

LEGISLATIVE COUNCIL,

Thursday, 12th January, 1871.

Representation of the People Bill: Speaker's ruling: correction of minutes—Customs House Clerk—Publicans' Petition—The Bridge—Public Pound Bill, 1861: select committee report—Police Ordinance, 1861, 35th Section Repeal Bill: recommitment—Coasting Vessels and Cargo Boats Regulation Bill: second reading: in committee—Scab-in-Sheep Ordinance Amendment Bill: in committee—14th Victoria, No. 6 Amendment Bill: Message from the Governor, No. 7—Assent to Bills: Message from the Governor, No. 8—Fraudulent Debtors Bill: Message from the Governor, No. 9—Bankruptcy and Insolvency Bill: Message from the Governor, No. 10: in committee—Public Pound Bill, 1861: in committee.

The SPEAKER took the Chair at 4 p.m.
PRAYERS.

REPRESENTATION OF THE PEOPLE
BILL.

Speaker's Ruling: Correction of Minutes.

The ATTORNEY GENERAL (Hon. R. J. Walcott) called the attention of the House to a mistake in the wording of the Speaker's ruling as recorded in the Minutes for the 11th January, and moved that the following words be expunged: "That no member having a direct pecuniary interest in any question should be allowed to vote;" also the words "The present rule did not apply," and the insertion of the words, "they were entitled to vote."

The COLONIAL SECRETARY (Hon. F. P. Barlee) seconded the motion.

The SPEAKER said he had not the slightest objection.

Mr. STEERE said that the words could not be expunged without the permission of the House. As far as he could recollect the words used by the Speaker were, "No member having a pecuniary interest in the matter could vote."

The SPEAKER said he was perfectly in accordance with May in ruling as he did.

The ATTORNEY GENERAL (Hon. R. J. Walcott): The ruling was not before the House.

Question put and passed.

CUSTOMS HOUSE CLERK.

Mr. NEWMAN, in accordance with notice, asked the Hon. the Colonial Secretary how he could reconcile the removal of the experienced third-class clerk at the Customs House and replacing him with an inexperienced one, with the statement made by him that two clerks were required.

The COLONIAL SECRETARY (Hon. F. P. Barlee) declined to give any explanatory reply to the hon. gentleman's question.

PUBLICANS' PETITION.

Mr. NEWMAN, in accordance with notice, asked, in reference to the licensed victuallers' petition, the Government to bring in a Bill dealing with the whole subject of the sale of spirituous liquors, &c., and that the subject may then be discussed. He spoke of the grievances of the publicans and was in favor of placing greater restrictions upon the gallon license holders.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said the Government was quite prepared to bring in a Bill to deal with the whole question.

Mr. PHILLIPS said the complaint was that the hotel department in public houses had to be closed at 10 p.m., and gallon license holders being allowed to sell such small quantities.

Mr. SHENTON: There is a heavy penalty for a gallon license holder selling less than one gallon.

Mr. NEWMAN: The complaint is that the gallon license holder does not sell less than a gallon, but that he delivers less than a gallon.

Mr. DRUMMOND said it had been decided by the late Attorney General that a gallon license holder can sell a gallon of grog and deliver it as he pleases. The only thing he is required to do is to enter it in his day book.

After a few remarks from Messrs MARMION, MONGER, and McKAIL,

The COLONIAL SECRETARY (Hon. F. P. Barlee) said the Government would, at the next session of the Council, bring in a Bill on the whole question under discussion.

THE BRIDGE.

Mr. NEWMAN requested that some steps should be taken at once to remove the groynes at the bridge as they were an obstruction to cargo boats.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said the Clerk of Works had given directions for their removal.

PUBLIC POUND BILL, 1861.

Select Committee Report.

Mr. LOGUE brought up the report of the select committee, and moved that it be received and adopted.

Question put and passed.

POLICE ORDINANCE, 1861, 35th
SECTION REPEAL BILL.

Recommitment.

Mr. STEERE moved that the Bill be recommitment, with a view to moving, pursuant to notice previously given, that an additional clause be added to the Bill.

Question put and passed.

In Committee.

Mr. STEERE said that the clause he proposed would give the police power to proceed against a certain class who loiter about settlers' stations and have no visible means of support as rogues and vagabonds.

Progress reported, and leave obtained to sit again.

COASTING VESSELS AND CARGO
BOATS REGULATION BILL.

Second Reading.

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that the Bill be now read a second time. He said that the Bill was designed to regulate coasting vessels and other boats entering the ports of the colony. The Bill would give the Harbour Master power to direct masters of vessels to the moorings and the position they are to take in harbour.

The Bill was read a second time.

In Committee.

The Bill was discussed in Committee, and certain amendments were agreed to.

Bill reported, with amendments.

SCAB-IN-SHEEP ORDINANCE
AMENDMENT BILL.

Second Reading.

Mr. DRUMMOND moved that the Bill be now read a second time.

The Bill was read a second time.

In Committee.

The Bill was discussed in Committee, and one amendment was agreed to.

