Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 17 AUGUST 1865

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"MR. PRESIDENT,

"The Legislative Assembly having this day agreed to the following address to His Excellency the Governor, viz. :—

"MAY IT PLEASE YOUR EXCELLENCY,—

"We, Her Majesty's loyal and dutiful subjects, the members of the Legislative Assembly of Queensland, in Parliament assembled, desire to assure your Excellency of our continued loyalty and affection towards the Person and Government of our Gracious Sovereign.

"In the person and conduct of your Excellency, Her Majesty's Representative in this colony, we have never failed to recognise an active intelligence, and a prudent zeal for the interests and welfare of Queensland, which have secured, not only the respect due to the office which your Excellency fills, but also our personal regard and gratitude.

"We further beg to assure your Excellency that we entirely agree with the principles of constitutional government, which have been laid down by Her Majesty's late and present Secretaries of State for the Colonies, in the terms recently quoted by your Excellency, viz. :—

"'The general principle by which the Governor of a colony possessing responsible government is to be guided is this: That when Imperial interests are concerned, he is to consider himself the guardian of those interests; but in matters of purely local politics, he is bound to follow the advice of a Ministry which appears to possess the confidence of the Legislature'; and 'A strict observance of the principles of constitutional government has given to Great Britain her happy pre-eminence among free and well-ordered communities, and is no less important to a colony enjoying representative institutions than it is to the mother country.'

"We thank your Excellency for having directed public attention to these principles, and for your assurance that henceforward, as heretofore, your Excellency will continue to support the law of the land, and to carry out the will of the people, as expressed by the Colonial Parliament, with unceasing vigilance and inflexible resolution.

"Beg now to communicate the same to the Legislative Council for their concurrence.

"GILB. ELIOTT,
"Speaker.

"Legislative Assembly Chamber,
"Brisbane, 9th August, 1865."

On motion made by the HON. J. BRAMSTON, —"That the message be taken into consideration at a later hour this evening,"

The PRESIDENT said: Honorable gentlemen—The question seems to me to resolve itself into this—What is the value of an address from the Council? If this Council are prepared to adopt, without consideration, any address that may be placed before us, what is its value before the world? I fancy the value of one so adopted will be very small. If this address, which we have just received, by message from the Legislative Assembly, is to have any importance—if it is intended to have any importance—from the concurrence of this honorable House, it certainly should not be adopted without consideration. It seems to me to be most

LEGISLATIVE COUNCIL.

Thursday, 17 *August*, 1865.

Constitutional Position of Her Majesty's Representative in the Colony.—Criminal Practice Bill, 2°.—Criminal Statutes Repeal Bill, 2°.—Offences against the Person Bill (Re-committed).—District Courts Bill (Committed).

CONSTITUTIONAL POSITION OF HER MAJESTY'S REPRESENTATIVE IN THE COLONY.

The following message, having been received from the Legislative Assembly, was read:—

desirable, even if we run the risk of losing the outgoing mail, that we should not adopt it before it is placed in the hands of honorable members of this Council. I think that, for the dignity of this Council, it is desirable that some pause should be permitted before we take a step of such very great importance, in a constitutional point of view.

The motion was agreed to; but, at a subsequent stage of the proceedings, the consideration of the message was made an order of the day for Friday.

CRIMINAL PRACTICE BILL.

The Hon. J. BRAMSTON moved—That "a Bill for further improving the administration of Criminal Justice," be read a second time. He said it contained very little new matter, but its merit was, that here in one Act was contained what had hitherto been scattered over a considerable number of statutes; and it embodied the whole practice that took place at a criminal trial. It was divided into the several stages of a criminal trial. In the first place, it commenced by shewing how, in such practice, the information might be amended, which was not to be held vitiated through a mistake. This was the law at present. The Bill, copied from the Imperial Act, was slightly different from that Act, by reason of certain words having been introduced from the Colonial Act now in force:—

