Queensland

Parliamentary Debates
[Hansard]

Legislative Council

FRIDAY, 12 JUNE 1874

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LEGISLATIVE COUNCIL.

Friday, 12 *June*, 1874.

Absence of The Honorable W. H. Long.—Motion for Adjournment.—Appropriation Bill—No. 2.—Insolvency Bill.

ABSENCE OF THE HON. W. H. LONG.

The PRESIDENT announced that he had received a letter from the Honorable William Houstoun Long, excusing his unavoidable absence, owing to an attack of congestion of the liver, from the "call of the Council" on the 20th ultimo.

The Hon. J. F. McDOUGALL moved—

That the excuse of the Honorable W. H. Long for his non-attendance to the call of this House, made on the 20th May last, be accepted, and that the honorable member be excused accordingly.

The Hon. H. G. SIMPSON said he was very happy to support the motion, as there seemed to be very little doubt, from the letter received, that the Honorable Mr. Long had been unable to attend the Council. But it was strange that, having had leave of absence for a definite period, and that period having expired before the call of the House became due, there should have been no further application for an extension of leave;—in fact, that no notice was taken in the honorable gentleman's letter of the necessity for getting his leave extended. The letter was a sufficient excuse for the honorable gentleman's non-attendance to the call of the House; but the honorable gentleman's attention ought to be drawn to the fact that, if he wished to remain away for a longer period than was originally granted to him, he ought to have applied for it. He (Captain Simpson) did not know whether the Clerk of the Parliaments should communicate with the honorable gentleman.

The PRESIDENT: The letter was dated the 27th of May.

The Hon. H. G. SIMPSON: He merely wished to express his opinion upon that point. He did not wish to make any motion. The President would take what steps he might think proper.

Question put and passed.

MOTION FOR ADJOURNMENT.

The Hon. G. HARRIS moved the adjournment of the House, for the express purpose, he said, of bringing under the notice of the Honorable W. Box that it would be very desirable—indeed, it was necessary—to postpone the committal of the Insolvency Bill until this day week, in order to ascertain what time it would be convenient for certain gentlemen to attend at the bar of the House to be examined. He referred particularly to the judges of the Supreme Court, but he thought it would be proper to examine merchants and bankers also.

The Hon. W. D. Box rose to a point of order. The honorable gentleman could not move the postponement of the order of the day, that the Bill should be considered in committee. His object would be gained when the order was called on.

The PRESIDENT: The Honorable Mr. Harris was not in order in moving the adjournment of the House, for the purpose of discussing a Bill which was ordered by the House to be taken into consideration in committee. He could raise the question when the question was put that the House do go into committee.

APPROPRIATION BILL—No. 2.

The House went into committee for the consideration of this Bill.

The Hon. H. G. SIMPSON said honorable members had heard, no doubt, that it was contemplated to make provision for additional salaries to Ministers. He wished to know from the representative of the Government whether the Bill made any such provision. He did not for one moment mean to object to such increase, because he thought it was most desirable, and he hoped that it would be for all Ministers equally.

The POSTMASTER-GENERAL: There was no provision whatever made in the Bill for the increase of Ministers' salaries; but he might mention that the Civil List Amendment Bill stood one of the first orders of the day in the

other House, and that that Bill was for the increase of Ministers' salaries.

The Hon. G. HARRIS asked whether the salary of the representative of the Government in the Council was equal to the salaries of other Ministers in another place? He did not put the question as referring at all to the honorable gentleman personally, but to the position itself, which should be considered equal in point of salary to the positions of other Ministers. He might hope, some day, to occupy the position himself; as might any other honorable gentleman.

HONORABLE MEMBERS: Hear, hear.

The POSTMASTER-GENERAL: He was unable to afford the information to the Honorable Mr. Harris, at present. Of course, as the Bill was now for committal in another place, the Council would soon know the fate of the Bill, as far as the salary of the Minister in the Council was concerned.

The Hon. H. B. FITZ endorsed the remarks of the Honorable G. Harris. The Minister in the Council ought to have more salary than his colleagues in the other House;—there, the Minister had the help and advice of his colleagues, but here he was all by himself. He was afraid that before the session was over, the Postmaster-General would wish himself back in the other House.

