Record of the
Proceedings of the Queensland Parliament
...
Legislative Assembly
12th June 1861
...
Extracted from the third party account as published in the
Courier 13th June 1861

The Speaker took the chair at a quarter past three.

PAPERS, &c.

The COLONIAL SECRETARY laid upon the table of the house: Report of the Engineer of Roads upon the main road between Brisbane and Drayton. Report of Lieut. Heath upon the impediments to navigation in the river at the Seventeen Mile Rocks. Report of the Curator of the Botanical Gardens.

DEATH OF THE DUCHESS OF KENT.

The COLONIAL SECRETARY laid upon the table of the house a despatch to Sir George Bowen, announcing the death of her Royal Highness the Duchess of Kent. He also stated that he had intended at the termination of the two previous sittings of the house to lay this despatch before the hon. members, and move a befitting address of condolence to her Majesty, but his intention had been frustrated owing to the house having been on each occasion counted out. He should, therefore, before the house adjourned that evening, move the address referred to.

LETTER OF MR. JUSTICE LUTWYCHE.

The COLONIAL SECRETARY laid upon the table a letter addressed by Mr. Justice Lutwyche to the Governor, some time back, respecting the franchise of the colony. He placed this before hon. members in consequence of misrepresentations as to its scope and contents, which had appeared in the *Courier* newspaper, and also been made by the late member for Ipswich, Mr. Macalister. His Honor had made no such communication as that all the acts of the Legislature would be invalid unless further legalised by the home government. The letter, it would be seen, conveyed no such statement, but referred to the legality of certain reforms, where the franchise of New South Wales introduced here.

On the motion of the COLONIAL SECRETARY, the last two documents placed before the House were ordered to be printed; and upon the motion of Mr. O'SULLIVAN, seconded by the COLONIAL SECRETARY, the report of Lieut. Heath was ordered to be printed.

NEW MEMBER.

Dr. CHALLINOR, introduced by Messrs. Blakeney and Fitzsimmons, took the oaths and his seat for the district of West Moreton.

APPOINTMENT TO COMMITTEES.

The COLONIAL SECRETARY moved,—

"That Mr. Fitzsimmons be appointed a Member of the Joint Stock Committees for the management and superintendence of the Parliament Buildings and of the Refreshment Rooms, in place of Mr. Macalister, resigned, and that such appointment be notified to the Legislative Council by message.

The motion was put and passed.

The COLONIAL SECRETARY moved,—

"That Mr. MOFFAT be appointed a Member of the Standing Orders Committee in place of Mr. Macalister, resigned."

This motion was put and passed.

CHAIRMANSHIP OF COMMITTEES.

The COLONIAL SECRETARY moved,—

That Mr. Blakeney be appointed Chairman of Committees during the present parliament. It was unnecessary for him to detain the house by any remarks. He would simply state that he had made this

same motion on a previous occasion, and he believed the gentleman he had named to be qualified in every way to efficiently discharge the duties of the office of Chairman of Committees.

The ATTORNEY-GENERAL seconded the motion, which was put and passed.

Mr. BLAKENEY thanked the house for the honour they had done him, an honour the more valuable because it was unanimously conferred. It should be his endeavour to discharge the duties of his office honestly, faithfully, and fearlessly, without favour to any individual or party. He trusted that in discharging his duties to the best of his ability, he should receive the support of every hon. member. (Hear, hear.)

MEDICAL BILL.

A message was received from the Upper House in the usual form, accompanying the Medical Bill.

On the motion of Mr. WATTS, the Bill was received and read a first time, its second reading being set down as an order of the day for next Wednesday.

REAL PROPERTY ACT.

The ATTORNEY-GENERAL, before going into the details of this measure, deemed it necessary to assure the house that in bringing it forward he felt that he had undertaken a great and arduous duty. He had for several reasons undertaken the responsibility of bringing this measure forward during the present session. It would be in the memory of the house, that at an early period of the first session of the Queensland Parliament he had been asked by the hon. member for Fortitude Valley whether it was the intention of the government to introduce a measure to facilitate the Transfer and Encumbrance of Freehold and other Interests in Land. He had replied that the government intended on an early opportunity to introduce such a measure, and he now had redeemed the pledge he then gave. Knowing that such a measure was expected by the country, and having given a promise to introduce a measure, he was thus induced to put himself in motion and to examine and consider what kind of Bill would be best adapted to attain the object proposed. After mature deliberations with his colleagues, and after having consulted with eminent gentlemen of other colonies who had made this subject their special study, he had come to the conclusion that this Bill he now held in his hand was the one best adapted to meet the wants of this colony. He trusted he should be able to clearly explain to the house the main principles of the measure, and the reasons which induced him to believe that it was the one best adapted for this colony. When he had first set himself in motion in this matter he had placed himself in communication with Mr. Kelly, of New Zealand, and Mr. Torrens, of South Australia—two gentlemen, of whom, of course, every member had heard in connection with the subject of the registration and transfer of land. To both of these gentlemen he felt himself much indebted, as they had both behaved most kindly to him, and evinced a desire to afford him every assistance in their power in proceeding with the task which he had taken in hand. They were both the authors and representatives of different systems. By the system of Mr. Torrens, the titles to land were alone registered, and by that of Mr. Kelly the assurances, or deeds, were registered. Each gentleman, of course, thought his own system best, and seemed desirous that his system should be tried here. Indeed, Mr. Kelly had gone so far as to offer to come up and assist in initiating his system, were the government to express themselves favourable to its adoption. However, after deliberation, he (the Attorney-General) had arrived at the conclusion that Mr. Kelly's system was not the best for this colony. It appeared to him that that system was cumbrous and expensive. He had little doubt that the machinery requisite to carry it out would have been found to entail an enormous expense—an expense which no fees here could possibly cover. He found to his great pleasure that he had since been backed up in that belief by Mr. Torrens, whose opinion was quoted in a work of Mr. Gawler, of South Australia. (The hon. member here quoted a paragraph from the work referred to.) It would appear that Lord St. Leonards had urged some objections to the system of registration, but from what he had just quoted it would be evident that the objections were urged against registration of assurances or deeds. This Act, however, provided for the registration of titles. With regard to the system of registration of deeds hon. members were aware that the first deed registered took priority. If he sold land to A, the deed not being at the time registered, he might sell the same land to B to-morrow. A, or some other person acting under his authority, might thus be defrauded as priority of registration affected the title. Complication of this kind were continually liable to occur under the system of registration of deeds, whilst under the measure of Mr. Torrens matters were much more simplified. But the little book which he held in his hand written by Mr. Torrens himself, explained the advantages of his system as compared with other systems, more clearly and lucidly than he could pretend to do in addressing that house, and to the perusal of that book, which was in every body's reach, he would commend those hon. members who had not yet read it. It had

