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LEGISLATIVE COUNCIL.

LAND CLAIMS.

(Continued from the Supplement to the Gazette of April 6.)

His Excellency then said, that the preamble was carried in their favour, but as the three hon. gentlemen who were not members of the Executive Council had voted against the government, he should not proceed with the bill.

The Colonial Secretary then moved—That the further consideration of the bill be adjourned *sine die*.

Mr. Earp seconded the motion, which was carried unanimously.

The Attorney-General then rose and said, I quite concur in the policy of the government in declining to carry this bill against the almost unanimous feeling of the Land Claimants, and the opposition of the un-official members of the Council. No law can be advantageous, by being brought into operation against the feelings of the community at large; and, I do not hesitate to admit that this measure would fail in its object, opposed by almost all the parties most nearly concerned in it. As the measure brought under the consideration of the Council for the settlement of this question has gained, for the government, nothing but unpopularity, I am anxious to avow my own share in it. I believe that, from first to last, all the members of the government have been unanimously of opinion that, if carried into operation with the concurrence of the land claimants, it was calculated, in a high degree, to promote their interests. But, if there is one member of the government who has taken a greater share than another, in originating, devising, and endeavouring to carry the measure, it is myself. If, therefore, any member of the government deserves, on that account, more odium or more unpopularity than another, I am the man. I entertain a confident expectation, however, that no long time will elapse before the more right-minded of its opponents will regret having in the warmth of their feelings indulged suspicions and imputed motives derogatory to the character of the official Members of the Council; and, will be first to admit that the measure was proposed for their own benefit, and that, in scornfully rejecting that measure, they will discover, when too late, they have taken a step ever to be regretted, but never to be repaired.

Mr. Porter could not possibly understand the last observation of the honorable member. It seemed to imply that the colonists were not capable of judging with regard to their own affairs.

Mr. Earp observed that the feelings of the colonists with regard to this measure hereafter, so far from partaking of regret, would be subject of congratulation, on the certainty that a measure had been defeated deeply injurious to their interests.

The Attorney-General observed that he would be the last man in that Council to hold out any thing like a threat, or to cast any reflections on the colonists, but what he intended to convey was, that either from misapprehension, or misrepresentation, the colonists were taking a course which could not conduce to their own permanent prosperity.

Mr. Porter could not but regret that something like a threat had been held out with regard to the effect which the course taken by independent members of Council would eventually have. No satisfactory answer had yet been given, in reference to the question which had been put, on the subject of fixing boundary lines for the projected settlements, and their extent.

The Colonial Secretary.—I beg to remind honorable members that, in all the discussions on this Bill, official members of Council have, very earnestly, repudiated any desire of pressing it against any strong opposition, or manifestation of public feeling. His Excellency the Governor, in his speech on the opening of Council, distinctly stated that the measure now before the Council had been prepared, because the one adopted by the Legislative Council of New South Wales had been generally deemed unsatisfactory, as not calculated to effect a speedy settlement of the question. With respect to the intimation that Government has now no alternative but to revert to the Bill of New South Wales—and which has been wrongfully construed into a threat—it must be remembered that Sir George Gipps' Bill is now the law of the land, and can, of course, remain as it stands, with such modifications as are pointed out in instructions from the Secretary of State. One of those instructions is, that the same rule, as near as is possible, shall be applied to individual claimants as that which has been agreed upon between the Government and the New Zealand Company. For this provision was made in the Bill now withdrawn. The opposition to the present measure has certainly sprung up rather suddenly and unexpectedly; but I can scarcely believe that the non-official members of this Council attribute to the official members that with which they are charged out of doors. It has been publicly stated, and published that some trick has been attempted, but which was first detected and exposed by the non-official members. One writer had gone so far as to say that a job had been concocted, and that the entire measure was framed with a view to obtain the property of claimants by a trick. I will not admit that the Government has lent itself to any thing so despicable. I mention the fact now, in order to give Mr. Porter and Mr. Earp, the honorable members adverted to, an opportunity of contradicting the statement. Those gentlemen have never, in any stage of the proceedings in this Council, uttered opinions so disparaging to the Government. The Government proposed the Bill, now withdrawn, as a boon to the colonists, and the simple question was, whether they would accept it or not.

Mr. Porter had never accused the Government of any trick. He himself had not taken any part in the proceedings out of doors. The Attorney-General, on a former day had stated to him, that the lease he proposed was available property for sale, or otherwise disposing of it, but on the following day, to his astonishment, he stated in Council, that the object in making a lease was to prevent the sale of lands granted.

The Governor remarked that a lease for thirty or sixty years, more especially where a portion of the land had been cultivated, made that an available property in a mercantile point of view, the same as any other lands held under similar tenure.

Mr. Earp said the impression created on his own mind, by the amendments proposed regarding leases, and the explanations given of those amendments was, that their adoption would put the settlers in a worse position than that which they occupied when the Bill was originally proposed. The same opinions were entertained by his honorable friend (Mr. Porter), and this impression gave rise to the opinions and published statements to which the Colonial Secretary had alluded.

