

The ATTORNEY GENERAL (Hon. R. J. Walcott): Keeping in the house—keeping away from his creditors, or from the bailiff.

Mr. NEWMAN said that it is the legal phrase for "keeping house." He thought that would be keeping out of the house. In clause 5, he proposed that the word "two," be inserted in place of the word "six."

Amendment not agreed to.

Clause agreed to.

Clause 10—

Mr. NEWMAN took exception to clause 10, but on the explanation of the Hon. the Attorney General, withdrew his objection.

Clause agreed to.

Clause 14—

Mr. NEWMAN moved that the amount of tools, bedding, &c., to a bankrupt should be increased to £50, instead of £20.

Amendment agreed to.

A discussion then arose, at the instance of Mr. NEWMAN, as to the meaning of section 5, in clause 14, particularly as to the interpretation of the words "of which goods and chattels the bankrupt is the reputed owner."

The ATTORNEY GENERAL (Hon. R. J. Walcott) gave his interpretation of the words.

Clause, as amended, agreed to.

Clause 15, section 2—

Mr. NEWMAN moved the insertion, after the words "to vote as a creditor," of the words "unless objected to by the bankrupt, on the ground of non-indebtedness."

On the explanation of the Hon. the Attorney General, the amendment was withdrawn.

Mr. NEWMAN objected to section 3 of this clause which runs thus—"A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained." He contended that creditors ought to be allowed to prove their debts *ex parte*. Under the peculiar circumstances of the colony it would not be possible to prove debts at once.

The ATTORNEY GENERAL (Hon. R. J. Walcott): Creditors should have proof of their debts under their thumbs.

Mr NEWMAN said that things *in transitu* for instance, could not be brought into account so as to strike a balance at the time of meeting.

The COLONIAL SECRETARY (Hon. F. P. Barlee): A creditor could prove a debt from his books.

Mr. NEWMAN and Mr. STEERE made a few other remarks.

Clause agreed to.

Clause 19—

Mr. STEERE moved that the words in clause 19, "appointed by the Court of Chancery," be struck out and the words "appointed by the Supreme Court in its equitable jurisdiction," be inserted.

Amendment agreed to.

Clause 29—

Mr. SHENTON moved that instead of a trustee being allowed to keep £50 in his hands 10 days, £25 be inserted in its place.

Amendment agreed to.

Clause, as amended, agreed to.

Progress reported, and leave obtained to sit again.

The Council adjourned at 6.30 p.m.

## LEGISLATIVE COUNCIL.

Friday, 16th December, 1870.

Superannuation—Bankruptcy and Insolvency Bill: in committee—Fraudulent Debtors Bill: second reading: in committee—Lunacy Bill: second reading: in committee.

The SPEAKER took the Chair at 4 p.m.

PRAYERS.

## SUPERANNUATION.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said that as the sole reason why the Bill to regulate superannuations and other allowances to persons having held civil offices in the Public Service, under the Colonial Government, was rejected the other day, by the House, was a want of confidence in the Executive Council as at present constituted, and from no desire on the part of hon. members to shelve the matter altogether, he was about to propose to the House a motion on the subject that day. He could quite understand the feeling of the House in not giving effect to the Bill, on the ground of want of confidence in the Executive Council, and as that body had no voice in expending the public money, he recognized the feeling himself that caused its rejection; on that ground, therefore, he made no objection at all. He believed that it was not the desire of the House to shelve the subject, and do an injustice to the Public Service of this colony. He was aware they had no feeling of that kind. He would now propose the following resolution:—

That this Council having rejected the Bill to regulate superannuations and other "allowances to persons having held Civil Offices in the Public Service under the Colonial Government," on the ground of want of confidence in the

Executive Council, as at present constituted, do authorize the Governor, at any time when this House is not in Session, to grant to Civil Officers who may retire from the Civil Service of this Colony, superannuation allowances in accordance with the regulations under which they have hitherto been granted; such allowances to be subject to the vote of this Council.

The hon. members of the House were aware that the majority of persons in the Public Service were not well off, and did not make any money out of their small salaries. He believed there was no want of confidence in the Governor, and he considered the resolution he had proposed would meet the wishes and views of the House.

Mr. STEERE stated that the reason he opposed the Bill, was in consequence of what had been stated by the Hon. the Colonial Secretary—a want of confidence in the Executive Council, as that body is not responsible for the expenditure of public money; if they passed the resolution submitted, they would not be in a hurry to pass another. There was no desire to do any injustice to the members of the Public Service. As to passing the present resolution, he thought there would be no objection on the part of the members of the House in doing so.