"If it shall appear that any matter or words required by law to be inserted in any indictment have been omitted or that any matter or words which should have been omitted have been inserted in such indictment"—

the indictment was not to be vitiated. But it was a very difficult thing to say what was "required by law" to be inserted in an information; and when the Bill went into committee, he would restore the clause to what it was in the Imperial Act. The first new clause in the Bill, was to meet a particular state of circumstances—things that could hardly occur except in this colony—consequent upon the very ill-defined boundaries of the circuit courts districts. There was a risk of a man being sent to be tried at the wrong assize court; and the clause referred to was to give power to the courts to try any man brought before them, unless the judge thought otherwise. He had himself seen a case in which the decision depended upon which side of a creek a man stood; if that point had not been got over, all the trouble and expense of the trial would have been thrown away, and the man would have had to be remanded to another court. The clause would not, however, affect the right which every man put on his trial had of pleading to the jurisdiction of the court; and if he did so, and forced his plea, the judge was then bound to remand him. It would save expense, and he (Mr. Bramston) believed would in practice be found a great convenience. The Bill then went on to deal with other matters of indictment, and there was absolutely nothing else new until he came to the 11th clause, where what was a matter of practice regarding particular offences had been introduced, which had been omitted from the colonial Act. When a man was to be tried for stealing money or bank notes—

"it shall be sufficient to describe such money or bank note simply as money without specifying any particular coin or bank note."

In numerous instances, owing to the want of such a provision, there had been evasions of justice; but now a man who should do a wrong act would not escape conviction. In the 15th section, the form of the colonial statute was retained, although it differed in three words from the English one—that was to say, certain offences were misdemeanors at common law, certain others were misdemeanors by Act of Parliament, and it was in England required that the words "against the terms of the statute," or "against the statute in that case made and provided," be inserted in the indictment when the offence was a misdemeanor by statute, and not at common law. The English Act did not go on to give the corresponding effect, as it was given in this Bill; a man who actually committed an offence might easily get off, if the offence charged as being a misdemeanor at common law proved to be an offence against a statute:—

"No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved nor for the omission of the words 'as appears by the record' or of the words 'with force and arms,' or of the words 'against the peace;' nor for the insertion of the words 'against the form of the statute' instead of 'against the form of the statutes' or *vice versa for the omission thereof*," &c.

The concluding words were peculiar to the colony. So long as the person on trial was shewn to have committed the offence, he would be convicted, no matter whether it were an offence by statute law or an offence by common law; in that respect, and in that respect only, did this section differ from the Imperial Act. There was a verbal amendment he would have to make in a subsequent clause when in committee; it was to make the plea of "not guilty" in misdemeanors equal to what it was in felonies. For some reason, that he was unaware of, it had been omitted. There was one other clause, the 27th, relating to the punishment for perjury, in which was contained what it would have required a knowledge of old Acts to have ascertained.

"27. Whosoever shall be convicted of wilful and corrupt perjury or of subornation of perjury shall besides any other punishment that may be inflicted by law be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not

exceeding seven years with or without hard labor and with or without solitary confinement."

He would next direct attention to the 36th and 37th sections, which gave certain powers, which at home were exercised by the Secretary of State for the Home Department, to the Governor and the Executive Council, to deal with insane persons charged with or tried for criminal offences. Those clauses were from the Imperial Act, and would make ours correspond with the English law. The Bill followed the criminal through the whole of his trial, and afterwards, in the case of capital felonies, to execution. It would repeal all present Acts respecting the practice of criminal trials; and every case that was likely to arise would be provided for in its clauses. It would prove of considerable benefit not only to the profession, but, even to the Judges on the bench, who would have in one short measure all the law they required on a trial. But there was one point in which it was not complete; that was in respect to the recording of sentence of death. That was regulated by 4 George IV., cap. 48. He proposed in committee to incorporate its two clauses in the Bill, and to repeal that statute. He believed then the Bill would meet every case that was likely to arise in practice at the trial of criminal offenders. The Bill was in advance of English legislation. Fortunately, our statute book was considerably smaller than the English one, in which there were hundreds of Acts which could not possibly apply to our circumstances; and, consequently, it was not so easy for the Parliament at home to proceed with the work of expurgation as it was for us. Consolidation was easier, and from the complication of Acts, English and colonial, it was much more necessary here than at home, and the Government, in undertaking the work, believed that they were doing good. This short Bill contained the substance of twenty-two statutes that were now on our statute book. To shew the state of our law, a horse-stealer must be followed through seven statutes before he could be set to work on the cutting at the gaol hill. There was an Act inflicting the punishment of death; an Act abolishing the punishment of death and substituting transportation beyond the seas for life; an Act abolishing transportation for life and substituting transportation for fifteen years; an Act abolishing transportation and substituting penal servitude; an Act providing that he might be detained; an Act providing that instead of being detained he might be sent somewhere else; and there was another providing that he might be made to work on any public works not more than two miles outside the walls of the gaol. Those Acts were all done away with, and the whole were embodied in the Bill. It would be in the memory of honorable gentlemen, that in the Offences Against the Person Bill, reference was made to this Bill, in respect to the execution of capital offenders, which was to be carried out as provided in this Bill. The old Act 17 Victoria, No. 40, was repealed and re-enacted here, but with one short clause added:—