Bill reported, with an amendment.

LOCAL BOARDS BILL.

In Committee.

Resumed debate.

Mr. STEERE moved a further amendment, which was agreed to.

Bill reported, with amendments.

WILD HORSES AND CATTLE NUISANCE
BILL.

In Committee.

Resumed debate.

After some discussion in Committee,

Mr. MONGER moved an amendment that clause 4 be struck out.

Question put, "That clause 4 stand part of the Bill," upon which a division was called for, the result being as follows:—

Ayes 10

Noes 3

Majority for 7

Ayes.

Mr. Shenton
Mr. Steere
Mr. Newman
Mr. Logue
Mr. Marmion
Mr. Drummond
Mr. Phillips
The Hon. M. Fraser
The Hon. R. J. Walcott
The Hon. F. P. Barlee
(Teller.)

Noes.

Mr. McKail
Mr. Bussell
Mr. Monger (Teller.)

Question thus passed.

Bill reported, with amendments.

Sitting suspended until 8 p.m.

14th VICTORIA, No. 6, AMENDMENT
BILL.

Message from the Governor—No. 7.

The SPEAKER announced the receipt of the following Message from His Excellency the Governor:—

The Governor is already empowered to revoke the Ticket-of-leave of any Convict in the manner provided for by Section I of "A Bill to Amend the 14th Victoria, No. 6;" it is also already competent, as provided in Section II, for any one or more Justices of the Peace to hear, determine, and report upon any charge of immoral or disorderly conduct preferred against any Ticket-of-leave holder which is now indictable, and this Bill creates no new indictable offence.

It would appear, therefore, that the "Bill to Amend the 14th Victoria, No. 6," does not, in fact, amend it, and is surplusage; and The Governor has consequently disallowed it.

Government House, Perth, 12th January, 1871.

ASSENT TO BILLS.

Message from the Governor—No. 8.

The SPEAKER announced the receipt of the following Message from His Excellency the Governor:—

His Excellency The Governor has, this twelfth day of January, in the year of Our Lord 1871, and in the 34th year of Her Majesty's Reign, been pleased, in the name and on behalf of the Queen, to assent to the following Acts, that is to say:—

"An Act to prevent the sale, by Unlicensed Persons, of Spirituous and Fermented Liquors."

"An Act to make provision for the more effectual protection of Railways and Electric Telegraphs."

Government House, Perth, 12th January, 1871.

FRAUDULENT DEBTORS BILL.

Message from the Governor—No. 9.

The SPEAKER announced the receipt of the following Message from His Excellency the Governor:—

The Governor returns "A Bill for the Punishment of Fraudulent Debtors, and for other "purposes," with the following amendment for the consideration of the Legislative Council.

In the Schedule of Enactments repealed, to insert the words "20th Victoria No. 9. An Ordinance to Enlarge the Remedies of Creditors against the Persons of their Debtors;" and he offers the following reasons for the consideration of the Council:

This Ordinance is, in its provisions, somewhat analogous to the English Statute 15th and 16th Victoria, cap. 52, which Statute is expressly repealed by "The Bankruptcy Repeal and Insolvent Court Act, 1869," (32nd and 33rd Victoria, cap. 83), such repeal being necessary on the abolition of imprisonment for debt. Analogous provisions to those contained in the Sections 9 and 11 of the Bankruptcy Bill now under consideration, have by a recent Statute (33rd and 34th Victoria, cap. 76) been substituted in England for the repealed Act 15th and 16th Victoria, cap. 52.

To retain the Ordinance 20th Victoria, cap. 9, on our Statute Book is inconsistent with the principle of Legislation which does not allow the imprisonment of a debtor by his creditor. The object of the enactment is to enable the creditor to obtain a recognizance conditioned that the debtor shall pay the damage, or *render himself to prison*. These latter words have been construed to import, not that the defendant is bound to render at all events, but only in case he is required by the Plaintiff in the action so to do; and the serving out of the Writ of *capias ad satisfaciendum* is notice to the Bail that the Plaintiff requires the debt to be rendered.

As no Writ of *capias ad satisfaciendum* can be obtained in this Colony, no action can ever be maintained on the Bail Bond.

Thus the Ordinance is altogether inoperative and senseless, and can only constitute a snare to the unwary.

A Return of *non est inventus* must be made to a Writ of *capias ad*

satisfaciendum before any proceedings can be had against the Bail.

Government House, Perth, 12th January, 1871.

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that the amendments proposed be adopted.

Mr. NEWMAN expressed his regret that the 20th Victoria No. 9 was to be repealed, because there was no provision in the Bankruptcy Bill to arrest an absconding debtor.

Mr. SHENTON said the 20th Victoria No. 9 was kept in the book simply to enable a creditor to stop a debtor getting out of the colony.

The ATTORNEY GENERAL (Hon. R. J. Walcott) explained that the 20th Victoria No. 9 was useless. Some measure might be brought in to meet the wishes of the House, by introducing a measure to compel persons about to leave the colony to publish their intention of so doing in the newspaper.

