

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 28 JULY 1881

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LEGISLATIVE COUNCIL.*Thursday, 28 July, 1881.**Hansard.*—Message from Legislative Assembly.—Suspension of Standing Orders.—Appropriation Bill No. 1.

The PRESIDENT took the chair at 4 o'clock.

HANSARD.

The POSTMASTER-GENERAL (the Hon. B. D. Morehead) said he had no doubt hon. members had noticed that the proceedings of the Legislative Council yesterday had been completely ignored in this morning's issue of *Hansard*. As soon as he discovered the omission he came down to the House to demand an explanation. He had since received a letter from Mr. Gilligan, the Acting Principal Shorthand Writer, enclosing copy of a memorandum from the Government Printer, which was as follows:—

"SIR.—I regret to inform you that, owing to an accident, the sub-overseer has omitted the few lines of yesterday's Council's proceedings in this morning's *Hansard*. It will, however, be inserted in to-morrow's issue. Will you please inform the Hon. the President and the Hon. the Postmaster-General of the omission, which I much regret.—I have, &c.,

"J. C. BEAL."

He need scarcely tell hon. gentlemen that he did not consider that explanation fully satisfactory, and he intended to further investigate the matter. He was bound to give that explanation, which was as satisfactory as he could at present make it.

MESSAGE FROM LEGISLATIVE ASSEMBLY.

The PRESIDENT announced receipt of a message from the Legislative Assembly, forwarding Appropriation Bill No. 1, and requesting the concurrence of the Legislative Council therein.

On the motion of the POSTMASTER-GENERAL, consideration of the message was postponed till a later hour of the sitting.

SUSPENSION OF STANDING ORDERS.

The POSTMASTER-GENERAL moved—

That so much of the Standing Orders be suspended as will admit of the passing of an Appropriation Bill through all its stages in one day.

The Hon. W. H. WALSH said he did not suppose there would be any great objection to the motion, but he must avail himself of the opportunity of saying that the Government appeared to be carrying on the business of the House in a most extraordinary manner. If hon. gentlemen would only look at the business-paper of to-day, they would see that all the business vouchsafed to them was to suspend the Standing Orders, for which there ought to be no necessity if the Government conducted their business properly; and the only other business which was to come before them on next Wednesday was the consideration of an Insanity Bill. The House had been sitting for some weeks, and there had been actually no real business brought before it. He knew very well what would happen in a short time. They would be told that there should be no delay in bringing the session to a close. That was what they would be told directly. Although they had been hungering for business for at least three weeks, what they had before them to-day was to suspend the Standing Orders to accelerate that which ought never to be accelerated except under the most extraordinary circumstances; and then next Wednesday they were invited to consider an Insanity Bill. He really thought they ought to consider the Insanity Bill first—it would be the most appropriate; and then they ought to go into the more important question of determining how the people's money should be wasted. It appeared to him that the Government were bringing the legislation of that House into a farcical state. Nothing but the most urgent business—or, he ought rather to say, hasty business—was now brought before it. Nothing of great importance to the colony was now delegated to that House for consideration, such as the expenditure of £60,000 or £70,000 a year on a postal service; the only real business up to that moment that had been brought before them, and which there was no occasion to hurry on at that early stage, was that the Standing Orders should be suspended. He did not see why there should be any Standing Orders at all; they were always being suspended; they were always being operated upon by the hon. member representing the Government in that Chamber. He supposed the thing would be done, and merely entered his protest against that hasty kind of legislation. It was entirely owing to the misconduct of the Government in not calling the Houses together earlier. They had no time to reflect or even to breathe, but had to hurry through the most important of the business—namely, the voting away of the moneys belonging to the people of the colony. That

kind of legislation was what they were treated to last session, and what they would be treated to, he could plainly see, this session. He considered it, therefore, his duty to, at any rate, mention to hon. members his own fears and suspicions as to the way in which the business of this session was going to be conducted. He saw the Postmaster-General burning for his reply, and he would now sit down, and perhaps some other member would afterwards move the adjournment of the debate.

