

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

THURSDAY, 23 MAY 1867

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LEGISLATIVE ASSEMBLY.

*Thursday, 23 May, 1867.*Ministerial Explanation, Message from the Governor,
Prorogation of Parliament.MINISTERIAL EXPLANATION, MESSAGE
FROM THE GOVERNOR, AND PRORO-
GATION OF PARLIAMENT.

THE COLONIAL SECRETARY : Sir—A desire was expressed yesterday, by several honorable members, that an explanation should be afforded to the House of the reasons which have actuated the Government in the course they have taken, and also of the advice following upon those reasons which they tendered to His Excellency the Governor. Now, sir, I am quite willing to gratify that desire, and to state to this House, not only what was the advice which the Ministry gave to His Excellency, but the reasons which induced them to give that advice. I cannot help thinking, sir, that the resolution arrived at by this House, on Tuesday last, was of no common kind, and the anxiety evinced to hurry that resolution through the House would tend to prove that it was intended to be of no common character. A member of the Government, transferred by law from one department to another (“Hear, hear,” and “No, no”)—I repeat, that a

member of Government, transferred from one department to another by law, comes into this House to take his seat, to discharge the duties of his office, and to assist the other members of the Government and this House in attending to the interests of the colony—is hurried, and, without any previous intimation, thrust out of the House, and told that he has no right to be in it. Now, if this had occurred in the case of any private member of this House, I think he might with perfect propriety have complained of it. But looking to the position of my honorable colleague as a member of the Government—looking to what I conceive to be the most conclusive authority produced to this House by my honorable and learned friend, the Attorney-General, I cannot but conclude that that resolution was even worse than it appeared to be. The House will recollect that on that evening it was distinctly stated that the course pursued by my honorable colleague, Mr. Douglas, was a course which had been regularly pursued in New South Wales. (“Hear, hear,” and “No, no.”) I stated so myself. Upon that occasion, sir, an honorable member of this House—I think it was the honorable member for North Brisbane, Mr. Raff—proceeded to quote one of the clauses of the Constitution Act; but the honorable member stopped short at a point at which he ought to have proceeded, and left us without any information—so far as a majority of members of this House were concerned—as to what the clause really amounted to. Now, sir, with the permission of the House—and it forms a portion of my explanation, I will just point out to honorable members that under the 19th clause of this Act, having reference also to the preceding one—or rather to the clause substituted for the previous one—a proclamation was issued last year, declaring the Secretary for Works capable of being elected a member of this House, and, as such, falling within the category of officers referred to. The 19th clause of the Constitution Act states at the end of it:—

“Provided that nothing in this Act shall extend * * * to any of the official members of the Government, or other officers referred to in the preceding clause of this Act—”

that is, those who have been proclaimed—
“who shall accept any other office.”

These words are so very plain that a man who runs may read them; and not only so, but, as was stated upon that occasion, the course pointed out by this very clause has over and over again been pursued in the adjoining colonies. The Colonial Treasurer of New South Wales, Mr. Smart, was transferred from the Treasury to the Public Works—a case which is precisely parallel to the case of my honorable colleague, Mr. Douglas. Mr. Arnold, Minister for Works, was transferred from the Works to the Lands Department; and, I think, without referring

to other, though there are other, cases, these two instances are amply sufficient to shew the interpretation put upon the clause in question by that colony from which we derive our constitution. The resolution which this House arrived at the night before last, and the resolutions which they agreed to on a previous occasion with regard to another matter, induced the Government, in deliberating upon the position in which they were placed by the resolution of Tuesday, to come to the conclusion that this House had shewn a determination to govern the country by resolutions, and to disregard Acts of Parliament. Now, sir, as far as my honorable colleagues and myself were concerned, and referring to the resolution of Tuesday last, the course which we intended, and would have pursued, was plain and direct. I shall not at present say what that course would have been. But the question we had to consider was, whether there were not other interests involved; whether we had not other matters to complain of, and other questions to take into consideration, in arriving at the conclusion as to what advice we should tender to His Excellency. This Government, sir, has, for a considerable time, been pursuing a certain land policy in connection with the railway lines of the colony;—a policy which it is of the utmost importance should be continued. The Government announced in the Speech of His Excellency, at the commencement of the session, a certain line of policy, broad and comprehensive in reference to the great questions which now excite the interest of the community. In the debate which took place in this House on the address in reply to His Excellency's Speech, an amendment was proposed in the shape of a vote of want of confidence in the Government; and although that amendment was not carried—and although no division took place on the subject—yet, in the course of that debate, expressions of opinion were uttered by honorable members who the Government would have supposed would assuredly have supported them—opinions which at once displayed an intention on their part to have supported the amendment, if it had been confined to the Warwick Railway, and to have condemned the Government. The conclusion to which the Government came on that occasion, from the opinions expressed by a number of honorable members in this House, was, that they could not rely for support, upon any important question, upon either side of the House. The opinion they formed on that occasion arrived at a culminating point on Tuesday night, after the resolution was passed in reference to my honorable colleague, Mr. Douglas. It amounted to this—they were compelled to entertain the conviction that, not only could they not expect support from this House in carrying out the policy which they had announced, but it was vain for them to hope that they had the slightest prospect of being able to pass through this House the measures

