

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

MONDAY, 11 SEPTEMBER 1865

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LEGISLATIVE ASSEMBLY.

Monday, 11 September, 1865.

Transmission of Messages from the Legislative Council.—
Real Property Act Amendment Bill.

TRANSMISSION OF MESSAGES FROM
THE LEGISLATIVE COUNCIL.

The COLONIAL SECRETARY: Mr. Speaker, I have ascertained that the Legislative Council meet to-day at twelve o'clock, and that, in accordance with the forms of that House, it is not possible for messages to be sent up to this chamber until the Council is sitting. It may therefore be convenient to members of this House to suspend our sitting until half-past twelve o'clock, by which time the Appropriation Bill will have been read a third time, and forwarded to us, with the Distillation Bill, and other Bills which have to be sent back. It may therefore perhaps be convenient, to avoid the difficulty in making a quorum, to resume the chair at half-past twelve o'clock.

The SPEAKER: I think it is very much to be regretted that the same forms are not adopted in the other branch of the Legislature, with regard to messages, which are in force in this House. We send up our messages whether this House is sitting or not; and I see nothing in the standing orders of either House to prevent such a very desirable practice. That is the parliamentary practice, as I shall shew to the House:—

"It appears to have been an ancient order, that one House could not regularly send a message to the other, but whilst both Houses were sitting, the Speaker of each House being in the chair; but this rule is not now observed, and either House may agree upon, and send a message to the other, although it is known that the latter has adjourned for the day. In such a case, the

messengers proceed with the message, as soon as the House to which it is to be delivered is sitting. When the sending of a message is under consideration, and it is feared that the House to which it is to be sent may adjourn before the message can be agreed upon, a message may be, and very frequently is, sent immediately to the latter, requesting them to continue to sit for some time in order to receive a message."

There is nothing to prevent this practice from being carried out; it is, at all events, in accordance with parliamentary practice. I shall resume the chair at half-past twelve o'clock.

REAL PROPERTY ACT AMENDMENT
BILL.

The House having resumed,

The SPEAKER reported the receipt of the following message from the Legislative Council:—

"The Legislative Council having had under consideration the Legislative Assembly's message of the 9th September, with amendments upon the Council's amendments to the Bill, intitled 'A Bill to amend the Real Property Act of 1861,' beg now to intimate to the Legislative Assembly that they insist upon their amendments in the former part of clause 3; because they consider that by imposing the proposed fee, they have not exceeded their constitutional powers.

"That they insist upon their amendment in the latter part of the clause, with an amendment, viz.:—The omission of the words 'five pounds,' leaving the blank to be filled up by the Legislative Assembly; because, whilst asserting their constitutional power to impose the proposed fee, they do not desire to jeopardize the passing of the Bill.

"That they insist on their amendment in the latter part of clause 6; because, instruments involving legal technicalities could not, with safety to the public, be allowed to be prepared by other than duly qualified legal practitioners.

"That they insist on their amendment in clause 9; because the amendment proposed by the Legislative Assembly would have the effect of compelling the whole of the legal profession to obtain a license from the Registrar-General before they could practice.

"That they insist upon their amendment in clause 10; because such is the law at present, and it appears inexpedient to alter it.

"(Signed) "M. C. O'CONNELL,
"President."

Mr. FORBES: Sir, I rise to express my opinion as to the unprecedented course pursued by the Legislative Council, in reference to this measure. I must say that the efforts of this House to further the interests of the colony, have been persistently opposed by the other branch of the Legislature. For my part, I attach no importance whatever to the objections advanced by that chamber. I think it would be beneath the dignity of this House to notice the slights which are cast upon them by the members of the Legislative Council. I would not break a butterfly upon a wheel; but I cannot avoid noticing the obstructive spirit

evinced by honorable members of that House—obstructive to the best interests of the colony, and to the majority of its population. I can assure the House, that three-fourths of the population will speak out upon this question before the next session of Parliament, and those gentlemen will feel the consequences which they have entailed upon themselves by rejecting the original measure in its integrity. I believe, sir, the Legislature will yet be compelled to adopt the Real Property Act of 1860 in its integrity. I look upon the amendments introduced by the Council almost in the light of class legislation, because they provide for a monopoly by a very small section of the community, to the injury of the rest of the colony. I hope honorable members will bear in mind the reasons for which the amendments to this Bill have been brought forward, and take into consideration the great interests at stake. I will conclude by moving, that the amendments of the Legislative Council be taken into consideration this day six months.