been said by those who had opposed Mr. Torren's Bill, that it was illegal, and lest this assertion, which had been more than once repeated, should cast upon the minds of some hon. members any doubts of the legality of the measure, it would be as well for him to enter into a short explanation upon this point. In his opinion, the measure was decidedly not illegal, as, in the first place, it had received the royal assent. In support of his opinion, he would read a portion of a despatch from the Duke of Newcastle to Sir R. Macdonnell, Governor of South Australia, which was written in consequence of a memorial in opposition to the measure having been sent home by a large number of the legal profession in South Australia. Although the royal assent was given to the measure, yet in this despatch the opinion of Sir Hugh Cairns, who had expressed himself opposed to certain clauses of the bill, was adverted to. (The hon. member here quoted briefly from the despatch in question.) With all due deference to the opinion of Sir Hugh Cairns, who was certainly one of the ablest, if not the ablest lawyer in all England, he (the Attorney-General) thought that perhaps that eminent lawyer was not so intimately acquainted with the state of the colonial law as some able men here who had made that law their peculiar study. It certainly appeared to him that in the dispute upon this point Mr. Torrens had gained decidedly the advantage over his antagonist, Sir Hugh Cairns. The final Act brought in by Mr. Torrens was to amend and consolidate the laws relating to the Transfer, &c., of Land. The Act now submitted to the house by him (the Attorney-General) it would be seen was merely an act to simplify the laws relating to the Transfer, &c., of Land. The reason for the difference in the title of our act and that of South Australia was, that in that colony two acts dealing with the same subject had been previously brought in by Mr. Torrens and passed by the Parliament. Both of those Acts were in some respects inefficient, and, in some respects, illegal. Mr. Torrens, therefore, had to introduce a bill to amend and consolidate those previously existing laws introduced by himself. The act at present before the house was, in effect, a transcript of the South Australian measure; but as no new laws dealing with the subject were previously in existence here, it was, of course, intituled an Act to Simplify the old Laws, instead of an Act to Amend and Consolidate new ones. The great question for the house to decide was, whether this bill was suited for Queensland. He was of opinion that it was not a bill adapted for England, and he doubted whether it would suit New South Wales, where land had been transferred over and over again, and was held under long and intricate titles. He did not say whether it would suit Victoria, although Mr. Ireland, a lawyer holding a high position there, had said it would not suit that colony, and had introduced an original measure of his own. But in that measure, as far as he (the Attorney-General) had had an opportunity of studying it, Mr. Ireland appeared to have availed himself very largely of Mr. Torrens' Act. Moreover, Mr. Ireland admitted that although Torrens' Act would not suit Victoria where there was a large number of titles in existence of a very intricate character, yet it might be well adapted for South Australia, where the titles were comparatively few and simple. Now, if it were admitted that this Act would suit South Australia, it would certainly suit Queensland. The act was the most comprehensive measure of the kind which could be framed, and its merit lay in its adaptability to the circumstances of a young colony where but little land had been alienated, and but few transfers of land had been made. The great benefit conferred by this bill would be impossible were it not that we were, as a young community, enabled, as it were, to commence at the beginning and easily bring all our lands under its operation. It was not the bill for a country where all the land had been long since alienated, but it was an excellent bill for a young colony. Here we had large tracts of land to alienate, and existing titles were of necessity so simple that there could be no great difficulty with them. In proof of this latter statement he would draw the attention of the house to the following figures. The number of grants of land issued in the then district of Moreton Bay, previous to the Supreme Court being established at Brisbane, was 2461; the number of grants issued from the Supreme Court, Brisbane, previous to separation, was 3261; and the number of grants issued since separation was 2262, making a total of 7984. Up to the year 1856, before the Supreme Court was established, he believed that allotments were purchased by many individuals with a view of holding them over for some years and then making money by the re-sale when the colony had advanced, and land had become more valuable. He doubted if even half of the lands then bought had since passed out of the hands of the original grantees. After the establishment of the Supreme Court, the idea of buying land with a view to re-sale at some future period at a large profit was still more prevalent, and since separation the belief in the future value of land had increased rather than abated. He mentioned these facts to prove that most of the land here was still in the hand of the original grantees, and in cases where it had been transferred the title must, could not, of necessity be very intricate. On a fair calculation, he should say that, at least eight-tenths of the land alienated since the Moreton Bay district was proclaimed, must still be held by the original grantees, whilst out of the remaining 2-10ths only 1-10th had passed more than once out of the possession of the original grantees. It would be seen, then, that in the majority of cases here, the act would exercise a prospective force. It could also, where necessary, exercise a retrospective force. Thus the present state of this colony, viz., the entire absence at present of intricate titles to land,

