

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 13 AUGUST 1879

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LEGISLATIVE COUNCIL.

Wednesday, 13 August, 1879.

New Standing Order.—Assent to Bill.—Tooth Estate Enabling Bill.—Proposed Adjournment.

NEW STANDING ORDER.

The PRESIDENT announced that he had received His Excellency the Governor's approval of the new Standing Order passed by the House, in substitution for Standing Order, No. 58. [See p. 168.]

ASSENT TO BILL.

A message from the Governor was received, informing the House that His Excellency had assented to the Electoral Rolls Bill.

TOOTH ESTATE ENABLING BILL.

On the Order of the Day being called, Mr. GREGORY moved—

That this Bill be now read a third time.

Mr. WALSH said he should make another attempt to try to induce the House to pass the Bill in something like a formal and proper manner. He had taken exception enough to the way in which it had been introduced from the other Chamber to the Council. He believed he had shown that almost every practice that should have been followed had been neglected, or violated, by the way in which the Bill had been rushed into and through Parliament. The House had seen by the evidence that was given at the bar, the other day, that the Bill was not in accordance with the advice given by the solicitor of the family. That gentleman, being present, said that he himself had drawn up the petition, and that the Bill was in violation of it—that he had drawn up the Bill itself, and that it was altered from that draft; that he had no authority whatever from the family for making that change in it—for the change that was made in it by the Select Committee of the Legislative Assembly. That had been conclusively laid before the House. That was what he (Mr. Walsh) was now endeavouring to show; and in doing so, he was endeavouring to put the persons interested in the passage of the Bill on the right path, as well as to protect those whom the Council should protect in such a matter. When the Bill was brought up from the Committee of the Whole, the other day, and the report was about to be adopted, he endeavoured that the House should, at least, do one thing properly—make the preamble in conformity with the provisions of the Bill. But the honourable gentleman in charge of the Bill, feeling that he had sufficient power at his back to violate every rule that should be observed, persisted, and that could not be done. The proceeding would not have occupied five minutes; and

then, at any rate, the Bill would have made its *exit* from the Chamber in decent form. He pointed out that the preamble must be in consonance with the Bill, and that the Bill must be in consonance with its preamble. As it was, the Bill was in violation of its preamble, which only set forth that its provisions were to enable the administrators of the Tooth estate to sell land for the liquidation of the debts. Any other honourable member in the Chamber, or in the world probably, would have gladly adopted the suggestion he made, and recommitted the Bill for the purpose of simply altering the preamble, so that the Bill should be something like what it was intended to be. But, of course, with the persistence which he (Mr. Walsh) was sorry to say marked the hon. gentleman all through, and which prompted more opposition than the Bill would otherwise have met, the honourable Mr. Gregory refused to allow even that to be done; and, the majority on his side of the House backed him up. The preamble of the Bill and the petition of its promoter said distinctly, that the one object was to enable the administrators of the Tooth estate to sell land; yet a provision had been added to the Bill authorising the mortgaging of the land. He now wanted to point out to honourable gentlemen—so that it should not be his fault that they would pass the Bill without knowing what was the proper way in which to proceed—the constitutional practice in such a case as the present; and he would go to the House of Commons, which, he need not tell them, was a model upon which the Queensland Parliament founded its own practice and procedure. He found that the House, according to order, resolved into Committee of the Whole on the Railway Clauses Consolidation Bill, which was a private Bill, considered and passed provisions, of which particulars appeared—“clause amended and agreed to;”—and then came down to the preamble:—

Preamble amended and agreed to.

That was the practice of their great exemplar; and he could adduce a thousand other instances to show that it was the invariable rule of that House. Further, he might state that it was distinctly laid down in page 507 of “*May*,” that, where the nature of a Bill had been altered, the preamble must be altered to fit it. But, he particularly wanted to show the law as laid down by Cushing:—

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—as, that doubts exist as to what the law is—or that some form of offence has been of frequent occurrence which it is necessary to

punish with additional severity; or the advantages which it proposes to effect—as that it is expedient to revise, consolidate, and bring into one, all the statutes relating to a given subject. The reasons upon which a public statute is passed are not generally of such a nature that they can be defined with perfect precision, or enumerated in full; hence there may be reasons for the passing of an Act which are not given in the preamble; those which are given may be aside from the real occasion of the law; and when doubts are alleged, it may be that no reasonable or well-informed person ever entertained any.