The Hon. A. H. BROWN called attention to the disproportion of the appropriations for roads:—Southern division, £106,000; central division, £16,190; northern division, £31,150. It must strike every one that the central and northern divisions were very much neglected, and that the sum put down for the southern division was very much in excess of the provision for the other parts of the colony. In the southern division, it must be remembered, there were railroads and water carriage, which rendered the requirements of ordinary roads for traffic less than where there were no such facilities. Honorable members representing southern districts appeared to have taken very good care of themselves. In the northern division the necessity for roads was very great, where, in a very special manner, they were ramifying to all the gold fields, and the sum appropriated was quite insufficient to meet that necessity.

The POSTMASTER-GENERAL: He might point out, for the information of honorable gentlemen, that the southern division of the colony embraced the two Moreton districts, Darling Downs, and Wide Bay—and the two Moretons alone contained half the population of the colony;—and it comprised, further, Warrego, Maranoa, and Balonne. Wide Bay district contained about 24,000 people, and that was in the southern division. The central division contained a very limited population, and in it there was only one main road to the one port, Rockhampton, with about 7,000 inhabitants, that had very little settlement about it: the settlement was in the district at back. It was pretty well off for roads, and it wanted very little, the country was so good naturally, except bridges in certain places, to make it equal to other parts of the colony, for the requirements of traffic. From Dawes' Range to Cape Palmerston, or, to St. Lawrence, there was very little settlement. The northern division comprised Bowen, Mackay, Townsville, Cardwell, and Cooktown, whose several requirements made the appropriation for that division appear very high. The population of the new northern districts had increased very much since the last census—much more than that of the central districts. £16,000 for the central division, he must acknowledge, did look small; but the vote was passed by the popular branch of the Legislature.

The Hon. H. B. FITZ said the House had only to look at the Appropriation Bill to see the crying injustice which was done to the North. When it was considered that £2,000,000 had been expended for railways in the South, something more ought to be done for the North than to order merely £16,000 for its roads as against £106,000 for the roads of the southern division. But he was not surprised at it. The result of this Appropriation Bill passing would be the revival of the agitation for separation in the North, and the North would be perfectly justified. He had no doubt that most of the £106,000 would be spent in Ipswich and West Moreton. There was an Ipswich Premier and a West Moreton Postmaster-General.

The Hon. H. G. SIMPSON said there seemed to be some ineradicable confusion in the mind of the Honorable H. B. Fitz as to the northern and central divisions of the colony. The honorable member got up and complained for the North, yet he spoke of the central districts. He (Captain Simpson) did not think the North cared what became of the central division. The explanation give by the Postmaster-General seemed to be a very fair one. The central division, between Dawes' Range and Cape Palmerston, was a very small one, with one main trunk line of road in one direction, on which money was now being spent for a railway. In the real north, there was no railway, as in the south and the central divisions, and there had been very little money spent there at all. As far as he understood it, the northern members in another place seemed to be satisfied; at any rate, they had made no complaint of the appropriation for the roads of the districts that they represented. The wants of the central division hardly appeared to be a matter to raise a very important question upon.

The POSTMASTER-GENERAL: On the population basis, the amount set down for the northern division was far in excess of that appropriated far the southern division; indeed, it was as two to one in pounds sterling. In the two Moreton districts, there were 70,000 people; in Darling Downs district, about 20,000; Wide Bay, over 20,000; and Maranoa, Warrego, and Taroom districts,

brought up the total to 115,000 as the population of the southern division. Whereas in the northern and central divisions the population amounted to 45,000. He calculated the population of the colony at about 160,000. Honorable members must recollect that Wide Bay was included in the southern division.

The Hon. H. B. FITZ urged that very large squatters in the West, whose direct port was Bowen, had had to take their wool to Rockhampton, owing to the badness of the roads in the North. £1,000 spent on the road to Bowen would have obviated such an inconvenient diversion of traffic. He referred to Bowen Downs station particularly.

The POSTMASTER-GENERAL: The honorable gentleman should recollect that Mr. Morehead, who held that fine property, and who represented Mitchell in the Assembly, might well be left to look after his own district.