shadowed forth in His Excellency's Speech. Now, sir, looking at all these matters, the policy of the Government and the vital questions affecting the welfare of the country now at issue, as well as to the age of the present Parliament, we arrived at the conclusion that it was desirable the country should be appealed to, and a decision pronounced upon the policy of the Government. If, sir, the Government is to be supported, it must be supported by a party, and that party must unquestionably be a majority of this House. If we do not possess a majority in this House, we have no business to be in it. Influenced, therefore, by this view, and actuated by these motives, the members of the Government have unanimously advised His Excellency to dissolve this Parliament. And, now, Mr. Speaker, I have the honor by command to announce a message from His Excellency the Governor. [*The honorable gentleman handed the message to the Speaker.*]

Mr. WALSH: I rise, sir, to a point of order. (Cries of "Chair, chair.")

Dr. CHALLINOR rose, but was also received with cries of "Chair, chair."

The COLONIAL SECRETARY: I presume, sir, that as a message from His Excellency the Governor is before you there can be no discussion until it has been received.

The SPEAKER: I certainly have a message from His Excellency, but a question of order as to the mode of receiving it was raised at the same moment.

Mr. WALSH: I was about to say, sir, had it not been for the interruptions which, as a matter of course, the honorable the Attorney-General—

The ATTORNEY-GENERAL: I must rise to a point of order. I submit, sir, that the message from His Excellency should take precedence of all other business.

The SPEAKER: I will read the message. I think there has been some mistake in the mode of delivering it. It is customary when a message is received from the Governor that the bearer should be announced. No announcement was made to me, but I quite concur in the opinion that all other business should be suspended. The message has certainly not been delivered in the usual way.

Mr. WALSH: I rise, sir, to propose a motion—["Chair, chair," from the Government benches.] I am speaking to a point of order—["Chair, chair."]

The SPEAKER: I really must stop this discussion.

The ATTORNEY-GENERAL: I must appeal to the House, sir, to support your ruling.

The SPEAKER: The message has not been delivered to me in the usual form prescribed by our Standing Orders, although I am aware that this practice is pursued in New South Wales in accordance with Standing Orders to that effect. Although the mode of delivery is informal, as a message from His Excellency the Governor has been given to me, it is my bounden duty to read it.

Mr. BROOKES: This House, sir, is bound to submit to your ruling.

The SPEAKER: I rule that the message must be read before the point of order can be raised.

Mr. WALSH: I was going to say—

The SPEAKER: I must say that the honorable member is out of order.

The following message was then read by Mr. Speaker:—

"G. F. BOWEN,

"Governor.

"The Governor informs the Legislative Assembly that he has determined, by the advice of his Responsible Ministers, to prorogue the present Parliament, with a view to the immediate dissolution of the Assembly, and a general election.

"In taking leave of the second Parliament of Queensland, the Governor desires to express his deep sense of the constant and loyal co-operation of both Houses with the Representative of the Queen.

"Government House,

"Brisbane, 23 May, 1867."

The Hon. R. PRING: Sir, I rise to a point of privilege. A message cannot prorogue Parliament, and I wish to know whether a commission under the Great Seal has been handed in.

The COLONIAL SECRETARY placed a second paper before the Speaker.

The Hon. R. PRING: The message was handed in, but not the commission, when I spoke.

Mr. WALSH, who was met with cries of "Chair," I believe there is nothing to prevent me from moving the adjournment of the House.

The SPEAKER: As honorable members do not seem to accept my ruling, I must leave it to the House to decide the question.

The Hon. R. PRING: I was in possession of the House upon a question of privilege, and I repeat that the message given to the Speaker was not accompanied by a commission under the Great Seal. That was poked in while I was speaking, and I thought it my duty to call the attention of the House to the fact. For the Premier knows as well as I do, that a message from His Excellency the Governor unaccompanied by a commission bearing the Great Seal is not worth the paper it is written upon for the purpose of proroguing Parliament.

The COLONIAL SECRETARY: A proclamation has been received from the Governor proroguing Parliament, and it is not competent for this House to open its mouth afterwards.

The Hon. R. PRING: I deny it. ("Chair, chair.")

