

**THIRD HOUSE OF ASSEMBLY  
EXTRAORDINARY SESSION**

## MINUTES OF THE THIRD HOUSE OF ASSEMBLY OF VANCOUVER ISLAND—EXTRAORDINARY SESSION

**Saturday, the 20th day of August, 1864<sup>1</sup>**

The House met this day at 1 p.m. pursuant to A Proclamation by His Excellency the Governor bearing date the 15th day of August, one thousand Eight Hundred and Sixty four.

Present: Mr. Speaker, Messrs. Street, Duncan, Dennes, Bayley, Franklin, Carswell, De Cosmos, and Dr. Trimble.

A Summons to attend His Excellency was delivered by Mr. Nesbitt Clerk of the Honble. the Council.

“Mr. Speaker, The Governor desires this Honble. House to attend His Excellency forthwith in the Legislative Council Chamber.”

Mr. Speaker, with the Members of the House went up accordingly to attend His Excellency, who addressed both Houses of the Legislature as follows.

*Honble. Gentlemen of the Legislative Council, and Gentlemen of the Legislative Assembly*

The discovery of a Gold-field within the last few weeks having so much altered the circumstances & enlarged the prospects of this Colony, I have deemed it my duty to call you together to aid me with your advice. It is unnecessary for me to recapitulate to the Legislature already so well informed on the subject the position in which the Crown Lands & Crown Revenue of the Colony now stand, and I feel confident that you will concur with me in the opinion that under the altered prospects of the Colony it is anomalous and inexpedient that it should be continued.

The management of Crown Lands & the Expenditure of Crown Revenue freed from the control of the Legislature is a responsibility I do not desire to incur unless devolving upon me as a necessary duty.

The Mining interests bid fair to rival any other in importance and the Colonial Legislature is, in my opinion, the proper power to frame laws and regulations for their development and guidance.

The adoption of any other course must, I fear lead to complications which may prove detrimental to the best interests of the Colony.

A large number of Miners have already taken out Licenses and registered their claims & the number being daily on the increase, I desire if possible to have the advice and assistance of the Legislature in framing wise and just laws for their encouragement and protection.

The Rules and Regulations now in force have been issued subject to modification or alteration pending the enactment of permanent Laws. Intended to meet an emergency & as a preliminary protection to Miners only they are manifestly inadequate to the rapidly increasing importance of the subject.

There are doubtless difficulties in the way of a prompt Adjustment of this question, but none so formidable that they cannot be surmounted by the cordial co-operation of the Legislature and the Executive which it is no less my desire than duty to afford.

<sup>1</sup> On 8 July 1864, Governor Kennedy prorogued the House until 3 October, but decided to summon it earlier when gold was discovered on Sooke River. This action was challenged by the House inasmuch as the required fourteen days' notice had not been given. Kennedy therefore issued a new proclamation on 27 August revoking his previous order and directing the House to reconvene on 12 September.

The unforeseen necessity which has compelled me to require your attendance at this unexpectedly early period will prevent me bringing other measures of importance under your immediate consideration—but there is one which I think the public interests require to be settled without unnecessary delay, that of reunion with the Colony of British Columbia. The prolonged agitation of this question cannot fail to aggravate any evils which are alleged to have resulted from separation, and interpose obstacles to its calm consideration hereafter.

The Union or separation of these Colonies is a matter of secondary importance to the maintenance of a cordial co-operation and good understanding between them, and it is therefore I think incumbent upon the people through their representatives to set this matter at rest for the present.

Gentlemen of the Legislative Assembly

The financial condition of the Colony will require your consideration. Being contingent upon the decision of the Legislature on the subject of Crown Lands and Revenue it will be brought under your consideration in a specific form.

The Blue-Book for 1863 being the first compiled for this Colony will be laid before you.

Honourable Gentlemen of the Legislative Council and Gentlemen of the Legislative Assembly

I have now to commit these important questions for your consideration with an earnest prayer that your deliberations may be conducive to the honor of our Sovereign and the prosperity of her Subjects whose interests are in your keeping.

The Legislative Assembly being returned, Mr. Speaker read the Speech of His Excellency the Governor.

Mr. De Cosmos moved the 1st Reading (pro formâ) of "A Bill Entitled An Act respecting Barristers and Attorneys."

2nd by Mr. Franklin and Agreed to.

