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Legislative Assembly

TUESDAY, 15 AUGUST 1865

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LEGISLATIVE ASSEMBLY.

Tuesday, 15 *August*, 1865.

Alleged Disfranchisement of Electors for Eastern Downs.

ALLEGED DISFRANCHISEMENT OF ELECTORS FOR EASTERN DOWNS.

Mr. BLAKENEY moved, pursuant to amended notice,—"(1.) That a select committee be appointed, with leave to sit during any adjournment, and power to call for persons and papers, to inquire into, and report upon, the allegations contained in a petition presented by him, on the 2nd instant, from certain inhabitants of the town of Warwick and its neighborhood, complaining of their names having been illegally removed from the electoral roll for the district of Eastern Downs, at the last revision for said electorate. (2.) That said committee consist of the honorable the Colonial Treasurer, Messrs. Douglas, Jones, Pugh, and the mover." The honorable member said he had hesitated, at first, in presenting the petition which had been forwarded to him; but having received a further communication from the petitioners, which satisfied him that there were good grounds for instituting a full inquiry into the allegations it contained, he now asked for a select committee for that purpose. He felt certain that if a police magistrate, or any officer of the Government, were charged with violating his duty, the Government would be anxious to investigate the case; and he, therefore, expected their cordial assistance. The allegations were these: that at the last revision court held at Warwick, for the electoral district of Eastern Downs, the printed list contained the names of 189 electors, which was, perhaps, a small number for such a large electorate. That court was presided over by the present police magistrate, Mr. White, and another gentleman—who ought not to have interfered with the revision of the lists—the returning officer of the district. Those were two, at any rate, out of the three magistrates who sat upon that occasion. He believed the facts were as follows:—when the court was opened, the clerk of the bench stated, in open court, that no notices of objection had been served for that electorate. In spite of that, the police magistrate insisted upon revising the list, and expunging the name of every person whom he considered ought not to remain upon it. He thought the House would be surprised when he stated—and it would be proved beyond a doubt—that that gentleman, aided by the returning officer, struck off the names of no less than one hundred persons, against whom no notice of objection had been sent in. Now he would call the attention of the House to the 23rd section of the Electoral Act, 22 Victoria, No. 20:—

"The clerk of petty sessions shall at the opening of such court of revision produce the lists and a copy of the papers so containing the names of persons claiming and of persons objected to. And the presiding justice shall insert in the list

the name of every person claiming as aforesaid to be inserted who shall be proved to the satisfaction of the court to be qualified and shall retain on the list the name of all persons to whom no objection shall have been duly made and the name of every person objected to unless the party objecting shall appear by himself or by some one on his behalf in support of such objection and shall establish the name by satisfactory proof And the presiding justice shall expunge from the list the name of every person whose qualification shall be disproved or who shall appear to be disqualified to the satisfaction of the court or who shall be proved to be dead and correct any mistake or supply any omission proved to have been made in any such list in respect of the name or abode of any person included therein or the nature or local description of his qualification Provided that no person's name shall be inserted by such justice in any list or expunged therefrom except in the case of death unless notice shall have been given as aforesaid and the presiding justice shall in open court write his initials against every name struck out or newly inserted and against any part of any list in which any mistake shall have been corrected and shall sign his name to every page of every list so revised and no alteration in any list shall be valid unless so initialised."

Could any words be stronger than those to shew that no persons' names should be expunged from the list, no matter whether they were rightly or wrongly inserted. He contended that no person had a right to remove any name which had once been placed on the list, unless due notice of objection had been served to such person. He did not suppose the Government would attempt to defend such a course, but they might, in defence of their officer, qualify his conduct by stating that he had not outraged the law as completely as had been affirmed; because, in the last session of Parliament, a Bill had been introduced—the Additional Members Bill—in which some changes were made in the various electorates. That would, no doubt, be the excuse made—that the Act of last session extended the boundaries of the town of Warwick; and that, therefore, certain names ought to have been expunged. No doubt, the extension of the town to the municipal boundaries did exclude a certain portion of the Eastern Downs. But the same thing had occurred in other districts—in the districts of Wide Bay and Port Curtis. Electors, who were qualified to vote, on account of property which they held in the town of Maryborough, which was made a separate electorate, were no longer electors of the Wide Bay district; and received notice, and very properly, that their names would be struck off the roll for Wide Bay. That was the case also in Rockhampton. But, in these cases, where notices were not sent to the parties claiming to vote, their names were allowed to remain on the roll. What right, then, had the police magistrate of Warwick, and the returning officer, to disfranchise any persons under similar circumstances, without giving them due notice of the objections taken to their votes? What right had they to take upon themselves to say, that because their property was situated in the town of Warwick, their names must be struck off the roll for the Eastern Downs? Up to the present moment, no notices of objections had been served. He found, on reference to the list, that Dr. Aldred, the returning officer, had his qualification in the town of Warwick, but he was retained upon the list in virtue of a small freehold which he possessed in Allora. But if the Bench chose to retain him on the list on that account, why did they not adopt the same course with other individuals who were similarly situated?

