

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

...
Legislative Council
24th July 1861

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Extracted from the third party account as published in the
Courier 25th July 1861

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

ALIENS BILL.

On the motion of Mr. BALFOUR, a message was transmitted to the Legislative Assembly conveying the Aliens Bill, with an intimation that the Legislative Council adhere to their amendments.

MINISTERIAL REPRESENTATION IN THE COUNCIL.

Mr. WOOD moved the following resolutions:—

"The Legislative Council begs to point out to the Legislative Assembly the great inconvenience suffered by itself, and the great injury done to the public service, owing to the want of a responsible minister to lead in the Legislative Council on behalf of the government. The Legislative Council is fully persuaded that both houses of Parliament cannot but agree in thinking that the appointment of a fourth responsible minister will be the only way to relieve the Legislative Council from its present anomalous position. The Legislative Council would therefore trust that the Legislative Assembly will take steps to place ministers in a position which will enable them to spare one of their number to conduct the government business in the Legislative Council."

He did not think it necessary to supplement the matter by any observations of his own, as he believed hon. members were very generally agreed as to the desirability of an appointment such as he proposed.

Mr. BALFOUR supported the motion, and hoped it would be passed unanimously.

Mr. MACDOUGALL also supported the motion, believing, as he did, that the time had arrived when they should have a ministerial representative of the government in the house.

Mr. FITZ spoke in favour of the motion, but contended that the government were in no wise to blame for the state of affairs that had arisen. The government had, as he stated, on a former occasion, placed a sum on the estimates for a Minister of Lands, who was to be placed in that house; but the Assembly having refused to grant the item, the government were of course precluded from carrying out their arrangement.

Mr. GALLOWAY agreed generally with the hon. Mr Wood, but he thought the resolutions were rather too mild. Still, as he was anxious that the motion should be passed unanimously, he had made up his mind to withdraw a set of resolutions which he had himself drawn upon the subject. If the government did not think proper to act upon those now proposed to be submitted, he contended it was high time some other government should take their places. (Hear, hear.)

The PRESIDENT admitted the necessity of having a responsible minister in the house who, by his intimate acquaintance with all the measures of the government, could give a leading idea upon every matter that might come before them. He instanced his own experience in proof of the difficulties which private members had to contend with in conducting the government business

in the house; and concluded by expressing a hope that the mild and dignified form in which the question had been put, would insure for it a full and anxious consideration on the part of the government.

Dr. HOBBS also agreed with the motion, and stated that when he accepted office as representative of the government in the house, it was on the distinct understanding that some member of the ministry would be appointed soon after to take his place permanently; and it was mainly owing to the disappointment he experienced in finding that this arrangement was not to be carried out, combined, of course, with the other difficulties of his position, that he was induced to relinquish the office of government representative in the house. He was inclined to think that the Assembly would receive the resolutions in a gracious and considerate spirit.

The motion was then put and passed, and the resolutions were ordered to be transmitted to the Legislative Assembly.

THE JUDGE.

Mr. FITZ alluding to the resolutions he moved on the previous day, stated that he had substituted another resolution for the 6th, which was thought by some honorable members to be too strong. It was his intention to move the resolutions after the Supreme Court Bill had passed.

ROADS CLOSING BILL.

Mr. BALFOUR moved the second reading of this bill in a few explanatory observations.

The motion having been carried, the house resolved itself into a committee of the whole for the purpose of considering the bill in detail.

In clause 1, authorising the closing of unnecessary roads, the PRESIDENT took some objection to the exercise of this power, as it might lead to very great hardship to persons who had purchased allotments in the various towns of the colony.

Mr. MACDOUGALL moved the substitution of six months for "two months" notice.

Dr. FULLERTON made some remarks, in which he deprecated the system of laying out towns in Australia. The only town he had ever seen in Australia which manifested any pretension in the laying out to provide for the health of the inhabitants was Adelaide, the capital of South Australia.

Mr. GALLOWAY supported the clause as it stood.

After a few observations from Mr. BROWN and others, Mr. HARRIS moved, as an amendment, that the notice should be inserted in one or more of the local newspapers, exclusive to the *Government Gazette*, which was carried.

The other amendment for substituting six instead of "two months," was then put and passed.

The remaining clause was agreed to without opposition, and the house having resumed, the report was adopted, and the third reading fixed for the following day.

REVENUE AND AUDIT BILL.

Mr. BALFOUR moved the third reading of this bill, and in doing so he explained that he had taken no advantage of hon. members, for had he been so inclined, he might have moved the third reading on the previous day.

Mr. BROWN animadverted on the conduct of Dr. Fullerton, who first voted for shelving the bill, and immediately after voted for proceeding with it. He (Mr. B.) believed even now, that if the matter were pushed to a division, a majority of the house would be found against the bill. It was not his intention, however, to divide the house.

Dr. FULLERTON made some remarks in explanation of the course he had found it necessary to take.

Mr. HARRIS did not agree with Mr. Brown that on a division of the house there would result in a victory against the bill. He still adhered, however, to the opinion expressed by him on a former occasion.

Mr. GALLOWAY remarked that it was absurd on the part of the hon. member (Dr. Fullerton) to assent to a principle as he had done, and then do away with it by a proviso. That was precisely the course the hon. member asked them to adopt in reference to the Auditor-General

Mr. BIGGE said that since this matter was last before the house, he had spoken to a great many people out of doors, and they were all of opinion that an Auditor-General should not be mixed up in banking or other mercantile operations.

Mr. WOOD would vote for the third reading, simply because he desired to bow to the opinion of the majority.

The bill was accordingly read a third time and passed.

LOAN BILL.

Mr. BALFOUR moved the second reading of this bill, and briefly explained the circumstances under which such a measure had been found necessary.