The Hon. W. F. LAMBERT denied that the central division was small, and said that Moreton might be stolen out of it and not missed. The watershed of the Fitzroy River did not alone represent the central division, and yet he could quote the authority of Sir Charles Nicholson for saying that it drained a larger expanse of country than Great Britain. Besides that, it comprised the Mitchell, a district in which settlement was extending every day, a large number of Victorian settlers going up there with their stock. It was but reasonable, it was sensible, at any rate, by making roads, to encourage them to bring their capital into the country to develop it. The appropriation of £16,000 only for the repair of roads was to ignore the central division altogether, when it was compared with £106,000 for the southern division, including Darling Downs, with its fine railways, where few or no ordinary roads were required. For what reason such a distinction was made, he could not discover.

The POSTMASTER-GENERAL: The port of Rockhampton was not the port of the whole country, on the Fitzroy River. A great part of the Upper Fitzroy ranked in the southern division of the colony. Some of the traffic from Mitchell came to Dalby. If honorable members would look at the roads chart, they would see that what he had said was correct—that the road requirements in the central division were comparatively light. There were road engineers for each division of the colony, and the Government must be largely guided by their reports of the requirements of the several districts.

The Hon. W. F. LAMBERT: The Mitchell district was supplied from Rockhampton, and, when the railway was completed, he believed the whole traffic would be by Rockhampton. A few small stations on the Upper Dawson sent their produce by way of Dalby, but they were as nothing compared with the country that Rockhampton would drain when the railway was complete, and that was far more extensive than the western country that the southern railways would drain. There was a navigable river above Fort Burke, and that would drain from the western portions of this colony the traffic of half the Warrego, and the country for two or three hundred miles beyond. There was nothing of the kind in the Mitchell district, and the traffic must come by the railway to Rockhampton.

The POSTMASTER-GENERAL: He had seen wool lately from Central Mitchell, passing through Ipswich—from West and North Blackall.

The Hon. A. H. BROWN: That fact showed that the roads were so bad in the northern districts that the traffic could not go to its legitimate port—that was Rockhampton. The effect of the discussion was good; but he did not think the explanation of the Postmaster-General satisfactory. There should be a proper expenditure for roads.

The Hon. A. B. BUCHANAN said he wished the honorable gentleman representing the Government to inform the House, how the items under the head of surplus revenue, £240,000, were to be paid. The country had been told by his colleague that it did not exist—it had been transferred from one account to an other.

The POSTMASTER-GENERAL: No doubt, the item set down would come out of a loan vote.

The Hon. H. B. FITZ said he could not understand that remark.

The Hon. G. SANDEMAN said it appeared to him that the charge of centralisation was just as applicable at the present time, as in the past. It was a charge always made against Governments, and with very great justice. The present Government did not seem to have improved in their mode of distributing the public funds with regard to road expenditure. This subject was of great importance. From his knowledge of the central and part of the northern districts, he must agree with honorable members as to the disparity between the appropriations for roads in the respective divisions of the colony. It was not fair that so small an amount should be voted for northern requirements, as compared with £106,000 for the southern division. From his practical knowledge of the extreme western country, from travelling over it, he found that hardly any expenditure had been devoted to it; indeed, the money voted appeared to have been spent in the districts around Brisbane and on Darling Downs. Therefore, the charge of centralisation might be very fairly made against the Government, whose assistance the extreme outside districts required more than did those districts which were in a good position from being long settled. He must agree with those honorable members who objected to the small sum appropriated to the central and northern divisions; and he objected, also, to the sum voted for the old settled districts, instead of for the extreme west.

The Hon. F. T. GREGORY directed attention to the item of £62,000 for education,

which appeared on the original estimates as it appeared in the Appropriation Bill. By comparison with previous estimates he saw that the item was growing, and at such a rapid pace, that it justified inquiry; and he asked the honorable gentleman representing the Government, if he was in a position to inform the House whether any steps were to be taken by the Government to introduce a responsible head over a department of the public service which required such provision more than any other, but which was now without it?