The ATTORNEY-GENERAL rose to a point of order. It appeared to him that the honorable member was quoting from a printed document which was not before the House, or annexed to the petition.

The SPEAKER ruled that the honorable member was in order. A considerable latitude was allowed to honorable members in asking for a select committee. The document from which the honorable member quoted had direct reference to one of the allegations contained in the petition.

Mr. BLAKENEY continued: It was perfectly notorious that, in open court, one hundred names had been struck off the list, without a single notice of objection having been served. If Dr. Aldred's name had been suffered to remain in virtue of his freehold property in Allora, why, he repeated, had not the same course been pursued towards other electors similarly situated? How was it that an elector, William Duggan by name, who was precisely in the same position—who had also property in Allora, where he possessed three acres to Dr. Aldred's one—was disfranchised? Why,—because Duggan was a troublesome person, and it was considered advisable to strike his name off the roll. ("No," from the Government benches.) He found, also, that several names had been struck off the list of persons holding property in the Warwick Agricultural Reserve; and it was also notorious that they had never been acquainted with the fact. Yet their names were struck off by the magistrates, and he should be glad to know what evidence was placed before those gentlemen to justify them in the course they had pursued, or if not, why any electors should be disfranchised upon their mere *ipse dixit*. He considered that the fact of so many names having been struck off the roll at one fell swoop, justified him in asking for a full inquiry into the circumstances of the case. Such an investigation could do no harm, and it might be productive of a great deal of good.

Mr. JONES said if he thought the select committee asked for by the honorable member would be likely to do any good, he should support the motion. But he could not see that it was necessary at once to take such an

extreme course. For his part, he should object to sit upon a committee moved for by an honorable member who seemed to have formed such a very strong opinion as to the merits of the case. In his opinion, the proper course to pursue would have been to have asked the Government, in the first place, if they were aware of the circumstances under which so many names had been struck off the roll for the Eastern Downs, and, if not, if they would take the necessary steps to obtain that information. It was very possible that some very serious mistake might have been made; but he could not see the propriety of appointing a select committee, and incurring the expense of bringing witnesses from Warwick, in order to prove what, perhaps, after all, would not be denied.

The ATTORNEY-GENERAL said that, while he gave the honorable member for North Brisbane, Mr. Blakeney, every credit for bringing forward his motion with a view to serve the public interest, he could not see in what way he would be benefited by referring the matter to a select committee. If an illegal act had been committed by the police magistrate, who appeared to have been made the scape-goat of the occasion, he did not see how it would be remedied by a committee. For, if a person were proved to have committed a breach of an Act of Parliament, he was guilty of a misdemeanor, and the House could not charge him with such an offence. Any of Her Majesty's subjects could take the necessary steps to obtain redress in such a case, just the same as a person could who had been robbed of his purse in the streets. A select committee could take no notice of any such delinquency, although he was ready to admit, it might obtain some valuable information. As far as legal points were concerned, the honorable member might have stated everything correctly; and although he (the Attorney-General) had not been informed of the circumstances, it was possible that some persons might have been illegally disfranchised. But if so, he did not see how a select committee could help them. An Act had lately been passed by the House which altered the boundaries of the electorates; and the fact was, that those persons who complained of being disfranchised by the last Act of Parliament had got into the Warwick electorate in which they might have claimed to vote, instead of the Eastern Downs; and they wanted to take advantage of the fact that no notice of objections had been served upon them to obtain more than they were entitled to. But he did not admit that they had been illegally disfranchised, for it was not necessary for the police magistrate to lodge any objections to enable him to strike a person's name off the list; he thought the police magistrate of Warwick had exercised a very wise discretion, and that he was quite exculpated by the circumstances. Assuming that the list had not been properly revised since the passing of the Act, the police magistrate, knowing that the boundaries of the two electorates had been altered, must have been aware, from his local knowledge and experience, that certain persons were no longer included in the electorate of Eastern Downs, and was justified in striking off their names in accordance with the 23rd section of the Electoral Act, 22 Victoria, No. 20, which stated that the returning officer should retain on the list the name of any person—

"Claiming to be inserted as aforesaid who shall be proved to the satisfaction of the court &c. * * * And the presiding justice shall expunge from the list the name of every person whose qualification shall be disproved or who shall appear to be disqualified to the satisfaction of the court" &c.

