L.L.B Regulations

Register 24th December 1890.

HOUSE OF ASSEMBLY.

MONDAY, DECEMBER 22.

[The following is a continuation of the report from yesterday's *Register*.]

DEFENCE FORCES BILL.

Returned from the Legislative Council without amendment.

UNIVERSITY STATUTES AND REGULATIONS—A POINT OF PRACTICE.

The Hon. J. L. PARSONS, for Mr. SOLOMON, moved—"That in the opinion of this House all Statutes and regulations of the Adelaide University should be laid before Parliament for ten days before being submitted to His Excellency the Governor for approval." So far as the Act of 1874 was concerned the only provision was that Statutes and regulations made by the University should be approved by the Governor-in-Council, but certain facts might lead to an amendment of that Act. He wished to express his sense of the very able, valuable, and gratuitous services rendered by those connected with the University, and he would be sorry if the motion was understood to be a reflection upon their knowledge of public affairs, and the wisdom of adopting the Statutes and regulations which had been so adopted. In many respects, however, it would be well for the Statutes and regulations to be laid before Parliament.

Mr. HORN hoped the motion would not be pressed. The University was managed by a Council and Senate, and so far as he knew it had been managed to the satisfaction of all connected with it. The Senate and the greater portion of the Council were gentleman peculiarly fitted for carrying out the duties. It was very easy to replace the Hospital Board or State Children's Council, but it would not be so easy to replace the Council of the University. The object of the motion was to meet a particular case, which might be a little hard, but he questioned whether they should attempt to interfere to meet exceptional cases. He did not suppose the House wanted to run the University, but if everything the Council passed had to be submitted for the approval of the House that would practically mean that the House should run the institution. The particular regulation which the motion was intended to refer to had been discussed in the Press during the last two years. Their object was to place the Adelaide University on an equal footing with the Melbourne institution, so that Adelaide degrees might be recognised there, but if the resolution were agreed to it would mean that the regulations would be deferred for another year. Mr. Parsons had not shown any reason for the motion. (Hear, hear.)

The CHIEF SECRETARY (Sir J. C. Bray) said the University Act of 1874 provided that the Council and the Senate should have power to make certain Statutes and regulations, and clause 10 specified that "all such Statutes and regulations as aforesaid shall be reduced to writing, and the common seal of the University having been affixed thereto, shall be submitted to the Governor to be allowed, and countersigned by him, and if so allowed, and countersigned shall be binding upon all persons, members of the said University, and upon all candidates for degrees to be conferred by the same." They would make a mistake if they attempted by a resolution to override the Act. Although it might be a good thing for some regulations to be laid before Parliament, it would be a pity and a mistake to say that the University regulations and Statutes should

that the University regulations and Statutes should be so presented, and especially as the Council had lately passed Statutes which if they had to wait for the approval of Parliament, could not be enforced for over six months. He trusted the motion would not be carried, because an Act had been passed in 1874, and on the particular point under consideration it had never been questioned so far as he knew.

The SPEAKER (Hon. J Coles)—I have not looked at the Act, but if, as the Chief Secretary says, it will have the effect of overriding an Act of Parliament it cannot be put.

The CHIEF SECRETARY (Sir J. C. Bray) said the motion would be imposing an additional condition which the Act did not contemplate.

The SPEAKER—This motion is certainly adding to the Act, and I think it cannot be put.

The Hon. C. C. KINGSTON said he must challenge the Speaker's ruling.

The SPEAKER—Will the hon. member please put his objection in writing?

The Hon. C. C. KINGSTON thought an opportunity should be given for him to say in what way the motion did not override an Act before giving his challenge in writing.

The SPEAKER—There is no objection to the hon. member giving expression to his opinion, but my ruling is this—that the motion imposes a condition upon the University Council which is certainly not provided for in the Act.

The Hon. C. C. KINGSTON asked whether the Speaker intended to give his ruling before he had an opportunity of speaking.

The SPEAKER—You can address the House, but the motion cannot be put.

The Hon. C. C. KINGSTON said his only opportunity of addressing the House was by challenging the ruling. He regretted being forced into that duty, but the position taken was utterly untenable. It was unfair at a moment's notice to ask the Speaker to rule that the proposal was out of order, and he only rose to assist the Speaker in coming to a right conclusion. The motion amounted to an expression of opinion that before Statutes and regulations were submitted to the Governor for approval the House should have an opportunity of considering them, and he considered that it was impossible to say that the expression of an opinion that a certain course should be adopted in the slightest degree overrode this Act. Section 10 of the Act of 1874, was as read by the Chief Secretary.

The SPEAKER again suggested that the objection should be handed in at once in writing.

The Hon. C. C. KINGSTON again asked that he should not be forced into that position. Was it not the practice of the House when a point like this suddenly arose to allow hon. members an opportunity of stating their views for and against in order to assist the Speaker?

The SPEAKER—I have no objection to listen to arguments, but I have already intimated that the motion cannot be put, because in effect it overrides an Act of Parliament, which is contradictory to the Standing Orders and practice of the House.

The Hon. C. C. KINGSTON said that in circumstances he would dispute the Speaker's ruling and put his challenge in writing.

The objection was handed up.

