Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

WEDNESDAY, 30 AUGUST 1876

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LEGISLATIVE ASSEMBLY.

Wednesday, 30 *August*, 1876.

Telegraph Messages Bill.—Stamp Duties Amendment Bill.

TELEGRAPH MESSAGES BILL.

On the Order of the Day being read for the third reading of this Bill,

The SPEAKER said: I have to inform the House that on the ground that a portion of this Bill has not been dealt with by the committee, the Chairman of Committees has declined to certify to the Bill as required by Standing Order 238.

The ATTORNEY-GENERAL: As the person in charge of this Bill, I should like to know why the 238th Standing Order has not been complied with? This Bill was yesterday considered by a committee of the whole House, and was reported by the Chairman of Committees without amendment. The 238th Standing Order is:—

"Before any Bill shall be read a third time, the Chairman of Committees shall certify that it is in accordance with the Bill as agreed to by the committee."

The CHAIRMAN OF COMMITTEES: With the permission of the House, I will offer a few remarks upon this matter, in justification of the course which I have felt it my duty to pursue. I admit that I reported the Bill to the House without amendment yesterday evening, but it was pointed out to me afterwards that the Bill had not wholly gone through committee—that there were, in fact, several lines never submitted to the committee. When this was pointed out to me, I thought I could not conscientiously certify to the committee that the Bill had passed through. That is my justification, sir.

The ATTORNEY GENERAL asked, as a matter of information, what part of the Bill the honorable member referred to?

The CHAIRMAN OF COMMITTEES: The four or five lines where the preamble is generally placed; it is the enacting clause. Those words were never submitted to the committee, and I could not conscientiously certify that the Bill had passed. The words I refer to are:—

"Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows"—

The ATTORNEY-GENERAL said the Bill was reported to the House without amendment in the usual manner. As a matter of fact there was no preamble to the Bill at all. It commenced "Be it enacted by the Queen's Most Excellent Majesty" and so on, and was virtually a Bill without a preamble. There was a Standing Order which directed the Chairman to put the question, that the preamble be postponed, and the practice was, if there was a preamble, to postpone it, after which the clauses of the Bill were considered

seriatim. When the clauses had all been considered, then the preamble was considered; it was read by the Chairman, and the motion was put, "That the preamble as read be the preamble of the Bill." The portions considered by the committee were, therefore, the clauses and the preamble, and when that was done, no further notice was taken, but the Chairman reported the Bill to the House with or without amendments. The only way in which this misapprehension could have arisen on the part of the Chairman was as to what was a preamble. He held in his hand a definition of what a preamble was; he was not aware whether there was a definition in "May," but "Cushing" thus described it:—

"The preamble of an Act is the recital by way of introduction or inducement to the enacting part of the reasons on which the enactment is founded. The preamble of a public statute recites the inconveniences which it proposes to remedy."

And then he said:—

"According to the practice, therefore, which prevails in Parliament, although the preamble may sometimes be omitted in public statutes, yet it is always inserted in private Bills, and must be proved in order to entitle the promoters of the Bill to proceed. . . . For the purposes of amendment the preamble is considered part of the Bill to which it is attached."

As to the statement of the enacting authority, the same author said:—

"The statement of the enacting authority follows immediately after the preamble, and is followed directly by the body of the Act."

If that was a definition, it was quite clear that the preamble of a Bill was quite different from an enactment clause, and as every lawyer knew, he might refer to the preamble to interpret the Bill itself. The preamble was a distinct part of the Bill, and there was no provision in the Standing Orders for dealing with the enacting clause in committee. He appealed to the House to bear him out in the opinion that what was postponed was the preamble, which he had just defined, and which had somewhat gone out of fashion. The same authority said:—

"The first or introductory paragraph, namely the preamble, is the first in order to be considered; but as in public Bills the preamble is intended to be a summary of the reasons which induce the Legislature to pass the Bill, and which consequently cannot be truly or adequately set forth, until the provisions of the Bill are settled; it is usual to postpone the second reading and consideration of the preamble until the clauses of the Bill have been gone through with."

Again, in a subsequent paragraph, "Cushing" said:—

"When all the clauses and schedules have been considered, and all the amendments made, which the committee see fit, or is authorised by instruction to make, the preamble, which had been postponed, is considered, and, if necessary, amended, so as to conform to amendments made in the Bill, and the chairman then puts the question:—'That this be the preamble of the Bill,' which he thereupon reads to the committee."

