

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

...
Legislative Council
18th July 1861

...
Extracted from the third party account as published in the
Courier 19th July 1861

[Owing to a pressure on our space, we are compelled to give but a very brief epitome of this day's proceedings. A more extended report will be given in our next issue.]

The PRESIDENT intimated that he had received a letter from Dr. Hobbs announcing his resignation of office as leader of government business in the house, and requesting one month's leave of absence.

This was granted on the motion of Dr. FULLERTON.

Some discussion then arose as to whether the house should proceed in the absence of a regularly appointed and recognised government representative. Messrs. YALDWYN, ROBERTS, and other members, regarded the non-presence of such a functionary in the house as indicating a want of courtesy on the part of the government. The former eventually moved an adjournment of the house, in order to give the government time to appoint a representative.

Mr. BALFOUR, however, stated that he had consented, at the request of the government, to take charge of government business until a successor to Dr. Hobbs had been appointed.

The house then proceeded with the business, Mr. YALDWYN having withdrawn his amendment.

On the motion of Mr. BALFOUR the Standing Orders were suspended, with a view of passing bills through all their stages in one day.

Mr. BALFOUR then moved the second reading of the Supreme Court Amendment Bill, which was opposed in a lengthy speech by Dr. FULLERTON, who concluded by moving that the bill be read a second time that day six months.

The amendment, however, was negatived, and the second reading carried.

The Parliamentary Privilege Bill was then passed through committee, with a slight amendment, on the motion of Mr. BROWN.

The Fencing Bill was passed, and the Real Property Bill was carried through committee with amendments. One or two clauses, however, and the last schedule were reserved for further consideration on Tuesday next.

The house adjourned at ten minutes to ten o'clock.

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The PRESIDENT took the chair at 10 minutes past 3 o'clock, and opened the proceedings with prayer.

RESIGNATION.

The PRESIDENT intimated that he had received a communication from the hon. Dr. Hobbs, announcing his resignation of the office of Government leader in the house, and requesting a month's leave of absence.

On the motion of Dr. FULLERTON the leave of absence was granted.

IRREGULARITY—GOVERNMENT REPRESENTATIVE.

The PRESIDENT expressed a doubt as to the regularity of their proceeding on the previous day in the disposal of the Revenue and Audit Bill. The Parliamentary practice he had hitherto followed in matters of the kind referred to, was that of New South Wales, but upon enquiry he found that the position of the New South Wales Legislature differed, to some extent, from that of the Imperial Parliament in relation to the rejection of bills whilst under consideration in committee. He thought it would, perhaps, be better to refer the whole matter to the Standing Orders Committee.

Mr. YALDWYN contended that they had a right to reject a bill at any stage if they thought proper, and that they were not necessarily compelled to bind themselves hand and foot by the practice of any other body. If a division took place on a measure, no matter what might be the result, the minority ought to bow to the majority. (Hear, hear.) He observed that the hon. gentleman who hitherto represented the government was not in his place in the house, and therefore it became a serious question whether, under such circumstances, they ought to proceed with the public business. He thought that, in courtesy to the house and justice to the country, the government ought to have provided themselves with a representative to manage their own business. He concluded by moving that the house do now adjourn, until a responsible representative of the government had been appointed in the House. (Hear, hear.)

Mr. BALFOUR stated that immediately after the resignation of Dr. Hobbs, the government, being unable apparently on the spur of the moment to obtain the services of any other gentleman to take charge of the important business on the paper of that day, had communicated with him, and he had promised, if the indulgence of the house were accorded to him, to act temporarily as their representative. (Hear, hear.) He was fully sensible of his own deficiencies, and nothing but the desire to go on with the public business in order to bring the session to a close would have induced him to accept the responsible position of government representative, which he hoped the house would for the present be indulgent enough to tolerate. (Hear, hear.) The fact, moreover, that they had up to the present time preserved the most friendly relations with the government, and the other branch of the legislature, was another reason why he desired to see the business gone on with at once, for the sooner they brought the session to a close the sooner would they be enabled to return to their homes, cherishing, as he hoped, the same friendly feelings.

