

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

TUESDAY, 9 OCTOBER 1866

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LEGISLATIVE ASSEMBLY.

Tuesday, 9 October, 1866.

Privilege (Telegram of Election).—Civil Service Act Repeal Bill (Adjourned Debate).—Supply.

PRIVILEGE (TELEGRAM OF ELECTION).

The COLONIAL SECRETARY said: I rise, Mr. Speaker, to bring before the House a matter which I may term a question of privilege, namely, the right of a gentleman to take his seat in the House as the elected member for a district, the writ not having been returned to you. I refer to the district of the Kennedy; and I hold in my hand a telegram sent to you from the returning officer for the Kennedy District, which is as follows:—

“O.H.M.S., Electric Telegraph, Queensland.

“Rockhampton, 5.45, October 8, 1866.

“Message for the Speaker of the Legislative Assembly.

“G. E. Dalrymple is returned for the Kennedy District by a majority of about thirty (30). Glendhu returns not received; but cannot alter the election.

“FRANCIS CLARKE, Returning Officer.”

Now, of course, I am not prepared to say how far this latter expression, as to the absence of the returns from the district of Glendhu, affects the returns from the other districts; but there is a distinct intimation in the telegram that they cannot alter the election. In “May’s Parliamentary Practice,” page 198, I find this passage:—

“Doubts have arisen as to the period at which a person elected to serve as a member is entitled to take the oaths and his seat. At the beginning of a Parliament, the Return Book, received from the Clerk of the Crown, is sufficient evidence of the return of a member, and the oaths are at once administered. If a member be elected after a general election, the Clerk of the Crown sends to the Clerk of the House a certificate of the return of the indenture into the Crown Office; and the member is required to produce this certificate from the Public Business Office before the Clerk of the House will administer the oaths. The neglect of this rule in 1848 gave rise to doubts as to the validity of the oaths taken by a member. Mr. Hawes was elected for Kinsale on the 11th March; on the 15th he was sworn at the table; but his return was not received by the Clerk of the Crown until the 18th, and it was questioned whether the oaths which he had taken before the receipt of the return had been duly taken. A committee was appointed to inquire into the matter, who reported ‘that although the return of the indenture to the Crown Office has always

been required by the House as the best evidence of a member's title to be sworn, yet that the absence of that proof cannot affect the validity of his election, nor the right of a person duly elected to be held a member of the House."

Under these circumstances, it becomes a question if this telegram, under the hands of the returning officer, can be recognised as evidence of the return of Mr. Dalrymple for the Kennedy District. I do not know that I am in a position to make any motion on the subject. I think I shall have done enough by bringing the matter before the House; for the next step will be, that if the House is of opinion that Mr. Dalrymple is entitled to take his seat on the strength of such evidence, that gentleman will present himself for the purpose.

The SPEAKER: I apprehend the only thing the House requires is to know for certain that Mr. Dalrymple has been returned. Here we have a telegram, directed to myself, saying that Mr. Dalrymple is actually returned, though the returns from Glendhu have not arrived, but that they cannot alter the return. We have nothing in our standing orders to guide us in a case of this kind, and, therefore, we must go entirely by the practice of the House of Commons. Now, it appears to me that the case cited by the honorable the Colonial Secretary is not so strong as is the case here. There was no evidence in the case cited, but here we have the evidence of the returning officer that Mr. Dalrymple has been returned. I think it is a case in which the House might, perhaps, allow Mr. Dalrymple to be sworn, for I think the House ought not to act so as to disfranchise a whole constituency because of some misadventure to the writ. It is a case, however, for the House to determine. For my own part, I am quite prepared to administer the oaths.

Dr. CHALLINOR said: I do not think we should rely on the telegram, for a telegram cannot be accepted as legal evidence. In the case referred to by the honorable the Colonial Secretary, I take it that the gentleman elected for Kinsale was personally cognisant of his election; but in Mr. Dalrymple's case we have no evidence that he has been declared elected, and until we have evidence to that effect, I do not think he should be allowed to take his seat. I have no desire to obstruct Mr. Dalrymple in any way whatever. Quite the contrary. But I do not think he should be admitted on the evidence received, as the case would establish a precedent that might prove a very bad one.