The SPEAKER—The hon. member has challenged my ruling on the following grounds:—"That this House disagrees with the ruling of the Speaker on the grounds that the motion overrides an Act of Parliament inasmuch as it has no such effect." It seems to me that the decision of the Speaker should be at once taken into consideration.

The CHIEF SECRETARY (Sir J. C. Bray) asked Mr. Kingston not to press his challenge.

The SPEAKER—The hon. member has challenged my ruling, and the question is that the House should disagree with the ruling on the grounds stated.

The Hon. C. C. KINGSTON said that nothing afforded him greater regret than the necessity for tabling the motion. The privileges of the House were of considerable importance, and he would not be doing his duty if he refrained from asking the House to express an opinion upon the ruling at the earliest possible moment. The motion asked them to express their opinion that all Statutes and regulations of the University should be laid before Parliament for ten days before being submitted to the Government for approval, and it could not be fairly argued that the expression of such an opinion could in any way affect the provisions of an Act of Parliament. No resolution could override an Act of Parliament. It was perfectly competent for effect to be given to this resolution without in the slightest degree contravening the express provisions of the Act. Section 10 was not in the usual form expressly requiring that before Statutes were recommended to His Excellency for approval they should be laid on the table of the House for a specified time—a provision which was found in various Acts, notably the Railway Commissioners and Corporation Acts, and which gave Parliament the opportunity of considering such by-laws and regulations which it was intended to convert into law by force of the power given to make them. There was nothing in the University Act to prevent the Ministry of the day doing exactly what the resolution required without contravening in the remotest particular the requirements of the Act. Under the Language of Acts Act "the Governor," in clause 10, meant the Governor acting with the advice and consent of the Executive Council. The approval referred to could not be given by the Governor except acting on the advice of his Ministers, and Ministers were under no obligation to give that advice except at times, in circumstances and under conditions such as might seem fit to them. The Governor was absolutely free, acting with the advice of his Ministers, to either temporarily or permanently withhold his consent. It was simply idle, therefore, to suggest that the expression of the Parliamentary desire that before Ministers made up their minds on the subject Parliament should be apprised of the conditions of the regulations to which the consent of the Governor was asked in the slightest degree overrode the provisions of the Act. Believing that it would be highly undesirable to create a precedent which would limit the right of debate and the right of action on the part of the House in giving instructions to Ministers as to the way in which they should exercise any discretion conferred upon them by the Act, he respectfully asked the House to affirm his proposition.

The SPEAKER (Hon. J. Coles)—In giving the ruling I have given I am not establishing a precedent, but following the practice of other Speakers and of Parliament. Page 131 of Blackmore lays down that "if there is an irregularity in the motion—if *e.g.* it seeks to renew a question already decided by the House in the same session, or anticipates business already on the Paper, or requires the previous consent of

on the Paper, or requires the previous consent of the Crown, or in effect overrides an Act of Parliament—the Speaker would call attention thereto, and if necessary decline to put it." The Adelaide University Act of 1874 provides in section 11:—"The powers herein given to the Council shall, so far as the same may affect the two Chairs or Professorship founded by the said Walter Watson Hughes and the two Professors appointed by him, and so far as regards the appropriation and investment of the funds contributed by him, be subject to the terms and conditions of the before-mentioned indenture." The motion of the hon. member contemplates something further than that. If given effect to it will provide that all Statutes and regulations of the Adelaide University shall be laid before Parliament for ten days before being submitted to His Excellency the Governor for approval. That was never contemplated in the Act, and, in fact, the resolution undoubtedly overrides the Act.

The CHIEF SECRETARY (Sir J. C. Bray) hoped Mr. Kingston would not press his objection, because in a strict construction of the Act the ruling of the Speaker was perfectly correct. If the motion were carried and acted upon, as it would be, it would really prevent a proper exercise of their functions by the University and the Governor. The Act distinctly contemplated that regulations might be made by the University authorities and approved by the Governor immediately. It might be that something would require being done before Parliament next met—perhaps that certain things were to be done on March 1. It would be clearly impossible for the University to do that if the motion were enforced. It would have been competent to have tabled a motion saying that a Bill should be introduced to give effect to what the present resolution contemplated.

Mr. HORN said that to carry the resolution would override the Act. The Act said a certain thing should be done when the common seal of the University was affixed. The resolution said that before that was done the regulations should be laid before Parliament for ten days. What would be the effect of the resolution? The regulations just passed and now ready for presentation would be deferred for twelve months, because the next examination took place in March and Parliament would not be called together until June. Practically the whole of the academical year would be lost. If withholding regulations for twelve months was not overriding the Act he did not know what was.

Mr. ASH submitted that the resolution did not override the Act. An analagous case occurred last year. There was a Supreme Court Act, yet last year a motion was carried requesting the Judges to furnish a report as to certain cases. That was no part of their duty according to the Act. It was ordering them in fact to do something which they were not compelled to do by the Act which created them. The Speaker raised no objection to the motion. (The Attorney-General—"That was a motion for information.") The case was certainly not on all fours with the present one, but cases seldom were in every particular. Section 10 of the University Act did not, as Mr. Horn said, say certain things should be done as soon as the seal was fixed. (Mr. Horn—"Practically it does.") It said as soon as the seal was fixed the regulations should be submitted to the Governor for approval, and if so