Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

WEDNESDAY, 16 JUNE 1869

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LEGISLATIVE ASSEMBLY.

Wednesday, 16 *June*, 1869.

Pastoral Leases Bill.

PASTORAL LEASES BILL.

On the Order of the Day being read, the SECRETARY FOR PUBLIC LANDS moved—

That the Speaker do now leave the chair, and the House resolve itself into a Committee of the Whole for the consideration of this Bill in detail.

Mr. WALSH, rose, and said he wished it had fallen into other hands to undertake the motion he had to move as an amendment. He felt that he should be totally unable to quote the authorities he would quote, in a way which he should like. He sincerely trusted that honorable members present would listen to the objections he had to make to the mode in which the Bill had been introduced, and that, even if he did not make himself quite clear, they would not consider his case weak. They had before them a question of a point of order; and for the sake of expedience, self-interest, or in order to get through the business of the House, it was neither wise nor safe for them to depart from the good old rules and standing orders of the House. If he had wanted a strong reason for what he was about to do, it would be sufficient to quote the very notices which the Premier had given notice of for this day, that he should move this House resolve itself into a Committee of the Whole for the purpose of considering certain resolutions to initiate money Bills. It was because the House had not done so with the present Bill that he begged them to reconsider their steps, and introduce the Pastoral Leases Bill in a proper way. After the way in which the Government had acted, last night, in withdrawing the Brands Bill when he had objected to it as a money Bill, he thought they might see a similar reason for initiating the Pastoral Leases Bill in committee also. No sooner had the honorable Colonial Secretary announced, last night, that he trusted the Bill would be found to give a revenue, than he at once, and the House also, had a feeling that the Bill would have to be taken back, and be initiated, in a proper way, in committee. The present Bill was so far from not being a Bill to raise revenue, that the great object of Bills concerning pastoral tenants or purchasers of Crown lands was to raise a revenue. It was childish to attempt to disprove that it was intended for that purpose; if it were not, of course the Government would not be able to raise any revenue under it. Then, again, perhaps it would be explained away as a pastoral relief Bill, instead of being justly described as a pastoral revenue Bill. They had the example of yesterday to follow in withdrawing this Bill, and their own standing orders which point out that all Bills for raising revenue must originate in a committee of the whole House. What was the real meaning of the English people when they determined that no money Bill should originate except from the people? It was that the people alone should tax themselves, and that whatever was done in the shape of levying taxes might arise from the spontaneous offer of the English House of Commons. That was the jealous way in which taxation had been viewed there, and it was held absolutely necessary that these Bills should originate in themselves and not from any other power in the realm. He found in "Todd's Parliamentary Government in England," the following passage on money Bills, p. 525:—

"We will now proceed to consider the subject of money Bills which are of three kinds, viz., Tax Bills, Bills of Supply, and Bills of Appropriation. All these Bills have a peculiar form of preamble, which intimates that the revenue or grant of money is the peculiar gift of the House of Commons."

The present Bill proposed a money grant of the Government to the Crown as a peculiar gift of this chamber, and being their gift it must originate with themselves, otherwise it would be a tax exacted from them in the shape of a Bill brought forward by the Government. In England, such Bills are invariably presented by the Speaker to obtain the Royal assent. He would not repeat at large what "May" said on the subject, but nothing could be more explicit than the following:—

"The House are no less strict in proceedings for levying a tax, than in granting money; and it is the practice, without any exception, for all Bills that directly impose a state charge upon the people, to originate in a committee of the whole House. To bring a proposition under this rule, however, it must directly involve a charge upon the people, it not being sufficient that it would diminish the publicincome."—"'Parliamentary Practice,' p. 448."

And so the present Bill must originate in a committee of the whole House, he had no doubt upon the subject. He would now read what an illustrious foreigner, Dr. Fischel, a German author, translated by Mr. Shee, of the Inner Temple, had to say on the subject—

"All Bills which relate to the granting of public money to religion, or trade, or the imposition of a charge upon the subject, must originate in a committee of the whole House".—P. 469.

He would now refer to the time when this authority was re-asserted in the House of

Commons, to show the absolute necessity of following this practice—

"On the 23rd February, 1821, on the motion of Mr. Wynn, it was resolved 'that this House will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole House; and that the same be declared a standing order of the House.'" —"Hansard."

Before that time, it was merely a custom tenaciously and gloriously clung to by the House of Commons. Referring to our own practice, he found that, on the 26th September, 1867—

"Mr. Lamb moved, pursuant to *amended* notice, that the Speaker do now leave the chair, and the House resolve itself into a Committee of the Whole, to consider the desirability of introducing a Bill to consolidate and amend the laws relating to the Pastoral Occupation of Crown Lands."

