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TUESDAY, 27 JUNE 1865

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LEGISLATIVE ASSEMBLY.

Tuesday, 27 June, 1865.

Toowoomba Swamps Drainage.—Expenditure out of Immigration Loans.—Real Property Act Amendment Bill, 2°.

TOOWOOMBA SWAMPS DRAINAGE.

Mr. GROOM moved,—"That this House will, to-morrow, resolve itself into a committee of the whole, to consider of an address to the Governor, praying that His Excellency will be pleased to cause to be placed upon the Supplementary Estimates of 1865, the sum of four thousand pounds, for draining the eastern, western, and main swamps, in the town of Toowoomba." The honorable member, in the course of his remarks in support of the motion, said that this matter had been brought under the notice of the Government by the Municipal Council, who pointed out in their petition that a large amount of the mortality of the neighborhood was attributable to the malaria from the swamps. The honorable the Chief Secretary on that occasion promised that a sum would be placed on the estimates for the drainage of the swamps. On finding that the promise had not been carried out, he waited on the honorable the Chief Secretary on the subject, and was informed that the Government would prefer that action was in the first place taken by a private member of the House. In consequence of this expression he gave notice of the motion which he now brought forward. The honorable member then proceeded to quote from the report of the Board of Health, to shew that the infantile mortality of Brisbane was mainly attributable to the want of milk, and to an undue amount of animal food; and proceeded to state that as such was not the cause of the large proportion of infantile mortality in Toowoomba, it must be sought for in some other source. The only other source, he maintained, was the malaria arising from the swamps, which were, to a great extent, cesspools; and, according to the report of the Board of Health, those were the chief causes of diphtheria, and scarlatina, which were the diseases children mostly were subject to. The honorable member also referred to the inability of the Municipal Council to carry out a work of such magnitude from the want of funds, which, in some degree, was owing to the smaller grant given to the council than to other similar bodies. Under those circumstances, and as the work would be reproductive to the extent of reclaiming about 125 acres of valuable land, he thought it should be undertaken by the Government. The Municipal Council, however, he said, would defray the cost of draining the swamps, if the Government, on the other hand, would consent to grant them the land that might be reclaimed.

Mr. TAYLOR suggested that the amount should be reduced to £2,500.

The SECRETARY FOR LANDS AND WORKS opposed the motion, as there was nothing on the face of it, or in the speech of the honorable member, sufficient to satisfy the House that such a sum was required. If the work were done—the corporation of Toowoomba not being in a position to carry out any improvements—it would have to be done by the Government, and the utmost they could do, at present, would be to send an engineer to survey the place, and report upon it. He would point out, in the meantime, that the finances of the country had to be carefully economised; and that the expenditure already set down on the Estimates was very considerable.

The motion was put, and negatived, on a division, by a majority of twenty-three to five.

EXPENDITURE OUT OF IMMIGRATION LOANS.

On the motion of Mr. STEPHENS, the House ordered "a return of the various items composing the expenditure out of the immigration loans, as given in the Auditor-General's Reports, namely—£10,030 expended in 1863 and £131,820 12s. expended in 1864; and also of the amount expended in 1865, up to the present date." In support of his motion, the honorable member expressed his surprise at the way in which the House treated the expenditure defrayed out of the loan fund, as compared with that defrayed out of current revenue. In respect of the latter, estimates were prepared in which every particular item of expenditure was set forth, and, in this order, every item was discussed and voted by the House. In respect to the expenditure out of the loan fund, the contrary was the case. According to the Auditor-General's Report, during the last year, the expenditure out of the general revenue was £439,034 18s. 6d.; and out of the loan fund, £401,042 6s. 10d. Of the former, full particulars were before the House; of the latter, scarcely any particulars at all. Being guardians of the public purse, it appeared to him necessary that they should be equally informed of both. Out of the loan fund, as he learned from the report, £157,776 19s. 11d had been disbursed in "sundry payments" on account of the Southern and Western Railway; but that was all the information about that expenditure. During next year, a comparatively small amount would be expended on that railway for working expenses; yet, in the Estimates for 1866, which were on the table, each separate salary was specified. But the particular votes to which he wished to draw attention were those named in the Loan Act of 1863, £100,000, and in the Loan Act of 1864, a second sum of £100,000, which were simply for "immigration purposes." It would be impossible, by any terms, to give the Executive greater latitude in the expenditure than they had under those votes. There was no doubt in his mind that the money had been spent in accordance with the instructions of the House; but then there were so many ways in which it could be expended, in furtherance of immigration, that it was essential that the House should have particulars of the expenditure. The only information that he had been able to derive on this subject was, that £70,473 16s. 4d. had been taken out of the loan for 1863, and transferred to the general revenue account, in order to meet a deficiency from excess of expenditure over revenue in 1862-3—in consideration, however, of there having been a large amount of land orders cancelled which had been used for immigration purposes. From an answer to a question put in the House, the other day, he had learned from the Government that £30,000 had been sent home to the Imperial Emigration Commissioners. That was one vote exhausted, and that was all they knew anything about. Referring to the Auditor-General's Reports, he found that the actual expenditure out of the loan was something very different. In his report for 1863, the sum of £10,000 was put down as having been sent to the Commissioners; and in the report for 1864, £131,820 12s. was the sum total expended out of the immigration loans; therefore, it appeared that a total of £141,820 12s. had been expended. Another £10,000 was, according to the statement of the Colonial Secretary, a few evenings ago, to be added; which made £151,820 12s as the sum that had already been expended. The House should know the particulars of the balance of £51,820, of which, as yet, they had no information. It would be remembered that on Thursday evening last, the honorable the Colonial Treasurer stated that the Government proposed to take £31,898 out of the loan, in order to pay salaries connected with immigration;—in fact, to reduce the balance to that extent, that there would remain only £16,282 unappropriated out of the loans of £200,000 for immigration.