Ordered for next meeting, 2nd Reading of above Bill.

Mr. De Cosmos moved "that A Committee be appointed to draft an Address to His Excellency the Governor in reply to His Excellency's Speech."

Agreed to.

Mr. Speaker appointed the following Committee: Messrs. De Cosmos, Street, Franklin.

Ordered that Committee report on Monday next.

Mr. Duncan gave Notice (for 29th Inst.) of Motion for a Committee "to enquire into the State of the Probate Court."

The House then adjourned till Monday next.

Speaker.

## Monday, the 22nd day of August, 1864

Present: Mr. Speaker and Mr. Dennes.

A Quorum not being present the House did not sit.

## Tuesday, the 23rd day of August, 1864

The House met this day at 3 p. m. pursuant to adjournment.

Present: Mr. Speaker in the Chair, Messrs. De Cosmos, Dennes, Duncan, Franklin, Carswell, Street, and Dr. Trimble.

The last minutes having been read and confirmed.

Mr. Speaker read the following Communication from His Excellency the Governor with enclosure from the Right Honble. the Secretary of State for the Colonies in the matter of the Resolution passed by the Legislative Assembly representing the necessity of appointing a Barrister-at-law from England to fill the office of Chief Justice of Vancouver Island.

No. 16.

Vancouver Island  
Victoria 22nd Aug. 1864

To The Honble. the Speaker and Members of the Legislative Assembly.  
Gentlemen

I have the honor to transmit the reply of H. M. Principal Secretary of State for the Colonies<sup>2</sup> to a Despatch of my Predecessor enclosing a Copy of a Resolution of the Legislative Assembly representing the necessity of appointing A Barrister from England to fill the office of Chief Justice of Vancouver Island.

I have the honor to be,  
Gentlemen,  
Your very obedient Servant,  
(signed) A. E. Kennedy  
Governor.

Also (No. 17) from His Excellency,<sup>3</sup> transmitting copies of two Despatches from the Rt. Honble. the Secretary of State for the Colonies on the subject of the proposed Telegraph connecting Victoria with the U.S. of America & granting exclusive rights and privileges to the California State Telegraph Co.

Also (No. 18) from His Excellency<sup>4</sup> transmitting a further Despatch from the Rt. Honble. the Secretary of State for the Colonies (dated 11 July 1864) on the same subject.

Mr. De Cosmos fm. the Select Committee appointed to draft an address in reply to H. Excy.'s Speech brought up the Report of that Committee.

Mr. De Cosmos then moved the following Resolution.

Whereas the Statute 37. Geo. III Cap. 127 in force in this Colony requires that not less than 14 days' notice be given of the Assembling of Parliament and Whereas the Parliament of this Colony has been assembled after giving

<sup>2</sup> Cardwell to Kennedy, 12 May 1864, Great Britain, Public Record Office, CO 410/1, 460.

<sup>3</sup> Kennedy to Speaker and Members of Legislative Assembly, 22 August 1864, Vancouver Island, Governor, Correspondence Outward, 2 April 1864 to 3 August 1866, Messages to House of Assembly, PABC (cited hereafter as Messages to House), transmitting dispatches Nos. 8 and 9, 1 June 1864.

<sup>4</sup> Messages to House, 23 August 1864.

less than 14 days notice<sup>5</sup>—and Whereas there are grave reasons to suppose that in consequence of the requisite notice not being given the validity of any Acts of this House may be called in question. Resolved therefore that this House is of opinion that it is not expedient to transact any public business, till such time as the Parliament of this Colony shall be assembled in accordance with the time of notice prescribed by the Statute aforesaid.

Mr. Carswell seconded.

Mr. Franklin moved in Amendment “that the question of the meeting of this Legislature after a notice of four days be referred to a Committee.”

Mr. Dennes moved in Amendment “that the question be referred to a Committee of the whole.”

Mr. Street seconded.

The Question was then put as between the Amendment of Mr. Franklin & the Amendment of Mr. Dennes.

For Mr. Franklin’s motion

*Ayes:* 2.

Messrs. Franklin  
Trimble

*Noes:* 4.

Messrs. Street  
Dennes  
Carswell  
De Cosmos

Mr. Franklins Amendmt. was therefore lost.

The question was then put as between Mr. Dennes’s Amendment and Mr. De Cosmos’s Resolutions.