That was respecting public Bills:—

The preamble of a private Act sets forth the facts upon which it is founded, and as these are the whole inducement for the enactment, it is necessary that they should be fully and truly stated, and, as will be seen hereafter, substantially proved or admitted.

Cushing’s opinion was based upon D’warris, one of the best authorities, and also upon “*May’s Practice of Parliaments*” in England. So that the Bill before the House was a fraud, as far as the observance of Parliamentary practice was concerned; it was a fraud in regard to its preamble, which did not contain one word as to the necessity for borrowing money for the purpose of enabling the Tooth family to pay the debts; but it set forth solely that there was a necessity for selling lands to enable the debts on the estate to be paid. The preamble was a fraud; that which followed it was a fraud. He did hope and pray honourable gentlemen, for the sake of consistency, and not for obstruction, to do what now he pointed out as so necessary; to consent to the recommitment of the Bill for the purpose of altering the preamble and making it in unison with the tenour of the Bill. All he could say, if they did not see the propriety of that, was, that he did not know how things ought to be put before them in a plainer way. He wanted the preamble put right, so that some little justice might be done to the Council; so that trouble might be hereafter prevented;—because, if the preamble of the Bill was so at variance with the body of the provisions of the Bill, when it should come into a court of law, it might be a question if the justices would not take exception to it. But, for their own sake, the Council ought not to allow the Bill to pass in such a shape as to appear an actual fraud. He moved, by way of amendment—

That all the words after the word “*Bill*,” be omitted, with a view to insert the words, “be re-committed to re-consider the preamble.”

MR. GREGORY said he should be perfectly willing to submit to further delay on the part of the honourable gentleman who still opposed the Bill, could he really see any force in the arguments that had been adduced in support of the amendment. But

the honourable gentleman had brought forward nothing beyond the statement made by him on a former occasion. Every consideration had been given to that statement, and the conclusion arrived at was that the preamble as framed embodied all that was contemplated by the provisions of the Bill. He saw no reason to alter the opinion he held; and he thought it would be a great waste of time to consider the matter further. No doubt, the honourable gentleman moved his amendment in perfect good faith. He (Mr. Gregory) gave him full credit for doing so; he did not attribute any sinister motives to him; but, he believed that the term "dispose" in the title and throughout the Bill was quite sufficient to meet all the objections to which the honourable gentleman had drawn the attention of the House. He must therefore oppose the amendment.

Mr. TAYLOR: It would be useful if the honourable Mr. Walsh would state what alteration he wanted to make in the preamble.

Mr. WALSH: Simply to enable the trustees of the estate to borrow money—to put in proper form, that they should give a mortgage of, as well as sell, land in the estate, for the purpose of paying the debts of the family. The trustees wanted power to borrow money at a lower rate of interest than they now paid; they had not asked for that power, and he had argued all through that Parliament had no right to give it to them; but seeing that that power was given by a certain provision of the Bill, it should be set forth in the preamble, as well as the power to sell or dispose.

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

CONTENTS, 8.

The Postmaster-General, Messrs. Gregory, Edmondstone, Sandeman, Turner, Hart, Foote, and Taylor.

NOT-CONTENTS, 4.

Messrs. Roberts, Cowlshaw, Walsh, and Swan.

Resolved in the affirmative.

The Bill was then read a third time and passed, and returned by message to the Legislative Assembly.

PROPOSED ADJOURNMENT.

The POSTMASTER-GENERAL said, as the Council had no business to transact, and as there was no probability of their having any for a fortnight hence, and as he knew it was the desire of many honourable gentlemen that they should not come to the Council unless there was business to do, he moved

That this House do now adjourn until this day fortnight.

Mr. WALSH: That was entirely in accordance with the whole proceedings of the Postmaster-General, who had been dragging honourable gentlemen to the House day after day, to attend to a petty little Bill; and, after having stuck to the Bill and to its promoter, at great cost and waste of time, he now coolly got up and proposed that an adjournment for a fortnight should take place. The honourable gentleman should know that unless he violated the Standing Orders he could not carry that. But, perhaps, that would be appropriate to him; and that he, with his supporters, meant to set all practice and precedent at defiance. He (Mr. Walsh) asked the President if such a motion could be put? The Chamber should not be at the dictation of the Postmaster-General. Again, in the interests of the country, he (Mr. Walsh) asked if a motion for adjournment for a fortnight could be put?