The SPEAKER said that he perfectly understood that no allowance to persons in the Public Service would have any effect until after the meeting of the Council.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said that if a person in the Public Service was fairly entitled to a retiring allowance of say £60 per annum, that person would draw the amount month by month until the Council met.

The SPEAKER stated that he was satisfied with that explanation, and was in favor of the resolution being adopted.

Resolution put and passed.

## BANKRUPTCY AND INSOLVENCY BILL.

In Committee.

Resumed debate.

Clause 29—

Mr. LOGUE enquired the meaning of the words "having notice," in the 5th line of the first paragraph.

The ATTORNEY GENERAL (Hon. R. J. Walcott) gave the legal meaning.

Clause agreed to.

Clause 31—

Mr. LOGUE said that by the 2nd section in clause 31, "a laborer or workman of any bankrupt, would only be allowed two months' wages."

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that the words "and not exceeding two months' wages," be struck out, and these words inserted instead: "shall be paid in full."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 44—

Mr. STEERE moved that in the 1st line the word "from," be struck out and the word "of" be substituted.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 48—

Mr. LOGUE moved that section 1 be struck out, viz., "Debts due to the Crown." A release to a bankrupt would not under that section, be free from such debts.

Amendment not agreed to.

Clause agreed to.

Clause 54—

Mr. STEERE moved that the words, "and if he (a trustee) fail to do so, he shall be deemed guilty of a contempt of court, to be punishable accordingly," be expunged.

The ATTORNEY GENERAL (Hon. R. J. Walcott) warned hon. members not to give too much power to trustees, or they might make ducks and drakes of the money.

Mr. STEERE felt it was rather difficult to know what was contempt of court; no person would act as trustee, if that penalty was left in the Bill.

Clause postponed.

Clause 55—

Mr. STEERE asked the meaning of the words "from time to time as may be prescribed." Was the time prescribed by the Ordinance itself?

Clause postponed.

Clause 58—

Mr. SHENTON enquired as to the power of Local Courts.

The COLONIAL SECRETARY (Hon. F. P. Barlee) explained this power.

Clause agreed to.

Clause 61—

Mr. LOGUE objected to this clause altogether; under it any clerk of the Local Court would have the power of the judge. It could be delegated to him.

The COLONIAL SECRETARY (Hon. F. P. Barlee) called the hon. members' attention to the words, "as may be expedient."

Mr. LOGUE objected to it.

Mr. BROWN: The magistrate is liable for acts done by his clerk, as himself.

Mr. STEERE objected to such power being given to clerks of Local Courts.

Mr. LOGUE contended the clause should be struck out.

Mr. STEERE moved that words conferring that power be expunged.

Mr. DRUMMOND said that magistrates are responsible for the acts of the clerk of the Local Court. For magistrates of Local Courts to do all the work would be impossible.

Amendment not agreed to.

Clause agreed to.

Clause 63—

Mr. STEERE moved that after the words authorizing the Chief Justice with the sanction of the Governor, to draw up a scale of fees, to insert after the word "Governor" the words "and the Legislative Council." He considered it was objectionable to leave the scale of fees; they ought to be told what the scale of fees are to be, and not give the Chief Justice power to do so, with the consent of the Government.

Mr. SHENTON: The Government charge of 5 per cent. was one of the greatest objections at the present time.

Mr. STEERE: The Government get 5 per cent. commission on estates.

The COLONIAL SECRETARY (Hon. F. P. Barlee) pointed out that the Supreme Court has always drawn up the scale of fees; under the old Act there was only an official assignee; now there could be a trade assignee, who would be able to protect creditors' property to whom it belonged. The Chief Justice, who had the management of the Supreme Court, would draw up the scale of fees, and when approved be laid on the Table of the House. He could not see why the same course could not be adopted now.

Mr. SHENTON: The Government charge 5 per cent. over and above the cost of office.

The ATTORNEY GENERAL (Hon. R. J. Walcott) begged to say no salary was paid to the Official Assignee.

The COLONIAL SECRETARY (Hon. F. P. Barlee): In this colony, yes. He always considered 5 per cent. too high for winding up of accounts.

Mr. SHENTON: The 5 per cent. the Official Assignee was entitled to.

The COLONIAL SECRETARY (Hon. F. P. Barlee) had always considered 5 per cent. too high. The Official Assignee and Master of the Supreme Court now get £275 per annum. If business increased it might be desirable to raise that salary. The fees should be

sufficient to prevent the Government being out of pocket.

Mr. STEERE did not see why the fees should have the sanction of the Governor: he had nothing to do with it.

The ATTORNEY GENERAL (Hon. R. J. Walcott): There is no Parliament without the Queen.

Mr. STEERE: Nor no Legislative Council without the Governor.