The CHAIRMAN of COMMITTEES agreed with the observations of the hon. Mr. Yaldwyn. He contended that if hon. members had any regard for their own dignity and independence, they would at once adjourn until a representative of the government had been appointed. That such a gentleman was not present to go on with the business, he regarded as an act of discourtesy, which was the real state of the case. Let them look at the manner in which they had been represented by the government from the very first. Three gentlemen had been appointed successively to the office, but every one of them had taken care to state that he only partially represented the ministerial policy. One hon. gentleman told them that in accepting the office he would not consider himself bound to advocate all the measures of the government; another hon. member said that although he accepted the office he considered himself entirely unfettered, so far as the government were concerned; and the two last hon. gentlemen stated that they merely undertook the duties of the office temporarily. Such was the state of the case up to the present time, and he would ask the house whether anything could be more unsatisfactory. It was only the other day that Dr. Hobbs was asked distinctly if he represented the government, and in answer he replied as distinctly "No." Now he maintained that the house were entitled to have among them a gentleman who should fully and fairly represent the ministerial policy, and who should be prepared at all times to give such information as hon. members might desire touching the various ministerial measures they might be called upon to consider. (Hear, hear.) In fact he saw no difficulty in appointing such a functionary, or why, for instance, should not one of the ministry—say the Attorney-General—hold a seat in that house? He would certainly have a more comfortable billet here than in the Assembly (laughter.)

Dr. FULLERTON was in favour of going on with the business, and explained that Dr. Hobbs' absence was occasioned by pressing private arrangements. There could be no doubt that the government experienced serious difficulty in finding a gentleman to represent them in the house, owing to the fact that, with the exception of himself (who was precluded by ill-health from accepting any office) and perhaps one or two others, all honourable members resided out of town, and could not therefore give the requisite time and attention. He believed the government had done all they could when they appointed so very able a member as Mr. Balfour to conduct their business. (Laughter.)

Mr. BROWN agreed with the Chairman of Committees that the house had been treated with discourtesy. Still, he would not like to oppose going on with the business.

Mr. FITZ pointed out that the Government had placed a sum on the estimates for a Minister of Lands and Works, whom he believed it was intended should hold a seat in that house. But as the Assembly had rejected the proposal, he could not see how the ministry were to blame for the emergency that had now arisen.

The PRESIDENT stated that when he accepted office as the representative of the government in the house, he did so on the understanding that before long some arrangement would be made in pursuance of which the government would be permanently represented by one of their own number. Perhaps it would be as well before the session closed to pass a series of resolutions expressive of this view.

The motion for adjourning the house was then withdrawn.

ALIENS' BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly, returning the Aliens' Bill, with an intimation that they had agreed to some, and disapproved of other, amendments.

Ordered to be considered on Tuesday next.

SUSPENSION OF STANDING ORDERS.

Mr. BALFOUR moved, "That the standing orders No. 50, 51, 54, 55, 56, and 58 be suspended, until further notice, for the purpose of enabling the Council to pass bills through their various stages in one day." He explained that the object was merely to expedite the business, in

order to allow of the session being closed at the time contemplated by the government.

After some discussion, in which the CHAIRMAN of COMMITTEES, Mr. YALDWYN, Mr. FITZ, Mr. WOOD, the PRESIDENT, Mr. MACDOUGALL, Mr. BIGGE, and Mr. HARRIS took part, the motion was put and passed on the following division:—

Content, 7.	Non-content, 4.
Mr. Yaldwyn	Mr. Fitz
Bigge	Macdougall
Dr. Fullerton	Barker
Mr. Balfour	Roberts.
Harris	
Wood	
Brown.	

SUPREME COURT AMENDMENT BILL.

Mr. BALFOUR moved that this bill be read a second time. In explaining the provisions, he said the measure was one which had caused more noise in Queensland than anything that had ever occurred since the date of separation. He was therefore very sorry that it had not fallen into other hands. It was not his intention, however, to go into the general principles of the bill, as hon. members would see more clearly what these were when they came to consider the several clauses in committee. The only important point to which he would allude was the clause granting a salary of £2000 to the present Judge. The hon. member here proceeded to explain the case, much to the same effect as the Attorney-General had explained it in the other house. He considered that the Judge had a vested interest in the amount of salary mentioned, and as he respected vested interests, he should certainly give his warmest support to this portion of the bill.

Mr. YALDWYN agreed with the last speaker.