The POSTMASTER-GENERAL said the hon. member who had just sat down had been much more tame than he had anticipated; but probably, when the adjournment of the debate was moved, to which that hon. member referred, he would show some of his old vigour. No hon. member knew better than the Hon. Mr. Walsh the reason why the business-paper showed so small an amount of business to be transacted by that House. The hon. member knew that there had been a certain serious charge levelled against the Government which he represented, and most hon. members would admit that the Government would have been very wrong indeed had they initiated in that Chamber any business until that very serious charge had been disposed of. That was the reason, and the sole reason, why Bills had not been brought before that Chamber. The hon. gentleman had also talked about the misconduct of the Government. It was very easy to charge a Government with misconduct in a broad, general, and vague way; but he was quite prepared to meet that hon. member, or any other hon. member who would formulate such a charge, and give him an opportunity of either refuting it or being defeated on the question. But the hon. member did nothing of the sort; he simply charged the Government generally with misconduct. The hon. gentleman had been long a distinguished member of both branches of the Legislature, and had also been a member of a Government, and he, of course, knew that he was not justified in bringing such a sweeping charge without cause. With reference to bringing the House into a farcical state, he would leave it to hon. members to decide which was the hon. member who had done more to bring about that state of things than any other member of the House. The hon. gentleman, while admitting that his action would not produce any effect, contented himself with protesting against the existing mode of conducting business in the House, and was pleased to say that he believed the business of the House would be conducted this session as it had been conducted last session—according to his mind, in a highly improper way. Surely the hon. member was possessed of some generosity. Let him wait a few weeks, and see whether the charge which he had somewhat prematurely levelled against him (the Postmaster-General) was justified. He did not think that he had hitherto done anything to justify the remarks made by the hon. gentleman, who might wait—and very properly wait—until the opportunity arose of making them fairly; and no doubt such an opportunity might very soon arise. With regard to the Insanity Bill, the hon. gentleman seemed to look upon it as almost a personal matter. He could assure him that it was not intended as a personal matter. As to the Appropriation Bill, every hon. member knew it was a real necessity that that Bill must be passed. With reference to the policy of the Government, or to the conduct of the Government business in the House, he had no desire, nor had any other member of the Government any desire, to do anything but what was just and fair. It was certainly not a violent action on the part of the Government to move the suspension of the Standing Orders on

an occasion like the present. It had been done over and over again, and the Hon. Mr. Walsh knew that perfectly well. There had been no attempt to force anything through the House, nor as long as he held his present position should he make any attempt to pass any measure through the House until it had been fully ventilated and fully discussed.

The HON. K. I. O'DOHERTY said he could not allow the observations of the Postmaster-General to pass without one word of comment. In almost the first speech that hon. gentleman had made in the House, it was rather stretching his position too far to speak of remarks made by an old and distinguished member like the Hon. Mr. Walsh as farcical. Up to this period the Council could fairly claim that its proceedings had been conducted with every courtesy between one hon. member and another. They had endeavoured, at all events—he spoke on the part of the great body of members—to induce the leaders of the House to conduct their debates with all possible courtesy towards each other. But how, in the name of wonder, could they expect that courtesy to be continued if the representative of the Government were allowed, without protest, to refer to the speech of a distinguished member as farcical?

The POSTMASTER-GENERAL said the word "farcical" was used by the Hon. Mr. Walsh. He took it down at the time, and simply used it as a quotation from him.

The HON. K. I. O'DOHERTY said there was no doubt the Postmaster-General possessed extreme ability, and could twist an argument in his own favour. He appealed to hon. members if the Postmaster-General did not charge the conduct of the Hon. Mr. Walsh as farcical, and turn the question of the Insanity Bill into a personal attack upon him. At that early stage of the session he entreated hon. members to stand forward and protest against such conduct, no matter from which side of the House it came. They had had enough of it during the last session or two, and he hoped the Postmaster-General, as leader of the House, would not aggravate what many hon. members considered a great blot on their proceedings during last session. Personally, he disagreed entirely from the part taken by the Hon. Mr. Walsh, if he intended to postpone the consideration of the Appropriation Bill. The Civil Servants must be paid, and it was not a question of the policy of the Government. There had, no doubt, been delay from the cause mentioned by the Postmaster-General, and that was a very good reason for the delay. He objected strongly to any hon. member's conduct being spoken of as farcical, and alluding to the same hon. gentleman as being little better than insane. He hoped an opportunity would arise during the session of calling in question, not the policy of the Government, but the policy of one branch of the Legislature towards another. A very interesting debate might be initiated with a view to understanding exactly the relations that existed between the two Houses, and especially between this House and the Government. He was but a comparatively new member of the House, but he had been accustomed to debating in the other branch of the Legislature, and he believed that an amount of overbearing conduct had been exhibited by the other branch of the Legislature, and by the Government representing that branch, against this Chamber that they ought not to permit. At all events, it should be known where the line was to be drawn, and it should be known whether they were to be a Committee of the Lower House, or whether their powers were co-ordinate with it, with equal rights and equal liberties. Whispers had been abroad with respect