The COLONIAL TREASURER informed the House that the Government had no objection to furnish the return, and he intimated that had it been asked for before the honorable member for the Burnett (Mr. Mackenzie) had tabled his motion respecting the remittance of money to the Imperial Emigration Commissioners, which had produced the elaborate debate that took place on Tuesday last (20th instant), it might have spared the House some trouble.

REAL PROPERTY ACT AMENDMENT BILL.

Mr. FORBES said: In rising to move the second reading of the Bill for the amendment of the Real Property Act, I trust the House, and especially honorable members belonging to the legal profession, will bear with me, as the subject is one I am not fully conversant with, and, therefore, I feel myself somewhat inadequate to the task. As the matter, however, seems to be one that is to be determined by commercial usage, I am emboldened to undertake the task of bringing it before the House. In passing the Real Property Act of 1861, it was, I maintain, the intention of the Legislature that the forms required by the Act should be filled up by anyone, though not connected with the legal profession, who could write clearly and distinctly. The filling up of the forms did not require any legal or other peculiar ability; and in the discussion which took place on the Bill, when it was before the House, it was admitted that the Registrar-General should be the conveyancer for the whole colony. That such was the case was established by the fact that several honorable members connected with the legal profession alluded to the large amount of their income they were giving up in agreeing to the measure. Now, it has lately occurred that

some persons have been filling up some of the forms that have been issued from the Registrar-General's office, and one person was threatened with heavy pains and penalties by one of the Judges of the Supreme Court for doing so. Now, a Judge is just as fallible and liable to error as any other member of the community; and if we find a Judge, laboring under an error, attempting to act—it might be imperiously—it is the duty of the Legislature to step in and provide a remedy. I hope that those legal gentlemen, who so strongly supported the Real Property Bill when it was before the House, will not oppose this small Bill for its amendment in a matter affecting merely the filling up of the forms under one of the schedules. I have been informed that about sixty-three per cent. of the whole of the real property in the colony has been brought under the operation of this Act; and with respect to properties in that position, mortgages can be executed in five minutes, and consequently at a very much less cost than in the case of properties not under the Act. Another reason I have to urge in favor of this Bill is, that I do not see why the Legislature should afford protection to the legal profession more than to any other class of the community; or, on the other hand, if legal gentlemen are to be protected in the practice of their profession, I do not see why the members of other professions should not be protected in theirs, such as musicians, architects, &c. I may state that if we look at the *Statistical Register*, we shall find that, as I have stated, about sixty-three per cent. of all the real property in the colony has already been brought under this Act; and I have been given to understand, that if this Bill should become law, the whole of the freehold property in the colony will be brought under its operation. With these observations, I beg to move the second reading of the Bill.