The POSTMASTER-GENERAL said he might tell the honorable gentleman that the amount of £62,000 would not cover the expenditure that would be required this year. Next year, the amount required under a system of free education would not be much under £100,000. Of course, he spoke only for himself when he said that £100,000 would not educate above three-parts of those who were entitled to education, because the system was not fairly carried out, as, in districts where persons failed to subscribe a required amount, the board gave very little assistance to them. He noticed that in the settled parts of the colony schools had been set up, but he was afraid that very few children would go to those schools, where they had to pay, and he presumed that the Government would have to take over such schools, and place them on the same footing as their own vested schools. That was one of the reasons why so large a sum was required for educational purposes. The expenditure was approved of by the people's representatives, and it was very hard to interfere with it. Although the amount had reached a large figure, it would yet reach still more gigantic proportions than any yet known. For the information of the honorable member, as regarded a Minister for Education, he begged to state that he had not heard anything which would lead him to speak of the appointment of a Minister for Education as probable. For himself (the Postmaster-General) he thought a Minister for Education was more required than a head in other departments of the public service.

The Hon. A. H. BROWN: The explanation of the Postmaster-General almost horrified him. He could not but look upon the present and the probable expenditure for education with some degree of alarm. He did not know where the country was drifting to. The honorable gentleman who represented the Government was so prepared to speak on the subject, and spoke in such a confident way as to the money being voted, that he might be the Treasurer. He (Mr. Brown) confessed that he regarded the subject with pain; and he should be very sorry to see the expenditure increased, and the State burdened in a way that was not needed, for free education.

Question put and passed.

On the resumption of the House, the Bill was reported without amendment, and the report was adopted.

INSOLVENCY BILL.

On the reading of the order of the day,

The Honorable W. D. BOX moved—

That the House be now put into committee for the consideration of this Bill.

The Hon. G. HARRIS resumed the observations he was making when he was ruled out of order, on his motion for the adjournment of the House; and he asked the honorable gentleman in charge of the Bill to postpone its consideration until this day week, in order that, if it pleased the House, certain gentlemen, in every way quite qualified to give an opinion upon such an important measure, might be examined at the bar. In support of such a moderate request, he said he should like to draw attention again to the numerous petitions which had been presented to the House, requesting that the Bill might be referred to a Select Committee for the purpose of obtaining evidence as to the effect of its provisions; and he desired particularly to ask honorable members whether such persons whose signatures were attached to the petitions, as the Mayor of Brisbane, Mr. Goertz, Mr. Street——

The Hon. J. GIBBON: Not worth much.

The Hon. G. HARRIS: He begged to differ from the honorable gentleman. The name of the Mayor of Brisbane carried very great weight, indeed. He should like to inquire if the following names should not be regarded?—Hutchins, Weedon, and Co., merchants in this city; Charles Street, carrying on a large drapery business; John Forsyth, Clark and Treleaven, E. and J. Young, Wallace Barnett and Chester, Robert Armour and Co., T. A. Buchanan, A. J. Hockings, Quinlan and Co., Fenwick and Scott, Berens, Ranniger and Co.; R. Oliver, J. and J. Burns, S. Davis and Co., J. and G. Harris, D. F. Roberts, Muir, Gosling, and Co.; S. Benjamin and Co., George Myers and Co., Grimes and Petty. He should like the honorable gentleman in charge of the Bill to examine the signatures, and to say from his own knowledge whether they were genuine or not. It was the duty of honorable members to give some consideration to the petitioners. They would probably bear in mind that many of the names were also attached to the previous petition which prayed for the Bill to be restored to the paper. Alfred Holland, Gall and Inglis, J. A. Phillips, Coleman Davis, and a great many others he could not make out. G. D. Harrison, Peter Fleming, Thomas Cowell, R. Rhodes, Edwin Lewis—all respectable merchants, or engaged in various other ways; —every respectable tradesman in North Brisbane generally. George Slater, Brookes and Foster——

The Hon. A. H. BROWN: Take them as read—the names, he meant.

The Hon. G. HARRIS: S. Lesser, William J. Munce. There was a sample from the Brisbane petition. He should next refer to Ipswich;—Cribb and Foote, who were well