The question was then put and passed. Thus showing what the practice was which a Minister thought it his duty to pursue with regard to a Bill similar to the present. On September the 19th, of the same year, in the Sydney Parliament, the Martin Government brought in a Bill—the Land Laws Amendment and Freehold Settlement Bill—when, on the Order of the Day for the second reading of this Bill—

"Mr. Speaker said he considered this measure contained provisions that brought it within the class of Bills which ought to be introduced in committee. One of these rules specially referred to compounding with the Crown debtor."

That was, then, an analogous case; they were now about to alter the tenure under which certain Crown tenants held their lands and the payments made for them. Those persons who first entered into obligations would, under this Bill, be enabled to compound with the Government and come under the provisions of this Bill, so that a more strictly analogous case could not be found. The Speaker went on to say—

"A previous Speaker of this Assembly had ruled that all land Bills ought to be introduced in committee."

That was the Speaker's ruling, and it led to a lengthened discussion; and the Premier, Mr. Martin—the prototype of our Premier—with all his ability, was defeated, and had to withdraw his Bill. In this discussion, too, Mr. Garrett, who, whatever may be his political character, carries great weight as an authority upon parliamentary usage and the forms of the House, said—

"The plain reading of the rules of Parliament would cut the ground from under the honorable member's feet. The rule was clear that the House should not proceed to consider any measure dealing with revenue, except it had been first considered in Committee of the Whole. * * Where did we get our revenue unless the matter went through committee? We could not deal with the public lands except in that way. He believed that measures in the mother-country proposing to deal with the Crown lands there would have to originate in committee."

Mr. Robertson too, referring to what had been said by Mr. Piddington—

"denied that the Opposition had offered any obstruction to the progress of the public business. No sooner was this Bill introduced than he pointed out the blunder that had been made, and showed how the mistake could be rectified."

Now, he also wished to show how the mistake made in the present case could be rectified, and the Bill be brought to its present stage as rapidly as they possibly could. The sequel to what occurred in the Sydney Parliament was that

"The motion was then put and agreed to; and on the motion of Mr. Wilson, the Bill was withdrawn."

That was the fate of a similar measure to the present, in New South Wales. Again, although no great authority and guide for us, he had noticed in the *Natal Herald* an extraordinary coincidence respecting a measure of the same sort affecting the lands of the colony, which had probably been hurried through the House. At any rate, the proceedings led to a public meeting to denounce the conduct of Parliament for hurrying measures through the Houses, contrary to the standing orders of their chamber. At this meeting a series of resolutions were submitted to those present, and adopted. The first of these was—

"That in the opinion of this meeting, the Law No. 18, of 1868, is—(*a*) wholly illegal, inasmuch as it was passed in violation of several of the standing rules and orders of the House; (*b*) arbitrary and oppressive, in that it was enacted in direct opposition to the wishes of the people, repeatedly and clearly expressed both by petition and in public meeting, on the occasion of its first introduction in another form; (*c*) unequal in its operation, and unduly oppressive in trades and professions. That a system of evasion of the standing rules and orders of the Legislature, such as is thus inaugurated, is subversive of the first principles of legislation, and alike discreditable to the Government who prompted, and the representatives who adopted it."

It was a most extraordinary instance in point; there they saw the people of Natal meeting to denounce the Government for passing Bills contrary to the standing orders which should guide that colony. It would be strange that those who were so anxious to close the business of this session—it would be most disgraceful, and awaken the attention of the public to the corruption of this chamber whenever it has peculiar measures to pass;—he said, the corruption of this chamber, for such it would be if the Government were allowed to hurry through work for any object, regardless of the forms of the House,—it would be degenerating from their position which, as legislators, they should hold—determined to do what was just, though the heavens fall—should they not abide by the rules of

he House. He had shown that, by the practice of the House of Commons, Bills to raise revenue were always initiated in committee; he had shown that it was the practice in another colony; in another, there was a rising against the rulers for disregarding the standing orders; and he had shown in our own colony it had been practised, and though laws had been passed otherwise than in accordance with this practice, it was no reason why they should continue these mistakes still. If they wished to do away with the practice, the remedy was simple—they should abolish the standing orders. Why did these orders exist, if they were to be made light of for mere expediency, in a broad measure like the present? He had other objections to the Bill which he was not inclined to urge on the question of this point of order. But he trusted that, if the House determined to pursue a false course, he would be allowed, in a few words, to express his opinion of the merits of the Bill itself. But the wiser plan for the House to adopt would be to pause before departing from their standing rules and principles. For, if any infringement of them were admitted, even in a momentous subject of the sort contained in this Bill, the same blunders, the same crimes and mistakes, will be committed, with this precedent, at a very inconvenient time, and in very unfortunate circumstances. He begged, therefore, to move—

That the said Order of the Day be discharged from the paper—the said Bill having been introduced to this House in a manner not consonant with parliamentary practice, nor with the standing orders.