The enacting clause was clearly no part of the preamble, but it was embodied in the Bill by order of the House before the third reading. When the motion "that this Bill do now pass" was carried, that was the time in which in theory this part of the Bill was inserted. The Chairman's refusal to certify the Bill because the enacting clause was never substantially put to the committee, was a reason why he should never certify at all. All that the chairman had in this case to certify were the two clauses, and unless there was something wrong in them there was no reason why he should not certify the Bill and allow it to become law.

An HONORABLE MEMBER: Recommit the Bill.

The ATTORNEY-GENERAL: No, I shall not move its recommittal.

The SPEAKER: I think that when discussions take place upon matters which have occurred in committee, they should take place in committee. It would, therefore, be more convenient that the Bill be recommitted, and the chairman, if necessary, can state a case for the House to decide upon.

Mr. WALSH said that, with all due respect to the Speaker, he thought this was a question which the House was absolutely called upon to discuss. He was perfectly amazed to think that the first law officer in the colony, whose duty it was to advise the Government in all legal matters, should get up and make such a speech as that he had just delivered. The Attorney-General had coolly stated in effect that a Bill committed by order of the House need not be considered in its entirety, but might be passed in a fragmentary fashion; then the Speaker was told he was not to call the attention of the House to the fact that the Bill was informal, while the Chairman of Committees was informed that he was not to do his duty, when he knew he was doing it, by refusing to attest that the Bill had properly passed through committee. What were they asked by the Attorney-General, the first legal authority of the colony, to believe? That a portion of a Bill only need pass through a committee of the House. They were asked to ignore the existence of Her Majesty and the Legislative Council in the enacting clause. What the Attorney-General wished to insist was, that there was no need to have Her Majesty's sanction to the Bill. He had never in his life heard such an expression of opinion given before an intelligent body of men. How could this Bill pass the third reading when it had never passed through committee? Only a portion had passed through, and for some reason the preamble—for such it was, notwithstanding the assertion of the Attorney-General—had not received the attention it ought to receive, or that consent which was absolutely necessary. He did hope that on a question of privilege like this the House would maintain not only its rights, but its powers. He would

say again, he was amazed that the chief law adviser of the Crown could get up and address to a body of reflecting men such an extraordinary jumble of legal opinion as had been given. The honorable gentleman knew very well that there must be a recital of the nature of the Bill. Under the circumstances, of course, the Bill would be recommitted.

Mr. THOMPSON said that the preamble of a Bill was, of course, that which went before the clauses. Preambles, as the Attorney-General had observed, had gone out of fashion, but the preamble was always known as the introduction or preface, and it covered the whole of the clauses. He did not know that the matter was of very great importance, but the dictionary definition of a preamble was "introduction." The preamble without recitals was important in this respect, that it introduced and governed the whole of the clauses.

Mr. J. SCOTT said the whole matter lay in a nutshell. Either the enactment clause was part of the Bill, or it was not; if it was, it should have gone through the committee; if it was not, it ought not to appear in it at all. When the Bill went through committee on the previous day, the first clause put was No. 1. The enacting clause was never put, and if it was not put, the committee could not pass it. The Bill, not being enacted at all, would be therefore useless.

Mr. IVORY asked whether it was possible to point out a Bill without a preamble? The fact was, the Attorney-General wished to introduce a truly novel style of Bill—a Bill without a preamble, but the House would do well to think seriously about the matter.

Mr. MCILWRAITH said the present difficulty might be thus described: the third reading of a certain Bill had been called on, and the Speaker had ruled that, on account of the 238th Standing Order not having been complied with, that third reading could not be put. When this was the position of matters, there was only one solution, and that was for the honorable gentleman in charge of the Bill to move it back to the committee, so that further discussion might be taken upon it. He had no doubt that if the Chairman of Committees had committed an error in not certifying to the Bill, he would be quite prepared to listen to the arguments of those who differed from him. He (Mr McIlwraith) was not himself certain whether the Attorney-General was not right; the balance of the argument was probably in his favor, but the only solution of the question was to argue it in committee, and persuade the Chairman of Committees that he was either right or wrong. At the same time, the only argument brought forward by the Attorney-General was founded upon Cushing's opinion. This would have been much more conclusive had it been an English authority, but the House ought not to be guided by an American ruling upon a point of order or privilege. For himself, he did not see why the preamble itself should not be the enacting clause as it was.