"The bodies of persons executed for murder or other capital felony shall be buried at such places as the Governor with the advice of the Executive Council shall direct."

It was thought advisable to insert that, though at present there was no law as to the disposal of the bodies of such individuals; for it would be very difficult, supposing the friends of an executed man demanded his body for the purpose of exhibiting it—as had been done—or for other purposes, it would be very difficult to shew authority for refusing their demand. Those were the only new matters to which it was necessary to draw the attention of the House.

The Hon. E. I. C. Browne said it was certainly not his intention to oppose the second reading of the Bill. He agreed with the honorable member who had introduced it, that it would be one of very great benefit. The honorable member had stated his intention of making an amendment in the first clause of the Bill.

The Hon. J. Bramston: At the request of the Attorney-General.

The Hon. E. I. C. Browne: The amendment was to strike out certain words which, if he was right, had been introduced by the Attorney-General, who was, perhaps, best acquainted with criminal practice, and which words were in the colonial Act, 16 Victoria, No. 18—and that had been found to work well. Why should the House be asked to make an alteration in the law of the colony, which would be a retrograde movement? When the honorable member moved the omission of the words in committee he (Mr. Browne) would oppose it, unless some better reason than he had heard for the amendment were given. Another reason why they should make no difficulty, by such a retrograde movement, was, that the District Courts were about to be established; and they should do all they could to facilitate the practice of those courts.

The question was then put and affirmed, and the Bill read a second time.

CRIMINAL STATUTES REPEAL BILL.

The Hon. J. Bramston moved—"That a Bill to repeal certain enactments which have been consolidated in several Acts of the present session, relating to indictable offences and other matters, be read a second time." It was, as its title imported, merely a necessary consequence of the six Bills that had been advanced through nearly all their stages in the House, and of the seventh, that had just been read a second time. It would remove from the statute book all those Acts and parts of Acts which had become unnecessary, because their provisions were consolidated in the seven Bills of which he had spoken. As he had stated before, with refer-

ence to recording sentence of death, it would be necessary to make an addition to the schedule. As in the word "repeal" the whole meaning of the Bill was contained, he would not trouble the House with any further remarks.

The question was put and affirmed, and the Bill read a second time.

OFFENCES AGAINST THE PERSON BILL.

Upon the motion for the third reading of the Offences against the Person Bill,

The Hon. ST. G. R. GORE said: When the Bill was last before the House, he introduced several clauses for the punishment by whipping for certain offences against women and children; but he had failed to carry them in the shape he desired. He did not wish to stir up the debate again; but since that time he had been informed that several honorable members who had voted with the majority had misunderstood the subject, and had voted under a misapprehension. He moved the re-committal of the Bill for the re-consideration of clauses 47 to 52, both inclusive; and, also, at the request of his honorable friend, Mr. Bramston, for the amendment of clause 69, which had been inadvertently overlooked.

The Hon. J. BRAMSTON said that, having been one of the majority who voted against the amendments of the honorable member, Mr. Gore, on a previous occasion, he should like to hear an expression of opinion from some other honorable members, whether they considered that the offences referred to against women and children deserved corporal punishment. He was aware that it was the wish of some honorable members, who were not in their places on that occasion, to go into committee, but he might say that his own opinion was not changed; and, unless the majority wished for the changes proposed, he did not see why they should go into committee.