The ATTORNEY-GENERAL said he was quite sure that he should be the last to depart from any rule that he believed to be in existence, affecting the practice of the House; but he had never had his mind more free from doubt, than he had it on the present question. The honorable member was altogether wrong, and to set himself right he must settle one question which he had neglected. That honorable member had alluded to motions concerning the Brisbane Bridge Bill and the Native Industries Bill, as examples to determine the course proper for the present Bill. But the Brisbane Bridge Bill proposes to levy tolls, and that is clearly a tax, making it a money Bill. So, too, regarding the Native Industries Bill, it was one affecting trade and was thus required to be introduced in committee. The present Bill neither imposed taxation nor affected trade, so that these examples failed. The examples quoted from New South Wales did not apply, there had, in that instance been a great battle, whether the Bill contained a tax or no, for it was only by means of a tax, that the Legislature there could increase the rents of the pastoral tenants at that time; and, as the Bill proposed the levy of a tax, it was properly held that it should be initiated in committee. But the pastoral tenant of the Crown is not a taxpayer, so far as his rent is concerned, that payment is a rent founded in contract, and not a charge, imposition, or aid levied upon the people. These contracts were in many instances under Orders in Council, which were as valid as the statutes of this colony. In this Bill there was nothing levied as a tax, no one—no lawyer—could pretend that the rent was a tax imposed upon the pastoral tenant, otherwise he could not pass it for so many years. Could he bring in a Bill to raise the rent next year? He could not, without a violation of the engagement entered upon. If honorable members were prepared to admit that rent is a tax, it would serve his purpose, at least it would serve the purpose of the country; but it would place the pastoral tenants in a position of uncertainty—the very thing which they desire to be relieved from. No, it was a matter resting in contract, not a matter in the way of tax; it was not a grant of supply; the Bill did not propose to give any sum whatever, it did not mention revenue from beginning to end; neither did it mention a word of appropriation. It had not been presented to the Governor as a money Bill. The example of Victoria was a better guidance for them than New South Wales, as the former colony possessed the more eminent men. At all events, he could set one colony for an example against another; and in the present Bill they followed the custom of Victoria. This is not a Bill of taxation, nor of supply, nor of appropriating any sum out of the revenue. For what reason they should be asked that the Bill should be initiated in committee, he could not conceive. It involved no gift from the Parliament to the Queen. After all, the initiament of the Bill in committee was purely formal. He thought he had said almost all that he needed to say. The Bill gave authority in a mere matter of contract, making such contracts sufficient if they contain certain terms; no man need contract to pay the rent. There was in no way any grant in aid, or charge upon the people. If the Crown lands had been the property of the tenants, and the Bill imposed a payment, then it would have been a tax; but it was not so. In the very Bill itself the matter is treated in the light of a contract, and the payment is spoken of, as rent, all through. The mere fact that the money goes to increase the revenue does not make it a tax. The standing order of the House of Commons was—

"The House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole House."

The same held true with respect to charges upon the public revenue and matters affecting religion and trade. The present Bill made no charge upon the public revenue in any way, nor did it come under any of these orders of the House of Commons. He thought they would set a bad example, and

an inconvenient precedent, if the House were to say this was a money Bill. To his own mind it was not, and he hoped the House would not accede to the motion, and prevent the business of the country from being carried on.

The Hon. R. PRING said he was clearly of opinion that this was not a money Bill, and that it did not require to be initiated in a committee of the House. However, he quite approved of the action taken by the honorable member for Maryborough in drawing attention to his views. It was quite right to take care that the business of the House be done according to form and according to precedent, so that the honorable member ought not to feel at all mortified if the House should be against him. He coincided with the Attorney-General entirely, that it is not because the revenue is increased by payments under it that a money Bill is made. A money Bill is made by arbitrary imposition of payment; rent was no arbitrary tax, or a tax at all. The Bill only dealt with the lands; we issue a lease of certain lands under certain terms; it was discretionary with persons whether they have the lease or not; if they did, they paid a voluntary tax founded upon contract. He could not see what else could be said upon the subject.