For Mr. De Cosmos’ Resolutions

*Ayes:* 4.

Messrs. Street  
Carswell  
Dennes  
De Cosmos

*Noes:* 2

Messrs. Franklin  
Trimble

Mr. De Cosmos’s Resolutions were therefore carried.

Mr. De Cosmos moved that a Committee be appointed to draft an Address to His Excy. the Governor embodying the foregoing Resolutions.

Mr. Franklin moved in amendment “that the Resolutions be transmitted to the Governor, this day 6 months.”

<sup>5</sup> An Act to Shorten the Time Now Required for Giving Notice of the Royal Intention of His Majesty, His Heirs and Successors. That the Parliament Shall Meet and Be Holden for the Dispatch of Business; and More Effectually to Provide for the Meeting of Parliament in the Case of a Demise of the Crown, 1797, 37 Geo. 3, c. 127, s. 1: “Whereas it is expedient to shorten the time now required for giving notice of the Royal Intention of His Majesty, his Heirs or Successors, that the Parliament shall meet and be holden for the Dispatch of Business; be it therefore enacted . . . that Parliament shall meet and be holden for the Dispatch of Business on any Day being not less than fourteen Days from the Date of such Proclamation, the same shall be a full and sufficient Notice to all Persons whatever of such the Royal Intention of his Majesty, his Heirs and Successors. . . .”

Question, For Mr. Franklins Amendmt.

*Ayes:* 4.

Messrs. Franklin  
Trimble  
Duncan  
Dennes

*Noes:* 3.

Messrs. Street  
Carswell  
De Cosmos

The Amendment was therefore carried.

The House then went into Committee of the whole upon the report of the Select Committee appointed to draft An Address in reply to His Excellency the Governor's Speech.

Mr. Speaker left the Chair.

Mr. Dennes in the chair of the Committee.

Mr. Speaker resumed the chair.

The Chairman reported that the Committee having had under consideration the foregoing draft of An Address begged to report progress and asked leave to sit again.

Ordered that Report be received and leave granted.

Mr. Dennes gave Notice of Motion.<sup>6</sup>

The House then adjourned till tomorrow.

### Wednesday, the 24th day of August, 1864

The House met this day at 3 p. m. pursuant to adjournment.

Present: Mr. Speaker in the Chair, Messrs. De Cosmos, Carswell, Dennes, Street, Franklin, and Dr. Trimble.

The last Minutes having been read, the House divided on motion by Mr. De Cosmos Seconded by Mr. Street "That the Minutes be confirmed."

Question.

*Ayes:* 3.

Messrs. De Cosmos  
Street  
Carswell

*Noes:* 3.

Messrs. Franklin  
Dennes  
Trimble

Mr. Speaker gave his casting vote in favor of confirming the Minutes.

Mr. De Cosmos asked Mr. Speaker whether the two Gentlemen who had been elected by a tie-vote for the City of Victoria, vice Mr. W. A. G. Young Colonial Secretary resigned were entitled to sit within the Bar of the House.

Mr. Speaker replied that those Gentlemen could take their Seats within the Bar of the House but could not vote.

<sup>6</sup> Motion Book, p. 75: "I give Notice that I shall on Friday next ask leave to introduce A Bill for the more easy recovery of small debts and demands in the Colony of Vancouver Island."

Mr. Franklin rose to a question of Order—his Honble. Colleague (Mr. De Cosmos) had risen yesterday to introduce a Subject of which Notice had not been given. That subject was treated as one of privilege but had afterwards taken the shape of a motion & ended in Resolutions being allowed to pass as the deliberate vote of the House.

Mr. Speaker said that he had yesterday pointed out to the House the issue raised by Mr. Franklin's question; that objections should then have been made—it was too late to make them now.

Dr. Trimble asked the Chair whether or not it was Parliamentary to rescind Resolutions already passed by the House.

Mr. Speaker replied that instances of Resolutions being rescinded had occurred.

Mr. De Cosmos rose to correct certain mis-statements which had been made by the Reporters of the public Journals in their report of his Speech of yesterday; he had stated that “the law of England prior to 1849 were the laws here as far as practicable.”

Mr. Franklin gave notice of motion for tomorrow (to rescind Resolutions).<sup>7</sup>

The House then went into Committee of the whole upon the address in reply to H. Excy.'s Speech.