Dr. FULLERTON said the second reading of this bill did not admit of a silent vote, for it was, in his opinion, the most important measure that that Council had been called upon to consider; one that required reflection and the exercise of sound judgment; one that demanded the application of minds capable of deciding what was right; and, having arrived at that decision, incapable of swerving from it. In giving their vote on this bill they were placed on the horns of a dilemma. If they rejected this bill they would be brought into collision with a majority of the Legislative Assembly; and, if they accepted this bill in its present form, they would proclaim to the world that their decision respecting the disputed item in this bill, last session, was dictated either by ignorance or injustice. There were grave considerations which should cause them to examine well the merits of this bill, and weigh accurately the arguments adduced by the hon. members of the Legislative Assembly for altering their opinion, since last year, respecting the vexatious part of this bill—the Judge's salary. The chief argument advanced for the alteration was that Mr. Justice Lutwyche had a vested right to £2000 a year, as that amount of salary was promised by the commission which appointed him Judge at Moreton Bay. They must not, however, allow this specious but deceitful reason to lead them into error. They must recollect that this was merely a temporary appointment, given by the government of New South Wales while Moreton Bay was part of that colony; and that Mr. Justice Lutwyche was foisted on Moreton Bay because Mr. Cowper wished to provide for the person who had served his purpose as Attorney-General in Sydney. Nor could they have forgotten that the *Sydney Morning Herald*, at the time, did not hesitate to speak of the character of Mr. Justice Lutwyche in very unfavourable terms, and to say that it was shameful on the part of Mr. Cowper to place Mr. Justice Lutwyche in such a high and responsible position in this young colony. And, as the *Sydney Morning Herald* was to New South Wales what the *Times* was to Britain, the pointed articles in that paper, and the ill-fame with which it heralded his approach to Brisbane, caused many to defer paying to Mr. Justice Lutwyche that courtesy and respect which is usual in civilised society, until he should contradict the statements made by the *Sydney Herald*; and as Mr. Justice Lutwyche never did so, many, while they show all due deference to the Judge, withhold from him that feeling of respect which his position should command. To the same ill-fame which heralded the arrival of Mr. Justice Lutwyche at Brisbane,

together with other circumstances, may be attributed all the talk and trouble, discussion and public excitement, about his salary. The hon. representatives of the people were sufficiently liberal, and had given salaries to all the public officers in proportion to the revenue of this colony. But when they were asked to exceed this salutary rule, in order to provide for the protege of the Sydney government, they very properly felt it their duty to enquire into the claims of Mr. Justice Lutwyche. And as a person in the high position of a Judge should not only know his profession, as a lawyer, but be also worthy of imitation as a gentleman of unblemished moral character; and as the marked insinuations of the *Sydney Herald* had cast a cloud over the previous character of Mr. Justice Lutwyche, which he had not attempted to dissipate, the Legislative Assembly decided, last session, that Mr. Justice Lutwyche had no claim upon them for a salary so much disproportioned from the annuities awarded to the other public servants of this colony. In this decision the hon. gentlemen of this Council coincided, and the bill last session, reducing the Judge's salary from £2000 to £1200 a year, passed that house without a division. And on what evidence, he would ask, were they now required to reverse their judgment? Was it because Mr. Justice Lutwyche had maligned their government? Was it because he had made himself a political partisan, by encouraging public meetings, whose object was to overawe the Legislative Assembly? Was it because that, having been connected with the press elsewhere, he had been able to induce a portion of the press here to allow himself, or others for him, to blindfold the public by exaggerated statements in his favour? Or was it because he had the temerity to represent himself as necessary to stand between the people and the crown; as if the inhabitants of Queensland required him as a shield against the mild and equitable rule of her Gracious Majesty? Had the conduct of Mr. Justice Lutwyche, since his arrival, lessened the stain upon his former character? Had it not fully confirmed the opinions of the *Sydney Herald*, that it was a shame for Mr. Cowper to send him as judge to this infant colony? Or did any experience they had had of the conduct of Mr. Justice Lutwyche, encourage them to cancel their opinion of that gentleman's claims upon this colony? None—must be the reply of every candid, unbiased observer. All admit that it was an unpleasant task to be obliged to reduce the wages of any servant, and one would sooner dispense with the services of those employed than offer them a smaller salary. Our Legislative Assembly, no doubt, entertained this feeling; and calculated, last session, that Mr. Justice Lutwyche, resenting such contempt, would retire to his former patron, Mr. Cowper, and claim from New South Wales the salary secured by his commission from that government. But Mr. Justice Lutwyche, for reasons well known to him, preferred remaining here, where, by public meetings, and the aid of a portion of the Press, he might succeed either in extorting his demands, or else in shaking the foundations of society to the very centre. For it was not enough for him to claim £2000 a year for himself, but he presumed also to dictate to the Parliament the salary that should be given to his successor. £1200, a year, must be considered, by every disinterested person, as much for our Judge as would be compatible with the salaries of other government officers, and fully equal to £4000 a year for our Governor. Nor had they heard any argument to convince them that he should have more than that. The Duke of Newcastle, it is true, being ignorant of the peculiar circumstances of the case, and feeling it a distasteful duty for the Queen to sanction the reduction of a salary once received, returned this bill, that the item of the Judge's salary might be reconsidered; but he did not say it must be altered, nor did it follow that they must do violence to their consciences by voting for what they disapprove of. Her Majesty's Privy Council, when they issued the order fixing the Judge's salary at £1200, would not have been ignorant that the Ministry of New South Wales had appointed a Judge to officiate at Moreton Bay before separation; and had they considered that his commission from New South Wales should be binding on the government of this colony, after separation, they could not have fixed the Judge's salary, that having been already determined by the government of New South Wales. It was argued, however

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