The ATTORNEY-GENERAL: Sir, as it was I who introduced the Real Property Act of 1861, and I am, therefore, to a certain extent, responsible for its provisions, I rise to inform the House of the reasons that induce me to oppose the second reading of this Bill; and, at the outset, I shall premise that the question has been raised before the Supreme Court, as to whether A, or B, or C, can take upon himself the duty and responsibility of following a profession to which he has never been called; and that the Supreme Court has determined, as a question of law, in a case lately referred to it, that he has not that privilege under the Act. I do not think the language used by the honorable member for the Warrego is at all becoming to his position, as a member of the House, when he talks of an imperious Judge. I do not know that either of the Judges can be said to be imperious, and I scarcely know, in the course of my experience, any Judge in any colony that can be said to be imperious.

Mr. FORBES: I think the words I used were—it might be an imperious Judge.

The ATTORNEY-GENERAL: Well, be that as it may, I take the liberty of saying that I believe the Judges were well able to deal with the law of the question raised; and the decision they arrived at was, that none but professional men, or men qualified under the Act 11 Victoria, No. 33, could, without subjecting themselves to pains and penalties, fill up the form prescribed by schedule A of the Act. On that occasion my learned friend, the Honorable Mr. Bramston, and I, argued the question for the defendant Lindo; and my honorable and learned friend, the member for Fortitude Valley, argued the case on the other side. The great question for the court to decide was, what was the intention of the Legislature, as expressed by the Act in its letter and spirit? It was contended that, if it was intended by the Legislature that non-professional men should be allowed to fill up the forms, the 14th clause of the Act 11 Victoria, No. 33, would have been repealed. No such repealing clause, however, could be found in the Real Property Act of 1861, and therefore their honors the Judges were compelled to come to the conclusion that none but persons duly qualified under the Act 11 Victoria, No. 33, could fill up the forms mentioned in that Act. That ruling I consider to be a sound one. I believe some honorable members thought that by the first section of the Real Property Act, the Act 11 Victoria, No. 33, was impliedly repealed, but it was not so. The first section of the Act is as follows:—

"From and after the commencement of this Act all laws statutes acts ordinances rules regulations and practises whatsoever relating to freehold and other interests in land so far as they may be inconsistent with the provisions of this Act and so far as regards their application to land under the provisions of this Act or the bringing of land under the provisions of this Act shall be and the same are hereby repealed."

Those gentlemen who took upon themselves to perform duties which might subject them to pains and penalties, did so, I believe, at first, conscientiously, believing they were entitled to do so. Still, I think that, after the decision of the Supreme Court, they could have no cause to complain if they were subjected to the penalties in the event of their continuing to practice. The case of Lindo that was brought before the Supreme Court, was not one of great hardship, so far as Lindo was concerned, and I do not think that the gentleman who brought the case before the court was actuated by any feelings individually inimical to Mr. Lindo. The action, I am inclined to believe, was brought chiefly for the purpose of having the question determined one way or another, and taking means afterwards, if necessary, to obtain a proper statutory enactment. Lindo was not punished, and it was never intended to punish him, though he had