Mr. TAYLOR: Yes.

Mr. WALSH: He had no doubt it could, in the interests of certain country members. The other House had been flauntingly told that a Bill which was required was to be introduced in the Council, in order that it should be expedited. What business had the Council done? They had been sitting for three months; and they had done nothing. He did not hesitate to say that that was due to the weakness of the honourable gentleman who had charge of the Government business in the Council, and who was not to be entrusted with important business. Was he to be allowed to get up and move an adjournment for a fortnight? A great deal of important business might be brought up at the end of that time, and it would be rushed through the Chamber. If honourable gentlemen wanted to analyse measures presented to them, they were told it was not decent, it was not courteous to the other House, to discuss or alter them. That was the way business was to be done by the Council. He had not the least notion, this afternoon, that such a motion was to be made, or he should have given notice of one or two motions that would probably affect the position of the honourable gentleman. It might be in anticipation of that business which he was about to introduce that the honourable gentleman had moved the adjournment. It was of a piece with the whole conduct of the Postmaster-General, and the proceedings of the House. Having shepherded honourable gentlemen beside him to come day after day for a Bill that had passed this afternoon, the moment it was passed, he got up to adjourn the House for a fortnight. He (Mr. Walsh) was sorry to speak in so contemptuous a way of the Chamber—of the conduct of business in the Chamber. The Postmaster-General was not treating honourable members in a proper way. He was treating them as old

women, or as children. That might suit the tastes of certain honourable gentlemen who came to the House at intervals only, but who did not take the interest in the good government of the country that he (Mr. Walsh) did. But it was disgusting that the House had been brought together so often, and so long, for a private Bill, which had at last been rushed through without any opportunity being given to re-consider it and put it into proper shape; and that honourable gentlemen should now be at large for a fortnight. He knew that his duty was to try to get some better administration in the Chamber than they had at this moment.

Mr. TAYLOR said he thought the honourable gentleman was too severe on the leader of the House. If there was no business to come before the Council, why should honourable members attend?

Mr. WALSH: Why did he not bring some in.

Mr. TAYLOR: As to his talking about business being rushed through the House, that was not quite the thing. Honourable gentlemen did not attend to rush business; it was not their way to rush. But it did not suit them to attend, when there was no business to be done. The representative of the Government said there would be no business for a fortnight; and it was best for the House to adjourn. If they did not adjourn for a fortnight, the President and the officers of the Council would be obliged to appear in the Chamber, though there was nothing on the paper. The Postmaster-General took the right step in the present juncture. There was an important debate going on in another place; the result might be to put the Government out of power; and it was the proper way for the honourable gentleman to wait to see the result before proceeding further. He (Mr. Taylor) was surprised at the honourable Mr. Walsh objecting to the motion, seeing that the result of the debate elsewhere might be to put out the Ministry that he was so much opposed to. He asked the President, whether the motion could be put?

The PRESIDENT said he did not think the honourable Mr. Walsh was serious, or intended that he should give a ruling, being himself perfectly aware that the order of the House was, that their sittings should be on the days appointed "unless otherwise ordered." If the House chose to order that they should meet this day fortnight, instead of to-morrow or next Wednesday, there was no reason why they should not so "otherwise order."

Mr. WALSH: When a Sessional Order was altered it was necessary that there should be a certain number of members present, or that notice of motion should be given. No such notice had been given; and if notice had been given, the resolution

could only be perpetrated to-morrow. Without notice, the motion was informal, according to his opinion. However, if the President ruled, he (Mr. Walsh) must give way. He said that a few days' occupation of the benches in the Council Chamber had convinced him that if ever there was a farce, it was in having a second Chamber in Queensland.

The PRESIDENT said the honourable member was out of order in alluding to the position of the Council in that way.

The POSTMASTER-GENERAL said he was extremely sorry the honourable Mr. Walsh had exploded in such a way this afternoon. He was not aware that any discourtesy had been received by him. He had consulted with him as well as with other members of the House as to his intention to move the adjournment; and, on the perfect understanding that there was no opposition to the motion, he brought it forward. If any honourable member opposed it, he was aware that it could not be put without notice.

Mr. WALSH: I oppose it.

