

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 12 MAY 1869

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LEGISLATIVE COUNCIL.

*Wednesday, 12 May, 1869.*Privilege.—*Sheriff's Sales Bill.*

PRIVILEGE.

The Hon. W. HOBBS said he did not wish to make any remarks on the motion of which he had given notice, for the simple reason that it had been discussed before. Since that discussion, he thought honorable members had had an opportunity of ascertaining that the proceedings of the House, on the 14th April last, were not in accordance with parliamentary practice; and he thought the Council should have an opportunity of reviewing their action on that occasion, and of rescinding the resolution declaring him in contempt, and annulling the proceedings thereupon. He did not believe honorable gentlemen thought for a moment that he was desirous of asking them to stultify themselves; but, if they had committed an error, as he was sure they had—from "*Hatsell's Practice*" and "*May's Practice*"—without doubt they should have an opportunity to correct it, and, by rescinding the resolution, avoid establishing an unpleasant parliamentary precedent. The subject had been so fully discussed before, that it was quite unnecessary to have it debated again; and he had put the motion on the paper merely to give honorable members the opportunity to set matters right and free themselves from the charge of having acted in an unparliamentary manner. He believed the subject had been reviewed in other portions of the colony, in the newspapers, which, so far as he had ascertained, all agreed that the action of the House was unusual and contrary to the precedents of Parliament in such matters. It might be said that the Standing Orders directed the House to act in such a way as the Council had acted; but, he contended, that the Standing Orders must be read in the light of parliamentary practice. If the Council did not adapt them to, or apply them in accordance with, the manner laid down by the Imperial Parliament, they would get into a state of confusion, and would not know what they were about. There was one Standing Order which was violated every week, the twenty-fourth, and no notice was taken of it at all. Why should the House be anxious to act so severely under the twenty-third and twenty-fifth Standing

Orders, or to make such importance of them, and take no notice of the disregard of the twenty-fourth, which he thought was of equal force to the others? Honorable members must be aware that the latter was broken through every week.

The Hon. J. F. McDougall: By the Brisbane members; not by others.

The Hon. W. HOBBS: Therefore, he moved—

That the resolution declaring the Honorable W. Hobbs guilty of contempt, on the 14th April, be rescinded, and the subsequent proceedings thereupon be annulled.

The Hon. D. F. ROBERTS said he thought the honorable gentleman had far better have left the matter at rest. Placing it in the most simple form that occurred to his mind—suppose that the call of the House was made for a special occasion, to discuss a question, not anything like that which came before the Council on the day named, and there was no quorum: what would become of honorable members, then? It was easy to send a message;—the honorable member could have done so, and said at what time he would be at the House. But were they, now—because the honorable gentleman had acted, as the House considered, not according to parliamentary rules—to stultify themselves, and say that they had done wrong? He thought they certainly should not. The honorable member was very unwise to bring the matter again before the House.

The Hon. T. L. M. PRIOR said that he, for one, should oppose the motion. Honorable gentlemen were aware that all the country members were present on the occasion referred to in the motion, many of them at very great inconvenience; and, certainly, they should expect that an honorable member who lived in town ought not to forget, at all events, a call of the House, and neglect to attend on a day when he was specially required to do so. An honorable member, too, who enjoyed some little perquisites from the Government, should consider it his duty, when honored with a seat in the Council, to be present to form a quorum. The Honorable W. Hobbs said that the twenty-fourth Standing Order was not carried out—that it was every week violated. He forgot that many members of the House had to travel a very great distance to attend to their parliamentary duties. For himself, it took up a week to enable him to attend the House two consecutive sittings—riding down the country, from his home, two days, and back again, two days more, to enable him to be in his place in the Council two days. It might be thought he would not do that unless there were some necessity for it; but it was his duty. There were not merely a few honorable members living in the bush who did that. Yet the Honorable W. Hobbs could not give his attendance for two or three hours. He (Mr. Prior) thought the Council

had come to a right conclusion when they voted the honorable gentleman in contempt. He was not aware of the precedents of Parliament, but he merely took the common-sense view of the case, when it arose, and he voted as he thought right. There was nothing to prevent the honorable gentleman attending; and, when he did come, his excuse was admitted, though it was a very lame one. After what had occurred, if a case arose again, he (Mr. Prior) did not think action would be taken so sharply; but he agreed that the House would be stultifying themselves to rescind the order they had made; and he hoped honorable members would show that they would maintain the correctness of their proceedings.