Mr. GROOM said he was convinced that the Chairman of Committees had done right, and that the omission of the Attorney-General to move the preamble was fatal to the Bill. The proceedings of the House had always been guided by the practice of the Imperial Parliament, and it was laid down very clearly in "May" as follows:—

> "In the Lords, the first proceeding of the committee is to postpone the title, which is there treated as part of the Bill; but in the Commons, the committee do not consider the title unless it requires amendment. The preamble is next postponed, which in the Commons is the first proceeding. This course is adopted because the House has already affirmed the principle of the Bill, on the second reading, and it is, therefore, the province of the committee to settle the clauses first; and then to consider the preamble in reference to the clauses only. By this rule the preamble is made subordinate to the clauses, instead of governing them. It was not observed, however, in the Bishopric of Manchester Bill, 1847, nor in the Education (Scotland) Bill, 1855, in which cases the question for postponing the preamble was put and negatived; and the preamble considered before the clauses. The same course was proposed in the Ecclesiastical Titles Bill, 1851, but was not adopted by the committee. Upon the question for postponing the preamble, a discussion has, on rare occasions, been raised upon the principle of the Bill. On the 29th June, 1869, in committee on the Irish Church Bill, in the House of Lords, a long debate was raised upon the postponement of the preamble, which was, however, agreed to without division."

That had always been the practice in the Imperial Parliament and in that House. They had one able Parliamentary draughtsman, Mr. Scott, who rendered great assistance in the drawing of Bills, and he always commenced the Bills with "Be it enacted." The House ought not now to establish any new principles.

Mr. BELL said if the Attorney-General would not recommit the Bill, it must be thrown out, and perhaps that was the object of the Government. It was quite clear, he thought, there was no intention on their part that the Bill should become law, for the Attorney-General would never persuade the House that one portion could pass through committee and the other not. As things at present stood, it looked very much as if the Government regretted that the Bill was placed on the table, but having go e so far, wanted to see it thrown out. He would not say this was the intention of the Attorney-General, but it looked like it.

The COLONIAL SECRETARY thought the honorable member for Toowoomba, in his quotation from "May," had altogether misunderstood the question. The question was whether this was a preamble or not.

Mr. WALSH: Not at all. There is no question about it.

The COLONIAL SECRETARY said the question was whether the words in dispute were a preamble or enacting clause, and in his opinion, the honorable member for Toowoomba's quotation set the matter at rest in favor of the Attorney-General; it was not a preamble according to the meaning of "May."

Mr. DE SATGE said the House might have recommitted the Bill and disposed of it while they had been discussing the matter. He had heard during the day that the new member for Burke was not after all to take his seat on the Ministerial benches, but would join the Opposition. Had this anything to do with the present position of the Bill?

The ATTORNEY-GENERAL said he was surprised at the mean insinuation just thrown out; the honorable member for Normanby knew perfectly well that the Bill was brought in, and would be carried through as a public duty and nothing else. Under the circumstances he would move that the Bill be recommitted, but he should not move anything further. If the majority of the House were against him, he would at once yield; of course, it was never his wish to oppose his opinions to the views of the House. He moved, therefore—

That the Order of the Day be discharged from the paper.

Mr. WALSH: Before this is passed allow me to point out one paragraph from "May":—

"It has not been the practice to order Bills to be withdrawn after they are committed, on account of any irregularity which can be cured while the Bill is in committee, or on recommitment.

"A Bill may be recommitted—1st, without limitation, in which case the entire Bill is again considered in committee, and reported with 'other' or 'further' amendments. 2nd. The Bill may be recommitted with respect to particular clauses or amendments only, or to the clauses in which amendments are proposed to be made, and the preamble. 3rd. On clauses or schedules being offered, or intended to be proposed, the Bill may be recommitted with respect to these clauses or schedules. In these two latter cases no other parts of the Bill are open to consideration. 4th. The Bill may be recommitted, and an intimation given to the committee that they have power to make some particular or additional provision.

