

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Assembly**

**WEDNESDAY, 10 AUGUST 1864**

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## LEGISLATIVE ASSEMBLY.

*Wednesday, 10 August, 1864.*

Tobacco Duty.—Electoral Roll for District of Maranoa.

## TOBACCO DUTY.

DR. CHALLINOR moved,—“That the report from the committee relative to the remission of duty on unmanufactured tobacco be adopted, viz.: ‘That it is expedient that, in order to encourage the manufacture of tobacco, the Government should be empowered to permit the introduction of unmanufactured tobacco, at the rate of one ton per month, at a reduction upon the present duty of one shilling per pound, to be distributed amongst such tobacco manufacturers as may be established within the Colony, during the next twelve months.’” He begged to point out, in addition to the facts he had stated yesterday, that in Victoria there were eleven hundred acres under tobacco cultivation, and in Melbourne there were three manufactories in existence, giving employment to nearly seven hundred people. Recently there had been at Bendigo a sale of native grown tobacco, and the prices realised were very good.

The COLONIAL TREASURER said that as the resolution now stood, it would be impossible

for the Government to take any action upon it. He would point out that the tariff at present in force was established under an Act of Parliament, and no resolution of the House could over-ride an Act of Parliament. If it were determined to remit the duty, it would be necessary to bring in a Bill for the purpose. At any rate, he would propose an amendment to the resolution, in the shape of an addition, to the effect that the Legislative Council be invited to concur in the foregoing resolution. Then, with the concurrence of both Houses, the Government might feel authorised to bring in a Bill.

The ATTORNEY-GENERAL said that, without entering into a discussion upon the merits of the resolution, he would offer a few remarks upon the legal bearings of the case. There was a certain Act of Parliament in force here, to which he would refer the House. He alluded to the Act 19 Victoria, No. 14, commonly known as the Customs Act. That Act said, “there shall be payable” on certain articles mentioned in the schedule certain duties. Amongst the articles mentioned were tobacco and snuff, on which a duty of two shillings per pound was fixed. Now, if the House took upon themselves, by simple resolution, the responsibility of instructing the Government to remit the duty, they would have to come down afterwards and grant the Government a Bill of indemnity. The Duke of Newcastle had expressly laid it down that no resolution of the Legislature could over-ride an Act of Parliament. If they did what the resolution asked of them, they would require an Act of indemnity both from the Assembly and Council. And even then the position of the Government might be very peculiar. When the resolution was carried, there were two seats in that House vacant. Suppose the future occupants of such seats refused to vote for any such Bill of indemnity, and it did not pass? It behoved the Government, in a case of this kind, to take precautions to protect themselves. The best course to adopt, as the principle of the resolutions had been affirmed by a majority of the House, would be for the mover to bring in a short Bill for the remission of the duty. The Government would then be relieved of the responsibility, and the proceeding would be altogether more legal than it was likely to be, even with the present amendment of the Colonial Treasurer. They should not lay themselves open to the charge of trying to do by resolution, that which it was well known could only be done by an Act of Parliament.

DR. CHALLINOR expressed his regret that the honorable and learned Attorney-General had not given the House the benefit of his legal advice at an earlier stage of the debate. The Government knew very well that it was doubtful whether a Bill now introduced would pass through all its stages during the short period of the session which remained. Before he took action in the matter, he had consulted

the Colonial Treasurer, who seemed to think at that time that the Government had power to remit the duty, but he presumed the honorable member had since been otherwise advised. He did not think, even if there were two new members, that the House would be at all likely to refuse to pass a Bill of indemnity. At any rate, there could be no objection to accept the amendment.

The SPEAKER called the attention of the House to the parliamentary practice, as laid down by May, in reference to the alteration of duties after votes of the House:—

“In the imposition and alteration of taxes, the effect given to a vote of the Commons, in anticipation of the passing of a statute, is more remarkable than in the voting of supplies. It has been customary for the Government to levy the new duties, instead of the duties authorised by law, immediately the resolutions for that purpose have been reported from a committee, and agreed to by the House; although legal effect cannot be given to them, by statute, for some weeks, and may ultimately be withheld by Parliament. It is obvious that this custom is not strictly legal, but the ultimate decision of Parliament is anticipated by the Executive Government, upon its own responsibility. If the House have resolved that a duty shall be reduced on and after a particular day, a treasury order is issued, by which the officers for the collection of the revenue are directed to collect the reduced duty, from the time stated in the resolution. But, before they permit the articles to be entered for consumption, they take a bond from the owners or importers, by which the latter bind themselves to pay the higher rate of duty, in case the Parliament should not eventually sanction the reduction. If, on the other hand, a duty has been increased by a resolution of the House, the revenue officers demand the increased duty, by virtue of a treasury order, and will not permit the articles to be entered for consumption until it has been paid, or security given for its payment. For these official acts there is no legal authority at the time; but when the Act is subsequently passed, it alters the duty from the day named in the resolution of the Commons, however long a time may have since elapsed; and thus the duties which have been already collected since that day become, *ex post facto*, the duties authorised by law.”