to that. He had been asked to sign a document shortly after the last session of Parliament in reference to the appointment of one of their own officers. He did sign it, and so did twenty other members of the House; and the document was handed in to the President. He wanted to know what answer had been accorded to it? Had it been set aside without one word of explanation? What was the use of the President having a right to nominate officers of the Chamber, if he had not the power to appoint them? He did not wish to say a word with reference to the appointment that had been made; it was, probably, as good a one as was possible to be made; but he objected to be told that the document to which he had referred, and which ought to have carried great weight, was so much waste paper. He felt warmly on the subject, and without a sufficient explanation he could hardly be expected to give a loyal support to the party in power. The dignity of the House had also been ignored by permitting an hon. member to walk out of the House to contest an election, and then to reappoint him immediately on his defeat. Then again, the Postmaster-General when in the Lower House passed a resolution that no member of either House should accept any payable appointment under the Government; and yet he was instrumental in appointing the hon. gentleman now sitting beside him (the Hon. P. Macpherson), who, it was well known, was a recipient of Government money. He would not say one word against that hon. gentleman, and was proud to meet him there; but he would like to know why his friend, Dr. Hobbs, was not there? By what principle was the Government actuated in turning away Dr. Hobbs and putting in his friend, the Hon. P. Macpherson? And he might say the same with regard to Mr. Thornton, than whom a more excellent member had never sat in the House. Before he joined in the work of the session he wanted to understand on what principle the Government were working, especially in reference to their treatment of what he called the higher branch—and he was proud to belong to it—of the Legislature—the branch to which the people outside looked to protect their interests, as the safeguard, not merely of the Crown, but of their own interests in the country.

Question put and passed.

APPROPRIATION BILL No. 1.

The POSTMASTER-GENERAL moved that the Bill be read a first time.

The HON. W. H. WALSH said that before the question was put he should like to refer, as safely as he possibly could, to a rumour that was current outside the Chamber, that this Bill had not been constitutionally introduced elsewhere. It was a matter of the greatest importance that the proceedings of both Houses, and especially of the Council, should be initiated and carried on in a proper and constitutional manner. They ought to look to that as much as to the Bills themselves. Hon. gentlemen must be aware of the fact that they lived under a certain Constitution, and that when they went outside of that Constitution they, in a public or legal sense, ceased to live. He hoped hon. gentlemen would give due value to the fact that they had a Constitution, and that Constitution, so long as they abided by it, was their safeguard. When they allowed that Constitution to be outraged, defaced, or violated, they placed themselves in the position of the weak at the mercy of the strong. The Constitution was for the protection of the weak—the strong could do very well without it; and that was why he wished particularly to call hon. members' attention to the fact that

it was their bounden duty to see that whatever they did was constitutionally begun, carried on, and ended. There was a rumour abroad that the Bill now before the House had not been properly introduced into Parliament, and they all knew how essentially necessary it was that Bills should be properly introduced which affected the pockets of the people. The House of Commons would not allow even a private Bill, if it affected taxation or expenditure, to be introduced into Parliament unless upon the recommendation of the reigning sovereign. It would no more allow that than it would allow a foreign enemy to land on the shores of England. If the rumour to which he referred were true, he would warn hon. gentlemen that it was a matter of very great importance for the House to consider whether the question should not be referred to a committee of the House to consider the parliamentary practice and precedents, and the practice of that noble Parliament by which they professed to be guided in their public actions. He repeated that there was a very strong rumour that the Bill had not been properly introduced elsewhere; and if hon. gentlemen would assume, even for the sake of argument, that that was so, he would tell them what was the constitutional law in England on the subject. No doubt he should be told that the Bill had been introduced in another Chamber in accordance with precedent. If so, the precedent was a very bad one indeed—so bad that it never ought to have been followed—so bad that there was all the more reason why they in that Chamber should not accept it as their guide. He would read a few extracts to hon. members to show how the English Parliament insisted upon money Bills being introduced in the House of Commons in a perfectly legitimate and constitutional fashion. In the first place there was a Standing Order of the Legislative Assembly, which was as clear as the light of day. Standing Order No. 270 provided:—

"The Order of the Day being read for the House to resolve itself into the said Committee, His Excellency's Speech to both Houses of Parliament shall be ordered to be referred to the Committee, together with any Estimates that may have been transmitted by message."