disposed of one great difficulty, which, in older communities, prevented the adoption of the measure. He (the Attorney-General) had received a letter from Mr. Torrens, stating that a commission, to examine and report upon the official machinery connected with the Registrar-General's department, and also upon the working of this measure generally, had been recently sitting in South Australia. Mr. Torrens wrote that the result of that commission was most satisfactory, and that there was no probability of any change of importance being recommended. This was the satisfactory conclusion arrived at after a most searching investigation into the working of the measure, and the machinery employed in carrying it into effect. It was right that he should now mention Sir Hugh Cairn's objection to certain portions of this measure. As he had stated, these objections had been answered by Mr. Torrens. He (the Attorney-General) wished to lay this subject as fully as possible before the house, and to give hon. members all the information in his power with respect to the bill. He would remind hon. members that they were now dealing with a very important subject—a subject not only affecting materially the interests of the legal profession, but one by which the future of the colony would be also most materially affected. Hon. members should consider well the great and momentous changes in existing laws made by this measure. The subject they were now discussing was one which had been settled in South Australia and New Zealand, but which was at present engaging the attention of New South Wales and Victoria, and to which soon the attention of Tasmania would no doubt be directed. That house would have now to decide whether it would adopt the measure of Mr. Torrens or some other system. For that reason he wished to give the house all the information in his power about the measure of Mr. Torrens. Sir Hugh Cairns had expressed an opinion adverse to certain portions of that measure, but he believed the opinion of Sir Hugh Cairns to have been given at the request of the memorialists against the bill in South Australia, to whom he had before adverted. If so, of course he wrote his opinion downright against the bill, as he was paid for doing so, and was consequently in the position of an advocate rather than of a judge. The following was an extract from the opinion delivered by Sir Hugh Cairns upon portions of this measure:—

"But sections 11 (5) 88, 91, 97, and 118 seem to us both unreasonable and invalid upon the assumption that by repugnancy to the law of England is meant not repugnancy to individual English statutes, but repugnancy to the constitutional law of England. We are of opinion that it is repugnant to that law to give an unprofessional Board, holding no judicial appointment under the Crown, the power of deciding without appeal upon the sufficiency of caveats, and of barring in the same way the interest of minors, lunatics, and absentees, and that it is equally repugnant to that constitutional law to take away the right of bringing ejectments, or to import into powers of attorney terms which their grantees neither authorised or contemplated. We cannot, however, consider the leading object of this act, assuming it to consist in the transfer of land by means of a registry of title, as repugnant to the law of England. It may be unknown to that law, but it is not contrary to its spirit and intention, which only in our opinion demand that transfers shall be fair and open. In early times transfer by livery of seizure was usual, and as time progressed a writing under seal was required, but only by way of greater security against fraud, and it seems to us impossible to contend that an entry in the register is more secret than a deed, or more liable to abuse for fraudulent purposes."

The following is the reply of Mr. Torrens to the above objections:

"This brings us to the only really important part of the opinion, the 7th page and the first six lines of the 8th. It is stated, "sections 5, 11, 88, 91, 97 and 118 seem to us both unreasonable and invalid." Section 5 simply authorises the Governor, upon the death, resignation, or dismissal of an officer to appoint another in his place, also to remove officers and appoint others in their places. In what the unreasonableness and invalidity of this consists is not pointed out, a serious omission, as it is possible those for whose benefit the opinion is designed may fail to discover it. Section 11 gives to the Registrar certain powers without which it would be obviously impossible for him to perform the functions imposed upon him in the subsequent clauses. When it is considered that this section is taken from an important statute (The Shipping Act) which confers like powers upon Registering Officers of Shipping, the opinion of invalidity on the plea of repugnancy to the law of England will appear unfounded. It would be difficult to show how any proprietor could be injured by the provision in section 88, enabling an agent having full power to sell, mortgage, or lease, to bring the property under the provisions of an Act which enables him to perform these operations with facility, safety, and economy, and it does not appear unreasonable, and certainly not repugnant, when the terms of Powers of Attorney confer an absolute right of sale to hold that such terms imply power to adopt the most facile and economical method of effecting sale or other dealing. The objection that it is repugnant to the constitutional law of England to give and unprofessional board, holding no judicial appointment under the crown, the power conferred upon the Land Titles Commissioner, will not stand the test of examination—is, in short, absurd. The appointment of these commissioners is under the crown as much as that of Mr. Justice Gwyme; and if