The local knowledge possessed by the police magistrate must have been quite sufficient to shew him that the persons whose names he expunged were no longer entitled to vote for the Eastern Downs. The magistrates who sat on a revision court were judges of the cases submitted to them, absolutely and dictatorially, and were guided by discretion and by their local knowledge. The honorable member had spoken very strongly about electors being disfranchised, and, no doubt, the franchise was a privilege which ought not to be violated. But, to use an old adage, "No man has a right to take advantage of his own wrong," which was a very fair principle to lay down in this case. The persons referred to by the honorable member did not really stand in a good position in petitioning the House, because they had been legally disfranchised; and the honorable member who took up their case could not shew that they had any legal right to vote. If the honorable member could shew that a properly revised list had been placed before the magistrates, and that, without any notices of objections having been served, these names had been struck off, then he would have some justice in his claim. But the honorable member knew very well that those persons had no right to vote; and he took advantage of a technical objection to ask for a select committee. He did not however object to the appointment of a select committee; it could do no harm, and might possibly be productive of some good.

Mr. LILLEY said he hoped the House would grant the committee, for whether it should result in good to the electors or not, it was essential the House should see that justice was dealt properly to every one in respect to his electoral rights. The honorable and learned Attorney-General had spoken about the equities of the case. Now, he held that the equities were all in favor of the electors; and if the equities were to be taken into consideration, the result must be that the committee would be granted. If his honorable and learned friend had read the whole of the clause of the Act, he would, by

simply doing so, have demolished the whole of his own argument. But the honorable member read only a portion of it. The section was the 23rd, and not the 33rd, as the honorable and learned gentleman mentioned; and he would read the whole of it to shew how adroitly the Attorney-General selected portions of it to suit his argument; and how completely the clause, as a whole, upset his argument. The clause was as follows:—

"The clerk of petty sessions shall at the opening of such court of revision produce the lists and a copy of the papers so containing the names of persons claiming and of persons objected to And the presiding justice shall insert in the list the name of every person claiming as aforesaid to be inserted who shall be proved to the satisfaction of the court to be qualified and shall retain on the list the names of all persons to whom no objection shall have been duly made and the name of every person objected to unless the party objecting shall appear by himself or by some one on his behalf in support of such objection and shall establish the same by satisfactory proof And the presiding justice shall expunge from the list the name of every person whose qualification shall be disproved or who shall appear to be disqualified to the satisfaction of the court or who shall be proved to be dead and shall correct any mistake or supply any omission proved to have been made in any such list in respect of the name or abode of any person included therein or the nature or local description of his qualification. Provided that no person's name shall be inserted by such justice in any list or expunged therefrom except in the case of death unless notice shall have been given as aforesaid And the presiding justice shall in open court write his initials against every name struck out or newly inserted and against any part of any list in which any mistake shall have been corrected and shall sign his name to every page of every list so revised and no alteration in any list shall be valid unless so initialised."

Now, he could not see how his honorable and learned friend could get over the provision that the court was to be satisfied by evidence, and also that no names should be struck off the roll unless notice had been given. He knew nothing himself of the merits of the case. It was quite possible that the magistrates thought they were acting within the law, or that they were doing what was right, but if so, they were mistaken. He was not disposed to look on the disfranchisement of a hundred men as a light matter. There might have been some equity in the case if, in striking the name off one list, they had put them on the list of another district for which the magistrates had as much knowledge that the electors were qualified as they had knowledge of their being disqualified in the first instance. The magistrates, however, did not exercise that power or discretion, but disfranchised them completely. But as the magistrates struck them off altogether, it was necessary they should shew that they acted in good faith. He thought the honorable member had made out a good case for the appointment of a committee of inquiry. The inquiry was not for the purpose of replacing the names on the list, for that could not be done till the next revision court, but that the House should see that no name had been unduly struck off the list.

Mr. BLAKENEY said that if the names had been merely transferred from one roll to another, he should not have asked for the committee, but he believed the magistrates had exceeded their jurisdiction, and had struck the names off one roll on the ground that the persons had lost their qualification, which was owing to the severance of the district, and did not place the names on the roll of the severed district in which the persons retained the qualification, in virtue of which their names were placed on the roll before the district was divided in two.

The ATTORNEY-GENERAL explained that when he said those persons were qualified for the Eastern Downs, he only spoke from assumption that it was so, and did not state it as a fact.

Mr. BLAKENEY, with leave, amended his motion, by inserting after the words "to inquire into," the words "and report upon."

Mr. TAYLOR required that the committee be appointed by ballot.

The motion, so far as it related to the appointment of the committee, was agreed to; and the balloting resulted in the election of Mr. Blakeney, Mr. Bell, Mr. Jones, Mr. Douglas, Mr. McLean, and Mr. Watts.

The SPEAKER stated that, as Mr. McLean and Mr. Watts had received an equal number of votes, it was his duty to declare Mr. McLean a member of the committee, as his name came first in alphabetical order on the list of members. The committee would, therefore, consist of Mr. Blakeney, Mr. Bell, Mr. Jones, Mr. Douglas, and Mr. McLean.