

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 2 OCTOBER 1867

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LEGISLATIVE COUNCIL.

Wednesday, 2 October, 1867.

Contagious Diseases Prevention Bill.

CONTAGIOUS DISEASES PREVENTION
BILL.

The Hon. W. WOOD said that in presenting the Bill to the House a few days ago, certain expressions of opinion had fallen from the honorable President, which had induced him to bring it in again, not so much from a desire to pass it through the House at that time, although he was still of opinion that it might have been originated there. He hoped the House would come to some understanding as to what measures might be introduced in it. The expression of opinion from the honorable the President, to which he had referred, was to the effect that, according to the first clause of the Constitution Act "all Bills for appropriating any part of the public revenue for imposing any new rate, tax, or impost," must originate in another place, and that even if a Bill were introduced in the Council like the Bill before the House, in which no money was mentioned at all, if it were necessary that a money clause should be added in another place, it could not be taken into consideration. The result of such a decision would be that no Bill could be introduced into the Council at all, inasmuch as all Bills either contained money clauses, or at any rate required certain fees or fines

to carry out their provisions. Now, in the Legislative Standing Order, No. 263, which was copied from one passed in the House of Commons in 1849, it was provided

"With respect to any Bill brought to this House from the Legislative Council, or returned by the Legislative Council to this House with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorised, imposed, appropriated, regulated, varied or extinguished, this House will not insist on its privileges in the following cases:—

"1. When the object of such penalty or forfeiture is to secure the execution of the Act, or punishment or prevention of offences.

"2. Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the Treasury, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

"3. When such Bill shall be a private Bill for a local or personal Act."

He might also point out to the honorable member that the Council had on many occasions passed Bills which embraced fees and penalties. The principle laid down in "May"—the principle of the House of Lords, agreed to by the House of Commons, was—

"That it is sometimes convenient that a Bill intended to contain provisions of this character, should be first introduced into the House of Lords, in which case the Bill is presented and printed, with all the necessary provisions for giving full effect to its object, and is considered and discussed in the House of Lords in that form. But on the third reading, any provisions which infringe upon the privilege of the Commons are struck out and the Bill having been drawn so as to be intelligible after their omission, is sent to the Commons without them. These provisions, however, are printed by the Commons in red ink, with a note that they "are proposed to be inserted in Committee."

Either a blank was left or the words were printed in italics, and that was the principle which had hitherto been admitted here. The House of Commons, as honorable members were aware, had always been very particular with regard to its rights and privileges, and he thought that as long as the Council only followed the English practice, the Legislative Assembly would not be likely to find fault with them. He brought forward the Bill a second time in order to take the sense of the House upon the question and to lay down a precedent for future guidance. The House could either refer the matter to the Standing Orders Committee, or come to some understanding as to what practice they intend to adopt with regard to the introduction of Bills of a similar character to that which he now brought forward a second time. He had only one more remark to make, and that was with regard to the course to be pursued in the Council when there was an equality of votes. In the House of Lords the Lord Chancellor had a vote as a peer. But, unfortunately, the honorable President was not in the same

position, and he (Mr. Woods) should have been glad if the honorable gentleman had a vote as a Councillor. When in the House of Lords the votes were equal, according to the old rule, *semper præsumitur pro negante*, the non-contents always carried the day without any casting vote being given. But in the Council the honorable President was apparently deprived of his right to vote as he might wish, and was pledged to side with the non-contents, instead of being in the position of a Speaker who always acted on the principle that the Bill should have another chance. The Bill before the House had not been offered another chance in consequence of the ruling of the President, and he (Mr. Wood) thought it would be well to lay down a rule for the future upon this point as well. He had forgotten to mention that he had inquired into the principle adopted in the other colonies, and found that it was allowed there to introduce into the Legislative Council Bills having fines or fees attached to them, but to leave a blank for the money clauses. With these remarks he would leave the Bill in the hands of the House, and move that it be read a first time.

The PRESIDENT: Honorable gentlemen—I am bound, of course, to answer the appeal which has just been made by the honorable member who has laid this Bill on the table, and moved its first reading. When that honorable member withdrew the Bill on a former occasion, in consequence of some remarks which fell from me having reference to the first clause of the Constitution Act, I presumed that, for the moment, he was convinced of the force of the objection I had made. But it seems that he has slept over the question, and has altered his opinion. I stated that the Bill seemed to me one which, from its construction, necessitated a certain amount of taxation. Reading the Bill, not, certainly, with any very great amount of attention, but reading it carefully, I saw it was necessary that certain medical officers should be appointed to carry out its provisions, and that there must, of necessity, be a certain expenditure for keeping the persons alluded to in the Bill in hospital. It, therefore, seemed to me to be a measure which necessitated money clauses; that is to say, a measure which required the imposition of some taxes or imposts in order to make it operative. I then read to the House from the Constitution Act the provision for the introduction of such Bills, which states absolutely—

"That all Bills for appropriating any part of the public revenue for imposing any new rate tax or impost subject always to the limitation contained in clause fifty-four of this Act shall originate in the Legislative Assembly of the said colony."

Now, we are bound by the Constitution Act, and there is a clause in existence bearing directly on the point at issue. Can we, therefore, render legal any Bill introduced in this House which provides for any "new rate, tax, or impost?"