brought himself under the provisions of the statute. The only object in bringing the case before the court was to have it determined, whether, by the Real Property Act, the Act 11 Victoria, No. 33, was repealed, and whether, therefore, the forms under schedule A of the Real Property Act could be filled up by non-professional men. In the judgment, on that occasion, an expression of opinion was delivered by the Judges to the effect, that the intention of the Legislature was expressed in such language as to enable them finally to determine the enactment; but at the same time, it was thought, in some quarters, that it might be well to bring in a Bill for its definition. Had the court determined that the Act did not prevent non-professional men from practising, I should have considered it my duty to bring in a Bill to define and make clear the law on the subject. I regret, sir, I am not able to lay before the House the decision of the Supreme Court in the case. It was delivered *viva voce*, and I am sorry to find that it has not been reported, or, at any rate, not reported with such accuracy as to be relied upon. But, if I understand the general proposition laid down by the Court in their judgment, it was to this effect: that not only did the Real Property Act of 1861 not repeal the Act 11 Victoria, No. 33, either absolutely or impliedly, but they further expressed an opinion that it was not desirable such power should be given to non-professional men, as they claimed. Not to go further with respect to the judgment itself, it may be more acceptable to the House if I can satisfy honorable members why it is not beneficial to the colony that the privileges sought to be given to a certain class of gentlemen, who have, no doubt, up to the decision of the Supreme Court, followed up a certain course of practice, should not be further continued; and perhaps my remarks may be listened to with some attention, as the House is now called on to determine a question which, in one sense, the Supreme Court has offered an opinion upon, and perhaps I may be pardoned for saying that the opinion the court *in banco* delivered, was not an opinion they were absolutely called on to express on the question before them. The point at issue was one as to the construction of the Act, and as to whether Lindo had incurred the penalties under the Act 11 Victoria, No. 33, respecting non-professional men practising. The decision on the point must be valuable to the House and to the inhabitants of Queensland, as shadowing forth the opinions of gentlemen—the most learned in the law in the colony—as to whether the practice of filling up forms or not by non-professional men, should be allowed to continue. I am now going to point out to the House why it would be a dangerous thing to allow a Bill of this peculiar nature to pass; the effect of which would be to admit any one, no matter who he is, whether educated or uneducated, whether conversant with the real property law or not, to hold himself out to the world as a man holding a professional capacity connected with the Real Property Act, and qualified and entitled to fill up certain forms prescribed by the Act for fee or reward. Now, it is a perfect mistake, so far as I have ever construed the Real Property Act of 1861, to suppose that the filling up of the forms under schedule A is a mere matter of form. It is not an easy thing to fill up those schedules so as to furnish to a person who asks for it, a satisfactory title. When a man goes to a person who professes to have a knowledge of the Act, and asks his advice, his doing so, and paying his money, shews that he places faith in the man as one who can furnish him with a *bona fide* title. I consider it is the duty of the Legislature, in passing measures relating to real estate, while following out the principle laid down in the Real Property Act of 1861, and affording to every one a cheap means of obtaining a grant of land, and so remedying one of the evils in the transfer of land—its great expensiveness—while aiming at all this, still it is also a duty, and a primary duty, of the Legislature to protect the illiterate man—and to protect him against the possibility of his employing persons as illiterate as himself from making out a title for him, by which he might suppose he had obtained secure possession, but which, when at some future period the title came to be tested, he would find it was not worth the paper it was written upon. If I could bring myself to think that the filling up of the forms under schedule A was a mere mechanical operation, that any person who could read or write was as well qualified to fill them up as a professional gentleman, and that such a form would have validity in law, I should not be found opposing the Bill. But, as I cannot come to such conclusions, I must oppose the Bill. I now come to the next step of the argument. It is my duty to inform the House why it is not a matter of form to fill up the forms under schedule A. I believe the argument used by the applicants for non-professional men to fill up the forms, is based on the assumption that anybody can do it. Now, sir, if I can satisfy the House that such is not the case, that should be sufficient to influence the House not to pass this Bill. I would remind the House that there are two descriptions of applications under the Act of 1861. The first is an application to bring under the Real Property Act of 1861 property which has been for some years treated under the provisions of the previous Act, and by which the fee-simple is conveyed from A to B, and so on. To bring such property under the Act of 1861, all parties join together in the application, and under the fourth provision of the Act the fee-simple becomes vested in the vendee, whoever he