the Act imposes upon them judicial powers of functions, then theirs is a “judicial appointment.” As to them being unprofessional, we have many examples of similar functions exercised with great advantage to the public by unprofessional men, e.g., the officer of the Ordinance department in selling land. In the neighbouring colony of Tasmania, a board called the Caveat Board, presided over by a non-professional man has existed for many years and given the utmost satisfaction.” He had quoted Sir Hugh Cairns’ opinion and that of Mr. Torrens in reply, because he wished the house to understand the objections which had been raised to the measure already, and which might, perhaps, in this colony be again urged against it. He wished to impress hon. members with the fact, that he had taken pains to satisfy his own mind of the validity of the bill. He would now proceed to make a few remarks upon the clauses of the bill itself. After what Mr. Torrens had so lucidly said and written in explanation and recommendation of his bill, he (the Attorney-General) felt some diffidence in saying anything upon the subject. Yet it was his duty to explain to hon. members the effect of the bill, and he would proceed in a brief manner to do so. He would first state the principle of the bill, and he could not state it more clearly than by reading a short extract from Mr. Torrens’ book. “The principle of the act now introduced is, that it creates *independent* titles, retrospective investigation is cut off, each proprietor of the fee holds direct from the Crown, subject to such mortgages, charges, leasehold, or other lesser estates, as may exist, or be created, affecting the land.” This was Mr. Torrens’s definition of his own act. First, it provided for the registration of the title, not the deeds. The non-legal members of the house must, of course, be aware that there was a great difference between registering the title, and registering the deeds. If a bill were passed for the registration of assurances or deeds, every previous deed appertaining to the land would, in case of transfer, have to be registered, and the loss of a single deed would affect a man’s title. The cost of the machinery to carry this system of registration into effect would be enormous. By this bill the title alone was registered. Taking, for instance, the case of a grant from the Crown, under this bill two grants would be issued from the office of the Surveyor-General; one of the grants would be placed in the possession of the grantee, whilst the duplicate of this grant would be transmitted to the Registrar-General. The Registrar would enter this grant in the book. It would be entered there as a matter of record, and would remain until some subsequent delivery of the land. If, afterwards, the grantee should wish to sell the land, a memorandum of sale between him and the purchaser would be drawn up in the form of schedule D annexed to this bill, the memorandum being attested by a witness. The parties then go to the Registrar-General’s office, and in the presence of the Registrar, the vendor, by himself or agent, hands over the memorandum of sale, of which a record is kept. The Registrar-General cancels the original grant, and issues a fresh certificate of title to the purchaser. Under this system all old titles might be burnt, or lost, and the title of the present owner of the land would not be affected. This bill in its present shape did not deal with estates entail; and although a clause could easily be drawn up dealing with such lands and introduced into the bill, yet he (the Attorney-General) did not think this would be requisite. However, this was for the house to decide. He did not think the people out here would be very likely to wish to perpetuate a system of tithe of lands. When an hon. member introduced last session a bill to abolish the law relating to estates entail and to assimilate the laws relating to the inheritance of real property to those relating to the inheritance of personal property, it did not appear as though the creation of estates entail was looked upon with much favour. The system was, no doubt, good for England, where it had sprung up in the old feudal times, and was still continued; but he did not believe there was a desire to perpetuate it in this colony. However, he could easily prepare the draft of a clause to meet the case of estates entail if it were necessary. He had given an illustration of the simple transfer of the fee simple from A to B, as provided for in the 46th, 47th, and 48th clauses; but the bill also provided for the case of land being let on lease. When a man got his certificate of title, a memorandum of it was entered into the register book, and in case of a lease of the land being subsequently granted to another person by him, a memorandum of this was also entered in the same book underneath the certificate of title, where it remained as an encumbrance on the freehold. At present, in a simple lease for three years it was necessary to take up a great deal of space about covenants, which consequently rendered the transaction more expensive. This bill would be found to contain in clause 68 & 71 a large number of usual covenants, and as would be seen by reference to schedule E, it would not be necessary, as now, to set forth all the covenants verbally, but covenants set forth by the act could be implied by indicating the portion of the act in question. The memorandum of lease would appear in the registry book, and would remain as a record of the encumbrance on the estate until it were cancelled. The act also provided for the case of mortgages or rent-charges on land. One great expense at present, in vesting an estate in a mortgagee, arose from the fact that the mortgagee held the fee simple of the land until the mortgage was cancelled. This involved the necessity of the expense, first of conveying the land from the mortgagor to the mortgagee, then of re-conveying the land to its original owner when the mortgage was cancelled; the title, moreover, became encumbered with the abstracts of two conveyances by the transaction. Under the