The Hon. ST. G. R. GORE said he must certainly oppose the motion. He really thought that the Honorable W. Hobbs appeared to take the matter too much to heart. The honorable gentleman was, to a certain extent, guilty of a breach of parliamentary discipline and parliamentary rule; but there was no imputation against his honorable friend's character. He committed that breach through sheer human forgetfulness; and although he was punished for his infringement of parliamentary rule, yet he must admit that the punishment was very mild. And, although his excuse was a very lame excuse, as was correctly remarked by his honorable friend, Mr. Prior—the honorable gentlemen said he forgot it was the day of the call—yet it was accepted. It would be taking the more dignified course, for the honorable member to put up with what had befallen him, and not to ask the House to confess themselves in the wrong. He (Mr. Gore) contended that they were not in the wrong. A call of the House was made in accordance with the Standing Orders; that call might be taken to mean at the time the President formally read the names of honorable members. He thought that if the President had, at a later hour of the evening, gone over the roll again, he would have been making two calls of the House; and, that those who were present at the first, and went away, meantime, might be made liable to the consequences of not answering at the second. They had nothing to do with "May"—

The Hon. W. HOBBS: Oh, oh!

The Hon. ST. G. R. GORE: Except in cases where their own Standing Orders were silent;—then, they might regulate their proceedings by the example of their great prototype, the House of Lords. He thought it would be much more dignified, and more creditable to himself, if the honorable member would acquiesce in the punishment imposed upon him, than to persevere in his present course. He contended, with reference to what the honorable member had stated relating to his being in contempt—

The Hon. W. HOBBS protested that he had not mentioned the name of the honorable gentleman: he spoke of the violation of the

twenty-fourth Standing Order, and that no notice was taken of it.

The Hon. ST. G. R. GORE: He thought the honorable member said that he had violated the Standing Order.

The Hon. W. HOBBS: No.

The Hon. ST. G. R. GORE: He must have misunderstood the honorable gentleman. An honorable member absent for a time was not in contempt, as the Honorable W. Hobbs had stated. Besides, there was a very simple way of getting out of it—inform the President. He thought it was the general practice, and honorable members would bear him out in saying it, that honorable members did inform the President when they thought they were likely to be absent over a week. He told him that he would not be down on such and such a day. If his business compelled him to be away more than a week, he should apply for leave of absence. He might be absent three weeks without leave of the House. But he ventured to say that the twenty-fourth Standing Order was never infringed by honorable members, and that the President was informed by most honorable members when they were not likely to be in attendance. Therefore, the objection of the Honorable W. Hobbs absolutely fell to the ground, so far as that order was concerned. No official letter was required to give information to the President of a member's intended absence. He might absent himself next week, if he chose, without saying anything to anybody; but if he wanted to be absent a fortnight, he might intimate it by saying to the President there was not much business on the paper, or nothing very important to do, and that he would not leave home for the next ten days or a fortnight. That would be "informing the President." From the way in which the motion was likely to be received, and the certainty of its being carried against the Honorable W. Hobbs, he advised him to withdraw it.

The Hon. H. B. FITZ: He was sorry his honorable friend, Dr. Hobbs, had been so indiscreet as to press the motion before the House. Speaking as a country member, no town member had any excuse for not attending to a call of the House. He knew that the honorable gentleman had pleaded forgetfulness, on the occasion. Country members had to take a good deal of trouble and to incur great expense, to attend to their duties in the Council. He had, himself, to ride eight miles in the night to get to the railway station before daylight, to come by the train to Brisbane, and all that was not without some personal inconvenience. The Honorable W. Hobbs has not been very remarkable for his attendance, and he was absent more than country members. True, he was a professional man, and not altogether master of his own time. In 1868, there were six sitting days, on three of which he was absent. In 1869, eighteen sitting days, on eight of which he was absent.