The Colonial Secretary would ask to what had they given rise?—A false assertion!

Mr. Earp would repeat, that the conversation which he had overheard with a member of the Executive Council (the Attorney-General), and the explanation of the amendments, together with what he had heard out of doors, left an impression upon his mind that the object of the clause regarding leases was to prevent parties from selling their lands. They had admitted that.

The Colonial Secretary must say that the Government could not be answerable for the false reports to which idle or mischievous persons might give currency; and members of council, as well as other intelligent members of the community, should be more cautious in giving credence to such rumours. It had been expressly stated that Government had endeavoured to carry this important measure by a trick, and that the two honorable members present had succeeded in detecting the job.

Mr. Earp felt it necessary to repeat again, that both Mr. Porter and himself were certain that the proposed amendments to the Bill, so far from benefiting the settlers, would, if carried, inflict upon them a deep injury. He (Mr. Earp), certainly understood the Attorney General, in a conversation which, he must admit, was carried on in an under tone, that the object of the alteration regarding leases was, to prevent lands now claimed from being made the object of bargain and sale.

The Attorney-General rose, but gave way to the Governor.

His Excellency said he thought he should be enabled to set this matter right. The Attorney-Ganeral, on being asked (as the honorable member has said) an important question in an under tone, gave his opinion as a lawyer, rather than as a Member of Council. The question was, would the granting of a lease give to the property an available value? A person purchasing the interest in a sixty years' lease, would know that he must, at the expiration of that period, give up possession. The granting of a lease to the claimants could not be considered as equal to a *fee-simple* in the estate, and this distinction appeared to have been overlooked by many gentlemen who had taken alarm. He would repeat, however, that a lease of sixty years, of an extensive and valuable estate, was an available property.

The Attorney-General said, that the lease would

be valuable for agricultural pursuits. If the parties had titles in fee simple, they could then make townships; the leasehold would not be valuable for this puspose.

The Governor.—The Bill was originally framed upon that principle, until the addresses were received from Kororarika. If grants were made in fee simple, in accordance with the opinions of the Attorney-General, towns would rise up in every direction, when probably the Council would be called upon to tax uncultivated lands.

Mr. Earp said, every one would agree to that. When this done the colony would rapidly advance. —If a man possessed a large quantity of land, the greater part of which was uncultivated, and for which uncultivated land he had to pay a tax, he would immediately endeavour in England, or the adjacent colonies, to sell portions of his land to people who would settle upon and cultivate it; this would answer his purpose, for in the first place he would thus diminish the amount of his annual tax, and in the second, he would derive capital from the sale of his land.

His Excellency thought that the fraud would be practised by such a measure would be inconceivable, and would require all the vigilence of the Government to prevent it.

Mr. Porter said, that many had stated that they would prefer that mode to any other.

The Colonial Treasurer said no Bill of that description could be carried out in this colony, for there would be nothing but grumbling and growling until a fresh and more wholesome one was substituted for it.

Mr. Earp said, he should very much like to have a grant of 10,000 acres, on condition of paying a small tax.

The Governor replied, that he should be glad to gratify the honorable gentleman with 10,000 acres, on receipt of £10,000 as purchase money.

His Excellency then put the question that the further consideration of the Bill be adjourned *sine die*, which was agreed to unanimonsly.

The Council then adjourned.

Friday, February 8, 1842.

All the Members were present, except Mr. Earp.

The minutes of the previous Council were read and confirmed.

THE LICENSING BILL.

The Colonial Secretary having moved the order of the day,—

The Attorney General moved that the Council do consider the Licensing Bill in Committee; which was seconded by the Colonial Treasurer and agreed to.

The Clerk of Council then proceeded to read the bill, when clauses 1 to 11 were agreed to without alteration.

Clause 12 having been read, Mr. Clendon moved, according to notice, that in the 73rd line, after the word "recognizances," the remainder of the clause be struck out, and the following words inserted;—"to the Registrar of Deeds in the district, to be filed in his office." His reason for moving the amendment was, that the jurisdiction of the County Courts only extended to £10, while the parties were, by the bill compelled to enter into recognizances, with two sureties, in the sum of £50, with certain forms and conditions.

The Attorney General explained that the recognizances of licensed persons under the act would be forwarded to the Registrar of the district. In England, where District Registry Offices have not been established, these documents were forwarded to the Clerk of the Peace. In this Colony there are no Clerks of the Peace, but Clerks of Courts would keep an account of these documents, and forward them to the proper quarter.

Mr. Clendon then begged permission to withdraw his amendment, and it was ordered that the original clause do stand part of the bill.

Mr. Clendon then moved that the 13th clause be expunged. In 9 cases out of 10, he said, parties infringing the law have not personal property to the amount of the fine, and, therefore, unless you levy on real property how is the £50 to be recovered? The sureties are the parties who must be looked to.

The Attorney General—If the property and effects of the licensed party is of little value, it is for the Police Magistrate to see that the sureties are sufficient for the payment of any penalty that may be incurred. Should there be reason to suppose that the property of any party offering himself as surety is encumbered, the fact can be ascertained on applying at the office of the Registrar of the District.