Mr. LAMB said, that the Sydney Bill, referred to by the honorable member for Maryborough, dealt with rent and assessment. He had carefully examined the Bills passed by the Legislature of Victoria, and saw that they were conversant simply with matters of rent and sale of land. He had concluded that Victoria formed a precedent for them, in the present case, while New South Wales was no guide.

Mr. THOMPSON said the House had nothing whatever to do with the question, whether the rule in question was a useful rule or not; the rule exists, if it is useful they could retain it, or get rid of it if it were not. The House would be stultifying itself not to act up to its own rules. With regard to these rules, there had been varying decisions even in the House of Commons, and this House could hardly be expected to be very decided upon the subject. In the first place, he considered the real purport of this Bill in regard to this matter of contract, and he might say that all legislation indicates a contract. Taking the case of a carriage-tax: if you use a carriage, you pay a tax. The distinction was, that this Bill makes a contract with everybody. Contract takes place between two people or classes; this Bill indicated a contract, which every tax implies. The Bill said, that anybody coming under it must pay. That formed a tax. It was a charge upon the people. That came under the second branch of the standing order in the House of Commons, the second branch being quite distinct from the question of revenue; the first branch dealt with charges upon the public revenue, the second with any charge upon the people whatever. On any other understanding the order became senseless, which was not likely, as it was an order of the House of Commons. Not only must a Bill imposing taxes, but if there be any charge upon the people at all, it must originate in committee. The question of tax did not come into consideration at all; the whole question was—did the Bill give money to the Government? Did it enable them to deal with moneys? Did it bring money into the Treasury? Doubtless the origin of the rule was that the money should be a benevolence from the Commons; in modern times, perhaps, this rule need not be so stringently adhered to. No doubt these rules were founded in wisdom, and the time might come when this would appear. There was a somewhat analogous case in the Commons in 1833, in dealing with church temporalities and the mode of taxation, research was made for precedents, when report was given that any proposition for a charge upon any class of people must originate in a committee of the whole House. The present was a question of any burden whatever upon the people, and not of a tax merely. In clause thirty-three a tax of three shillings per square mile was imposed upon every person occupying unwatered country. Clause sixty-one imposes a tax fixed by Government; whatever was the wisdom of the original rule, there was wisdom in preventing Government from fixing the amounts as under the sixty-first clause. If they looked, it would be seen that the whole of the Bill deals with money, and nothing but money—regarding the greatest source of our revenue. He thought, if the forms of the House were to be abided by at all, they should be abided by always, and that they should not step aside in any individual case and go outside these forms. Otherwise there would be nothing whatever to stop the forms from becoming of no consequence. Honorable members should pause before they came in face of their own standing orders. He did say, with all deference, that this was a Bill to impose a burden upon a class of people. If honorable members reverted again to "May," they would see that the only occasions upon which this rule has been held not to apply, have been cases of this sort—for local taxation, for a particular town, to be applied to that town, or for special funds for a special benefit, such as mercantile seamen's funds. Now, the exception showed the reason of the rule, that where the tax is a general one, and one which may come upon anybody, the rule applies. Now, he considered that the present Bill applied to the whole of Her Majesty's subjects. It was not local, and the money was not to be applied to the benefit of the parties paying it. The conclusion was, that the Bill should originate in committee.

Mr. ARCHER said he agreed that they were not then to consider whether these rules were useful or not, but whether the rule obtaining

in the British House of Commons applied to the particular Bill in question. He must say that, when first he heard the honorable member for Maryborough's notice of motion, he looked upon the present Bill as a money Bill, but, after thinking over it for some time, he quite concurred with the opinion of the Premier, and looked upon the leases as simply a contract between the tenants and the Government. He would remark that the comparison of a tax upon carriages was perfectly fallacious; it was quite competent for the House to increase a tax upon carriages, but it was not competent for the House to increase the rents for lands under lease, because it was a contract for a certain number of years; whereas a duty upon carriages was no contract at all. It was strange that the honorable member for Maryborough should have called upon the gentlemen of that House, for fear the people outside should call them to account for corruption. Was the honorable member for Maryborough the only one who acted in all he did from pure and conscientious motives? He did not think that he would probably be supposed to be more conscientious, because he cried aloud that he was so. That was not the way to win confidence in his pureness. He should vote against the motion of the honorable member for Maryborough.