might be. Now, when an application is made to bring under the Act of 1861 lands not held under grant from the Crown directly, but under various transfers from A, B, C, and D, for years previously, I think it will be found, by reference to the Act, that the greatest care is required to be exercised in the filling up of the form under the schedules. The form itself may be very simple; but I would wish to draw attention to the words that are printed in italics, and which are of the utmost importance. An applicant, when he sends in his application, is required to make a solemn declaration that the descriptions of the land are correct. He has not only to describe the situation and area of the land, but also the nature of the estate, whether held in fee-simple, or lesser estate, or for trust uses. Now, I should like to know how an uneducated man could do all that—how could he describe whether the interest in the property was reversionary or a tenancy, or indeed describe anything about it. Well, an illiterate man goes into a place for hiring servants, and meets with a man, perhaps, only a little less ignorant than himself, who makes out a description of the property for him, and the unfortunate applicant has then to make a solemn declaration that the description is correct, though if he were to think over it for a few minutes, he would scarcely be able to believe in it himself. The form of application is not so easy a thing to fill up. The next thing the applicant has to do is to make a solemn declaration that there is no person in possession holding adversely to his interest; so it would be seen that the applicant is wholly in the power in respect to such important matters of a person who, from his want of education, or from his not being bred to the law, can not fill them up properly. If the Act of 1861 is to be carried out, does the House think that that class of individuals who have the filling up of those applications—the filling up of which requires so much knowledge of the mode of doing so, should continue to have those privileges, and is the House willing to afford them those privileges which they claim? No doubt the filling up of the forms is much easier when the Crown grant has been made. But the application must be taken into consideration in one case as well as the other. What particular benefit can be gained by allowing non-professional men, as I term them, to undertake this duty? I cannot see that the public will derive any advantage, though no doubt they get a very great benefit themselves. And I question whether, if a select committee of this House were to consider the matter thoroughly, and take evidence upon it, it would not be proved satisfactorily that the majority of non-professional men who have filled up those forms have charged twice as much as would have been charged by a professional man. I state that, advisedly. Sir, it is not only the absolute application for a form; but the unfortunate applicant is drawn into the office of the land agent, either by an advertisement, "Land brought under the Real Property Act," or a placard to that effect, and he does not get out of that office for anything like the price of the form—very likely not for more than twenty guineas. I think, sir, this House, if it has the interest of the country at heart, should deal very carefully with this question. I am not going to give any instances of the charges that are made in such cases, but I may state what my opinion is, derived from cases which have come under my notice; and I am sure that every honorable member, every person who is capable of judging on this question, will say my statement is perfectly correct—I say, sir, that in the majority of cases the poor man has to pay a great deal more by employing one of those land agents than he would have to pay if he employed a professional man. Then, what benefit does the community derive? I do not mean to say that among the gentlemen who carry out the provisions of this Act there are not many highly respectable men; but there are also many dishonest men—men who have proved themselves to be dishonest. And, sir, a door is thus opened which leads to fraud, and to a system which ought to be put a stop to; and when once the door is opened, and every one is allowed to practice, it is impossible to distinguish between the honest and the dishonest. The only way in which justice can be secured to the public, is to require some qualification from those persons who are entrusted by the Legislature to carry out the machinery of the Act of Parliament. Now, the Act does not require that any person, to be qualified to carry out its provisions, must be an attorney or a barrister; but it provides that certain persons who have undergone a course of reading by which they can acquire the necessary information may, by passing an examination, be authorised to do so; and they would then be regarded by this Legislature, and by the community, as having given a guarantee of their fitness to take charge of the interests placed in their hands. But, at present, a number of persons who are not professional men, who do not come under the provisions of the Act 11 Victoria, No. 33—although some of them by their character and standing may afford a sufficient guarantee of their ability—are equally allowed to practice, and the ignorant man who applies to them is just as likely to be taken in as not. That is not a state of things which should continue to exist in this colony. I cannot see why gentlemen of good standing and acknowledged ability should have any objection to qualifiy themselves under the 14th section of this Act. Let them do so, and then we shall be in a proper position; the fees will not be so great; they will be the recognised persons to carry out the law, and the Act will work well. The clause I refer to is this:

"And be it enacted that every person except a barrister or attorney and solicitor of the

Supreme Court who shall be desirous of practising as a conveyancer shall one month at least before making application as hereinafter mentioned give notice in such manner and form as the Judges of the Supreme Court shall direct of his intention to apply to the said court for a certificate to practice as a conveyancer and any person having such notice as aforesaid shall be at liberty to apply to the said court touching his fitness to practice as a conveyancer and thereupon the Judges or one of them shall direct that the applicant shall be examined at the earliest convenient time by the Master in Equity of the said court (or such other one or two officers of the court as the Judges may appoint to assist him) touching his the applicant's skill and knowledge in conveyancing as well as to his character for integrity and the said master or his assistants shall be at liberty to put such questions to such applicant in respect to the matters aforesaid and to require such proof of his character as shall be deemed proper and if the said applicant shall be considered of competent ability and knowledge and a fit and proper person to practice as a conveyancer then the said master shall and he is hereby empowered to grant a certificate to such applicant authorising him to draw fill up prepare any conveyance will deed bond lease or agreement for a lease or other contract whatsoever of or relating to any estate or property whether real or personal and every such certificate shall be enrolled in the office of the registrar of the Supreme Court whereupon such applicant shall be deemed a certificated conveyancer and entitled to practice as such with power of appeal to the court in case of refusal of such certificate by the master as aforesaid."

So that any person who thinks himself fit to carry out the provisions of the Act, has only to ask to be examined before the Master in Equity, or two officers of the court who may be appointed for that purpose, as to his fitness, and then he subjects himself to no liability. And, sir, I think men of business would be more likely to employ a person who has undergone such an examination than a non-professional, and, perhaps, an ignorant man—while the interests of uneducated men would be protected. And my experience tells me that if we strike out the clause which the Bill before the House proposes to repeal, the Real Property Act will never be suited to the circumstances of this colony.