Mr. Clendon—I have known several instances where parties have contrived to erect a weather-boarded house, commenced selling spirits, and other liquors, when their furniture and effects would not, if put up for sale, realize five pounds.

The Governor—In such a case the sureties would be made responsible. The Crown would always be first served.

Mr. Clendon expressed himself satisfied with these explanations, and withdrew his motion. It was then ordered that clause 13 do stand part of the bill.

Clauses from 14 to 18 were then severally read, and agreed to without alteration.

Mr. Clendon then moved that the following words be inserted between clauses 19 and 20: "The Governor shall have power to grant a license at any period of the year, upon petition signed by two justices as aforesaid, subject to the provisions herein contained."

The Attorney General—I think it may be advisable to introduce a clause to provide for the licensing of houses in new Settlements, now forming, or which are about to be formed, such as Nelson and New Plymouth. I would propose that it shall be a general clause, authorising the granting of licenses at other periods of the year than

at the usual time. It is desirable, however, that there should be some regular period for the granting of new licenses, and the renewal of licenses already granted throughout the colony, and the bill fixes the first of April as that period. To meet the wants of emigrants arriving at new settlements, it may be enacted that licenses may be granted by any two justices for the district, the Police Magistrate being one. In its proper place I shall propose a clause to this effect.

Mr. Clendon—The plan of the Attorney General may meet the difficulty. It would be very hard that a person arriving in any part of this settlement in May, bringing out with him all the necessary materials for establishing a board and lodging house, should be obliged to wait until the April following before he could obtain a license.

The Colonial Treasurer—I agree with Mr. Clendon. It is a very probable thing that persons will come out to the colony, with the express intention of keeping houses of the description mentioned, and who will bring with them all the necessary property for such purpose. It would, therefore, be inconvenient, and subject such persons to serious loss, if they could not obtain a license for eleven months.

The Attorney General—It is to be supposed that, in districts already located, the magistrates have granted, at the annual licensing meeting, such a number as are necessary for the ensuing year. It is desirable that the power of granting licenses shall be confined to magistrates presiding in districts newly opened.

The Colonial Treasurer—In the case of a large body of emigrants arriving, the population would be greatly increased. It might, therefore, be necessary to have an additional number of public houses for their accommodation.

Mr. Porter—I agree with the Colonial Treasurer. There might be an arrival of two or three hundred emigrants in a short time; and I really do not see that any injury can arise by adopting the amendment.

The Governor—At New Plymouth a sort of monopoly has been created, where the vending of fermented and spirituous liquors is confined to one or two individuals. The Police Magistrate has taken upon himself to grant licenses to retail fermented and spirituous liquors on his own responsibility, having no authority so to act. If one public house is necessary for the wants of a community, it is right that a license should be granted; but, if two will lower the price of the articles vended without injury to the morals of the people, I do not see why a second should be withheld. It would, at least, have the effect of counteracting the practice of illicit vending of spirits.

The Attorney General—When application is made to the magistrates for a license in any new district, it will be for them to consult on the propriety of granting it; and to exercise their best discretion, after ascertaining whether such license, or additional license, is necessary.

Mr. Clendon having again read the clause,—

The Governor said—The most constitutional authority to regulate such affairs are the magistrates, and the bill is framed for their guidance. The Government can have nothing to do with the details of such petty affairs.

The Colonial Treasurer—Any modification of the Attorney General's amendment will meet the case.

The Attorney General—One reason why I urge the amendment is, that a person has gone to a distant part of the country, under the impression that this bill will become the law of the land, and I do not wish that he should be deceived by discovering that he has been retailing spirits, and other liquors, illicitly.

Mr. Clendon then withdrew his motion, with an understanding that the Attorney General would introduce his amendment in the proper place.

Clause 20 having been read, Mr. Clendon moved that after the word "day," in line 123, "the remainder of the clause be expunged." He thought little need be said on the necessity of closing public houses on the Sabbath day.

The Governor—It is quite right, in the moral and religious view of the subject, that public houses should be closed as much as possible on Sundays. But, we must look to what is practical, as well as to what is proper. If the law is made too stringent we shall defeat our own object; for the governed will endeavour to violate it. I am not an advocate for that species of legislation which is likely to create dissatisfaction, and thus induce parties to devise means of setting the law at defiance. People from ships, called "liberty-boys," are only allowed to come on shore on Sundays for recreation, and if such persons could not obtain spirits of the publican, at stipulated hours, they would most certainly procure the means of gratification in some other way, more offensive to the law and to morality, and thus a greater violation of the Sabbath be committed. With a very good constabulary, public houses may be kept under proper regulation. If constables do their duty, of a choice of evils the least will be to carry the law into effect as it stands. Besides, if licensed houses were entirely closed throughout the whole of the day, many parties in want of necessary refreshment, would be put to very great discomfort and inconvenience. I think, however, that the hours of opening on Sundays should be restricted as much as is practicable, and that they should be finally closed at seven o'clock in the evening.