The POSTMASTER-GENERAL said he thought there could be no doubt, from the unanimous expression of opinion which had been given, that the honorable member would withdraw his motion; and the more so, because of the very lenient manner in which he had been treated. Moreover, there was another Standing Order, the twenty-seventh, which distinctly set out the amount to be paid "for arrest, £50," and for daily sustenance, £5 5s., and which might have been brought to bear upon the honorable gentleman. It was quite true that the honorable gentleman was dealt with really more as a matter of joke. Honorable members were quite aware that he had committed the offence inadvertently—it might be attributed to human frailty; but his motion was only another development of his frailty. He would get a more formal recognition of his offence, and it would now be treated in a more impartial manner than had been done on a previous occasion. The House were quite willing to forgive the honorable member; but it was quite right that some notice should be taken of his absence. Considerable warning had been given to honorable members that their attendance would be required. What was the good of giving notice unless attendance could be compelled. With regard to "May," he perfectly agreed with the honorable Mr. Gore, that the Council were guided by the procedure laid down in "May," merely when their own Standing Orders did not make provision for any case; and, if the House did not depart from the Standing Orders, they could not be expected to rescind the resolution which had been passed affecting the Honorable W. Hobbs. Even if, as had been said, they had departed from another Standing Order, the twenty-fourth, neither by practice nor precedent would the House be justified, nor was it in good taste for the honorable gentleman to expect it, in reversing a decision deliberately arrived at.

The Hon. J. F. McDougall said he felt it to be his duty to oppose the motion. He advised the honorable gentleman to withdraw it; for, notwithstanding what had been stated by him in regard to parliamentary practice, there were the Standing Orders under which the Council had acted. He directed the honorable member's attention to the importance of the occasion for which the call of the House had been made, and to the circumstance that, if his neglect had not been marked in the way it had been, a future call—which, no doubt, would not be made, unless for a matter of the utmost importance—might be treated with contempt.

The Hon. W. Hobbs, in reply, said he was very sorry that he could not accept the suggestions of his honorable friends, to withdraw the motion. His object was not a personal one. He contended that, as the House had acted irregularly—and any parliamentarian must see that they had acted in an illegal and irregular manner—

The Hon. ST. G. R. GORE rose to order. The honorable gentleman had no right to say that the House had acted in an illegal manner.

The Hon. W. HOBBS: Well, the House had acted irregularly.

The PRESIDENT: The honorable member was out of order in addressing remarks of that nature to the House upon their action. The Council had by their decision adjudged the honorable gentleman in contempt, and it was neither illegal nor irregular.

The Hon. W. HOBBS: He withdrew the expression. As to the Standing Orders, they were to be read in the light of parliamentary practice. He had to express his regret that the House should take the view of the matter which they did, and which was at variance with his motion to rescind the resolution which they had come to. His honorable friend opposite, Mr. Roberts, had said that he asked the Council to stultify themselves. Surely the honorable gentleman, as a lawyer, must know that the decisions of the judges were sometimes set aside and reversed; and it was not, therefore, too much to ask the House to set aside a decision which certainly ought to be re-considered. For himself, he was perfectly satisfied with the action of the House; he did not complain of it on personal grounds; but, he brought forward the motion for the sake of the House—not for his own sake—so that they might rectify a mistake into which they had been led. Therefore, he must decline to withdraw the motion; he must let it stand on the records of the House that honorable members refused to do their duty, while he did his.

The Hon. J. BRAMSTON said that, if in order, after the honorable member had replied, he desired to move an amendment—namely, the previous question. He was unwilling to meet the motion with the direct negative, though he should not vote for it. But, as the Honorable W. Hobbs, who had heard the objections to his motion, refused to withdraw it, he (Mr. Bramston) thought it would be better to meet it by moving the previous question. As far as the subject of the motion itself was concerned, he declined to admit that in anything which had been brought before them, the Council were guilty of any irregularity whatever. He was willing to admit for himself, personally, that the English parliamentary practice was, perhaps, more courteous to members than our own, and, he considered, better. Had he been aware of that practice, at the time, he would have brought it before the House, and he would have moved that the order for contempt be not passed till the end of the evening. What the House did was in due form; although the honorable gentleman might have condoned his contempt if the House had postponed the order till the end of the evening, still the House were not bound to do so.

Question—"That this question be now put."