Mr. SHENTON thought that some such plan would meet the case.

Mr. NEWMAN was of a similar opinion.

Mr. STEERE said the measure did not affect him; it was only those who lived in seaport towns who would be inconvenienced. He thought, however, a measure could be brought in to meet all that was required.

The COLONIAL SECRETARY (Hon. F. P. Barlee) thought a measure compelling persons about to leave the colony to give notice of their intention so to do might be made to work.

Mr. LOGUE remarked that in the Bill now under discussion there was power given to imprison. His Excellency, in his Message, states the House was going back to imprisonment for debt.

The COLONIAL SECRETARY (Hon. F. P. Barlee): Not for common debt, but for fraud.

Mr. LOGUE said that the hon. gentleman would find it was for debt.

The ATTORNEY GENERAL (Hon. R. J. Walcott): For debts fraudulently contracted.

Mr. GULL considered some measure similar to the 20th Victoria No. 9 necessary.

Mr. DRUMMOND said if the sum for which proceeding could be taken under the Act was reduced from £50 to £10, it would be more satisfactory.

Mr. LOGUE rose to a point of order. He said the Messages should be considered in Committee of the whole House, and moved to this effect.

Question put and passed.

In Committee.

The SPEAKER considered the 20th Victoria No. 9 a very good Bill, and it was one which had afforded the trading community a considerable amount of protection. His Excellency was, of course, bound to follow the advice of his legal advisers, but he would say that the repeal of the 20th Victoria No. 9 would do much harm, and he urged the House to bring in a measure in its place at once.

There was some further discussion on the repeal of the 20th Victoria No. 9, and the necessity to introduce some measure in its place.

The recommendation of His Excellency the Governor to repeal 20th Victoria No. 9 was then adopted.

BANKRUPTCY AND INSOLVENCY BILL.

Message from the Governor—No. 10.

The SPEAKER announced the receipt of the following Message from His Excellency the Governor:—

The Governor returns the "Bill to amend the law relating to Bankruptcy and Insolvency," with the following amendment for the consideration of the Legislative Council:—In Section 2 that the word "April" be inserted between the words "of" and "1871."

That in Section standing as Section No. 9 the word "nine" be omitted and the word "ten" be inserted in lieu thereof, and that the numbering of other sections be amended in accordance therewith.

That in order more clearly to define the presumed intention of the Legislature, that all words in Sub-section 2 of Section 31, after the words "Fifty Pounds," be omitted, and that at the commencement of Section 31 the words "all wages of any laborer or workman in the employment "of the Bankrupt at the date of the order of adjudication shall be paid in full," be inserted.

That in Section No. 63 the concluding words "after they are," which apparently by clerical error stand part of an incomplete sentence, be omitted, and the following words inserted in lieu thereof, "if the Legislative Council be then sitting, and if the Legislative Council be not then "sitting, within three weeks after the beginning of the next session of the Legislative Council."

Government House, Perth, 12th January, 1871.

In Committee.

After some discussion on His Excellency's Message, the recommendations proposed were agreed to.

PUBLIC POUND BILL, 1861.

In Committee.

The Bill was agreed to in Committee, without amendment.

The Council adjourned at 9.30 p.m.

LEGISLATIVE COUNCIL.

Friday, 13th January, 1871.

Abscinding Debtors—Telegraph Line between Bridgetown and Albany—Status of Colonial Chaplains—Grants of Land to Religious Denominations—Mason, Bird, and Company: select committee report—Abscinding Debtors Bill: standing orders suspension: first reading: second reading: in committee—33rd Victoria No. 9, Amendment Bill: second reading—Public Loan Bill: third reading—28th Victoria No. 4, Amendment Bill: second reading: in committee—Police Ordinance No. 4, Amendment Bill: in committee—Coasting Vessels and Cargo Boats Regulation Bill: third reading—Scab-in-Sheep Ordinance Amendment Bill: third reading—Wild Horses and Cattle Nuisance Bill: third reading—Public Pound Bill, 1861: third reading—Torrens Real Property Act—Representation of the People Bill: standing orders suspension: third reading—Parliamentary Draftsman—Adjournment.

The SPEAKER took the Chair at 4 p.m.

PRAYERS.

ABSCINDING DEBTORS.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said he was prepared to introduce a Bill to facilitate the arrest of absconding debtors, and if it was the wish of the House it could be entertained that day.

TELEGRAPH LINE BETWEEN BRIDGETOWN AND ALBANY.

Mr. STEERE asked the Hon. the Colonial Secretary whether the Government would appoint an assistant surveyor to lay out a suitable line of road between Bridgetown and Albany, for the purpose of the electric telegraph. He always felt there would be a difficulty in this matter, as the present line between Bridgetown and Albany was a very roundabout one. He knew of no other means of getting the line surveyed without the assistance of the Government. He therefore hoped the Government would appoint an assistant surveyor to lay out a suitable line between the towns named.

The COLONIAL SECRETARY (Hon. F. P. Barlee) had placed himself in communication with the Surveyor General. The Surveyor General was desirous of