Mr. Porter—I quite agree with his Excellency that it is very unwise to make laws which, it is certain, will be violated. I think that eight o'clock would not be an unseasonable hour.

Mr. Clendon—If the grog-sellers violated the law, they would incur the penalty of losing ther license.

The Governor—I conceive that to deprive a publican of his license is too great a punishment for the offence; and should prefer the substitution of a fine. In the case of an individual los-

ing his license, it might be the means of ruining him irretrievably, and deprive himself and family of the means of subsistence. Many publicans have all their property embarked in their business, and are under mercantile obligations, which a deprivation of license would prevent them from meeting.

Mr. Clendon—My only desire is, to effect a public good.

The Colonial Secretary—The object of the hon. member is, no doubt, to prevent any unseemly violation of the Sabbath; and, in a desire to enforce a proper observance of the Lord's day, I feel as strongly as Mr. Clendon. We have heard a great deal of Sabbath legislation in England, and of the numerous attempts to enac stringent laws on the subject proving abortive. In London, and many other large towns, where the Police force is numerous, active, and under the strictest discipline, it is found impossible to prevent the law, with regard to the regulation of public houses on Sundays, from being evaded, and those violations are the more frequent, in proportion as the law is made more stringent. I entirely concur with his Excellency, that we must not only consider what is proper, but what is practicable. If I could be satisfied that Mr. Clendon's amendment would be really operative, I would with pleasure second it. But, so far from having the effect of preventing people from drinking on Sundays, I feel convinced it would create an increase of the evil. If persons could not obtain liquor in the town they would go into the country—and if the licensed public houses were closed against them, they would obtain spirits illicitly. Such a regulation as that now proposed would be altogether ineffective.

The Colonial Treasurer—I think it is a great evil that the Council should legally sanction what is improper to be done. Pblic houses ought not, in my opinion, to be opened at all on the Sabbath day, and I, therefore, quite coincide in the propriety of Mr. Clendon's amendment.

Mr. Porter—You cannot thrust a measure of that description down the people's throats.—Nothing is more certain than that your law would not only be violated, but that you would, in effect, encourage the opening of sly grog-shops, where there would be not only a greater consumption of spirits than in licensed houses, opened at specified hours under regulations, but the revenue would also suffer from your having rendered profitable an illicit trade.

The Governor—Those who have attended to the debates in the House of Commons on this subject must be aware that members in that august assembly have been obliged to vote against measures, the principles of which they approved, because they felt convinced such laws could not be protected from infringement.—Many hon. members had voted, on this ground, against the Sabbath-bills of Sir Andrew Agnew. They saw that it was impracticable to carry his views into effect, and rather than enact a law which was certain to be violated, and thus bring the law into disrepute, they had adopted the other course, and voted against it. Sir Andrew Agnew's plan would have not only prohibited Sunday grog-selling, but travelling, the opening of bakers shops, the sailing of ships, and other things of the like nature, which hon. members saw could not be prevented.

Mr. Clendon—This being a new colony, we are presented with a fitting opportunity of trying the experiment.

The Governor—I do not think it judicious for one colony to stand alone in this matter. I would rather first see the adoption of such a measure in the parent state. If this was done many of the difficulties in practice would be at once removed.

Mr. Porter.—Restrictions, more especially when opposed to the habits of the people and the present state of society, will not have a tendency to make men temperate. No such stringent law exists in the West Indies.

The Colonial Treasurer—(Looking round the Council-room), I do not know whether any person is present from the land-o'-cakes; but, in Scotland public houses are always closed on the Sabbath-day, and I do not believe that the restriction leads to the consumption of spirits illegally obtained. Such may be the effect in the penal colonies by which we are surrounded, but in this free colony I should very much like to see a legislative enactment similar to that of Scotland.

The Colonial Secretary—By the clause now under consideration it is not meant that persons shall abuse the privilege of visiting licensed houses at specified periods. If the regulation is infringed upon, the offenders are liable to punishment. I agree with Mr. Porter, that the morals of the people are not to be preserved by enactments which are offensive, because generally disapproved. If one man is determined to get drunk, that is not a sufficient reason why we should debar the rest of the community from entering a tavern; and transgressors of the law may be punished by the Police Magistrate. I will not oppose persons going to taverns at proper hours. We have all the same object in view; and I do not think that, in voting for this clause, I am injuring the morals of the people.

Mr. Porter—It is the abuse, and not the use, of liquors that constitutes the evil. I would ask the hon. members (Mr. Clendon and the Treasurer), whether taking a glass of wine on a Sunday is considered to be immoral or intemperate? If it is not, let the poor man enjoy his glass of ale or grog.

The Colonial Treasurer—If a public house is thrown open, parties may be induced to enter, and if so inclined, get drunk: whereas, if the doors are closed, persons will not think of drinking.

The Colonial Secretary—What is the use of shutting the front door, when parties can enter by the rear?