The motion having been carried, the consideration of the bill in committee was fixed as an order for the next day.

BENEVOLENT ASYLUM WARDS BILL.

Mr. BROWN moved the second reading of this bill in a few remarks explanatory of its object.

The motion was then put and passed, and the house resolved itself into committee for the purpose of considering the bill in detail.

In clause 2 providing for the punishment of inmates found guilty of wasting goods, or insubordination, Mr. HOBBS objected to the words "kept on bread and water for any term not exceeding one month" as being a very harsh and injurious punishment. The persons generally treated in the hospital were aged and infirm persons to whom such a punishment might prove almost fatal.

Mr. BROWN pointed out that the period of imprisonment was left to the option of the magistrates. It was simply "not exceeding," &c.

Dr. FULLERTON supported the clause as it stood, pointing out that persons some times got into the institution upon whom it would be absolutely necessary to inflict some such punishment as that proposed.

After some further discussion, the PRESIDENT moved an amendment to the effect that the bread and water during the imprisonment should only be given according to the discretion of the justices.

Mr. BROWN thought the amendment unnecessary, as a similar discretion was already exercised by the goal surgeon.

The amendment was then withdrawn.

The other clauses were passed without alteration, and the house having resumed, the report was adopted, and the bill read a third time and passed.

SUPREME COURT AMENDMENT BILL.

On the motion of Mr. BALFOUR the house resolved itself into a committee of the whole for the purpose of considering this bill in detail.

On the first clause coming under discussion,

Mr. BALFOUR, in answer to Mr. GALLOWAY, stated that the reason why the Judge's

commission from New South Wales had not been cancelled in this bill as it was in the bill of last year was, that the government did not wish to deprive his Honor of any advantage which he might be capable of deriving from it in prosecuting his claim or supposed claim against New South Wales.

Mr. GALLOWAY, the PRESIDENT, Mr. WOOD, Dr. FULLERTON, and Mr. FITZ were of opinion that the Judge ought not to hold two commissions. If his Honor accepted that of Queensland he was bound to resign the other.

When the third clause bearing upon this point came under discussion, Mr. BROWN moved an amendment to the effect that, upon his Honor receiving a commission from the Queensland government, any commission he might have previously held should forthwith be cancelled, so far as such commission might be then in force in the colony of Queensland.

The amendment was carried, and the clause as amended was agreed to.

Clause 4, enacting that when there shall be more than one Judge, a Chief Justice shall be appointed, who shall take precedence immediately after the Governor, the Puisne Judges taking precedence immediately after the members of the Executive Council, was opposed by the PRESIDENT, on the ground that they ought not to be called on to decide a mere question of precedence. That was a matter of honor determinable only by her Majesty, who was the fountain of all honor, and certainly one that ought not to be determined by a statute law. The hon. member then went on to show that the practice referred to in this clause had been taken from New South Wales, whose practice was materially different from that prevailing in the mother country. He contended therefore that all the words having reference to this matter should be expunged from the clause, and he concluded by moving an amendment accordingly.

Mr. BALFOUR partially agreed with the last speaker, but pointed out that the existing colonial regulations had received the sanction of Her Majesty, and that Her Majesty in a recent despatch from the Secretary of State had signified her pleasure that the sole Judge of Queensland should rank as Chief Justice, and accordingly take precedence immediately after the Governor. In fact, he believed this matter had been so fully considered by the government that he thought it was very probable if the proposed amendment were carried her Majesty's legal adviser in this colony would recommend the disallowance of the bill.

PRESIDENT: Do you speak on the part of the government?

Mr. BALFOUR: I am not authorised by the government to make this statement, but such is my opinion.

Dr. FULLERTON and Mr. BROWN agreed with the President.

The amendment was then put and passed without a division.

The clause as amended was carried.

Clause six, relating to Judge's salaries was verbally amended and carried.

In clause 17 defining the jurisdiction of the Supreme court, Mr. HARRIS moved a verbal amendment in the last line but one, which was opposed by Mr. FITZ, who proposed to strike out the last three lines altogether, on the ground that this portion of the clause gave attorneys an equal right with barristers to practice in cases not exceeding £20. This he regarded as an attempt to amalgamate the profession, which he thought was a result to be avoided as much as possible, seeing that it would destroy all encouragement, so far as those gentlemen were concerned who had gone to the expense of educating their sons for the bar.

The PRESIDENT supported the clause in its present form, as did also Mr. BROWN.

The amendment for omitting the proviso was then put and negatived, and the verbal alteration carried.

The clause as amended was agreed to.

At the end of clause 29 Mr. FITZ moved an amendment, to the effect that the curator of

official assignee shall render an account to a judge on the first of every month. Carried.

The 37th clause was amended on the motion of the PRESIDENT, by inserting the words "or registrar." and by the omission of the present judge's name to the writ. The same clause was also verbally amended on the motion of Mr. BROWN.

The other clauses were passed without opposition, as was also the schedule.

Mr. HARRIS moved, that the chairman leave the chair, and ask permission to sit again tomorrow, his object being to consider the expediency of making such provision for the appointment of a successor in the event of the present Judge dying suddenly. He imagined that the non-existence of some such provision in the bill was an oversight on the part of the government.

The motion was carried, and the house having resumed, the leave asked for was granted.

PRIVILEGE BILL.

The PRESIDENT reported that he had received a message from the Legislative Assembly intimating that they had agreed to the amendments proposed in this bill

SAVINGS BANK BILL.

On the motion of Mr. BALFOUR, the house went into committee on this bill.

The several clauses were agreed to without remark, and the house having resumed, the report was adopted, and the bill was read a third time and passed.

The house adjourned at a quarter to 10 o'clock the next day.