known to all honorable members, as, for years past, carrying on the most extensive business in this colony; Greenham, Macfarlane and Co., E. W. Hargraves, Gordon Cameron, James Foote, Member of Parliament, Hughes and Cameron, James Sloan, John Evans. He wished only to refer to the names with which he was personally acquainted:—John Drysdale, E. Holloway, William King, John North—a well known name in Ipswich for years past. The whole of those gentlemen were more or less connected with mercantile affairs. He next came to the Warwick petition, which was not only signed by the principal business men and storekeepers in that town, but also by the bankers:—The managers of the Joint Stock and New South Wales Banks; Marlay and Selke, D. Clarke, H. Farley, H. Benjamin and Co., D. and J. Benjamin and Co., Anderson, Horwitz, Nunn, and others. Then, again, the petition from South Brisbane:—David Bell, very well known there for years; Henry Burley, D. Sinclair, W. G. Moffatt, Love and Moffatt, and Mr. W. Baynes, who was very largely engaged, indeed, in butchering operations, for a number of years, and who held a very considerable stake in the country, as in fact all the gentlemen did. Perhaps honorable gentlemen thought that remark applied to the last-named business. There was a petition also from Toowoomba, which contained the signatures of all the principal business men there, well known, he had no doubt, to every honorable member of the House; and it was numerously signed. He might state that a very prominent member of the Brisbane Chamber of Commerce, Mr. E. B. Forrest, who was largely engaged in mercantile affairs, had expressed his sincere regret that the very moderate request made for the reference of the Bill to a Select Committee had not been granted. He felt that he was quite justified in using that statement made by Mr. Forrest, for it could be corroborated by other honorable members. Now, from the great interest he had taken in the Bill, he thought that the request was exceedingly moderate, based as it was upon the wishes of a considerable portion of the mercantile community of this colony. And he knew that, next week, he should be in possession of a number of other petitions to the same effect as those that had been presented already. He requested, now, that sufficient time should be given, before the Bill was put into Committee of the Whole, to obtain the evidence of the judges of the Supreme Court, or of anyone else that the House might think it advisable to examine, in order to enable honorable members to make a good measure of the Bill. Before moving that those honorable and learned gentlemen should be examined at the bar, he thought it would be but courteous, in the first instance, to ask them what time would suit their convenience. It would not be right of him to do otherwise in the case of gentlemen occupying such high positions, although he understood that the rules of the House were such that if the Council desired to examine anyone he was bound to come when summoned. Although he had a considerable number of amendments prepared or partially prepared to move, yet, so far as he was personally concerned, if the request he made was not granted, and if the House went at once into committee on the Bill, his mind was made up to wash his hands entirely of the matter. He did not say this with any desire to influence the honorable gentleman in charge of the Bill. Let him do as his judgement should dictate; but let him and those who acted with him take all the responsibility of the working of a bad law—which, as far as he could judge of the feeling of the House, during the past week, it was their intention to do.

AN HONORABLE MEMBER: Hear, hear.

The Hon. G. HARRIS: He should, at all events, feel perfectly assured that he had done his part in endeavoring to bring under the notice of the House the necessity for deliberation, and particularly under the notice of the Honorable Mr. Box and Mr. Hart, by whose action, he said unhesitatingly, the majority of honorable members had been led to disregard any suggestions he had made. If the postponement he asked for was granted, he should do his part to get gentlemen to come to the House and give their assistance; if it was not granted, he should not consider himself justified in taking any more trouble in the matter. He would not waste his time unnecessarily, when he found a large majority who were not disposed to listen to the suggestion, which he thought his experience as a business man in this colony for many years fully justified him in placing before the House. The majority that supported the Bill must take the result of their own action on themselves; they would be responsible for all the litigation, and expense, and annoyance which the passing of the Bill in its present form was almost certain to bring about. If they would not listen to him, the time might come when they would, to a certain extent, be sorry for what they were now doing. He moved, by way of amendment—

That this order of the day be postponed and made an order of the day for Friday next, the 19th instant.

The Hon. F. T. GREGORY said he had listened with very great attention to the long discourse given for the advantage of the Council, by the Honorable G. Harris, with his reasons why they should postpone the consideration of the very important measure now before them for another week, and he could not find in all that the honorable gentleman had adduced one single sound reason, but rather the contrary. The honorable gentleman wished the House to summon authorities, and examine them at the bar, with reference to the Bill. No doubt the suggestion was very good, in itself, barring

that the honorable gentleman had quite overlooked the fact that, until honorable members had considered the Bill in committee, they would not be in a position to put the salient points of the measure before those high authorities whom he invoked. It would be a waste of time to call gentlemen to the bar, now, to give the House advice as to the matter at issue. There was a great number of clauses in the Bill, and no one could have a question to ask upon one-fourth of them. He strongly deprecated the postponement of the Bill for another week, and he should oppose the amendment. In committee, honorable gentlemen who were opposed to the Bill could point out their objections to particular clauses, and, if it was deemed necessary, after discussing them, they would be in a position to call upon the judges, barristers, or any one else, to give their opinions.

