

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

FRIDAY, 5 OCTOBER 1866

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LEGISLATIVE ASSEMBLY.

Friday, 5 October, 1866.

Parliamentary Practice (Recall of Bill from Legislative Council).

PARLIAMENTARY PRACTICE (RECALL OF BILL FROM LEGISLATIVE COUNCIL).

Mr. BROOKES said: I rise, with the permission of the House, to a question of parliamentary practice in connection with the passing of the Stamp Duties Bill; and I may say I do so with considerable diffidence, but I believe that honorable members will shew me that forbearance usual on such occasions; the more especially when I inform them that I think I shall be able to shew them that the question I bring before the House is one of no inconsiderable importance. As honorable members will recollect, when, last night, the Stamp Duties Bill had gone to a division, I moved that it do not pass. That was after you, Mr. Speaker, had put the motion that it do pass; and you ruled on that occasion that my motion could not be put. Now, I am sure that if I express an opinion contrary to what you then expressed, you will not consider I do so from being moved by any want of confidence in you as a Speaker. I assure you, sir, that I am perfectly satisfied as to your impartiality in your rulings and decisions, and I will most willingly bow to them. But if I make the remark that you yourself do not lay claim to infallibility, and that, like the rest of us, you are liable to error, I am equally sure you will not think that I am making any charge against you; and I am satisfied that if it can be shewn that an inadvertence has occurred in connection with the passing of the Stamp Duties Bill, you will be the readiest to give your support to any proposition for its amendment. The point I wish to raise is this: that the House was misdirected, so I think, with reference to my amendment, on the occasion I have referred to. I have, since last night, looked into "May's Parliamentary Practice" for information on the subject, and I find, at page 282 of that work, that a discussion can be raised upon a Bill at every stage through all the various forms through which it has to pass; and that there is thus afforded, at every stage, an opportunity for delivering a Bill from any error on account of inad-

vertence that may affect it. I will read the passage—

"In passing Bills, a greater freedom is admitted in proposing questions, as the object of different stages is to afford the opportunity of re-consideration; and an entire Bill may be regarded as one question, which is not decided until it has passed. Upon this principle it is laid down by Hatsell, and is constantly exemplified, 'that in every stage of a Bill every part of the Bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected.' The same clauses or amendments may be decided in one manner by the committee, in a second by the House on the report, and until recently, might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the Bill has passed."

"When Bills have ultimately passed, or have been rejected, the rules of both Houses are positive, that they shall not be introduced again; but the practice is not strictly in accordance with them."

The writer then goes on to state the practice of the House of Lords. On page 286 there are also those remarks, and I will quote them in order that honorable members may see that there is a perfectly parliamentary and legitimate mode of deliverance from the inadvertence into which I think the House fell yesterday. The passage is as follows:—

"In order to avoid the embarrassment arising from the irregularity of dealing with a statute passed in the same session, it had, for many years, been the practice to add a clause to every Bill enacting 'That this Act may be amended or repealed by any Act to be passed in this session of Parliament.' And by 13 and 14 Victoria, c. 21, 'every Act may be altered, amended, or repealed, in the same session of Parliament, any law or usage to the contrary notwithstanding;' and the usual clause has, therefore, been omitted from all Acts passed since the session of 1850."

Then, at page 455, I find the following paragraph:—

"Occasionally a Bill is read a third time, and further proceedings thereon are adjourned to a future day, but the general practice is to follow up the third reading with the question 'That this Bill do pass.' This question has sometimes passed in the negative, after all the preceding stages of the Bill have been agreed to: Reform Bill, Ecclesiastical Titles Bill, Succession Duty Bill, Bribery Bill, Education (Scotland) Bill, but though amendments have been proposed, and debates and divisions have occasionally taken place at that stage, it is not usual to divide upon it. Sometimes a Bill is passed *nemine contradicente*."

I think I have almost said enough to shew honorable members that there is some substantial grounds for my raising this question of practice; and that it may be wise for the House to adopt some steps in the way of retracing or amending what we did yesterday. I do not care to refer to American authorities, I much prefer May; but I find, by Cushing, that a simple course is followed in the United States Legislature in similar cases, and it

is one that I would propose should be adopted here. I find in the twenty-third chapter of "Cushing's Legislative Assemblies of America"—a chapter on miscellaneous matters connected with the passing of Bills—that a difficulty, such as I allude to, has occurred in America, and has been provided for. The writer here quite agrees with May. I think this would be the best course for us to adopt. I find that in paragraph 2394, Cushing says:—

"Where a Bill is sent from one House to the other, by mistake, or is wanted in the originating House for the purpose of reconsideration, or for any other purpose, a message is sent from the former, requesting its return."