The COLONIAL SECRETARY (Hon. F. P. Barlee): In the other colonies the same course is adopted as here.

The ATTORNEY GENERAL (Hon. R. J. Walcott): It was not probable that the Chief Justice would propose a scale of fees that the Governor would not approve.

Mr. STEERE: They might be objected to by the House.

Mr. SHENTON moved that the fees now paid under the 20th Victoria No. 10 be the scale of fees.

The COLONIAL SECRETARY (Hon. F. P. Barlee): One Act might not be applicable to another.

Mr. STEERE: The scale of Government fees must have the consent of the Legislative Council.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said that until the Bill is passed a scale of fees cannot be drawn-up—it would be morally impossible to do so. No person could tell what fees might be required. The scale of fees, as soon as compiled, could be laid on the table for the consent of the House.

Mr. LOGUE: Before the Act passed, the scale of fees ought to be approved by the Legislative Council.

The COLONIAL SECRETARY (Hon. F. P. Barlee): It would be impossible to do it. The scale of fees could not be done until the Act was passed.

Mr. SHENTON suggested the words, "with the sanction of the Governor, and the consent of the Legislative Council."

Mr. STEERE asked to have a scale of the fees drawn up they could approve of.

The COLONIAL SECRETARY (Hon. F. P. Barlee): The Chief Justice would draw up the scale of fees, and if not approved of, it would be amended. He saw no difficulty that could occur.

Mr. LOGUE: If we pass that clause as it stands, it would take it out of our power.

Mr. BROWN said that what was proposed by the hon. member for Wellington would meet the case fully. The scale of fees under this Act might be quite decided by adopting the same scale as under the English Act.

Mr. STEERE claimed it was not possible to insert that scale of fees before the Bill passed.

The COLONIAL SECRETARY (Hon. F. P. Barlee): Each clause requires specific rules, and each would entail specific expenses. How was it possible then to draw up a scale of fees until the Bill was passed?

Mr. STEERE: The scale of fees could be adopted with the consent of the House.

The SPEAKER considered it was desirable to pass the Bill. The charge of 5 per cent. was too much. There was a strong feeling against that charge. He would not leave the scale of fees to the Governor on the recommendation of the Chief Justice.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said it was in the power of the people to avoid the charge themselves by not employing the Official Assignee to wind up their estates.

The SPEAKER: The Chief Justice's scale should be with the sanction of the Legislative Council.

Mr. SHENTON urged his former proposition.

The ATTORNEY GENERAL (Hon. R. J. Walcott) said that the fees under that Act were nearly word for word with those in England.

Mr. STEERE contended for the words, "with the consent of the Legislative Council."

Mr. DRUMMOND: The late Act provided for a charge of 5 per cent. It could not be so now, as it was not provided.

Mr. LOGUE: The principle affirmed is, that not the Chief Justice, but the House, has the power of confirming it.

Mr. STEERE then moved his amendment.

The SPEAKER moved an amendment on the amendment of the hon. member for Wellington, that the words "Chief Justice" be left out altogether, and the words, "Legislative Council with the consent of the Governor," be substituted.

The ATTORNEY GENERAL (Hon. R. J. Walcott) asked who gave sanction to the fees charged by Her Majesty's judges. It was Her Privy Counsellors. If the matter was pressed, the Act would be inoperative that session. If the fees were not left as required, they would simply stultify the Act.

The SPEAKER requested the motion to be put, so as to save the time of the House.

The ATTORNEY GENERAL (Hon. R. J. Walcott): The Bill must be withdrawn.

Mr. DRUMMOND suggested that the clause be passed for the present.

Mr. STEERE: What was to prevent the Chief Justice charging 5 per cent.?

The ATTORNEY GENERAL (Hon. R. J. Walcott): His moral duty.

The SPEAKER said that the hon. gentleman had not been in the colony so many years as some of them, or he would have seen things carried out here that in other parts of the world must have been a moral impossibility. He objected to the imposition of 5 per cent., and he should be wanting in duty, did he not protest against it. As the subject has been thoroughly ventilated, he would leave the clause as it was, rather than keep back the Bill.

Mr. BROWN thought they ought not to be afraid of spending a little time in discussion.

The COLONIAL SECRETARY (Hon. F. P. Barlee) looked upon the proposal of the Speaker, to leave out the words "Chief Justice," a slight upon the Chief Justice. The Chief Justice could compile a scale of fees, which could be submitted within a week, to the House. Did he expect to hear the suggestion less than from the Speaker of the House? The judge, who had the management and framing of the Rules of the House, was the best person to frame a scale of fees. He considered there was, at least, a want of courtesy in the amendment.