The Hon. G. Harris: To his mind, it would be a waste of time to go into committee first. Evidence called to the bar of the House would assist the committee very much.

The Hon. A. H. Brown said, he, also, had listened with some patience to the introduction of the speech of the Honorable Mr. Harris, and he slightly objected to that interesting position which the honorable gentleman assumed—that of a martyr! The honorable gentleman further assumed that the House objected to advice; on the contrary, he (Mr. Brown) should like to have it, more especially that of the Chief Justice, whose opinion he valued very highly. But not an argument had been advanced why the House should postpone the Bill. The remarks of the Honorable Mr. Gregory deserved attention. The Honorable Mr. Harris almost asked the public to believe that the Council wished to hurry the Bill through the Chamber in an unseemly manner.

The Hon. G. Harris: Hear, hear.

The Hon. A. H. Brown: Such was not the case. He highly approved of the Bill, and should do all he could to assist its passing, and to make it a perfect measure. That the Honorable Mr. Harris was justified in attributing to the House a wish not to accept or to seek for high legal authority, he denied.

The Hon. G. Harris: Why not get it, then?

The Hon. W. D. Box: It was incumbent on him to answer the objections of the Honorable Mr. Harris, and he did so by saying that he felt it his duty to urge the House to make all the progress they could with the Bill this evening. Of course, honorable members might postpone any clause for further information. He should not take up the time of the House by dealing with the petitions, all of which were disposed of last week when the House restored the Bill to the paper and refused to refer it to a Select Committee. The petition which he had, himself, presented was of great significance, and it was spontaneous. He maintained that the signatures which were obtained to the other petitions were obtained without the persons signing them being informed of the effect of what they did.

The Hon. G. Harris rose to a point of order.

The Hon. W. D. Box: That was his opinion.

The Hon. G. Harris: The Honorable Mr. Box was not justified in making any such remark as that the signatures to the petitions presented by himself (Mr. Harris) and other gentlemen had been obtained without the parties knowing what they were signing. He submitted that the honorable gentleman was not in a position to make any such statement as that.

The Hon. W. D. Box: They signed the petitions to send the Bill to a Select Committee, not knowing the effect of such action. His opinion of the effect was, that the Bill would be shelved. He trusted that honorable members would feel that he, having the Bill in charge, wished them most distinctly to give the fullest consideration to this most valuable measure; that, in so doing, they should have all the time needful; but that the delay of another week, after the time it had been delayed, was not needful. He asked them to support him in getting the Bill into committee to-night.

The Hon. F. H. Hart agreed that the House ought to go into committee on the Bill at once. It might be desirable, as the Honorable Mr. Harris had suggested, to get the opinions of legal gentlemen; but such opinions could be obtained at any time. He should be glad to hear the opinions of the Chief Justice and Justice Lilley. He was afraid the House could not get the opinion of Judge Lutwyche, who was too ill; but his opinion would be very valuable. After the House had considered the Bill, if there appeared to be anything wrong or conflicting in any clauses, then, if the Honorable Mr. Harris arranged to have those gentlemen at the bar of the House, those clauses could be submitted to those gentlemen and their opinions upon them obtained.

The Hon. J. F. McDougall said the Hon. Mr. Harris was not justified in stating that honorable members had arrived at a conclusion in ignorance. He told the honorable gentlemen that he had not been in any way influenced by anyone to take action one way or the other. He voted for the restoration of the Bill simply in order that it might be discussed on its merits; and he was now quite prepared to go on with the Bill in committee, and, if possible, to make it a good measure, or, if it could not be made a good one for the country, to throw it out.

Honorable Members: Hear, hear.

The question was put on the amendment and negatived, and the original motion was affirmed. The House then resolved into Committee of the Whole.

On the motion of the Hon. W. D. Box, to postpone clause 1, specifying the divisions of the Bill,

The PRESIDENT said he wished to obtain some statement from the honorable gentlemen in charge of the Bill as to what he intended to do with regard to the clauses which led to the Bill not being put from the chair when the second reading was first moved —those clauses which touched upon the Constitution Act. He consented, personally, to the suspension of the Standing Orders to restore the Bill to the paper, on the understanding that those clauses should be eliminated from the Bill.