The POSTMASTER-GENERAL: That was quite sufficient, without showing so much anger as the honourable gentleman did show. He was content. He had done nothing since he had a seat in the Council to degrade it; and he hoped that every honourable member was able to say the same for himself. As he stated before, he had consulted honourable members about the step he took in moving the adjournment. There was no business, and there was no probability of any coming before the House; and he knew that many honourable gentlemen had to attend at considerable inconvenience, and that it was well for them to be relieved when there was no necessity for their attendance. It was all very well for the honourable Mr. Walsh, who had no other entertainment but coming to the House, to protest. He (the Postmaster-General) should withdraw the motion; but it was open to any other honourable gentleman to move an amendment in accordance with it.

Mr. GREGORY: Really, the Postmaster-General made his motion out of consideration for honourable members, and in good part towards them. There was no business to bring honourable members to the House; and why should the President and the officers be compelled to attend uselessly? He was perfectly willing to attend, as were one and all, when there was anything to be done; but he certainly objected to be brought down from the country, and even honourable gentlemen with business in town objected to attend, when there was no business before the House. He did not know what the position of the motion, now, was; but if no sufficient reason was given for meeting sooner, he should endorse the motion for a fortnight's adjournment.

Mr. SANDEMAN said, as the Postmaster-General had withdrawn his motion, he would suggest that some other honourable member should give notice of motion for to-morrow. It was clearly too bad, it was unfair, to honourable gentlemen to be brought down from home when there was no business to be done. The House had been told that there was no likelihood of any business coming before them.

In answer to Mr. TAYLOR,

The PRESIDENT said the question now before the House was—Whether it was the pleasure of the House that the motion should be withdrawn?

Mr. TAYLOR objected to the motion being withdrawn. It was unreasonable of the honourable Mr. Walsh to expect honourable members to attend; and he ought to accede to the wish of the House.

Mr. WALSH: It was material to him, because the motion really interfered with his private business that he wanted to introduce. He did not see why the Government in the Council should escape for the next fortnight; or, at any rate, why private business should be frustrated. He knew another member of the Council who had business to bring forward. Had he (Mr. Walsh) known, before the order of the day was called on, that the adjournment was to be moved, he should have given notice of business to come before the House. But he had been taken by surprise. It had not been vouchsafed to him before the order of the day was called on, that the adjournment was to be moved. It was all very well for those who lived in the country to say they could not come down. What in the world did gentlemen accept seats in the Council for? To do the business of the country. The Colonial Secretary had made an excuse for a Bill not going before the other House, that it was to be introduced in the Council.

The POSTMASTER-GENERAL: He was not aware of it.

Mr. WALSH: He knew that the Colonial Secretary had said that the Government had a Bill prepared and nearly ready, and that it was to be introduced in the Council. He could not find it in *Hansard*; but he was quite sure that last night, or last week, the Colonial Secretary said so; and that the Bill was to be introduced in the Council in order to expedite it. In order to prevent that Bill coming forward, honourable gentlemen would, at the request of the Postmaster-General, adjourn the House for a fortnight. Besides, the adjournment would be an interruption to the private business that honourable gentlemen had every right to carry on.

The POSTMASTER-GENERAL, with the permission of the House, explained that, as he was at this stage of the proceedings unable to give notice of motion in the ordinary

way, he deemed it desirable to take the course he did by moving, with the consent of the House, as he thought, an adjournment for a fortnight. As notice was required of a motion to dispense with a Sessional Order, and as he could not give it formally now, he could only say that if there were a House to-morrow, he should make a motion of the kind that he had made this afternoon. He regretted very much that his motion, which was brought forward to consult the feelings of honourable gentlemen, after he had spoken to them, was not accepted. For his own part, he was ready to attend every sitting day. He did not know that there would be any business before the House, but he did not believe there would be, for a fortnight. As he understood that his motion must be withdrawn, the question now was simply the adjournment of the House until the next sitting day.

Original motion, by leave, withdrawn.

Mr. TAYLOR would move an amendment upon the Postmaster-General's motion, that the adjournment be until this day fortnight. As to what the honourable Mr. Walsh had stated, he had read the Colonial Secretary's speech of last night in *Hansard*, and there was nothing in it about a Bill to come before the Council. The honourable gentleman must bear in mind that he lived in town, and that in objecting to the adjournment, he was punishing, not the Postmaster-General only, but all the members of the Council who lived at a distance.

The PRESIDENT said he was afraid the honourable gentleman's amendment could not be put, because the House could not do by an amendment what they could not do by an original motion.

Question put and passed, and the House adjourned until next day.

The House adjourned at 4:30 p.m.