The ATTORNEY-GENERAL said: I have the greatest respect, Mr. Speaker, for your opinion on all occasions; and, though I am not the legal adviser of the House, I should not like, as a member of this House, to allow this case to pass without making a few remarks on the course it is proposed to pursue. I think, if Mr. Dalrymple were

admitted to take his seat, a most dangerous precedent would be established. The course proposed is one which I think it would be most unwise to adopt. I may say, in regard to the gentleman whose case is before the House, that I should be as glad as any other honorable member to see him in the House. I merely direct my observations to the circumstances of the case. So far from being assured that Mr. Dalrymple has been returned, it appears to me there is, to say the least, room to question it; for when the telegram was sent off, the returns from Glendhu had not been received. Now, we are not aware how many electors might choose to go and record their votes at Glendhu. To admit Mr. Dalrymple on the evidence afforded of his election, would be a dangerous precedent. And now for the precedent cited. In the passage quoted from "May" there occurs this extract from the report of the committee appointed to inquire into the case of the Kinsale election:—

"Although the return of the indenture to the Crown Office has always been required by the House as the best evidence of a member's title to be sworn, yet that the absence of that proof cannot affect the validity of his election, nor the right of a person duly elected to be held a member of the House"

Of course, then, we must have something to assure us that Mr. Dalrymple has been duly elected; and without that, the precedent it would establish would be a most dangerous one. But what is added in the next sentence in "May," which has not been read?—

"The committee, at the same time, recommended a strict adherence to the practice of requiring the production of the usual certificate." So there is a good ground for us not to depart from the usual practice. Equally with every other honorable member, I should rejoice to see Mr. Dalrymple in the House, but, notwithstanding that, I could not accede to the proposition, that on the strength of this telegram he should be allowed to take his seat, without protesting against it. We have not the slightest evidence, by this telegram, that he has been elected.

Mr. PUGH said: I quite agree with the honorable the Attorney-General, that every honorable member would be glad to see Mr. Dalrymple in his place in the House, for there was no other honorable member who commanded more respect while he held a seat in it. Still I should not, sir, with all respect to your ruling—

The SPEAKER: The honorable member is mistaken, I did not rule. I said it was for the House to determine whether Mr. Dalrymple should be allowed to take his seat; and that if the House so determined, I was prepared to administer the oaths.

Mr. PUGH: I beg your pardon, sir, for having made such a mistake. In the case of Sir Benjamin Hawes, whose case has been referred to, it is stated, that there was

evidence that he was duly elected, and therefore the case is not in point. If the returns for all the polling places, including Glendhu, had been published in the newspapers, it would have afforded better evidence than we now possess. But there has been nothing of the kind; and I think that, under all the circumstances, we should be establishing a very dangerous precedent if we were to allow Mr. Dalrymple to take his seat, though I should myself be glad to see him do so.

Mr. SANDEMAN said: I am desired to say, on behalf of Mr. Dalrymple, that he is anxious to take his seat in the House; and that his only desire to do so is, that the constituency which has elected him should not be unrepresented. It appears that the returns for the different polling places were well known to Mr. Dalrymple, though those for Glendhu had not come in; and as to the returning officer not being aware of the number of votes recorded at Glendhu, it is well known there were only three votes that could be recorded there. Now, as the returns from the other polling places gave Mr. Dalrymple a majority of thirty odd votes, it is quite clear that the result could not be affected by the polling at Glendhu. But I agree that the question is altogether one for the House to consider.