present act a different principle would be adopted. The fee simple of the land would remain vested in the grantee, but the mortgage would be registered as a mortgage and incumbrance on the estate. The present cumbrous system of conveyancing and reconveyancing would thus be obviated. With regard to the clauses referring to settlements, vests and trusts, it would be seen by them that if a person wished to create a trust estate he would have to vest the land in the trustee absolutely, just in the same way as if he had sold the land, and in the registrar's book the trustee would appear as the absolute owner. He contended that it was not contrary to the present law for the trustee to appear on the registrar's book as absolute owner. At present the fee simple being vested in a trustee gave him power of sale. There were other clauses of the Bill relating to the transfer of land in cases of marriage, insolvency, or death, which it would be needless for him to minutely dwell upon, and which no doubt hon. members would express their opinions upon when the bill was in committee. Provision was also made to enable owners of land residing out of the colony to transfer the land by power of attorney if they desired to do so. Referring to clause 11, it would be seen that certain powers were given to the Registrar-General which, in assimilating the laws relating to the transfer of Real Estates to those relating to the transfer of Personal Estates, it was found necessary that he should possess. He (the Attorney- General) thought that sections 12, 13, and 14 of that clause would in committee require alteration. In South Australia two commissioners were appointed, who, together with the Registrar-General were commissioners for investigating and dealing with applications for bringing land under the provisions of this Act. A solicitor was appointed with these commissioners. The commissioners were laymen, and were paid by fees, and the Solicitor was a professional man, with a fixed salary—£800 a year, he believed. It was the duty of the solicitor to prepare a draft of all the retrospective titles, and the commissioners decided upon their correctness. Of course if the solicitor—a professional man—said the titles were all right, the commissioners, who were non-professional men, agreed with him. He (the Attorney-General) thought it would be useless for us to attempt to create such a body out here. We could not afford to pay a solicitor £800, and without a solicitor it would pay no two commissioners, at fees of 10s., to hunt up and examine into titles. He should propose to create a Master of Titles. This gentleman should be a legal man with a fixed salary. It should be the duty of this gentleman to investigate the titles of all persons who wished to bring their land under the operations of this act, and he should report upon the validity or invalidity of such titles as were sought to be registered. He would also enable the Master of Titles to refer special cases for the Judge's opinion. To protect the applicant against the Master of Titles, it should be in the power of applicant to apply for a rule *nisi* to compel the Master of Titles to show cause why he should not possess his title, in case of the former pronouncing the title to be invalid. Clause 15, it would be seen, made it compulsory that all transfers of land effected after the passing of the act should be made according to its provisions. Clause 16 gave a discretionary power to those who held land prior to the passing of the act, to bring it under the operations of the act. In the 21st clause he intended to propose an alteration which had been suggested to him by Mr. Torrens himself. That clause provided that in cases where an owner wished to bring his land under the operations of the act, due notice of his intention should be given to the owner of the adjoining land. Under this clause in its present shape, the owner of the adjoining land might still be ignorant of the exact land which his neighbour was going to bring under the operation of the act. He should propose that copies of the diagrams of the land should be forwarded to the contiguous owner who could then at once see the land which his neighbour had applied to be brought under the act, and he would then see at a glance that none of the land overlapped his own; and that he had not been encroached upon. Clauses 22, 23, 24, 25 provided for parties interested being enabled to issue a *caveat* to prevent land from being brought under this Act. There were two kinds of *caveat* which he would term adverse and protective *caveat*. The former was necessary as a precautionary measure to prevent parties, who had no right to an indefeasible title to the land, from procuring such a title by bringing the land under the Act. The protective *caveat* would have the effect of preventing trustees who held the land for the benefit of others from dealing with it improperly. (The hon. member here drew attention of the house to the latter half of the 32nd clause of the bill, providing that duly authenticated certificates of title shall be evidence in courts of justice, and quoted at length that portion of the clause.) By clause 35 provision was made to meet the case of a person who possessed an estate for life with a remainder to another person in fee. The remainderman would not possess a certificate of title, but he would be entered upon the register book as a remainderman. He would draw attention to one clause of the bill which affected the revenue. The surveys were often very inaccurate in former days, and by this bill it was possible that some injury might be inflicted upon those who held lands under the old grants. Compensation was provided in such cases from the fees collected under this act, but in case they did not prove sufficient it would be necessary to fall back upon the consolidated revenue. Clauses 43 to 50 related to the transfer of property, clauses 50 to 52 to leases. Clause 53 provided for the case of an insolvent lessee. Then followed the clauses relating to mortgages, which were very simple in operation. When the

mortgage money was paid the mortgage was cancelled, and should the mortgagee be away from the colony the mortgage money could be paid to the Registrar-General who would have power to cancel the mortgage. Clause 78 contained one flaw which would have to be remedied in committee. As it at present stood, if he were to create a trust estate and appoint three trustees, if one of these were to die he should like to have the power of nominating another in his place. This power was withheld by the clause in its present shape. The 80th clause was one which should have the serious consideration of the house. It was quite different from the law of England by which no married woman can directly hold land for herself. This clause confers such a power on a married woman. It would be a question for the house to decide whether the real property law of England in this respect should be departed from. The rest of the clauses of the measure were principally of a technical nature. He would remind hon. members that this important measure was not the work of a day, but the work of 15 years. It would be seen that provision was made by clause 15 for cases of lost grants. By this provision the bona fide loser was protected, whilst fraudulent representations as to losses of this nature were guarded against. He should now leave the measure in the hands of the house, with the earnest hope that, should it become law, he might live to see the most beneficial results arise from its operations. (Hear, hear.)

Mr. R. CRIBB could truly say, in rising to support the second reading of the bill, that it was one of the most pleasant moments of his public life. In fact he knew of none with which he had been connected that had given him so much pleasure. He would say as he said before, that if the whole of this session, and even the next, were spent in the passing of that bill, more good would have been accomplished than by all the other ones put together. Besides the other improvements, one great recommendation was that there would be no accumulation of deeds, as under the present system, nor would the deeds contain a long rigmarole of stuff which was frequently signed by persons without being understood, but there would be a small document so plain in its nature that those who ran might read, and which those that read could understand. It gave him great pleasure to support the bill.

Mr. BLAKENEY said there could be no doubt that the highest praise was due to the Hon. and the learned Attorney-General for the very great attention which he had paid to the bill. Although he believed that the bill would work well, he would beg leave, to remind the hon. member Mr. Cribb—who he trusted would not be carried away by the exuberance of his feelings—of the pounds shillings and pence which the colony would have to pay. For himself he believed that the expenses which would be incurred under this system would amount to twice as much as ever went into the pockets of the lawyers for drafting the deeds which so much alarmed his colleague. Although the principles of the bill had been derived from South Australia, he had not yet heard by what machinery the bill was to be carried out here. If it was intended to throw the work upon the present overworked Registrar-General of the colony they would find that impossible. He would remind them that in South Australia there were no less than four Registrars, namely—the Registrar for Births, Deaths, and Marriages; the Registrar of the Supreme Court; the Registrar of Deeds and Registrar-General who had charge of the Lands Titles department; Deputy Registrar, Clerks, two Solicitors, and several Commissioners, who together entailed a cost of £4454 per annum, while on the other side the receipts under the head of this department during the year 1860 amounted to but £1933. The present bill proposed that the style of the commissioners shall be the “Lands Titles Commissioners.” The Registrar-General shall receive a reasonable salary. The other commissioners shall be remunerated by the fees specified in the list marked R. in the schedule. On referring to the schedule he found a large number of fees set down which would swell the expenses attendant upon this mode of conveyancing to a large extent. He considered the clause which authorised the commissioners to call in the services of a legal practitioner when necessary, who should be paid by fees, to be somewhat objectionable, as it might happen that one of them or the Registrar might have a personal friend whom he wished to serve. In this respect he thought it would be better to adopt the South Australian system, and appoint a professional man to assist the commissioners. However, although he believed the system would cost a great deal of money, he thought it would be but right to give it a fair trial, as, with some alterations, the system would be a considerable improvement on the present one.