The Hon. W. D. Box begged to inform the committee that when they came to the clauses, he should move them out of the Bill.

HONORABLE MEMBERS: Hear, hear.

Question put and passed.

Clause 42—Petitions by partnerships—was postponed, on the suggestion of the Honorable G. SANDEMAN.

Clause 44—Acts of insolvency.

The Hon. A. B. BUCHANAN pointed out that by clause 31 of the Bill it was to apply to all debtors resident, or having property, in the colony. Under the sixth subsection of the clause now under consideration, hardships might arise :—

"If an execution issued against a debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been levied by seizure and the debtor has not *bonâ fide* satisfied such process by payment or otherwise within four days from such seizure."

That was one of the "acts of insolvency." Action might be taken against a non-resident, or a person absent from the colony, and his agent might not be able, at the moment, to satisfy the execution; and it would be hard that the absent person should be adjudged insolvent in that case. The time seemed so short, that a man away in the North on business might be put into court.

The Hon. W. D. Box explained that "legal process" embodied a safeguard. A judge must have an opportunity of acting upon the debt due. The legal process involved sixty days' notice under the present law before the execution could take effect: it was described in the Supreme Court Act. No such surprise as the honorable member anticipated could take place.

The clause was agreed to.

Clause 51—Concise statements of acts of insolvency—was amended verbally in matters of mere clerical error.

Clause 69—Time for delivery of statement of debts, &c., to trustee—was postponed.

Clause 73—Power to summon witnesses before adjudication—was postponed.

Clause 76—Discharge of prisoners for debt on *mesne* process :—

"Notwithstanding anything to the contrary in the Act passed in the eleventh year of the reign of Her Majesty Queen Victoria intituled "*An Act to Amend the Law respecting Defamatory Words and Libel*" or in any other law or statute contained any person who shall be in custody of the sheriff or of any gaoler or officer under *mesne* process or in execution on any judgment decree or order for any debt or demand provable in insolvency shall upon adjudication of insolvency being made against him be entitled to apply to the court for and obtain an order discharging him out of custody in respect thereof either absolutely or on such terms as the court may think fit to impose and shall be discharged accordingly."

In answer to the PRESIDENT,

The Hon. W. D. Box said the clause afforded relief. A person suffering under the present law for libel or the use of defamatory words could bring his case before the Supreme Court for relief; and it rested entirely with the court whether or not he should be released absolutely or discharged on such terms as the court might think fit.

The PRESIDENT: Was it now the law that a person, against whom a verdict had been given, could escape in that way from the consequences of his conviction?

The Hon. F. H. HART: No.

The PRESIDENT: Then, the Bill proposed an extension of leniency to which he should object. He was once the object of a libel, and he obtained a verdict against the libeller, but that gentleman pleaded insolvency and escaped all the consequences. It was very undesirable, he thought, that the law should be so framed as that a man who subjected himself to the penalty due to defamatory words or libel should be enabled to escape that penalty by pleading insolvency. That might have been the law of New South Wales at the time he spoke of; but it was certainly defective. He should be very sorry to re-enact such a law.

The Hon. T. L. MURRAY-PRIOR: As he read the clause, the person, on applying to the court, must be discharged; he could not be kept in prison.

The Hon. J. GIBBON: But, if it was not passed, a man might be kept in all his life.

The Hon. F. H. HART: He had been informed by the framer of the Bill that the question had arisen in another colony—it had not arisen here—and it was decided that a man could not be discharged; he must be purged of his penalty.

The Hon. W. D. Box: He must show the court that he was insolvent; and the court would decide on what terms to let him out.

The PRESIDENT moved that the clause be omitted. Anyone who might choose to defame his neighbor could, if that clause became law, submit to a verdict, plead insolvency, and turn his back on whoever he had injured. The clause had nothing to do with an Insolvency Bill.

The Hon. T. L. MURRAY-PRIOR proposed an amendment in the clause which, he said, would most likely meet the President's wishes. He desired to define that the court might keep such a person in prison for a

certain time. After the word "impose," he moved the insertion of the following words:—"Or, at the expiration of such time as the court shall think fit."

The Hon. W. WILSON regarded the clause as too merciful.