The SPEAKER: Order, order. Honorable members must either obey or not obey. I must state to the House the rule upon the point. The Constitution Act says, in its 30th clause:—

"It shall be lawful for the Governor of the colony for the time being * * * * to pro-

rogue the said Legislative Council and Assembly from time to time and to dissolve the said Assembly by proclamation or otherwise—"

but here it has been prorogued.

The COLONIAL SECRETARY: There is the proclamation.

The Hon. R. PRING: That won't do.

The SPEAKER: The Colonial Secretary will be pleased to recollect that this is not in accordance with the terms of the Constitution Act. The Governor cannot prorogue Parliament by proclamation in this manner.

The COLONIAL SECRETARY: Do I understand you to say, sir, that His Excellency cannot prorogue this House. This proclamation is an exact copy of the last.

The SPEAKER: It is for this House to determine. The Act says:

"—to prorogue the said Legislative Council and Assembly from time to time and to dissolve the said Assembly by proclamation—"

The Hon. R. PRING: I rise to a question of privilege. The privileges of this House are involved in the manner in which Parliament is prorogued and the authority for that is to be found in "May's Parliamentary Practice," page 238. The Constitution Act, which the Speaker has read, only refers to the dissolution by proclamation. But when the Parliament has to be prorogued, the precedents followed in England by the Queen must be followed by His Excellency. And it will be found that when Parliament during session has to be prorogued, it can only be done by the Queen in person, or under a commission bearing the sign manual and directed to certain members of the House of Peers, and in this colony by the Governor in person, or by a commission bearing the letters patent of the colony. And it is for the Parliament to dispute the way in which His Excellency prorogues, and therefore we are quite correct in objecting to it. In page 238 of "May," the question is clearly laid down:

"But the form is different in the prorogation of Parliament after its first meeting.

* * * * *

"When Her Majesty is not present at the end of the session, Parliament is prorogued by a commission under the Great Seal directed to certain Peers, who, by virtue of their commission, prorogue the Parliament. The attendance of the Commons is desired in the House of Peers; and on their coming, with their Speaker, the Lord Chancellor states to both Houses that Her Majesty, not thinking fit to be personally present, has caused a commission to be issued under the Great Seal for giving the royal assent to Bills. The royal assent is signified to Bills in the usual manner; after which, the Lord Chancellor, in pursuance of Her Majesty's command, reads the Royal Speech to both Houses. The commission for proroguing Parliament is next read by the Clerk, and the Lord Chancellor, by virtue of that commission, prorogues the Parliament accordingly."

It is as clear as that I hold this book in my hand, that Parliament can only be prorogued by the Governor in person, or by a commission bearing the Great Seal of the colony. It is a question of privilege, as found in "May;" and we have a perfect right to debate it. If the legal advisers of the Crown cannot give proper advice upon this matter, where can we look for good advice?

Mr. PUGH: Sir—I quite disagree with the honorable and learned member who has just sat down. Whatever may be the practice of the home Parliament, we have our own constitution to guide us; and the clause which you have just quoted, I take it, is as plain as possible. Not to read it all, it says:—

"—to prorogue the said Legislative Council and Assembly from time to time, and also to dissolve the said Assembly, by proclamation or otherwise—"

It appears clear to me, from that clause, that the Governor is empowered to prorogue or dissolve by proclamation or otherwise, "whenever he shall deem it expedient."

Mr. WALSH: I rise, sir, to a question of privilege. (Cries of "Chair, chair.")

The SPEAKER: I can only say it does strike me that is not the proper way, according to my reading of the Constitution Act. The Colonial Secretary has referred to a precedent in 1863. That precedent has, however, not been strictly followed, there being at that time no message from the Governor. I did not approve of the course then taken, nor do I now; but it is for this House to decide. I thought, at first, it was a question of dissolution, but I see it is one of prorogation; and, therefore, I think the rule of the Imperial Parliament should have been followed. It is now my duty to read the proclamation:—

"PROCLAMATION.

"By His Excellency Sir GEORGE FERGUSON BOWEN, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Captain-General and Governor-in-Chief of the Colony of Queensland and its Dependencies, and Vice-Admiral of the same, &c., &c., &c.

"In pursuance of the power and authority in me vested, as Governor of the said Colony, I, Sir GEORGE FERGUSON BOWEN, do hereby prorogue the Parliament of Queensland, until Wednesday, the fifth day of June, 1867.

"Given under my Hand and Seal, at Government House, Brisbane, this twenty-third day of May, in the year of our Lord One thousand eight hundred and sixty-seven, and in the thirtieth year of Her Majesty's reign.

"G. F. BOWEN.

"By His Excellency's Command,

"A. MACALISTER.

"GOD SAVE THE QUEEN!"

Mr. Speaker left the chair at seven minutes past four o'clock p.m.