The complaint of the public this morning—and he was speaking now entirely on behalf of the public—was that the Bill had not been introduced by a message. It was invariably the practice that the Crown should recommend the granting of money. That was the only constitutional practice that was tolerated in the English Parliament. If hon. members would now turn to "May," they would find on page 584, in the edition of 1873, the following, under the heading "Constitutional Principles of Supply":—

"Let us now proceed to consider the constitutional principle by which other branches of the Legislature are governed. The Crown, acting with the advice of its responsible Ministers, being the Executive power, is charged with the management of all the revenues of the State, and with all payments for the Public Service. The Crown, therefore, in the first instance, makes known to the Commons the pecuniary necessities of the Government, and the Commons grant such aids or supplies as are required to satisfy these demands, and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted to them. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant; but the Commons do not vote money unless it be required by the Crown, nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted, or are about to vote, and for supplying general deficiencies in the revenue."

Then, on the next page, it was said:—

"So strictly has this principle been enforced that the House has even refused to receive a report from a select committee suggesting an advance of money, because it had not been recommended by the Crown."

Could language be plainer or stronger? The select committee had recommended that money should be expended, but the House refused because the recommendation had not come through the Crown. The same writer then went on to say:—

"On the 15th June, 1837, notice was taken that a report on the petition of Messrs. Fourdrinier contained a recommendation for public compensation for losses incurred by the patentees, and that the same has not been recommended by the Crown: and the report was recommitted in order to remove this informality. Such an objection to a report was, apparently, premature, as no motion had been founded upon it, and none could have been made unless recommended by the Crown."

Would hon. members bear that in mind? Then, immediately afterwards, May wrote:—

"In addition to the necessity of a recommendation from the Crown prior to a vote of money, the House has interposed another obstacle to hasty and inconsiderate votes."

He could go on and quote much more to the same purpose, but he thought he had read sufficient to convince hon. members that it was looked upon almost as one of the charters of the people's liberty at home that no money should be granted by Parliament unless the Crown requested it in the first place, because no taxes could be levied without the consent of the Crown. If the rumour was true that this Bill had been introduced without a message from the Governor, there had been hasty legislation elsewhere; and it behoved that Chamber to consider the very important question whether it should not reject the Bill, and so give the other Chamber an opportunity of introducing it in a constitutional manner. It was a most unfortunate thing for the country that the Governor should be absent from the colony at this moment, and, for aught he knew, His Excellency's absence might have necessitated the extraordinary action taken by the Government; and he believed that no person in the world would regret more than the Governor that such a course had been pursued. It was a most important matter, affecting the Governor's administration of the affairs of the colony; and unless Ministers could show Parliament that the Governor had sanctioned the proceeding, and was aware of what was being done, he thought it was their duty to the country, to themselves, to the Governor, to the Queen, and to the Constitution under which they lived, and hoped to live, to pause ere they proceeded to pass the Bill. He had felt it his duty to make these remarks, and regretted very much that he had been forced to do so; but if the Constitution was not upheld in another place, so long as they had seats in the Council Chamber he trusted there would be no lack of hon. members in the Council who were determined to do their duty to the best of their ability in maintaining that Constitution unimpaired.

Question put and passed.

The POSTMASTER-GENERAL moved that the Bill be read a second time.

The Hon. W. D. BOX said the assertion of the Hon. Mr. Walsh, that the Bill had been improperly introduced in another place, was, if correct, a very serious one, and he had anticipated that the Postmaster-General would, on moving the second reading of the Bill, have answered or given some explanation of the hon. gentleman's assertion. If the Bill was really improperly introduced, it would be much better if some hon. gentleman in authority would say so. He should like, in addition to an explanation from the Postmaster-General in refutation of the assertions of the Hon. Mr. Walsh, the President's ruling as to whether the Bill had been correctly introduced or not.