Mr. PUGH said he understood from the quotation that the Government could remit a duty from the date of the resolution being reported. Such being the case, it was evident that the Government were in a position at once to give the resolutions of the honorable member for Ipswich the force of law. He had observed that all the arguments of the Attorney-General were against the legality of the action of the Government in levying the gold export duty before any Bill for its importation had been introduced into the House. If those arguments were correct, the Government had clearly no right to have levied such a duty.

The COLONIAL SECRETARY thought the previous speaker did not understand the position of the Government. They desired that the honorable member for Ipswich should take the responsibility of the strong step pro-

posed by his resolutions. The Government did not care to trust to the honorable members opposite to pass a Bill of indemnity. They would much rather see those honorable members take upon themselves the responsibility of bringing in a Bill to remit the duty, as the Government would then be free of a responsibility which they were not desirous to assume. The case of the gold duty was entirely different. The Government had collected that, and according to the quotation just read by the Speaker, they were justified in doing so, and had been persuaded that they were right. (Cries of “No.”) The Government had acted under good guidance in levying the gold duty, the circumstances attendant upon which were precisely opposite to those under which the present resolution came before them. A resolution had been passed affirming the desirability of the gold duty. (“No, no,” from the Opposition.) Did they mean to assert that no such resolution had passed? (Cries of “No.”) Well, when the topic came regularly on for discussion, they might possibly succeed in convincing him on this head. He would point out, however, to those gentlemen who desired the Government to act on these resolutions, and who would, perhaps, then bring in a Bill of indemnity, that there was a case at home which justified the Government in their present position of refusing to act on these resolutions. When resolutions for the abolition of the paper duty were passed and agreed to by the Commons, the Bill which passed the Commons was thrown out by the Lords. What would have been the position of the Government had they at once remitted the duty? They, however, took good care to have a Bill pass both Houses before they did so. In the case of levying the duty on gold, the Government were prepared to defend their action at the proper time. This was not a question of remitting a duty.

Mr. BELL recommended the member for Ipswich (Dr. Challinor) to adopt the suggestion of the Attorney-General, and at once introduce a Bill to give effect to the resolution. As the proposition to introduce such a measure had emanated from the Government members, those gentlemen, would, of course, be bound to support it.

The report from committee, as amended by the Colonial Treasurer, was then put and passed.

#### ELECTORAL ROLL FOR MARANOA DISTRICT.

The COLONIAL SECRETARY moved, pursuant to notice,—“That it be an instruction to the Committee of Elections and Qualifications to determine, and report to this House, what electoral roll or portion of an electoral roll shall be used as the roll for this year for the Electorate of Maranoa.” He said he had placed the motion on the paper, because he believed the peculiar circumstances of the case were such as to render it desirable that the House should consider the course of pro-

cedure to be adopted in the future election for Maranoa. He did not think the Government ought alone to be responsible for the instructions issued to the returning officer for that electorate. The duties were very complicate, and in his opinion it was hardly fair that the Government should be called upon to decide upon a question which involved so much difficulty. If the Government gave instructions as to the roll that should be used, there were sure to be parties who would come forward and say that the Government gave the returning officer such and such instructions for party purposes, and so on; and he was desirous that the Government should be free from such imputations. Under the seventy-fourth clause of the Electoral Act, the Committee of Elections and Qualifications could deal with this question; and he trusted that they would willingly do so. The electoral roll had been collected for only a small portion of the district, and the old roll remained; and the committee, under the instruction of the House, would determine what roll should be used.

Mr. COXEN said he did not rise to oppose the motion, for he should be very happy to receive instructions from the House or any one else in this matter; but really he did not see what the committee could do. The decision that they had come to in the case of Mr. Kennedy referred only to the roll that had been used. The roll that ought to have been made use of was the revised roll for 1863. It was because the returning officer had disregarded the roll for 1863, and used the roll for 1862, that the committee declared against the return of Mr. Kennedy. There might have been a roll collected since that of 1863 of which the committee knew nothing. He should, however, be glad to give all the assistance he could in the matter.

Mr. PUGH said that, in his opinion, the only way in which the honorable member at the head of the Government could deal with the matter was to fall back upon the 26th clause of the Electoral Act. It appeared from the evidence which had been taken by the committee that the same printed roll had been used for 1862 and 1863, and the returning officer had committed an error in using the whole of the former, instead of a portion of it. He thought the Government should make use of the roll for 1863, as far as Condamine was concerned, and the roll for 1862 as far as Surat was concerned.

Mr. BLAKENEY said that there would still be this difficulty. As there would be no return of the election for Maranoa during the present session of Parliament, the decision of the committee, whatever it might be, would not be binding. The new member might be unseated by petition, but the petition would not be received until next session, and the committee of that session might say that they would not be bound by the decision of a former committee.

Mr. TAYLOR said he thought it would be far better to leave the matter in the hands of the Government, who would be guided by the opinion of the Attorney-General.

Mr. BELL expressed his opinion that the Committee of Elections and Qualifications would be overstepping their functions in deciding what should be the roll for the next year.

Dr. CHALLINOR said he thought it would be sufficient for the returning officer to act in accordance with the legal advice which would be afforded him.

The COLONIAL SECRETARY then, with the leave of the House, withdrew the motion. He said he had elicited information from the House which would enable the Government to act in the matter. He hoped that there would be no return to the writ now out, and that by the time the new Act was passed a new roll would have been compiled.

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