Mr. LILLEY through that after the lengthened explanation of the Bill which had been given by the Attorney-General it would be unnecessary for him, as a lawyer, to enter into its details. He however thought that its general principles were good, and having both before and since his admission to the profession, contended for the enactment of such a law—he felt great pleasure in supporting the motion, without going to the same length as the hon. member Mr. Cribb, by saying that it was the pleasantest moment of his life (laughter). Believing the present system to be so complex that not only were many persons unable to understand the mortgage deeds they signed, but also the lawyers themselves, he thought it desirable it should be swept away, especially in a colony like this, where he believed the transfer of land to be more frequent in proportion to the population than in any other part of the world. Whatever self-interest he might feel, as a lawyer, in maintaining the present system, he must see that

as the change would be for the general welfare of society, the sooner it was accomplished the better for himself. Although lawyers were regarded as the Ishmaelites of society, and were much abused, he trusted that henceforward the hon. member Mr. Cribb would think better of the profession, and say that the bill had received the support of a lawyer, and had been introduced by a member of the government who was himself a lawyer. He did not apprehend that the expenses entailed by the system would be so great as imagined by Mr. Blakeney, as he thought that when the registry of titles was compete, the machinery would become so simple as to be worked at but little expenses. Independently of that it would be no small benefit to remove the large expenses attendant upon obtaining a safe title, and the constant danger which existed of its being destroyed. There were lawyers in this town who had in their possession a large number of deeds, which, if destroyed by fire, would so completely sweep away important links in the title that they never could be restored. Any system which would remove such risks as those must be a great benefit to the community, and relieve lawyers from a great deal of anxiety. Another thing was the simplification of titles. He remembered, when at home, being engaged fully for a whole fortnight in preparing the abstract of a title. Although titles were at present comparatively simple in this colony, yet they would become just as complex in the course of time were the present system continued. Nor did this complexity depend upon the magnitude of the estate, for if a man bought a single inch of an estate it would be as necessary to give the same history of the title as if he had purchased a thousand acres. Under these circumstances no lawyer who wished well for his country, or cared for the credit of his profession would stand up and justify the present system (cheers).

Mr. FERRETT had no intention of speaking on that occasion, but from the hurried perusal he had given the bill there appeared one particular for which no provision had been made. If he understood the hon. the Attorney-General aright, only one title could be held to any estate. If so, he could not see how in the case of a person holding a portion of land cut off from a larger estate the one title could do for both portions. If he were in error perhaps the Attorney-General would set him right.

The ATTORNEY-GENERAL stated that he did say that there would be but one title to any estate, but in such a case as that referred to, a fresh certificate would be granted in respect of the part so cut off, and a fresh deed granted with respect to the original estate.

The ATTORNEY-GENERAL then moved the second reading of the bill, which was carried without a division, and the committal of the bill was fixed as an order of the day for the following day (this day).

CIVIL SERVICE BILL.

The COLONIAL SECRETARY, finding it was the desire of hon. members, that more time should be allowed for the perusal of this bill, moved that it stand an order of the day for Tuesday next, which was carried.

BAIL ON MANSLAUGHTER BILL.

The ATTORNEY-GENERAL, in moving the second reading of this bill, said that as the law at present stood in this colony, and until lately in England, coroners had no power to admit persons to bail who had been committed or remanded on a charge of manslaughter. Though so many years had passed over without any remedy being adopted in this respect, the present bill appeared to be a very good one. Under the present system great hardships were sometimes inflicted upon persons, under a charge of manslaughter, into which an inquiry was being held by the coroner, in consequence of the coroner having no power to grant bail. No doubt a prisoner so situated had the power of applying to a judge, but the process was so expensive and inconvenient that men were frequently detained in custody who were afterwards, upon fuller investigation, found to have been innocent. Although most coroners in this colony were magistrates, and in that capacity had power to grant bail in such cases, yet as, when acting as coroners, they were unable to grant bail, it was thought desirable to give them the power to grant bail in cases of manslaughter, but not in cases of murder. Doubtless the coroners of the colony were highly educated and intelligent gentlemen, but he did not think it desirable, for various reasons, that their power of granting bail should be extended to cases of murder, the more especially as persons charged with that crime could obtain bail on application to a judge. Many persons were under the impression that bail could not be granted to persons charged with murder, but although under the law of England it was in the power of Justices of the Peace to grant bail for any offence, the crime was of so serious a character that it was but seldom advisable to do so. Under these circumstances he thought it would not be advisable to extend that power to coroners. He believed that many coroners thought they had the power to grant bail in manslaughter cases, and many had exercised it though not legally, and it was to remove the doubts which had hitherto existed on their part that the bill had been introduced.

Mr. LILLEY thought that great benefit would be conferred by the removal of the present restrictions upon the power of the coroners. He himself knew of a case in which a person who had been charged with manslaughter through an accident, after being detained a prisoner for seven days, was admitted to bail on application to a judge, and was ultimately discharged with clean hands. He would support the second reading of the bill.

The bill having been read a second time without a division, the house, on the motion of the ATTORNEY-GENERAL, resolved itself into a committee of the whole to consider the same.

On the motion of Mr. LILLEY, the words in the first and second clauses and schedule, rendering the assistance of a magistrate necessary, were struck out; and on the motion of the ATTORNEY-GENERAL, Mr Blakeney left the chair, and reported the bill with amendments to the house. The bill was then ordered to stand an order of the day for Tuesday next.

COTTON GROWING.