The Hon. R. J. SMITH said that he opposed punishment by flogging in the first instance, and he had the same feeling to oppose it now. He objected to corporal punishment under any circumstances. From old associations, he knew the fearful results of it, and the little good effected by it. It might have been useful in England, he admitted; but it was there adopted as a *dernier ressort*, after allother means of reclamation and prevention had failed. Another thing was the difficulty in knowing how it should be administered. Notwithstanding the terrible frequency with which it was inflicted in the early career of this part of Her Majesty's dominions, and the wholesale way in which it was practised during the continental war, it had never done any good. All the works which had been written on the subject shewed that the reason for it seemed to be, to get rid of offenders—to kill them at once. In this age, when education and intelligence were so advanced, there was no need to resort to that brutal punishment. Whether flogging was to be done by the strong arm of a man, or by a boy, or in any other way, did not appear; or, whether it would be necessary to introduce a certain machine to inflict the blows, like the great hammer at Woolwich, which could forge an anchor or crack a nut. The Judge should state with what power the blow was to be inflicted. He (Mr. Smith) hoped that something else would be done before the terrible system of flogging was resorted to.

The Hon. W. WOOD observed, that the honorable member who had just sat down had chosen to adopt only one side of the argument, and ignore the other. Fortunately, he had never, like that honorable gentleman, witnessed the punishment, or its effects. He knew it was not meant by him that honorable members favored flogging because they liked it; they did so because they thought it would be a very effectual punishment for the class of offenders contemplated by the clauses of the Bill which it was proposed to amend. When men forgot themselves and became brutes, by the commission of such offences as were named in the clauses, they deserved no sympathy—they placed themselves without the pale of society; they deserved brutal treatment—and he should, therefore, vote for the amendment. It was at the option of the Judges to sentence an offender to be flogged; and every one would not be flogged. In aggravated cases, the punishment would be inflicted. As regarded the person who was to administer the punishment, the practice of other countries would be followed, and it would be administered by the public executioner. He trusted the House would go into committee, and pass the amendments.

The question was then put, the House divided, and affirmed the motion for going into committee:—

Ayes, 5.	Noes, 4.
Mr. White	Mr. Bramston
,, Gore	,, Roberts
,, Browne	,, Smith
,, Wood	,, Landsborough
,, Fitz	

DISTRICT COURTS BILL.

Upon the order of the day being read, for the consideration in committee of the District Courts Act Amendment Bill,

The Hon. D. F. ROBERTS said: Before going into the consideration of this Bill, as we have only had the returns of the expenses of the Judges and Crown Law Officers when on circuit, which I called for, laid on the table this afternoon; and as my object in asking for them was, to try to discover, by comparison with the expenditure under the old system, what is likely to be the expense to the country of the new, perhaps the honorable gentleman who represents the Government in this House will have no objection to inform us what are the intentions of the Government as regards the

appointment of Judges and others, to meet the requirements of this Bill. By these returns, I find that the expenditure for the last six years in the administration of justice in country districts, amounts to £3,735 8s. 9d. This is an average of £662 11s. 5d. a year. Now, of course, there is a great deal of speculation out of doors, as to the number of Judges and different officers to be appointed. I will take my own idea that there are to be three Judges; that is £3,000. Three registrars; that is £1,300—one being a first-class man, and the others second-class men: and for other expenses, £1,000. That would be a total annual expenditure of £5,300; whereas the present expenditure, that is, from Separation till now, is only £623. As the expenditure under the Bill is likely to be so large, and as we have heard so little about inconvenience arising from the want of justice in country parts, we are, I think, justified in asking from the Government information, to give us some idea as to what they propose to do, before we pass an Act which will increase one branch of the public expenditure nearly ten-fold what it is at present.