The amendment was then put, that in clause 20, after the word "day," in line 123, the remainder of the clause be expunged. The numbers were:—

Ayes—The Colonial Treasurer,
Mr. Clendon.

Noes—His Excellency the Governor,
The Colonial Secretary,
The Attorney General,
Mr. Porter.

The question was then put that clause 20, as originally proposed, do stand part of the bill.

Ayes—His Excellency the Governor,
The Colonial Secretary,
The Attorney General,
Mr. Porter.

Noes—Mr. Clendon,
The Colonial Treasurer.

Mr. Clendon then moved that clause 21 be amended as follows:—after the word "innkeeper," erase "not exceeding three in any borough." The population, in the settled districts, more especially in places which aspire to the rank of boroughs, (the hon. member observed), will, in all probability, increase, and this would render necessary an increase in the number of night-licenses. I think, however, that licenses authorizing the keeping open of houses to a late hour, should only be granted to innkeepers, and not to publicans in the general acceptation of the word.

The Attorney General—Night licenses are, like many other things, a necessary evil; but I am of opinion that the granting of them should be restricted within certain bounds and defined limits, so as to prevent, as much as possible, those evils which would arise if the privilege of keeping open at late hours was granted to improper characters, or to houses where a night license was not absolutely necessary to the public convenience.

Mr. Porter—I think that the Magistrates should have power to grant a greater number of night-licenses than three. It is reasonable to suppose that Auckland, being the seat of Government, will increase in population in a larger ratio than any other town established in the colony; and to restrict the night-licenses to three is too narrow a limit for the wants of the community. I also think that to compel innkeepers, not having night-licenses, to close at ten o'clock, is too early an hour for respectable persons to be compelled to separate at a tavern; affairs of business might sometimes detain them to a late hour.

The Governor—Parties whose business is likely to detain them to a later hour than ten, may resort to a tavern having a night-license, where they may remain until twelve o'clock, at which time the bar, or tap, of the innkeeper must be closed. I am of opinion, however, that at present, three night-licenses are sufficient for Auckland; although, perhaps, more may be required at Wellington, where the houses are wide apart.

Mr. Porter—Though in favour of an increase of night-licenses, I would, at the same time, increase the price, with a view to the exclusion of improper applicants.

The Colonial Treasurer—For a night-license an additional sum of £20 might be charged, which, added to £40, will be £60.

Mr. Clendon—I think it will be sufficient to make the night-license half the amount additional. The ordinary license being £38, one-half added would increase the night-licenses to £45.

The Governor—No! The ordinary license is, in a borough, £40.

Mr. Clendon—Innkeepers ought to be allowed to supply their lodgers—those who reside in the house—after the hour of twelve.

Mr. Porter—No law can prevent parties from remaining up to a late hour, at inns. If so disposed, you may depend upon it, they will keep it up in spite of every thing.

The Governor—According to the bill, the traveller cannot obtain wine or spirits, or other liquors, after twelve at night; at which time, as I have said, according to law the bar must be closed. But it is well understood that, pending the hour mentioned, the inmates of an inn can order as much liquor as they may require before retiring for the night, and take it at their leisure.

Mr. Porter—A night-license will shortly be necessary on the beach, for persons arriving or departing in boats, late at night, or early in the morning; and if the night-licenses are limited to three, much discomfort and inconvenience may arise.

The Colonial Secretary—If it were practicable I should prefer that night-licenses should not be granted at all; but, since it is necessary they should be allowed, I think the granting of them should be left to the discretion of the magistrates, rather than that the number should be limited by the bill.

The Attorney General—As I have already remarked, I should advise the number of night-licenses to be limited. With regard to the amendment, I wish to know whether it is intended to confine the granting of night-licenses to boroughs. If such is not the object of the Council, it will be necessary to erase the word "borough."

The Colonial Secretary,—A night-license might be necessary in one place, and not in another.

The Governor—With regard to the description of houses to which it would be proper to grant night-licenses, I should say that such inns as Mr. Wood's and Mr. Watson's, should have the privilege, if the parties applied for it. As a magistrate, I should say that no such house as any at the Pah, at the Bay of Islands, deserve the appellation of an inn. If magistrates cannot exercise a sound discretion in such cases, they are unfit for the posts they hold. I do no-

think it would be desirable to allow night-licenses to houses situated out of town.

The Colonial Secretary—I think there are instances where night-licenses may be granted to houses not situated in the town. I should say that the Prince Albert inn, at Epsom, comes within the meaning of the act. Sitting as a magistrate on the bench, I should not feel myself justified in refusing a night-license to the Prince Albert. I think any respectable house, at the road-side, where coaches call, and to which travellers are likely to resort for refreshment, might be called an inn. Eventually, as in New South Wales, applications will be made for night-licenses from all parts of the colony.

Mr. Clendon's motion, to erase the words in clause 21, "not exceeding three in any borough," was then put from the chair, and agreed to. The clause, as amended, was then ordered to stand part of the bill.

Clauses 22 to 26 were agreed to without alteration.