The POSTMASTER-GENERAL said the Hon. Mr. Box apparently misunderstood the remarks made by the Hon. Mr. Walsh. He did not think the Hon. Mr. Walsh contended that the Bill had been improperly introduced into this House, but that it was improperly introduced into the Assembly. He would read to the House a ruling on a similar question given by the President in 1879, as it appeared in the Council's "Votes and Proceedings":—

"TOOTH ESTATE ENABLING BILL.—On the Order of the Day being read, Mr. Walsh requested the ruling of the President on the following point of order:—That some of the clauses of the Bill transgress the Standing Orders of the Legislative Assembly; the Bill, therefore, should not have been passed through that House, and consequently is improperly before this House.

"The PRESIDENT ruled—That it is no part of the duty of this House to sit in judgment on the proceedings of the other Chamber; and therefore the Bill may be proceeded with, and dealt with as the House thinks fit."

He (the Postmaster-General) had nothing more to say on the subject.

The HON. C. S. MEIN said he had no doubt the decision quoted by the Postmaster-General was a perfectly correct one, and so far as the Bill was concerned they had a right to assume that it had passed through the Legislative Assembly properly. At the same time, he thought the House might have anticipated that the Postmaster-General would have given some explanation of the view of the Government upon the very serious constitutional question which had been raised by the Hon. Mr. Walsh. The Hon. Mr. Walsh was a member of very high standing, and he had had considerable experience in parliamentary practice, and was an undoubted authority on constitutional questions. He had listened attentively to the observations of the Hon. Mr. Walsh, and to his mind they appeared unanswerable if they were based on ascertained facts. The same rumour had reached his ears, and he had read papers laid on the table of the House relating to the proceedings of the other Chamber; and he observed that this Bill, which dealt with the appropriation of moneys out of the Consolidated Revenue, had not, so far as the public record of the other Chamber showed, been introduced in the manner provided by the Constitution Act. The law was certainly clear on the subject—so clear that every person who ran might read and understand it. The words were as follows, taken from the 18th section of the Constitution Act:—

"It shall not be lawful for the Legislative Assembly to originate or pass any vote, resolution, or Bill for the appropriation of any part of the said Consolidated Revenue Fund, or of any other tax or impost, to any purpose which shall not first have been recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote, resolution, or Bill shall be passed."

That was the written Constitution under which they were acting, and it declared as clearly as possible that no Bill dealing with the appropriation of money out of the Consolidated Revenue should be introduced except on a recommendation from the Crown. As the Hon. Mr. Walsh had pointed out, the Crown was the proper person to know what its requirements were, and when it had ascertained its requirements it asked the keeper of the purse to supply it with the needful money. According to the records of the other House, that had not been done in this instance, and it was a serious question for the consideration of the Legislature whether a Bill passed without that introductory formality would be legal. It was a serious matter for the Government to consider, because there could be no doubt that both parties in the Legislature were quite willing to comply with the necessities of the Crown by appropriating the sum of £100,000; but they were also exceedingly interested in the

observance of the requirements of their Constitution. It might indeed become a question whether it would not be necessary to introduce a Bill legalising what had been introduced in that apparently illegal manner. He admitted that, as far as the consideration of the Bill was concerned, they had no right to assume that it had not been passed through the Legislative Assembly in a proper way; yet, as the question had been raised, it would be only courteous on the part of the representative of the Government to assure them, if he could, that he had consulted with the legal authorities on the subject, and that they had satisfied themselves that everything was in order, and that it would not be necessary to introduce a Bill to legalise what was supposed at present to be an illegal transaction on the part of the Government. That question might be fairly answered.

The POSTMASTER-GENERAL said he could assure the Hon. Mr. Mein that the Government considered the course they had adopted was a perfectly legal one, otherwise they would not have adopted it, nor would it have been accepted in another place.

The HON. W. D. BOX said he gathered from what had fallen from the Postmaster-General that the President's ruling, if asked for, would simply be a repetition of what was already in the records of the House. He would, therefore, withdraw his desire to have the President's ruling on the subject.

Question put and passed.

The Bill then passed through Committee, and was reported to the House without amendment; and it was then, on the motion of the POSTMASTER-GENERAL, read a third time, passed, and ordered to be transmitted to the Legislative Assembly by message in the usual form.

The House adjourned at 5 o'clock until Wednesday next.