The Hon. J. BRAMSTON: I think that the calculation made by my honorable friend is not quite correct, because the expenses of the Circuit Courts are not confined to the travelling expenses of the Judges and the Crown Law Officers. There is a very heavy expenditure in bringing witnesses three or four hundred miles down the country for trial of cases which, perhaps, break down after all. These cases may be tried within five miles of the residences of the witnesses, at no expense at all, provided the Judges are sent into the districts. If the demands of the outside districts have not reached the honorable member, I can assure him and this House that there is a great outcry for justice to be brought to their doors—for the trial of small actions in the outside districts of the colony. He is, perhaps, the only person in the colony whose ears it has not reached. It cannot be denied that the benefit of the district courts system, if the Bill is passed into law, is not so much for the districts near home, as for those in the far interior where, now, cases after cases are not brought into court, on account of the trouble and expense that must be incurred. The difficulty in criminal cases is, to get witnesses together who have to travel two or three hundred miles; and the expenditure of money, and the trouble of bringing them to the circuit courts, must be very great compared to what it will be if the Judge be sent to the districts where the parties reside. And, again, suits between parties are not brought into court, simply because of the trouble and the enormous expense of bringing witnesses long distances which are now absolutely unavoidable if the cause of action arises in the interior. That is the reason why the proposed new courts are called for. I believe, if even the difference of expense be anything like what my honorable friend supposes—if the new sytem should be an expense to the country—it is our duty to make such an evidently required improvement in the administration of justice. As to the intention of the Government with respect to these courts, and the appointment of Judges and officers, I am not in a position to tell him, because the Government have not arrived at a definite intention. He has gone to the outside in supposing that the number of Judges will be three. I do not think it is possible to do with less; but I am certain there will not be more than three. If there were not such places as Roma and Clermont, and other towns at a distance of three or four hundred miles from the coast, two might be enough; but looking at the immense area of country to be travelled over, I do not think we could do with less than three. If the expense is great, the system will give satisfaction to the country. As to the necessity for these courts, let us look at what was done last year, in giving a jurisdiction of £30 to the police courts. The enormous number of cases that are heard under the new jurisdiction shew us what people put up with so as not to incur the expense of the Supreme Court. They put up with large losses rather than risk greater, by reason of the expense of going to the Supreme Court. All that will be remedied. The fees of the District Courts will, no doubt, bring something in; and, of course, the expenses will be as low as possible. It does not rest with the Government however, as to how many Judges or how many officers are to be appointed: all that will be discussed when the Supplementary Estimates come before the Assembly. As to the intentions of the Government, so far, they are what I have stated.

The Hon. W. LANDSBOROUGH observed that he was glad to see a Bill of this kind introduced. In a country so extensive as this, where people were located a thousand miles from the capital, they were compelled to forego prosecuting offenders, and were unable to enforce their just claims, because of the trouble and expense which were entailed upon them if they resorted to the courts as at present constituted.

The Hon. R. J. SMITH said he regarded the Bill as an entirely new feature in the administration of justice in this colony. It was certainly a very important measure. From the statement made by his honorable friend, Mr. Roberts, it appeared that the operation of the Bill, if it became law, would increase the expenditure in the administration of justice in the interior, from about £600 to something like £6,000 a year. But then, the House must look to the increase in the population, and they were bound to keep pace with the age—they must bring justice as near as they could to every man's door. He could hardly imagine

that his honorable friend's calculation could be correct. There must be far less difference, if the expenses of witnesses were taken into consideration. He recollected a case of assault coming on for trial at Rockhampton, about the time of Separation; and it cost the Government of New South Wales something like £2,000. It was brought under the notice of the Assembly in Sydney, and, he believed, the Minister of Finance had to explain the circumstances of the case; and it appeared that nearly £1,800 was for the expenses of witnesses. The expenses of witnesses were not included in the return on the table.

The Hon. H. B. FITZ said he thought that, as the Council had affirmed the general principle of the Bill on the second reading, the present discussion was only taking up their time unnecessarily.

The Hon. D. F. ROBERTS observed that as his honorable friend, Mr. Fitz, was not in his place at the second reading of the Bill, he was, perhaps, not aware that, on that occasion, he (Mr. Roberts) asked the honorable member representing the Government to furnish the return: it was then distinctly understood that the House would not go into committee on the Bill until the return had been furnished. The return had been laid on the table only this afternoon, and this was the first opportunity the House had of forming an idea upon the difference in the expenses of the existing and the proposed systems. He maintained that it was worthy of the consideration of the House, whether, without any further information than the return, they would go on with a measure that promised to more than double the present expense of the colony for the administration of justice. The honorable gentleman, Mr. Bramston, had said something about the expenses having to be passed by the Assembly; but if he looked at the District Courts Bill, he would find that the salaries of the Judges were set down at £1,000 a year. It was for the House to know how many Judges were to be appointed. He (Mr. Roberts) had heard, that for the city of Brisbane, a Judge Metropolitan was to be appointed. He for one, should look upon that as a perfect farce—perfectly useless.

The PRESIDENT: The honorable member is out of order.

The Hon. D. F. ROBERTS: Having brought the expenses of the new system before the House, he would crave their earnest inquiry before they passed the Bill.

The question was then put, and the House went into committee on the Bill.