I think that what I have said will be sufficient to justify me in your mind, Mr. Speaker, and in the minds of other honorable members, for having called attention to this matter; and I trust, at any rate, that it will shew the House and the Government that there is a good and substantial case made out, which they can freely admit, and which I consider they are bound to respect. I will therefore conclude by giving notice that, on Tuesday next, I shall move—

That a message be sent to the Legislative Council, requesting that, in consequence of an inadvertence in the passing of the Stamp Duties Act through this House, the said Act be returned for re-consideration.

The COLONIAL SECRETARY said: I have listened very attentively to the observations that have been made by the honorable member, and to the quotations he has made from recognised English and American authorities, but I must say that it does not appear to me that any one quotation made by the honorable member bears in any way upon the point that was raised yesterday. There was but one question about which there was any dispute, and that was whether you, Mr. Speaker, were bound to put the amendment of the honorable member. The amendment was, that the Bill do not pass. Now, that is simply the negative of the motion, and the object of such an amendment was fully met in the division on the motion by voting with the noes. The honorable member has not quoted a single authority to shew that the ruling of the Speaker was not quite correct. The ruling was one that has taken place over and over again, and I have never heard it challenged before; and it is now challenged, but without any good authority whatever being cited by the honorable member for his doing so.

The SPEAKER said: In respect to the point that has been raised by the honorable member, I shall begin first with his reference to the American system. The practice of getting a Bill back in a manner alluded to by the honorable member to that branch of the legislature from which it has passed, is entirely an American one. In America, the practice in dealing with Bills in some cases is entirely different from ours, which is essentially the

English practice. For example: in America they have such a thing as a negative motion; but we have no such thing; and, in America the previous question is put exactly the opposite way to that in which we put it. Now, with regard to the amendment that was proposed by the honorable member, I must say it is the first time I have heard the point raised as to putting a negative question; and I have never read of it in the practice of the House of Commons, or of any English Colonial legislature. I shall read to the House the various modes of putting amendments:—

“An amendment may be made to a question—(1) by leaving out certain words; (2) by leaving out certain words, in order to insert or add others; (3) by inserting or adding certain words.”

These are the three modes of putting amendments. Now, does the honorable member's amendment come within any one of these modes? I think most decidedly not; and so long as I have the honor to hold the position of Speaker in this House I shall object to a motion being put in the negative, because to negative a motion when it is put is the same thing; and I consider that to put a motion in the direct affirmative form is the proper way to put it. I do not think there is anything, as a point of order, in the honorable member's objection to the mode of putting the question. The honorable member quoted “May,” to shew what every honorable member knows—at least, what I have known for many a long day—that every Bill is open to amendment at every stage of its progress. Now, the point of order raised by the honorable member does not apply to that. If the honorable member—on the question “That the Bill do now pass”—had moved an amendment that was strictly applicable to the motion, I would have had no objection to it, and would have put it to the House; but an amendment must be relevant to the motion, otherwise it cannot be put. I think there is nothing in the point of order raised by the honorable member.

Mr. BROOKES: Will you permit me to put it that the amendment, “That this Bill do not pass,” is so inseparably linked with the motion, “That the Bill do now pass,” that it cannot be put as a separate motion? Could I have moved the previous question?

The SPEAKER: The motion “That the Bill do now pass” is put next after the third reading. I do not know if the honorable member is alluding to the amendment proposed by the honorable member for West Moreton, Mr. Benjamin Cribb. That honorable member wanted to put the previous question after the motion, “That this Bill be read a third time,” and I told him that it could not be put.

Mr. BROOKES: I would beg, with all deference and respect, Mr. Speaker, to call your

attention to page 455 of “May,” where you will find the following passage:—

“If a Bill or clause be carried to the other House by mistake, or if any other mistake be discovered, a message is sent to have the Bill returned, or the clause expunged, or the error otherwise rectified by the proper officer.”

Now, I would like to know what we are to do on a similar occasion in future?

The SPEAKER: I am always most willing to give any honorable member every information I can as to the course that should be pursued under any particular circumstances that occur; but at this time I do not think I should be called upon to say what should be done on some future occasion, under certain possible circumstances; but I may state, that if the honorable member had made an amendment that the Bill do pass at some future time, it would have been my duty to have put it to the House; but any amendment at the stage which the Bill had reached must be relevant to the Bill passing.

Mr. BROOKES: Then, I understand that I was wrong in moving “That the Bill do not pass”?

The SPEAKER: Yes, decidedly.

Mr. BROOKES: I would desire to ask one other question: It was only possible for me to have moved that the motion, “That the Bill do pass,” be amended by the addition of the words “this day six months”?

The SPEAKER: No doubt of it. On that occasion you could have done so.

The matter then dropped, and the House went into Committee of Supply.