But it may be that the honorable member does not in this Bill impose any such tax or impost; and if he believes that it can be worked without any such tax, of course its introduction will not be at variance with the Constitution Act. If not, it seems to me that the Bill is one which, under the clause I have quoted, cannot receive the Royal Assent; and in all probability, when it is placed before the Attorney-General, and that difficulty is pointed out, it will be declared irregular upon that ground. For this reason, I expressed my opinion that the honorable gentleman was taking up the time of the House unadvisedly in attempting to pass a measure which, however desirable in its scope and object, we were not competent to deal with as it was placed before us. That was merely my opinion. I did not give it as a ruling. I simply stated that, in my opinion, according to the best of my judgment, as a private member of the House, the Bill was one which should originate in the Legislative Assembly. With regard to the concluding observations of the honorable member as to the way in which I should give my vote when there is an equality of voices, I may say that I do not think this is a proper moment to enter into the question. When it is brought before the House at any time, I shall be ready to give my reasons for the course which I shall recommend for adoption.

The POSTMASTER-GENERAL said he had objected to the Bill on several occasions, and was still of opinion that it would entail considerable expense in carrying it out; and, on that account, should not have originated in the Council. He should, therefore, oppose the motion.

The Hon. W. HOBBS said he was glad that the Bill brought to the House before by the honorable member, Mr. Wood, had again been introduced. Honorable gentlemen would remember that, for several years past, he had brought the subject before them, and he had always held that the Council had not properly fulfilled the functions allotted to it under the Constitution Act. The honorable President had read a proviso in the first clause of that Act, but had not given the House the paragraph which immediately preceded it. In the Standing Orders, it was laid down that

"in all cases not herein provided having reference to the joint action of both Houses of Parliament, resort shall be had to the rules, forms, and practice of the Imperial Parliament."

Now, as the first clause of the Constitution Act provided that the Council and Assembly should "make laws for the peace, welfare, and good government of the said colony in all cases whatsoever," it seemed strange that the Council should not have the power to initiate a Bill under which some small fee or penalty was to be awarded. If that principle were laid down, how could the Council exercise their joint functions with the Assembly? Instead of being *primus inter*

pares, the Council would have to follow the other House. With regard to the Bill before the House, the tax was likely to be very small, and if the Legislative Assembly should object to it, they could only refuse to pass it. The Council did not dictate to them what their policy should be; they had the remedy in their own hands. But that was a very different thing from prohibiting the introduction of the Bill. He had frequently maintained in that House, particularly on the passing of the Appropriation Bill, that it was as much the privilege of the Council as of the Assembly to consider the clauses of that Act, and he maintained that the words he had quoted would never have been inserted in the Constitution Act, if it had not been intended that both Houses should have equal powers, and he thought, if honorable members would look back to the extravagant legislation which had taken place, they would see that their eyes had been blind to the powers conferred upon them, and that they had not done their duty in conformance with the Constitution Act. He hoped, now that the question was before the House, it would be referred to the Standing Orders Committee, or that, if it should be deemed necessary, a conference between the two Houses should be held, in order to determine the point. He simply threw out the suggestion, and if the honorable member thought fit to take any steps in that direction, he should support him.

The PRESIDENT said the honorable member appeared to have misconceived the tenor of his remarks. He wished to explain that he had not said that it was beyond the province of the Council to interfere in the passing of money Bills, but that, according to the Constitution Act, all such Bills should originate in the Legislative Assembly, and he could not see how that could be got over, unless a Bill were passed to alter the Constitution Act itself.

The Hon. W. THORNTON said he must confess he could not see the force of the arguments advanced by the honorable President or the honorable Postmaster-General. It did not appear that the Bill before the House was one for appropriating a part of the public revenue, or imposing any "new rate, tax, or impost." If he understood the President aright, the honorable gentleman did not object to the Bill because it imposed a penalty, but because it necessitated the appointment of certain officers who would have to be paid. But it did not state that those persons should receive any salary, or that there was to be any salaried office. Now, as honorable members were aware, there were several officers in the service who received no salary from their office for certain additional duties which they undertook to perform. That remark applied to himself and to several others, and it was possible that the Government might add to the duties of the health officer

the additional duty imposed by the passing of this measure. He thought it a great pity that a very useful measure should be delayed by an objection of this kind. It appeared to him that the Bill did not in any way come under the first clause of the Constitution Act.

The Hon. D. F. ROBERTS said he thought very few honorable members would be inclined to agree with the argument of the honorable member who had just sat down, that, because a Government officer held two or three appointments for which he was not paid, any medical gentleman at present in the Government service would be inclined to take upon himself a duty of this kind without any remuneration. He conceived that as soon as the Bill was passed, a suitable sum of money for the payment of a medical officer would have to be placed on the Estimates. He looked upon the Bill as a somewhat different measure from that which the honorable gentleman, Mr. Wood, had tried to make it appear. He quite agreed with the honorable the President that the Council had no right to deal with a Bill imposing fees, or fines and forfeitures; but he thought the Bill went far beyond that, and that according to the honorable gentleman's, Mr. Wood's, own quotation it should have been initiated in the Assembly. For if he remembered rightly, the quotation from "May" to which he referred stated, in reference to Bills imposing taxation, that "it may be advisable," &c. Now, no reason had been given to the House to shew that it was advisable to bring in such a Bill, and as the question was at least a doubtful one, he would say that, in his opinion, the Legislative Assembly was the proper channel by which it should be introduced into the Council.

The Hon. W. WOOD said he did not care whether the Bill originated in the Council or Assembly, except for the delay which would be occasioned. He had no objection to withdraw it in order to get it introduced in the Assembly. If any dispute arose as to the other matter, it could be referred to the Standing Orders Committee.

Motion and Bill, by leave, withdrawn.