Mr. BROOKES said, the special pleading of the honorable and learned Attorney-General had only conveyed to his mind the impression that the honorable gentleman was supporting a very weak case and speaking against his own convictions. It was only recently that he had said quite as much on the other side, for it was one of the highest qualifications of a professional man, to be able to speak at equal length for or against any question. He (Mr. Brookes) would endeavor to prove that the Bill before the House was absolutely necessary to the proper working of Torrens' Act. The honorable and learned Attorney-General had spoken of dishonest men, and had appeared greatly afraid that the poor man would be victimised by the land agents; but he (Mr. Brookes) did not think it would be easy to convince the public that the licensed surveyors monopolised the dishonest men. He thought there were just as many dishonest men among the lawyers as any other class of men.

The ATTORNEY-GENERAL: I beg to say that I never used the words "licensed surveyors." I said dishonest men, but nothing about licensed surveyors.

Mr. BROOKES: Well, perhaps the licensed surveyors and the lawyers were a very honest class of persons. But persons were told not to put their trust in princes, and he certainly should not put his trust in lawyers. It was a question whether a person would suffer most in the hands of an intelligent land surveyor or in the hands of a lawyer. He did not think there was a pin to choose between them, and if there was any difference it was in favor of the unprofessional man. He knew an instance in which a person had been charged £20 by a lawyer, who obtained a preferential claim, and the person was thrown into prison. He would challenge any one to prove that such a thing had ever occurred where a licensed surveyor was employed. He believed the leading principle of Torrens' Act was to aim a blow at the monopoly which the lawyers had enjoyed for such a long time, with great benefit to themselves, but not to the public. It was set forth in the preamble to the South Australian Real Property Act, that—

"Whereas the inhabitants of South Australia are subjected to losses heavy costs and much perplexity by reason that the laws relating to the transfer and encumbrance of freehold and other interests in land are complex cumbrous and unsuited to the requirements of the said inhabitants it is therefore expedient to amend the said laws."

And Mr. Torrens observed, in chapter 2nd, page 5, in reference to the "circuitous, unsolved, and secret method" of conducting dealings in land, that "no man could convert his property, or conduct the most ordinary and simple transaction except through the instrumentality of a legal adviser." He entirely agreed with the honorable member for the Warrego, that if the Bill were not passed the country would be retrograding. He believed that eminent juris-consult, Lord Brougham, had hoped to see some such reform in England in his day; and it was quite a mistake to suppose that the evil of the present system had not been long felt at home. In the "General Instructions for guidance in bringing land under the Act," it was stated, in the first paragraph,—

"That any person may act as agent for another in filling in the forms of application for bringing land under the Act, and charge for the services so rendered, or the proprietor himself may himself transact the business."

"Any person" might do so, there was no distinction laid down whatever. If the House refused to pass the Bill before them, they

might just as well be without the Act. If Torrens' Act were adopted, it should be adopted in its integrity. The honorable and learned Attorney-General had said something about having educated men to manage these matters—but he would ask, what was the use of having a Master of Titles? Everything was in printed form, and if a man could only read and write it was sufficient; and even if the applicant could not read, he could surely get some one to read the form to him. Then it had to go before the Master of Titles, but before that it underwent a searching rigid scrutiny. It had been said that sixty-three per cent. of the property in the colony had been brought under the Real Property Act, and that in another year's time the whole of it would be brought under that Act. Of course, if the lawyers were applied to, they would not approve of the alteration, for it was well known that a majority at least of the legal profession did not sanction it. He hoped the matter would be fully discussed. The question was a very important one, and he thought the House ought to pause before they took a step, the effect of which would be to render Mr. Torrens' Act null and void in the colony.