The Hon. Sr. G. R. GORE wished to say a few words on the previous question. He could not at all agree with his honorable friend, Mr. Bramston. The unanimous vote of the House, which he trusted would be given, would have a very salutary effect. It appeared that our parliamentary law was subject to cavil; and the formal decision of the House, that a call should be made at an early hour of the evening, and that all members not then present were in contempt, would have a very salutary effect. It appeared to him that the case stood thus:—The President having a matter of constitutional importance to bring forward for the consideration of the Council, was anxious that it should have the benefit of a full attendance of the House, in order that the discussion might be as complete as possible, and a call of the House was ordered with the unanimous consent of the House. If the honorable member's reading of parliamentary law was correct, as was contended, how would it work? It might be, that a dozen honorable members, holding contrary opinions to the President, would absent themselves—remain in the library—till the discussion had taken place, and, when the question was put, enter the chamber and purge themselves from contempt. Once the matter was understood, it mattered very little when the roll was called—whether at half-past three o'clock, or at ten o'clock at night. He wished that the House would, by their vote, now establish the rule—that the roll should be called immediately before the reading of the Orders of the Day, as was the case on the occasion in question; and that a member who absented himself at that time should be considered irrevocably in contempt. The Honorable W. Hobbs and the Honorable Mr. Bramston might look up the Imperial parliamentary practice—and, he admitted there was a good deal in it;—but where there were five or six hundred members, there might be a certain fitness in not exacting the same punctuality in attendance as in a house of only twenty members;—there were a variety of causes to prevent many out of so large a number attending. He maintained that, in this country, the case was entirely different. If a gentleman was in town, at all, he could have no possible difficulty in attending at half-past three or four o'clock, two days a week. The House admitted Dr. Hobb's human infirmity;—still, it was childish for an honorable member to say he forgot, and to ask the House to undo what was the consequence of his forgetfulness. He (Mr. Gore), a country member, made it his business, three days before, to start for town; and, when in town, he took proper measures to ensure his attendance in his place. He should vote against the previous question. He thought it would be better for the Honorable Mr. Bramston to withdraw his motion. The House, by rejecting the original motion, should lay

down for the future what was the opinion of the present Council on the point of parliamentary law and practice which was raised. It was just as easy for the Honorable W. Hobbs to have attended, early in the afternoon, on the occasion of the call of the House, as for any member who resided in the interior. He (Mr. Gore) hoped some other honorable gentlemen would express their opinion on the question, and that an authoritative decision would be given upon it by the rejection of the original motion.

The Hon. T. L. M. PRIOR: In the first place, it appeared to him to be a question of right or wrong, as regarded the decision of the Council: if they did right, under the circumstances referred to, they would all adhere to their former decision. He was very sorry to have heard the honorable the Postmaster-General express himself in the way he had done—alluding to the action of the House, as a joke. That was a very unfortunate expression. Honorable members did not come to the House, as a joke, but to do their duty to the country. He was sorry to allude to it; but he believed the sense of the whole House was, that their voting the Honorable W. Hobbs, in contempt, was no joke. For himself, he must say that, if he had thought his honorable friend, Dr. Hobbs, would have brought forward such a motion as was now before the House, he would never have voted for his being released from custody or confinement.

The POSTMASTER-GENERAL: Of course, when he made use of that term to which the honorable Mr. Prior objected, he meant to convey to the Council that it was an unusual exercise of their powers, to vote an honorable member in contempt; not that they were not perfectly right to exercise it. Such proceedings were calculated to raise in his mind certain associations connected with the dark department in the lower regions of the buildings. But, he supposed honorable members had never thought any occasion would arise for proceeding to extremes, and that recourse was not likely to be had to that department. There was a feeling that no honorable gentleman would ever place himself in the position to become a practical exponent of its necessity.

The PRESIDENT said it seemed to him, as was remarked by the Honorable Mr. Gore, that this was an occasion of some importance. The question now before the House, to decide, was, in what mode they should carry out obedience to their Standing Orders. If the House ordered a call of the Council for a certain day, it was presumable that such call was for a particular object; and, if members did not attend until after the measure or question for which the call had been made was disposed of, they could not be said to have attended in their places in obedience to the call.

The Hon. W. HOBBS: He was in attendance before the question was disposed of.

The PRESIDENT: The practice of the British Parliament was as had been stated by the honorable member, Dr. Hobbs; but, there, measures were under consideration for several days together, and being before Houses comprising from five to six hundred members each, if a member answered to his name at any time during the discussion, he was enabled to purge himself from the contempt for which a disregard of a call of the House made him liable. There was one instance he could refer to in the House of Lords: during the trial of Queen Caroline, it was ordered that members should attend from day to day, under a penalty of £100; they were in attendance—at a trial which lasted for weeks—to be ready to give their decision when called upon to do so. The Honorable W. Hobbs was not present when the roll was called, and the necessary consequence was, a motion that he was in contempt. The twenty-third Standing Order provided that—

“Any member not attending in compliance with an order for a call of the House, without reasonable excuse, shall be held guilty of contempt.”