The SPEAKER had little regard for what had been said by the Hon. the Colonial Secretary. He had no desire to interfere with the Rules of the Court, but he objected to the charge of 5 per cent. He did not intend anything offensive to the Chief Justice, nor could his remarks be so construed.

Mr. STEERE commented in reference to the striking out of the words "Chief Justice." If his amendment had been carried, the Bill would not come in force that session and the Speaker desiring to have it in operation immediately, would strike out the words, so as to overcome the difficulty. There was no disrespect to the Chief Justice whatever.

Mr. SHENTON suggested that the Government scale of fees might be laid on the table, in 10 days, for the sanction of the Council.

Mr. BROWN concurred with Mr. Shenton that that was the most reasonable course under the circumstances.

Clause agreed to.

Sitting suspended until 8 p.m.

Resumed debate.

Clauses 70 to 108 were passed without amendment.

Clauses 54 and 55—

A long discussion followed on clauses 54 and 55 which had been postponed for further consideration.

Mr. STEERE moved, for reasons he had given, that after the words "prescribed time" the words "two months" be inserted.

Mr. LOGUE moved the insertion of the words "without reasonable cause"—so that with that condition a trustee could not always be adjudged guilty of contempt of court.

The COLONIAL SECRETARY (Hon. F. P. Barlee) deemed the fears of the hon. member chimerical.

The SPEAKER said the Bill was an excellent one, and it should be passed with as few amendments as possible.

The ATTORNEY GENERAL (Hon. R. J. Walcott) could not but view the fears of trustees, who had done their duty, being punished, groundless.

Mr. LOGUE could see no objection to the insertion of the words he had mentioned.

Mr. BROWN was in favor of the amendment of the hon. member for Geraldton.

Mr. STEERE would not withdraw his motion, if contempt of court was definable.

After a few observations from the ATTORNEY GENERAL, Mr. SHENTON, and Mr. LOGUE, the amendment of that gentleman was put and agreed to.

Clauses, as amended, agreed to.

Bill reported, with amendments.

#### FRAUDULENT DEBTORS BILL.

Second Reading.

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that the Bill be now read a second time.

The Bill was read a second time.

In Committee.

Mr. SHENTON suggested that Act 20 Victoria No. 9, should not be repealed.

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that it be considered at a future time.

Motion agreed to.

Progress reported, and leave obtained to sit again.

#### LUNACY BILL.

Second Reading.

The COLONIAL SECRETARY (Hon. F. P. Barlee) moved that the Bill be now read a second time.

The Bill was read a second time.

In Committee.

Clauses 1 to 11 agreed to.

Progress reported, and leave obtained to sit again.

The Council adjourned at 11.15 p.m.

#### LEGISLATIVE COUNCIL,

Monday, 19th December, 1870.

Swearing in of Member—Bankruptcy and Insolvency Bill—Railway and Telegraph Bill; first reading—Land Regulations: select committee—Loan—Fraudulent Debtors Bill: in committee—Lunacy Bill: in committee—Public Pound Bill, 1861: second reading—Capital Punishment Bill: second reading: in committee—Electro-Magnetic Telegraph Company Bill: second reading: in committee—Sale of Fermented and Spirituous Liquors Bill: second reading—Repeal of License to Kill Kangaroos Bill: second reading: in committee—Third Readings—Trespass by Herds of Wild Horses and Cattle: select committee report.

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

#### SWEARING IN OF MEMBER.

The SPEAKER administered the Oath of Allegiance to the new Surveyor General (Hon. M. Fraser), who thereupon took his seat.

#### BANKRUPTCY AND INSOLVENCY BILL.

The COLONIAL SECRETARY (Hon. F. P. Barlee) said that before proceeding to the order of the day he would refer to what took place in the House on Friday last, during the discussion on the Bankruptcy Bill. Since then he had been assured by his honorable friend the Speaker that what he had said that day respecting the Chief Justice was not intended in any way to reflect upon His Honor. He was quite ready to accept that assurance, which was satisfactory. Under a sense of duty to the Government, and his position in the House, he felt called upon to make the remarks he had, and nothing was more painful to him than to wound the feelings of his honorable friend. Having regard to his duty to the Government, and the dignity of the House, he was sorry any hasty words had fallen from him.

The SPEAKER was certainly much astonished at the Hon. the Colonial Secretary's remarks, and so were the members of the House, as he had made no reference whatever to the Chief Justice on Friday; with the explanation given by the Hon. the Colonial Secretary, he was willing that the affair be entirely forgotten.

#### RAILWAY AND TELEGRAPH BILL.

First Reading.

The COLONIAL SECRETARY (Hon. F. P. Barlee), in accordance with notice, moved for leave to bring in a Bill to make provision for the more effectual protection of railways and electric telegraphs.

The Bill was read a first time.