Mr. Clendon then moved the following additional clause, between clauses 26 and 27 :—"Any constable may demand entrance into any licensed house, at any hour, upon information that this Ordinance is contravened; and unnecessary delay in giving admission to such constable may, upon the hearing of the case by the Police Magistrate, subject the parties so offending to the penalties herein contained."

The Attorney General—There does not appear to be any necessity for the additional clause introduced by the hon. member; for, as the law now stands, constables may demand admittance to licensed houses; but the publican may refuse to open his door. If the constable, however, has good reason to suppose that some offender is concealed in the house, whom it is his duty to apprehend; or, if he has become aware that gambling, or other illegal practices was going on, the refusal of the publican to permit the constable to enter, would be reported to the magistrate, who would not renew the license on the next licensing-day.

The Governor—According to the law of England, the house of no man can be forcibly entered without a search-warrant.

Mr. Clendon—It is not intended that the constable shall forcibly enter. If refused admittance, he would apply to a magistrate for a search-warrant. Under the New South Wales Act, a publican at Kororarika was deprived of his license for refusing admittance to a constable.

The Governor—It is certainly in the power of any publican to refuse admittance to his house, on demand; but it is still necessary that, on proper occasions, constables should be permitted to enter licensed houses. From the contiguity of New Zealand to penal settlements, it is perhaps necessary that the law, in this respect, should be more stringent than in other free colonies. We are in proximity to penal settlements; and, if the population of this colony was strictly searched, it would be found that a certain portion of bad characters are from New South Wales. These persons, it is but reasonable to suppose, have brought with them the vicious practices to which they were accustomed there.

The Attorney General—The power of forcible entry is given to constables in New South Wales, where a considerable portion of the population are, or have been convicts, so as to prevent offenders from escaping. As I have said, constables in New Zealand can demand admittance without the clause; and, if not allowed to enter, the Police Magistrate would refuse the license when a renewal of it was applied for.

Mr. Porter—In that case a publican who had harboured improper characters, or permitted illegal proceedings in his house, would escape until the next licensing-day. The offence might be committed immediately after the annual licensing meeting, so that a publican of very bad character and conduct might be allowed to retain his license for eleven months. I certainly see no harm in Mr. Clendon's additional clause, and have pleasure in seconding the motion for its adoption.

The Colonial Secretary—I think the additional clause proposed by Mr. Clendon would, if adopted, place too much power in the hands of constables, and which they are liable to abuse. Some of the constables in this colony are not the best of characters, and to give them an arbitrary power of entering a public-house whenever they think proper to demand admission, cannot fail to cause great dissatisfaction. A strong instance occurred, some time ago, at Kororareka, where a complaint was made of a constable having exercised improper authority in entering a house there. If licensed persons refuse to open their doors, when a constable demands admittance, the circumstance can be reported to the Police Magistrate, who would make himself acquainted with the grounds of suspicion, and the probable cause of refusal. I cannot consent to give constables the right of acting without warrant or authority, although I would invest Police Magistrates with very high powers.

Mr. Clendon—The additional clause now before the Council, provides that a constable can only "demand entrance, into any licensed house, at any hour, upon information that this Ordinance is contravened." He is not to demand entrance except he has received "information" of something wrong. If a constable exceeds that power, he is liable to punishment.

The Colonial Secretary—The clause provides that the constable may act "upon information," but it does not say that the party informing must go before a magistrate, who would give to the constable the necessary power of demanding admittance. If a party has any ill feeling towards a licensed publican, he has nothing to do but to go to a constable, and there can be little doubt he would be enabled to induce the officer to annoy the publican. The clause only

provides for suspicions; if it were on information before a magistrate, it would be less objectionable. You may safely give as much power as you please to magistrates, but not to constables.

Mr. Porter—I know that in Liverpool a constable can demand, and insist, upon entrance to any licensed public-house: and it is within my knowledge that a constable, who made forcible entry on believing that an offender against the laws was concealed, was borne out by the authorities of that town.

The Attorney General—The law of England gives power to a constable to demand, but not to enforce admittance, unless by special warrant from a magistrate. But, if a constable has good reason to believe that illegal practices are going on in the house, or that improper characters are harboured, the refusal of the publican to grant a search or inspection, would be *prima facie* evidence against him. The fact would be reported to the bench, and the magistrates would have the power of refusing to renew the license.

The Governor—To deprive a man of his license, for a breach of the law, is the heaviest punishment that can possibly be inflicted, and one, in my opinion, of too great a magnitude for the offence. I think a penalty of £5, in such cases, would satisfy the ends of justice.

Mr. Clendon—The punishment is at the discretion of the Police Magistrate. It may be a fine of from £2 to £20; or, a forfeiture of license.

The Colonial Treasurer—We learn, from the annals of criminal courts, that bad characters generally resort to low public houses, where they lay their plans of nocturnal depredations. Petty robberies, and other crimes, are almost invariably decided upon at such houses. A constable might be in pursuit of such offenders, when it would be certainly desirable that admission should be at once granted by the publican. Even a short delay might enable the delinquent to excape by the rear of the house.

