, or until the end of the then existing session, or any portion thereof any of the offences hereinafter enumerated, whether committed by a member of the house or by any other person.

Mr. R. CRIBB proposed the omission of the word "insulting" from the forty-sixth line.

A division being called for, the house divided, with the following result:—

Ayes (10.)		Noes (10.)	
Mr.	Raff	Col.	Sec
	Edmondstone	Col.	Treas.
	O'Sullivan		Watts
	Fleming		Ferrett
	B. Cribb		Fitzsimmons
	R. Cribb		Taylor
	Warry		Royds
	Challinor		Moffatt
	Forbes		Gore
	Lilley.	Att-	Gen.

The numbers being even, the CHAIRMAN, in giving in the casting vote, said that the amendment was one which had already been negatived, and therefore he gave his vote with the noes, on the principle that it was the duty of the chairman to support the already expressed opinions of the house.

Mr. LILLEY moved the omission of the last two lines, reading thus: "The publishing of any false, scandalous, or derogatory libel of any member, touching his conduct as a member;" and on the question being put that these words stand part of the bill, the house divided with the following result:—

Ayes.		Noes.	
Colonial Treasurer		Mr.	R. Cribb
Mr.	Watts		B. Cribb
	Ferrett		O'Sullivan
	Taylor		Warry

	Gore			Challinor	
	Royds			Fleming	
	Moffatt			Edmondstone	
	Fitzsimmons			Forbes	
Col.	Sec.	} Tellers.		Raff	} Tellers
Att.	Gen.	}		Lilley	}

During the early part of the division Mr. Fitzsimmons, who had been sitting on the ministerial side, crossed over to the opposition benches, with the view of recording his vote with the noes. His vote being claimed by the ayes, on account of its having been entered on the list, Mr. Fitzsimmons explained that his intention was to have voted with the noes, and it was with that purpose he went over to that side of the house. Some little discussion ensued, and an appeal to the chairman; he decided that the vote must be recorded among the ayes, the honourable member not having gone over to the noes until after his name had been inserted on the line of ayes. The Speaker on being appealed to confirmed that decision.

The division lists were then announced and the chairman, in giving his casting vote, declared it to be in favor of the noes, saying that on the second reading of the bill he had spoken against the disputed words which he considered objectionable.

The chairman then left the chair and reported the bill to the house with fresh amendments.

On the motion of the Colonial Secretary, the report was adopted and the third reading ordered to stand an Order of the Day for Tuesday next.

The house immediately adjourned at five minutes past ten till three o’clock to-day.