The call having been made, and the honorable gentleman not being in attendance, and nobody answering for him, the natural consequence was, that the House declared him “guilty of contempt.” The House having done so, it became his (the President’s) duty—from which he had no release—to issue his warrant—

“25. Any member or other person declared guilty of contempt shall be committed to the custody of the Usher, by order of the President.”

He was bound, in compliance with that Standing Order, to issue his warrant. He did not anticipate that the honorable gentleman would make his appearance that night; but it appeared that something reminded him, and he was in the House after the adjournment at six o’clock. There could be no doubt, as the honorable member had said, that he had forgotten he was bound to be present on the occasion of the call; and, having said so, the House dealt with him in a lenient manner. Now, however, he again brought the subject under the attention of the House. He (the President) was not sure the honorable gentleman was strictly in order, because when a discussion took place on the personal conduct of an honorable member, that member should not be present. However, he had not stopped the honorable gentleman from the chair, because he thought it was better for the House to determine what the practice should be. He thought that the practice in the case in question was the best. If a call of the House was desirable, in order to the consideration of a particular measure, and an honorable member was not present at the usual hour for the assembling of the House, he (the President) thought it was better to decide at once that he was in contempt. He assumed that the question

should be settled at once, and the practice of the House determined; and that it should not be met by a side wind—which would be the case if his honorable friend Mr. Bramston’s motion were entertained.

The Hon. H. B. FITZ said it appeared to him to make very little difference whether the motion were unanimously rejected, or the House decided that the question should not be put; though the latter would be taking the most lenient view of the matter, so far as the Honorable W. Hobbs was concerned.

The Hon. W. HOBBS: It was not on his own account he brought forward the motion; it was on account of the House.

The Hon. H. B. FITZ: He should strongly advise the honorable member to withdraw his motion.

The Hon. W. HOBBS: No, no; he should not.

The Hon. H. B. FITZ: Then, he should certainly vote against it.

The “previous question” was put and affirmed. The original motion was then put and negatived.

By leave of the House, the following motion standing on the notice paper, in the name of the Honorable W. HOBBS, was withdrawn:—

“That the discussion upon the question of privilege raised by the Honorable W. Hobbs on the 20th April, be inserted in the Minutes of the House.”

And, at a subsequent stage of the proceedings,

The PRESIDENT observed, with reference to the twenty-fourth Standing Order, to which the Honorable W. Hobbs had alluded, that so long as the public business could be carried on by the Council without inconvenience, he saw no necessity for acting upon that order. If he had found that the attendance of members was not sufficient for carrying on business properly, it would have been his duty, of course, to have brought the matter under the consideration of the House—to have mentioned the neglect of honorable members in not informing him whenever they intended to be absent for more than one week. It was competent for honorable members to be absent for three weeks without asking the leave of the House, but merely intimating to the President that they would find it inconvenient to attend for that time. He never brought before the House any infraction of that rule, and, therefore, he thought the Honorable W. Hobbs should not have regarded it as a hardship that the House decided that he was in contempt for not obeying the call of the House.

The Hon. W. HOBBS said he never thought it a hardship; but when he came to the knowledge of parliamentary practice, he thought he should afford the House an opportunity of setting themselves right.

The POSTMASTER-GENERAL: He presumed it would be desirable—he did not know that

it was necessary—in reference to the twenty-fourth Standing Order, that a resolution should be moved before any honorable member could be held to be in contempt.

THE PRESIDENT: Of course.

THE POSTMASTER-GENERAL: The Honorable W. Hobbs, after committing an act which, by the Standing Orders, was held to be contempt, was declared to be in contempt by a resolution of the House duly moved and affirmed. In the same way, if any honorable member absented himself, against the twenty-fourth Standing Order, the same course of procedure would be followed by the House: he would be declared guilty of contempt by resolution.

SHERIFF'S SALES BILL.

The Hon. J. BRAMSTON, on moving the second reading of "A Bill to amend the Law relating to the Sale and Transfer of Land by the Sheriff and other Officers," said it was an exact reprint of a measure which had been passed by the House in the previous session; and, as it had thus been approved by honorable members, therefore he thought it unnecessary to go into details to inform the House of its scope and bearing.

Question put and passed.