"A Bill may be recommitted as often as the House thinks fit. It is not uncommon for Bills to be again recommitted once or twice, and there are cases in which a Bill has been six and even seven times through a committee of the whole House, in consequence of repeated recommitments. * * * * Sometimes after the House has ordered a Bill to be read a third time on a future day, this order is discharged, and the Bill recommitted, or ordered to be withdrawn; and with a view to the recommitment of a Bill, amendments are occasionally moved to the question for reading the Bill a third time, that the order for the third reading be discharged, or that the Bill be recommitted."

Question being put and passed, the House went into committee.

The House having resumed, the Chairman reported the Bill without amendment.

The PREMIER moved—

That the Bill be now read a third time.

Mr. WALSH said he should like to ask the Speaker's ruling, whether this motion was in order? It was not an Order of the Day, but simply a message that had been sent up from the Committee of the Whole. The Order of the Day for the third reading of the Bill had been discharged from the paper.

The SPEAKER said the 236th Standing Order provided:—

"A Bill being reported with or without amendment, shall be ordered to be read a third time, at such time as may be appointed by the House, after the amendments (if any) have been adopted by the House."

Mr. J. SCOTT said another question arose: Had this Bill been certified by the Chairman since it had passed the committee?

The SPEAKER: Yes.

The question was then put and passed, and the Bill having been passed through its remaining stages, was ordered to be transmitted to the Legislative Council with the usual message.

STAMP DUTIES AMENDMENT BILL.

Upon motion of the COLONIAL TREASURER, the Speaker left the chair, and the House resolved itself into a Committee of the Whole to consider this Bill in detail.

The Chairman having reported the Bill with an amendment,

The COLONIAL TREASURER moved—

That the Speaker do now leave the chair, and the House resolve itself into a Committee of the Whole, for reconsideration of the schedule to this Bill.

Mr. THOMPSON said he hoped the Government were not really serious in this matter. They had solemnly passed the Bill through committee, and there had been no omission or anything of the sort that would justify its recommittal. They had solemnly adopted the principle that the tax on industries should no longer exist, and how the Government could now ask them to reconsider the matter he could not understand. If they persisted in it, and got a majority to go with them, they could of course recommit the Bill; but he doubted that they would get a majority, after they had actually induced the withdrawal of the amendment that had been proposed in committee.

The COLONIAL TREASURER said, in explanation, he might state that he moved the recommittal of the Bill for the purpose of giving honorable members an opportunity of stating their opinions on the view which had been so freely expressed by the honorable

member for Dalby—that there should be a duty on liens on wool. He thought upon such a suggestion they would have a better opportunity of expressing their opinions, because in the discussion that had taken place, that question had been mixed up with liens on crops.

Mr. WALSH said he doubted whether the motion could be put that the Bill be recommitted for the purpose of reconsidering a decision that had been arrived at in committee. A decision had been come to, and the Government accepted it, that the schedule should stand as amended, and he did not think they could go back. The Government could of course withdraw the Bill, with the consent of the House, or they could refuse to proceed with the third reading; but he never heard such a thing in his life as a Bill being sent back to a Committee of the Whole for that committee to reconsider the decision it had arrived at. That was really the question. A decision had been arrived at, that there should be no stamp duty on liens on wool and crops, and the Bill, he presumed, had been reported to that effect.

Mr. PALMER said he hoped before the House decided on this question they would look at the matter in all its bearings. It seemed to him monstrous that the Government should adopt the suggestion of a member even from that side of the House—it was the first time they had done anything of the sort—for the purpose of recommitting a Bill that they themselves had brought in. If they carried this out he had no hesitation in saying that they were adopting class legislation to a degree he had never heard of in this colony or any other. It was perfectly monstrous to suppose that honorable members on that side of the House would submit to an amendment of the kind suggested, to make the wool-grower the only man in the colony liable to a tax which all other producers were exempt from—from which cattle-owners, and producers of wheat, and all other kinds of produce were exempt. It was initiating a system of class legislation to which he most strongly objected, and he hoped the Government would not do it. He had never heard in all his experience of a Government passing a Bill through committee, and recommitting it the same night to put in an amendment suggested by a member of the Opposition, from a mere spirit of chivalry—just to say that the honorable member was a class legislator, and he drove the Government into being class legislators.