Mr. R. CRIBB: Sir, I cordially agree with the motion, and I think this House has been treated with great indignity by the Legislative Council. I consider that this is about as bad a case as could possibly arise between the two Houses. The Legislative Assembly, whether in its wisdom or ignorance, passed a Bill through this House, consisting of one clause, amounting simply to a declaratory clause, that the 13th section of the 11th Victoria, No. 33, should not apply to the Real Property Act of 1861. The first clause of the Real Property Act states that—

“From and after the commencement of this Act all laws statutes Acts ordinances rules regulations and practice whatsoever relating to freehold and other interests in land so far as they may be inconsistent with the provisions of this Act, and so far as regards their application to land under the provisions of this Act or the bringing of land under the provisions of this Act shall be and the same are hereby repealed.”

Well, that clause, when it was passed, seemed to me to be perfectly clear and explicit. But doubts have arisen, and the House passed a Bill, which stated—

“That from and after the passing of this Act section thirteen of eleventh Victoria number thirty-three shall not and may not apply to filling up or preparing any of the forms provided for by the Act twenty-fifth Victoria number fourteen intituled ‘An Act to simplify the laws relating to the transfer and encumbrance of freehold and other interests in land’ any law or custom to the contrary notwithstanding.”

Good reasons were shewn for that Bill; it was passed through this House, and sent up to the Legislative Council. Well, sir, the whole of this Bill is obliterated, even the preamble, with the exception of the enacting part. Every word is struck out, and a long rigmarole—nearly four pages—introduced, of

entirely different matter. And not only is it entirely different matter, but it is matter which has nothing whatever to do with the Real Property Act. Here is one clause—

“No person licensed as aforesaid shall be competent to draw fill up or prepare any power of attorney conveyance except as hereinbefore excepted will deed bond lease or agreement for a lease or other contract whatsoever of or relating to any estate or property whether real or personal.”

Here is a wholesale sweep;—all these amendments introduced into an Act which was passed merely to declare the meaning of the first clause in the Real Property Act, or rather to shew more clearly the real meaning of the Act. And so anxious was the honorable member who had charge of the Bill in this House, to carry it through, that he actually submitted to this proposition of wholesale slaughter—to wipe out the whole of our own Bill, and to concur in all these amendments with the exception of one or two little points which were considered to be so bad that they could not be allowed. This was transmitted to the other House, and I happened to be present in that House, for the very first time in my life, and heard the discussion upon it. And I could see that the whole of these amendments were the work of one individual; I presume he was put forward by the legal profession. And the main argument was this: that the community was simply a community to provide for the wants of the legal profession. That was the gist of the whole argument—we were simply to provide food for the lawyers—we were only to exist in subservience to the legal profession; and, as long as we did exist as a community, we were to be plucked by that fraternity. That was the whole of the argument; and what I wish to say, and to impress upon this House and the colony, is this, that in infusing new blood into the Legislative Council, which must be done, or we shall come to a dead-lock, care should be taken that no more of the legal element is admitted. For after all I heard in that House, I feel that it will be impossible for the two Houses to agree or to satisfy the country, if such arguments are used, or such a determined spirit of obstruction is evinced by that chamber. I hope the Government, in infusing new blood into that branch of the Legislature, will not commit such a mistake as to appoint any more members of the legal profession.

Mr. FORBES, in reply, said the action of the Legislative Council rendered it necessary for the country to look at their position—to see what it really was, and how far the country was benefited by them. He could almost wish that the Government were prepared with some measure which would at least alter the constitution of that House, and alter it in such a manner that the country would feel some confidence in the Legislature, which they did not feel at

present. No doubt it was impossible to constitute a second chamber in this colony from the same resources as were available in the mother country. But it was understood by the country—for he was not expressing his own opinion, but that of the country at large—that honorable gentlemen of the Upper House, as at present constituted, were compelled to state their political creed and repeat their catechism before they obtained their seats. The country was fully aware, though it was scarcely credible, what these gentlemen had to swallow before they were appointed. He believed that House was a mockery of the constitution intended for this colony—their efforts at legislation were, in his opinion, a complete mockery. The obstruction to legislation which they had caused had called forth the comments of the country, and it had come to this, that if the Government wished to secure their position and to further the interest of the country they must come forward before long with a measure to alter the constitution of the Legislative Council. If the matter were not dealt with in time, the country would speak out, and such a pressure from without would be brought to bear upon the Government that they would be compelled to alter the position of that House and the powers at present delegated to them.

The SPEAKER said he thought the honorable member was going rather too far in speaking of the other branch of the Legislature.

The question was then put, and Mr. Forbes' motion was affirmed.