Mr. FRANCIS said there appeared to be no precedent applying to the case, or, rather, there were precedents in both directions,—cases, in one colony, for one way of procedure, and cases, in another, of the very reverse. But he would ask upon what grounds these rules in the House of Commons, and these standing orders were based? It seemed to him to have originated from a desire that all questions which deal with the public property should be surrounded with all possible safeguards. Although the present was not a Bill which affected people in the way of tax, yet it did deal with what was the property of the whole people—the public lands which are the public estate. This House did not recognise any difference between money and land. The encouragements given by them for the growth of cotton, and the like, was tantamount to a money grant by land-order bonus. This Bill, then, inasmuch as it dealt with the property of the whole people, dealt with the money of the whole people; and, on those grounds, he thought it should be initiated in committee of the House. He did not know that the standing order was necessary, but being there, the House should abide by it. He regretted that care should not have been taken to avoid the delay which had taken place in regard to several of these Bills. It seemed to him to be the province of the Parliamentary Draftsman to indicate which were money bills, for their guidance. With these views he should support the motion.

The SECRETARY FOR PUBLIC WORKS said he not only did not agree with the honorable member who last addressed the House, but he did not understand the grounds upon which he opposed the motion. The fact was that the objection to this Bill was a technical objection, arising from the interpretation given to the word taxation. Now, as he understood the term taxation, it meant an imposition or tax upon the general public, and was entirely distinct from a contract which might exist between the Government and any party or parties. There was not a single case quoted by the honorable member for Maryborough, which had any bearing upon this question. The Bill did not embody any plan of taxation, and could not be included in the class of Bills which should be initiated in committee. According to the standing orders, which were simply copies of the standing orders in the House of Commons, this Bill did not come in that category. It was laid down—

"That this House do not proceed upon any motion or plan, for granting, or releasing, or compounding any sum of money owing to the Crown, except in a committee of the whole House."

Could any honorable member say that this Bill made any provision for granting or releasing any sum of money? Or that it contained any charge upon the public revenue? It simply empowered the Government to make a contract with certain persons, and to say that there was any taxation in it which the public or any portion of the public had to pay, was monstrous. As he had said before, the whole objection had risen from a mere technicality, and he hoped the time of the House would no longer be wasted, but that they would go into committee upon it at once.

Mr. MILES said he should not have spoken had it not been for what had fallen from the Premier. When that honorable member had spoken of the Brisbane Bridge Bill, he said it should be introduced in committee, because it was a money charge upon the public for the payment of tolls. But it appeared to him that one measure was as much a money Bill as the other, for if, as the honorable member had remarked, no persons need pay money under this Bill, unless they chose to take a passage, so no person need pay toll under the Brisbane Bridge Bill, unless he crossed the bridge. As far as that argument was concerned, it would not hold water at all. He thought there could be no doubt that the Bill before the House was a money Bill, and should originate in committee, and if the honorable member for Maryborough divided the House, he should support him.

Mr. PALMER said he had listened with considerable attention to the arguments used on either side, and it appeared to him that it was of little consequence whether the Bill was originated in committee or not. If, however, he must give an opinion, it would be that, in accordance with the standing orders, which the House was bound to adhere to, the Bill should originate in committee. The forty-third clause required the lessee requiring

appraisement to pay £5 for costs, and he really thought that was very much like a tax. And, as the honorable member for Maranoa had pointed out, the Premier had withdrawn a Bill which provided for the collection of tolls, this Bill, he thought, would have to be treated in the same way. He regretted the delay which this would cause in the business of the country; but, although he considered the objection a mere technical one, he felt bound to vote in accordance with the standing orders of the House.

Mr. WALSH said he thought it would be a great advantage to the House if the Speaker would give his opinion on the point under discussion.

The ATTORNEY-GENERAL pointed out that the honorable member for Maryborough, by bringing the question before the House by moving an amendment on the original motion, had taken the matter out of the Speaker's hands.

The SPEAKER said the question was now one for the House to decide, the honorable member for Maryborough having tabled a motion on the subject. If his opinion had been asked at first it would have been different.

The question was then put—"That the words proposed to be omitted stand part of the question;" and the House divided:—

Ayes, 20.	Noes, 5.
Mr. Lilley	Mr. Miles
„ Macalister	„ Thompson
„ Stephens	„ Francis
„ Taylor	„ Walsh
„ Lamb	„ Palmer.
„ A. Hodgson	
„ Sandeman	
„ Thorn	
„ Royds	
„ Ramsay	
„ S. Hodgson	
„ Pring	
„ Groom	
„ De Satge	
„ Haly	
„ Forbes	
„ Archer	
„ Bell	
„ Fraser	
„ Jordan.	

The original question was then put and passed, and the House proceeded to consider the Bill in committee.