Mr. Speaker left the chair.

Mr. Dennes in the chair of the Committee.

Mr. Speaker resumed the Chair.

The Chairman reported that the Committee having had under consideration the address reported from the Select Committee in reply to H. Excy.'s Speech on the opening of the present Session had agreed upon an address as follows.

*To His Excy. A. E. Kennedy, C. B. Governor of Vancouver Island and its Dependencies and Vice Admiral of the same.*

May it please Your Excellency

We, Her Majesty's faithful and loyal subjects the members of the Legislative Assembly of Vancouver Island have much gratification in being informed by Your Excy. that a Gold field has been discovered within the Colony that is prospectively of great value.

We beg to assure Your Excy. that we would be disposed to give that consideration to the question of the transfer of the Crown Lands & Revenues to the Colony & all other subjects mentioned in Your Excellency's address which the importance of the subjects demand, but we deem ourselves precluded from so doing on account of the House of Assembly having been called together without fourteen days notice having been given. The House is therefore of opinion that any Action it might take would be open to question and further that such a precedent might lead to most injurious consequences. We would therefore sincerely hope that Your Excy. may take our objection into your serious consideration & adopt such constitutional measures as to you may appear advisable under the circumstances.

Agreed to.

The House then adjourned till tomorrow.

<sup>7</sup> Motion book, p. 75: “I shall move that the Resolutions of the 23rd Inst. of the Member for Victoria [De Cosmos] be read & that they be rescinded.”

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### Thursday, the 25th day of August, 1864

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The House met at 3.15 p. m. pursuant to adjournment.

Present: Mr. Speaker in the Chair and Messrs. De Cosmos, Carswell, Duncan, Dennes.

The last Minutes having been read and confirmed.

Mr. De Cosmos rose to a question of privilege to correct a mis-statement which had been made by the Reporter of the Chronicle Newspaper in his report of the proceedings in the House yesterday.

2nd Reading of the address in reply to His Excellency's Speech on the opening of this Session of Parliament.

Mr. De Cosmos moved that in clause 2 after the word "address" the words "which the importance of the subjects demands" be inserted [omitted].

Carried.

The Address was then read a 2nd time & carried Nem. con.

The House then adjourned at call of Mr. Speaker.

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### Friday, the 26th day of August, 1864<sup>8</sup>

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At one o'clock the hon. Speaker of the House of Assembly accompanied by Messrs. De Cosmos, Franklin, and Dennes, waited on His Excellency and presented the following reply, which was read by the Speaker:

*To His Excellency Arthur Edward Kennedy, C. B., Governor of Vancouver Island and its dependencies, and Vice-Admiral of the same, &c. &c.*

May it Please Your Excellency,—

We, Her Majesty's faithful and loyal subjects, the members of the Legislative Assembly of Vancouver Island, have much gratification in being informed by your Excellency that a gold field has been discovered within the colony that is prospectively of great value.

We beg to assure your Excellency that we would be disposed to give that consideration to the question of the transfer of the Crown Lands and revenues to the Colony and all other subjects mentioned in your Excellency's address, but we deem ourselves precluded from so doing on account of the House of Assembly having been called together without fourteen days' notice having been given. The House if of opinion therefore that any action it might take would be open to question, and further that such a precedent might lead to most serious consequences.

We would therefore sincerely hope that your Excellency may take our objections into your serious consideration, and adopt such constitutional measures as to you may appear advisable under the circumstances.

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<sup>8</sup> This day's minutes do not appear in the original Minute Book. These are taken from the *Colonist*, 27 August 1864.



His Excellency replied as follows:

Mr. Speaker and Gentlemen of the Legislative Assembly;

I thank you for your address. However much it is to be regretted that doubts have arisen whereby the action of the Legislature has been delayed, I cannot but concur in the expediency of their being set at rest.

The adoption of the privileges and practice of the Imperial Parliament in so far as they are applicable to the local Legislature in spirit as well as in letter must be conducive to the public good and the honor of the Legislative Assembly. The right of the people and the privileges of the Legislative Assembly who represent them I hold equally sacred, and they cannot be too carefully guarded. Your address, gentlemen, shall receive my best and earliest consideration with a view to the removal of any doubts of the legality of your proceedings.

The members of the House then withdrew.

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