The Colonial Secretary—We are legislating for a large body of emigrants, fresh from the parent country, untainted by crime, and not for a sprinkling of persons from New South Wales, as in Kororarika. There is, therefore, in my opinion, no necessity for so stringent a clause, and when a body of newly arrived emigrants are diffused through Kororarika, the character of the inhabitants will undergo a great change for the better.

The Governor—For a constable to demand admittance to a public house, is a very different thing from the invasion of a private dwelling. Such a demand, made under suspicion that offenders was secreted, or illegal practices going on, can scarcely be called an infringement of the liberty of the subject. If the constable, after search, found no improper characters there, and that no breach of the law was being committed, he would of course walk quietly out again.

Mr. Porter—I agree with his Excellency. I can see no harm in a constable going to the house of a licensed person, and demanding admission in a proper manner, in the discharge of his duty.

The Colonial Secretary—According to this clause, any man, the greatest enemy of a publican, might give information to a constable that gambling is going on, although there might be no cause for such suspicion. The constable, however, might be induced to demand admittance, and put the publican, and the company in his house, to great annoyance and inconvenience. The clause provides for mere "suspicions." With regard to a forfeiture of license, for non-refusal to admit a constable who may demand entrance, his Excellency is of opinion that the penalty is too severe.

Mr. Clendon—If it is the opinion of the Council that the latter part of the clause, respecting a forfeiture of license, is too severe, it may be expunged.

The Governor—By a comparison with other punishments it certainly does appear that a forfeiture of license is too great;—the penalty is, in fact, tremendous, as it involves the present subsistence of the publican and his family, and their future prospects. Police Magistrates, at the annual licensing day, ought not to have the power of depriving the man of his license on slight grounds.

It was then resolved that the words, "forfeiture of license," in Mr. Clendon's additional clause, be omitted.

The question was then put from the chair, that the additional clause, as amended be agreed to;—

Ayes—His Excellency the Governor,
The Colonial Treasurer,
Mr. Porter,
Mr. Clendon.

Noes—The Colonial Secretary,
The Attorney General.

Mr. Clendon moved that, after the 25th clause, the following additional clause be inserted:—"Licensed persons shall not sell any spirituous liquors, or allow the same to be sold or supplied to any confirmed drunkard, of whom he may have been notified in writing, by order of the Police Magistrate."

Mr. Porter seconded the motion for the adoption of the clause.

The Attorney General—The bill, as it stands, gives the magistrates a power of punishing severely in the case of confirmed drunkards.—They may be imprisoned one week, with hard labour. But this clause, for one or two offences against the act, might brand a man's character so long as he lives, with the opprobium of being a "confirmed drunkard," under the hand-writing of the Police Magistrate. Drunkenness—an offence which I detest as much as any man—may be punished by confinement, but it is not in accordance with the laws of England, to say, upon the decision of one magistrate, that a man shall never again obtain refreshment at an inn or public house.

Mr. Clendon—If all those punishments of inflicting penalties, and committing to prison fail, then what shall be done? It seems that the only remedy left would be to prevent the offender from purchasing intoxicating liquors.

Mr. Porter—Of course the magistrate would discriminate between a person brought up for the first time, and an habitual offender. I think that, if a man is convicted of drunkenness three times within a short period, he may be considered a confirmed drunkard, and the magistrate would be justified in directing that the publicans should not supply him with liquor.

The Attorney General—For the same reason that you cannot legislate to prevent the sale of spirits on the Sunday, so you cannot for this offence. The law, for the same reason, would be imperative. A man who has money to pay for drink, can most certainly obtain it, even if prevented from asking for it at the house of the publican. The plans by which this law may be very easily evaded, are too numerous, and too obvious, to be pointed out.

The Governor—I agree with the Attorney General that in this, as in the case of entirely closing public houses on the Sabbath-day, it would be impossible to carry out the law. The confirmed drunkard could, without doubt, obtain liquor in despite of any enactment, however stringent; and, under such circumstances, it would be unwise to legislate. The 31st clause of the bill empowers the magistrate to imprison, after the third conviction; and this, I think, is preferable to any futile attempt of preventing the offender from purchasing of the publican. It is essential that no laws should be enacted, except such as are likely to bo observed and respected.

The Colonial Secretary—There is a man in Auckland, known as "Tommy the Shingler," who has been pronounced a confirmed drunkard, and the publicans have received a notification from the magistrates, that they are not to supply him with drink. This order, in practice, has been inoperative, for the fellow has, since the prohibition, been found in the streets drunk several times, and punished without effect.

Mr. Porter—I think that Mr. Clendon's clause would have the effect of preventing the confirmed drunkard from obtaining liquor of the publican.

Mr. Clendon—By the clause, I wish to prevent drunkards from obtaining liquor, rather than to inflict punishment after he has committed the offence.

The Governor—The Colonial Secretary has just shewn the ineffectiveness of Mr. Clendon's clause. There are, also, I believe, other instances, equally strong as the one alluded to, where the order of the Police Magistrate to publicans, with regard to confirmed drunkards, has proved ineffective.