Mr. R. CRIBB said: I do not think the question is one at all for the House to consider; for to admit Mr. Dalrymple to take his seat, on the evidence we possess in this telegram, would be to establish a most dangerous precedent, and a precedent of a kind the House has no right to establish. The precedent that would be established by Mr. Dalrymple being allowed to take his seat would be sufficient for all kinds of wrongdoing. If there was a measure of great importance before the House, for instance, and the state of parties was such that one vote could decide the question; and if, at the same time, an election were taking place, there would be plenty of telegrams sent down, stating that somebody had been elected; and it would then be claimed, by one party or the other, that, on the strength of this precedent, the said somebody should be allowed to take his seat.

The ATTORNEY-GENERAL: A legal friend has just put into my hands a case in point, one in which he was himself concerned. The gentleman was allowed in that instance to take his seat, on the strength of a telegram; and he was afterwards unseated.

Mr. FITZSIMMONS said: I think we should allow Mr. Dalrymple to take his seat. We have no proof that he has not been returned, and we have a telegram before us stating that he has been returned. I think the gentleman ought to be allowed to take his seat, in order that one of the constituencies of the colony should not be placed in the position of not being represented.

The subject was then allowed to drop.

CIVIL SERVICE ACT REPEAL BILL (ADJOURNED DEBATE).

Mr. WALSH, in resuming the debate on the motion for the second reading of the Civil Service Act Repeal Bill, said he regretted that the Bill was not brought before the House at an earlier period of the session. He thought it involved so much that deserved discussion, that it would have taken almost the entire session for honorable members to have had the subject before them, to have been able to weigh properly all the varied interests connected with it. Though he believed that the Civil Service Act, as it at present stood, and which this Bill was intended to repeal, had been a great injury to the country—though, as he believed, it was a measure that should never have received the sanction of Parliament, and should never have found a promoter in Parliament; still, as it had become a statute, and was part of the law of the land, the utmost caution was necessary before honorable members attempted to undo it. He would say more—he would say that, though he thought those gentlemen now in the Civil Service, who felt that they had a vested interest, who had so much argument on their side, so much reason on their side, and so much justice on their side, so much cause to shew why they should not be injured by the repeal of the Civil Service Act—though he thought much might be said on their behalf, he also thought that much might be said on behalf of the gentleman who introduced this Bill—for the patient inquiry and the great amount of work he must have gone through. No doubt the course proposed with respect to the Civil Service Act was a step in the right direction, for, sooner or later, the Act would have to be repealed. There was no doubt the country had committed itself to a bargain which it could not carry out, but the difficulty in his mind was as to how to deal with those gentlemen who had entered the service under the faith of the continuance of the Act. Those gentlemen had virtually entered into a contract with the Government, and it would not be just, or honest, or wise, to dismiss them without a *quid pro quo*; or to repeal the Act without giving them some sort of compensation, even though they were so satisfied with the service that they would remain in it. Under all the circumstances, and seeing the late period of the session, he hoped the honorable member for the Western Downs would consent to withdraw the Bill for the present. The bringing forward of such a measure would have at least this good effect, it would awaken the members of the Civil Service to the fact that their position was to be assailed; and would lead them to investigate the matter, and take steps to prevent themselves being sufferers by the action of the House. It would also have the effect, on the other hand, of inducing honorable members to take the matter into their consideration before next session, and see

whether it would be possible to devise a course by which, while they could act justly to the members of the Civil Service, they could extricate the country from the dilemma in which it was placed.

Mr. TAYLOR then said that, with the consent of the House, he would withdraw the Bill for this session, but he would introduce it again next session, if he should live so long.

Leave having been given, the Bill was withdrawn.

SUPPLY.

The COLONIAL SECRETARY moved that the House resolve itself into a committee of the whole for the further consideration of the Estimates.