Mr. BELL said the Government had his support in anything they might do in regard to the proposition they now offered to the House, because he looked upon it as a great improvement, whether it was class legislation or not, upon the class legislation they had to discuss in the amendment of the honorable member for Stanley, and he felt bound to give them his support. The greatest difficulty the Government had at the present moment to encounter was the argument of the honorable member for Warrego, as to whether they could put the question or not. Now, he thought it was quite plain that they could put it, because it was merely an amendment, the same as any other amendment. For instance, when the committee decided upon the exemptions, and the honorable member for Stanley put his amendment upon the same ground, the Government could now put their amendment and take the sense of the House upon it. There was nothing final in any decision of the House until it had absolutely passed the committee. If it were money, they would reduce it to a minimum until they could go no further, but this had not been reduced to a minimum. He thought the amendment could be put, and if it were, it should have his support.

Mr. DE SATGE said however prosperous the squatters in the settled districts might be, those in the unsettled districts were not in that position, and they were the people who would be most affected by this proposed tax. As the honorable the Premier admitted that the only liens were on wool; that there were none, or hardly any at all on crops, then the stamp duty was levelled particularly on the liens of those who were not prospering in their pastoral pursuits. They did not need to include in it those who were devoted to agriculture, but they would tax to a small extent, for it was only to a small extent, those who did not prosper in pastoral pursuits, and who were obliged to take liens on their wool. That was the position of the whole affair, and it was better to state it plainly. The Government wished to tax a class who, owing to the fall in the value of wool and one cause or another, had to take liens on their wool, and why not state it plainly? If they could not raise a few thousand pounds in a better way than that—by taxing unfortunate settlers in the outside districts, who were bound, through a fall in the value of wool, to take liens, let them do it this way by all means, and he would join the honorable member for Dalby in supporting it. If that was the mean narrow contemptible spirit that dictated every move of the present Government, let it go, and he would support it. That was the principle, or one of the principles, of the Government policy that had been apparent during the whole of the session. They had begun the few working days of the session nobly. They had already put a tax upon Chinamen, and they now proposed to do the same thing with regard to struggling settlers in the unsettled districts, and before the end of the session what their legislation would culminate in he could very well imagine. But in the other colonies they were being watched, and their noble efforts to put a tax of a penny a pound upon rice, and to continue the stamp duty on liens on wool, would be fully appreciated.

The SECRETARY FOR PUBLIC LANDS said he was surprised at the arguments of the honorable member for Normanby, because it was not the intention of the Government to do anything of the kind that had been attributed to them by that honorable member. This was not an income tax. True, it was the perpetuation of an old tax, and this Bill never contemplated reviving the whole question of the taxation in connection with the stamp duties. It sought to remedy an admitted evil in connection with the release of mortgages, and an amount of feeling had been imported into the debate which he did not think it deserved. There was no desire on the part of the Government to raise the question of class legislation. The honorable the Treasurer was naturally anxious not to part with any portion of the revenue, because the finances of the colony were not such as to admit of it, and his duty was not to forego any of its resources. Therefore, it was his bounden duty not to lose any source of that revenue. Honorable members opposite had made a most unfair imputation against the Government, for there had been nothing approaching a desire on their part to have anything like class legislation. The Bill would not itself bear that character; it was merely brought in by the Government to remedy a defect to which attention had been drawn during a previous session by the honorable member for the Bremer; that defect concerned a matter that did not produce any revenue, and the Government were bound to remedy it on the first occasion they could.

Mr. AMHURST said the state of the case was this—that the Government had proposed an amendment which was lost, and they now wanted to have the Bill recommitted to propose another amendment of a purely class character.

Mr. WALSH said he merely rose to call the attention of the Government to the fact that, as the question had been put by the honorable Speaker, if the Bill was re-committed they would have to go through it all over again.

The SPEAKER said that, with a view to avoid that difficulty, he would put the question, that he leave the chair, and the House go into committee to reconsider the schedule of the Bill.

The question was put, and the House divided with the following result:—

AYES, 21.

Messrs. G. Thorn, Griffith, Dickson, Douglas, Bell, Stewart, Pettigrew, Johnston, Bailey, Fryar, J. Thorn, Tyrel, Groom, McLean, Foote, Pechey, Fraser, Kingsford, Morgan, Edmondstone, and Beattie.

NOES, 15.

Messrs. Palmer, Thompson, McIlwraith, Haly, Stevenson, Macrossan, Lord, Low, Graham, De Satgé, Ivory, Amhurst, Walsh, W. Scott, and Buzacott,