On the motion of Mr. WATTS, the Speaker left the chair, and the house went into committee on the resolutions for the arrangement of cotton-growing.

Mr. O'SULLIVAN said that when the house was counted out the previous evening, he was expressing his opinion that the motions were of an exclusive character, and framed in favour of a particular company. Such an opinion was entertained outside the house. He would therefore move as an amendment that the minimum quantity be reduced to 40 acres, on condition that a sum in the same proportion to 40 acres as £5000 to 320 acres be expended. His object in making this amendment was, to bring the operation of the resolutions within the reach of the working classes.

Mr. WATTS said it was quite true that when he introduced the resolutions he admitted the right of any hon. member to move amendments, but he could not agree with the remarks which fell from the Colonial Secretary in his reply on the previous night. He would therefore prefer that the resolutions should drop altogether rather than that they should be burked by that proposition. In introducing these resolutions he was influenced solely by a desire to add another staple to the exports of the colony. He felt that this could never be done in a small way, and that unless it could be carried out by giving encouragement to the introduction of capital, it would never be done at all, as the bonus system of £10 per bale had been tried for one year and had entirely failed.

The COLONIAL SECRETARY said he desired to contradict a statement which he made on the previous evening. He had since found upon reflection that the bonus according to the existing land laws was granted on the exportation of cotton, and not simply on its growth in the colony. Whether or not that was a difference calculated to affect the profits of the producer, seemed to him to admit of considerable doubt, but nevertheless he felt obliged to take this the earliest opportunity of retracting the erroneous statement referred to.

Mr. R. CRIBB entirely dissented from the opinions expressed by the Colonial Secretary and others who had taken the same views with regard to the principle involved in these resolutions. Under the system as prescribed by the land acts, the government were empowered to make regulations which could be so framed as to remove all the obstacles complained of, but with regard to the resolutions as now proposed, he could see no other object to be gained that that of benefiting the rich at the expense of the poor man. In other words, they partook largely of the spirit of class legislation. Under these circumstances he should feel bound to support the amendment of the hon. member for Ipswich.

Mr. LILLEY considered the whole affair a perfect farce, and the fact of the bonus being granted only to the exporter of cotton, and not to the grower, only made the matter worse. He believed it would be found altogether impracticable to carry out the resolutions in their present form, and he should, therefore, either oppose them in toto, or vote for the amendment of the hon. member for Ipswich. From all that he could learn, he was disposed to think that the resolutions were chiefly designed to benefit a particular company. (Hear, hear.)

Mr. WATTS explained, pointing out that in bringing the matter forward he had no view to the interests of any particular company.

The ATTORNEY-GENERAL understood from the general tenor of the discussion that there was no particular objection to the principle of the resolutions, and that the chief object was to modify them in such a manner as to suit the peculiar ideas of certain hon. members. At all events they were all agreed as to the desirability of creating another export in the shape of cotton and one of the chief clauses passed in the Land Act of last session was designed to accomplish this object by giving a bonus for the exportation of cotton. The policy of this principle was fully discussed at due time, and seeing that the

object of the resolutions now under discussion was precisely the same he was at a loss to understand upon what reasonable ground hon. members could refuse to support them. It appeared to him that they could have no other effect than to increase the production of cotton, and to attract to the colony a large influx of population. The principle, moreover, was open to individuals as well as to companies.

Mr. WATTS again disclaimed any connection with any company whatever.

Mr. HALY would support the amendment of the hon. member for Ipswich.

Mr. RAFF was astonished, after the discussion and decision arrived at the other night, that the principle of these resolutions should be again called in question. It seemed to be the general impression at the time, and he had heard no arguments since to warrant a contrary impression, that the resolutions were sound in themselves, and merely required a few verbal alterations to make them perfect. Surely the hon. member for Fortitude Valley could not be so ignorant of commercial matters as not to know that the premium although received by the exporter, must necessarily revert in large proportions into the pockets of the producer. With regard to the amendment of the hon. member for Ipswich he had no objection if it were considered practicable to see it carried into effect.

Mr. O'SULLIVAN thought there was a kind of freemasonry between the hon. the Colonial Secretary and the hon. member (Mr Watts) in reference to certain class interests to be promoted by these resolutions, and he partly formed this opinion from the pertinacious manner in which the hon. mover adhered to the terms of his motion and the facility with which the hon. the Colonial Secretary corrected his own remarks. (Laughter.) He could assure the government, however, that if he found them practising a policy of that kind, he should feel it to be his duty to go over at once to the opposition benches. (Laughter.) He had no desire personally to accept office, but he could not help remembering that the ministry did not hold a life title to their seats. (Laughter.)

Mr. FERRETT supported the motion, on the ground that the object was to create a new staple, and to encourage the introduction of capital into the country, which would be alike beneficial to the poor and the rich man.

Mr. B. CRIBB spoke in favor of the amendment, as likely to carry out an idea he had long since entertained.

The COLONIAL TREASURER desired to correct a mistake committed by the hon. member for Ipswich, when he threatened the government that if they acted in a certain way in reference to this motion, he would at once secede to the other side, for the purpose of taking the leadership of her Majesty's opposition. (Laughter.) The hon. member should bear in mind that the question then before the committee was not a government one, and that consequently the members of the government were as free to exercise an independent vote as any other hon. gentlemen in the house. (Hear, hear.)

Dr. CHALLINOR was opposed to the resolutions in their present form. It seemed to him that the minimum limit of occupation, as prescribed in the second resolution, would, like the squatting system, create a monopoly in favor of the capitalist, and therefore he looked upon it as a species of class legislation. He could not understand, moreover, how the allotting of these lands was to be carried out, unless they were to have cotton as well as agricultural reserves, and if such was to be the case, why should a man not be allowed to select in the same way as under the Land Act.