Mr. WALSH rose to complain that the Government had made no provision for the continuance of "Hansard";—in other words, that the Government had taken upon themselves to stop the work by not putting a sum of money down in the Estimates for printing, and had thereby done that which he believed they had not power to do. It required a vote of both Houses of Parliament to say that "Hansard" should not be continued; and he was astonished at the Government acting in such a manner, without getting the authority of the Legislative Assembly, and without the sanction of the Council. Of course, he should be met with the answer that economy was necessary; but that would not be a sufficient answer in this case, seeing that the Government were running into extravagance that would bring the colony to ruin. The question was: was it the wish of the House that "Hansard" should be stopped? Unless the Government had received an expression of opinion on that question from the House, he maintained that they had no right to stop the publication. It was the duty of the Government to have put a sum on the Estimates, and then, if they had chosen to recommend that "Hansard" be not continued, it would have been an easy matter for the House to have refused the vote. But they had placed the House in a different position, and it was now necessary—if the Government would not do it—for some private member to go through the formality and delay of placing a motion on the paper, and moving an address to His Excellency the Governor. He would, therefore, make such a motion as would result in a distinct expression on the part of honorable members, whether or not they wished the work stopped. He did not desire that such a costly work as the present "Hansard" should be continued; it was not necessary—not even for the sake of uniformity. But they should not be without "Hansard." No later than the previous sitting, honorable members must have noticed the great value of the work, when they were able to point out most distinctly that some Government, at any rate, had broken faith with the House and the

country—had made promises which they had not carried out. He would now formally move—

That it is the wish of this House that "Hansard" be continued.

After a pause, during which the honorable member consulted the Speaker, Mr. WALSH withdrew the motion as informal.

Mr. RAFF said he believed it was quite competent, at this stage, for an honorable member to make any remarks on the question of supply. It was proposed that the House should go into the Estimates to-night, and spend some hours in debating certain small savings or parings involving some hundreds of pounds, while he thought most honorable members were in the dark as to the intended policy of the Government involving hundreds of thousands of pounds. The fact that the House had given an expression of opinion as to the expenditure on a certain line of railway was recent, yet it seemed to be a matter of great uncertainty what the action of the Government was to be upon that resolution. It had been rumored, also, this afternoon, that the Government had received intelligence of a decision which would involve the payment of a very large sum of money by the country. Taking that into consideration, with the ignorance of honorable members as to the intended policy of the Government, he thought it was not out of place to request from the Government some statement of their intentions, before the House went on with the paring process. He wished to know, what was of very much greater importance than that, what expenditure there was to be on the larger scale he had indicated.

The COLONIAL SECRETARY remarked that the honorable member for North Brisbane, Mr. Raff, was perfectly in order in addressing the House, and asking the Government for information on the motion for going into supply. At the same time, it seemed to him extraordinary that the Government should be asked by the honorable member, at this period, before they had had time to consider either of the questions referred to, to be bound down by a definite answer on either of them. All that he (the Colonial Secretary) could say with reference to the first question was, that the Government would endeavor to carry out what they believed to be the import of the resolution. With regard to the second question, the Government had no information that placed them in the position to make any definite statement to the House, touching the award to which the honorable member had referred. He believed he was correct in stating that the award was against the Government, but to what extent was a question that depended entirely on measurement; therefore, it was not in his power to state how far it went.

Mr. R. CRIBB maintained that the Premier had given the House a very good reason why they should not go into Committee of Supply; and that they should proceed no further with

the Government business until they had the information required. After the notice they had received that the Appropriation Bill was to be brought down next day, they should dispose of the general business before going further with the Estimates; and, besides, this was a day for the general business of private members.

The SECRETARY FOR PUBLIC WORKS said it was almost impossible for the Government to understand the exact temper of the House, or to know what they ought to do. One honorable member said the Government had a right to keep the whole of the unemployed in the colony at work; and another said that certain works ought to be stopped. The Government would be pleased if the House would give their decision on those points. With reference to the postponement of the Estimates for information, he begged to say that, though the arbitrator's award had been forwarded from Melbourne, the postponement could make no difference whatever; for it would take six weeks to get the information that had been asked for. If honorable members were prepared to stay in the House that length of time, they had a greater desire to do so than he had.

The original question was then put and passed, and the House resolved into a Committee of Supply accordingly.