Mr. Clendon—I believe that "Tommy the Shingler" has been seldom, if at all, before the bench, since the notification to the publicans.

The Colonial Secretary—Not having before me a return from the police office, I cannot say what number of times the man has been brought before the bench. I know, however, that the late Captain Symonds tried every means to reclaim him; and, having fined, and imprisoned him repeatedly without effect, he determined to try what leniency would do, and let him off Even this was unavailable, and I am of opinion that the only remedy for drunkards is "hard-labour" punishments, which have not, hitherto, been strictly carried into effect in this colony.

Mr. Porter—I believe that neither "Tommy the Shingler," nor another confirmed drunkard of the name of Sheehan, have been brought before the bench, since the publicans were ordered that they should not be served with liquor.

The additional clause, prohibiting publicans from supplying "confirmed drunkards" with liquor, was then read by the Clerk of Council, and put from the chair that it do pass, when the numbers were:—

Ayes—The Colonial Treasurer,
Mr. Porter,
Mr. Clendon.

Noes—His Excellency the Governor,
The Colonial Secretary,
The Attorney General.

The members being equal, his Excellency gave the casting vote against the clause being added, which was lost accordingly.

Clauses 29 and 30 were read, and adopted without alteration.

Clause 31 having been read, Mr. Clendon moved that, in the 171st line, after the word "imprisoned," insert, "and kept to hard labor." In same clause, in 175 line, after the words, "a term of," insert, "not less than seven days, nor more than thirty days." The hon. member thought it very hard upon government and the public, to feed a man in confinement, without his doing any work during the period.

Mr. Porter—I think there is no necessity for inserting the latter part of the clause.

The Attorney General—The act, as it stands, gives the magistrates a power of summary conviction; and, in those cases, it is at their discretion whether hard labour shall be added to the sentence. The clause is, therefore, unnecessary, because it only gives a power which the magistrates already possess.

The Governor—I should most certainly recommend that hard labour should always be inflicted in cases of imprisonment on summary conviction. This might prevent disputes between magistrates sitting on the bench. In one case in this colony, a dispute arose between a civil and a police magistrate, as to the amount of fine in a case of drunkenness. One of them was for inflicting a fine of 5s., the lowest penalty; whilst the police magistrate was for inflicting the highest penalty of 20s. In this case he (the Governor) had approved of the Police Magis-

trate's decision. The offender was an artizan, who, in England, would not obtain more than 5s. per day; whilst here he could obtain from 12s. to 15s. per day. The fine, he thought, should always be in proportion to the means of the individual.

The Colonial Treasurer—I should say, that, upon every third conviction for drunkenness, the party offending should be fined the highest penalty. But, I should wish to know whether, after the last conviction, he should begin again, and be fined in the lowest penalty.

The Governor—Suppose a man has been convicted three times, and kept himself sober for six months, he ought to begin fair again.

The Colonial Secretary—I concur with his Excellency that, after a third conviction, should the man keep sober for six months, his former offences ought not to be considered in the amount of punishment. Such a lenial interpretation of the law would be holding out some encouragement to sobriety.

Mr. Clendon then withdrew his amendment to the 31st clause, and it was ordered that the original clause do stand part of the bill.

The Attorney General then moved that the following additional clause be inserted after the 31st clause :—" Whereas, by reason of the formation of new settlements, and the rapid increase of the population thereof, it may be desirable that licenses should be granted otherwise than at the time, and in the manner hereinbefore provided; be it enacted, that it shall by lawful for any two justices of the peace for the district, the Police Magistrate being one, at any time, or times, to grant any number of licenses."

The Governor—I wish to know how it will be where no Police Magistrate has been appointed in the new settlements adverted to in the Attorney General's amendment? There is no difficulty in my appointing a justice of the peace for a district;—it is merely passing his name through the *Gazette*; but not so with a Police Magistrate, to whom must be confided the care of the district of which he is a resident. This difficulty, however, I think, may be easily remedied; for, in all new settlements which have been already established, I have had either strong recommendations of certain respectable persons from the Secretary of State, or from some friend upon whose recommendation I could place implicit reliance.

The Attorney General—The Police Magistrate appointed to a district will be a resident, having a knowledge of the parties who may apply for a license; and, of course, the proper person to decide whether such application should be granted. It would be injudicious to leave such a decision to inexperienced magistrates who might be invested with a commission of the peace.

Mr. Porter—As in South Australia, a certain number of persons should be empowered to grant licenses in case of any emergency.

The Governor—I do not think such a recommendation necessary. No difficulty is likely to occur in appointing suitable gentlemen to act. With regard to New Plymouth, Wellington, and Nelson, I have had references as to suitable persons to act as magistrates, either from the Secretary of State, or other parties. Suitable people will be known to the executive at any time.

The Attorney General's clause was then put from the chair, and unanimously agreed to.

The remaining clause, and the schedules to the bill, were then read, and adopted without alteration.

It was then ordered that the bill be read a third time on Thursday, the 10th inst. Council then adjourned to that day.

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