Mr. MOFFATT was in favor of the resolutions as he believed they would have the effect of introducing capital and thus benefiting the poor man as well as the rich man. But under any circumstances he contended that under the conditions prescribed it would never pay a poor man to take up even 40 acres, because by so doing he would be put to an expense for fencing and clearing, &c., of some £200 or £300. Under the land act the poor man obtained his ground without any such expense being attached, whilst on the other hand he received a bonus of £10 for every 3 cwt. of cotton he produced, which was as liberal an inducement as the legislature could be reasonably supposed to offer.

The ATTORNEY-GENERAL disclaimed all intention to favour class legislation, and proceeded to show that the poor man would really not be benefited by the alteration proposed in the amendment. The object of the resolutions was simply to encourage the growth of another staple by holding out an inducement to the introduction of capital into the colony, but in this arrangement there were no bonuses offered, and he was quite at a loss to understand how the word came to be imported into the debate. Under the land order system the poor man could obtain 40 acres in fee simple for the mere sum of £40, and there his expenses would end, so far as the actual possession of the land was concerned, but under the system now proposed, if the same party took up 40 acres he would be obliged to spend on it, within a period of two years, not £1 or £2 per acres, but £12 10s. per acre. Hence it would be seen that the advantages to be gained by the poor man under this arrangement were purely imaginary.

Mr. O'SULLIVAN again addressed the committee in support of his amendment, and, in doing so, combated several of the arguments advanced by the last speaker.

Mr. FITZSIMMONS supported the original motion for reasons similar to those offered by Mr. Moffatt and the Attorney-General.

Mr. R. CRIBB again argued in favour of the amendment, showing, in answer to the Attorney-General, that he even, under the land order system, the poor man, would have to pay for clearing, fencing, &c., at the rate of £8 or £10 an acre.

Mr. TAYLOR was of the opinion that, at their next meeting, they should pass a resolution restricting hon. members from speaking more than once on one subject; and as a reason he urged that the house, during this session, had already been counted out twice.

Mr. R. CRIBB rose to order.

Mr. TAYLOR proceeded, arguing generally in favor of the resolutions. He remarked that it was somewhat singular a subject of this kind—the creation of a new export—should receive its warmest advocates from the ranks of the despised squatters, whilst those who boasted of leading the van in all such matters—he meant those who resided in the towns, and prided themselves upon being ultra radicals—were its most consistent and violent opponents. The hon. member for Ipswich had told them that, if the government did not do a certain thing, he would go over to the opposition benches. Now, he (Mr. Taylor) could say that if the government did not do a certain thing, he, also, would go over to the opposing benches. Hence there would be two seceders, which would be much worse than one. (Laughter.)

The house then divided on the amendment, which was negatived on the following division:—

Ayes, 7.		Noes, 12.	
Mr. B. Cribb		Mr. Gore	
Dr. Challinor		Moffatt	
Mr. Fleming		Taylor	
Lilley		Roydes	
Haly		Colonial Treasurer	
O'Sullivan	} Tellers	Mr. Warry	
R. Cribb	}	Fitzsimmons	
		Richards	
		Edmondstone	
		Attorney-General	
		Mr. Watts	} Tellers.
		Col. Secretary	}

Mr. B. CRIBB moved as a further amendment that the minimum number be 50 acres instead of 320.

The COLONIAL SECRETARY regretted that the hon. member after the sense of the house had been so fully taken on the subject should seek unnecessarily to prolong the debate. It appeared to him to be an attempt on the part of the hon. member to import one of the worst practices of the New South Wales Assembly, which consisted in taking advantage of the mere forms of the house.

Mr. R. CRIBB characterised the lecture of the hon. member as uncalled for and offensive. He then proceeded to speak at some length. Whereupon the Colonial Secretary, followed by a large majority of the members present, left the chamber. The question was then put, and the bell for division having been rung hon. members returned.

Mr. R. CRIBB accordingly resumed, and, having made a few observations,

The amendment was put and negatived by a majority of 14 to 5, the minority being the same as in the other division minus Messrs. Haly and Fleming who went over to the other side.

Mr. O'SULLIVAN here moved an amendment to the effect that the money expended on the lands proposed to be granted should be expended on the actual growth of cotton, the object to prevent any portion of it being devoted to the importation of Coolies, or any other extraneous purpose.

Mr. WATTS pointed out that the amendment would prevent the proprietors from even growing a cob of corn for their horses.

The amendment was eventually withdrawn and the original motion carried.

The third resolution, transmitting the two previous ones to the Legislative Council for concurrence was agreed to without remark.

The house then resumed, and the resolutions were adopted, on the motion of Mr. Watts.

MAINE ROAD THROUGH DALBY.

The CHAIRMAN OF COMMITTEES having brough up the report, the resolution was agreed to, on the motion of Mr. WATTS.

REVENUE AND AUDIT BILL.

On the motion of the COLONIAL SECRETARY the house resolved itself into a committee of the whole, for the purpose of considering this bill in detail.

Clause 2 making the position of the Auditor General independent of the government, and responsible only to the legislature, was opposed by Mr. O'Sullivan, but after some explanation from the Colonial Secretary it was carried without a division.

There were two or three new clauses introduced by the Colonial Secretary, which were also agreed to.

The blank in the clause fixing the salary was filled in with the figures £600.

The remainder of the clauses were verbally amended and passed without opposition.

The schedules were then put and passed, and the preamble having been agreed upon, the bill was reported with amendments.

The COLONIAL SECRETARY moved that the adoption of the report should be deferred until Wednesday next.

The house adjourned at half-past ten o'clock till three o'clock this day.