The Hon. A. B. BUCHANAN said he should be sorry to see no relief granted, and he should support the clause.

The Hon. F. T. GREGORY did not see why relief from the law of libel should be given under an Insolvency Bill.

The Hon. A. B. BUCHANAN: When a judgment was given for a certain sum it became a debt.

The PRESIDENT: Under the law of libel, the libel was tried by a jury, and the award of damages or imprisonment was a fine inflicted upon the libeller for injury of his neighbors.

The Hon. A. B. BUCHANAN: If a man could purge his fine by payment, it was virtually a debt.

The Hon. G. SANDEMAN: The matter belonged to the criminal law, and not to an Insolvency Bill. If the President's motion was not carried, he should move the postponement of the clause.

The Hon. F. H. HART urged that a man was not to be left in prison all his days.

The Hon. J. F. McDOUGALL agreed with the President's objections to the clause, which was foreign to the Bill.

The PRESIDENT: If the safeguards which had hitherto surrounded private character and reputation against injurious attacks were removed, the doors would be opened to such law as obtained in California, where a man took a revolver and shot down his traducer at his door. It was very dangerous to interfere with those laws, which time and experience had taught us were sufficient to meet the exigencies of such cases as arose.

The Hon. T. L. MURRAY-PRIOR referred to the existing law of libel, which prevented a man under punishment for libel obtaining relief under the Insolvency law. The Bill proposed to enable him to get relief.

After some further discussion, the question was put on the motion for the omission of the clause, and the committee divided:—

Contents, 7.	Not-Contents, 7.
Hon. Sir M. C. O'Connell	Hon. A. B. Buchanan
„ F. T. Gregory	„ H. B. Fitz
„ W. Wilson	„ W. D. Box
„ W. F. Lambert	„ F. H. Hart
„ J. F. McDougall	„ A. H. Brown
„ G. Sandeman	„ J. Gibbon
„ G. Thorn.	„ T. L. Murray-Prior.

The CHAIRMAN gave his casting vote in favor of the "Not-contents."

On the motion of the Hon. W. D. Box, the clause was postponed.

Clause 87—Descriptions of insolvent's property divisible amongst creditors.

The POSTMASTER-GENERAL recommended the postponement of the clause, which was a very important one. He objected that the fifth sub-section would interfere with healthy and legitimate enterprise by taking away the opportunity of mortgaging chattels, which were now regarded as security for money lent under bill of sale.

The Hon. W. D. Box: The effect of the clause would be that bills of sale upon goods and chattels without possession would not be valid. The evidence of Judge Lutwyche before a select committee of the Legislative Assembly some years ago, and subsequent occurrences showed what abuse had crept in under the existing law. With regard to liens—

"Nothing in this section contained shall affect the validity of any preferable lien on wool or crops or mortgage of sheep or cattle under '*The Mercantile Act of* 1897' or of any security by way of mortgage over any machinery which may be in the possession of the insolvent for the purpose of being used by him in his trade or business or of any bill of sale registered under the said Act before the first day of July one thousand eight hundred and seventy-four."

That protected bills of sale existing, if registered; but if unregistered after the date fixed, they would be perfectly worthless.

The POSTMASTER-GENERAL suggested that, at any rate, a later date ought to be fixed.

The Hon. F. T. GREGORY: The clause was levelled at a class of people who were unfortunately numerous in this colony—that was to say, petty tradesmen, who carried on business on bills of sale on their goods until they got into the Insolvent Court. It was one of the best in the bill.

The Hon. A. B. BUCHANAN moved the insertion of the following word after the last "or" in the fifth subsection [*quoted above*]—"affect the validity." Though, perhaps, hypercritical, the words would make the meaning quite clear.

The amendment was agreed to.

On the motion of the Hon. W. D. Box, the date in the fifth sub-section was altered from "July" to "October."

The clause, as amended, was then affirmed.

Clause 102—Proceeds of sale and seizure of goods—was amended, on the motion of the Hon. F. H. HART, to the effect that the Sheriff, after sale under execution, should withhold from the proceeds of the sale—to be handed to the trustee of an insolvent estate—"as much thereof as shall be sufficient to defray the costs and expenses of the execution creditor."

All the clauses to 110 inclusive were agreed to; when,

The House resumed, and the Chairman reported progress and obtained leave to sit again on Wednesday next.