Mr. WALSH expressed his regret that the honorable and learned Attorney-General was not in his place at that moment, as he wished to notice some of that honorable member's observations, having reference to him. The honorable and learned gentleman, like all persons deeply interested in a matter, had proved too much. He had shewn that, however dispassionate he wished his judgment to appear, he had not approached the subject with that coolness, and in that temperate manner, which should have characterized his speech. So much had been said, by different persons, in reference to the question—so many opinions advanced—that he confessed he was not quite satisfied as to the course which the House ought to pursue. He believed that sufficient evidence had not been afforded on the subject; and, as honorable members who were more justly entitled to be heard on the subject would address the House, he would, in order to lessen the amount of discussion, conclude with an amendment he had to move. Before he arrived at that point, however, he wished to bear his humble testimony to what he considered had been the working of this Act. So far, it had been a great boon to the public; he had heard very few objections to it, but those of the Attorney-General were entitled to considerable weight. He had felt the very great advantages of the Act, and noticed its simplicity in the transference of lands. He felt it his duty to say thus much, because it was the first time he had had an opportunity of touching on the question. He thought the Attorney-General had treated the introducer of the Bill in a way which was not satisfactory, either to himself or the House. He thought when any honorable member introduced a measure, not palpably against common sense, or calculated to do some great or glaring evil, he ought to be treated with courtesy; and, therefore, he regretted that the Attorney-General should have alluded to the honorable member for the Warrego as a member who had lost his senses. He had not heard anything in the course of the debate to justify so severe a remark. There was no doubt that lawyers, as a body, were a most valuable class, and that the country could not do without them; but, for his part, he thought they were a great deal too exacting. He could not see that an admission to practice at the bar, or in one of the lower courts, entitled a lawyer to arrogate to himself all the ability in the carrying out of an Act of Parliament. Mr. Torrens, he believed, specially intended that the intricacies of the law should not be necessary for carrying out the Act, and that the interference of lawyers should not be absolutely required; and, he believed, when that precious measure was passed, the country intended—and certainly they hoped—that, in dealing with the Act, it would not be entirely necessary to employ lawyers to carry out its provisions. And, as to the difficulty in filling up the forms, if such great difficulties existed, why had not the honorable and learned Attorney-General taken some steps to remove them? It ill became him to come forward now, and point out that such difficulties existed in carrying out the provisions of the Act, that none but the most learned and profound persons — members of the legal profession — could cope with them. No doubt the Act was intended to cheapen and simplify the alienation or mortgage of lands from one person to another. The House was bound to see that no amendments or alteration was made in it; that no decision of the Judges should in any way cause it to become different in spirit to what was intended by the House. He believed he was not called upon to explain what the duty of the Attorney-General was in such a case, or he could, perhaps, tell him something very much to the point. If he (Mr. Walsh) knew nothing of the Statute of Uses, he knew a good deal of the uses of statutes. And even if he were ignorant of the meaning of the term, it did not justify the honorable and learned gentleman, or the Government of which he was a member, in departing from the statutes. It was much better to be ignorant of legal phraseology, than to be guilty of some of the twists and turns of which they seemed capable. He was sorry to hear the question of exorbitant charges on the part of agents under the Act opened up. From all he could hear, whatever might be the deficiencies or delinquencies of those agents, they fell far short of those of the legal gentlemen. He spoke advisedly. He himself had been the victim of the delinquencies of an agent; but, as far as his knowledge went, they were trifling compared with what he had heard of the delinquencies of certain legal gentlemen who had practiced under the Act. He might be wrong, but

these statements had been made to him. He would be quite prepared to bring forward proofs on some subsequent occasion, if necessary. He had made inquiries of those who were best informed, and had learned that the grossest frauds had been perpetrated, and the greatest mistakes made by members of the legal profession under the Act. He felt quite sure that the speech of the honorable and learned Attorney-General must have convinced any one that the Act hitherto had been a complete failure. But he (Mr. Walsh) would ask the House if any single appeal had been made to the insurance fund? If not, why had the honorable and learned gentleman attempted to create suspicion in the public mind, as to the working of the Act? His object in rising was to notice, and to meet, what he considered to be, the unbecoming remarks of the honorable and learned gentleman, and to urge the House not to decide upon the question, without carefully considering the interests it involved. Instances of irregularities committed by non-professional men had been adduced; but, on the other hand, he was informed that the greatest number of mistakes exhibited under the Act had been committed by members of the legal profession. He was most anxious to go right, but at the moment he was in a great quandary. He could not believe that the lawyers were the greatest blunderers under the Act. The wisest thing the House could do, would be to appoint a select committee, who could ascertain the causes which had been hinted at; and, by gathering the fullest information about them, arrive at the most satisfactory conclusion that was possible. If he induced the House to carry his proposal, he should believe that he had done his duty. He was not anxious to be on the committee, for he was not well versed in the subject; but he trusted the House would appoint honorable members who had a knowledge of the Act, and who had assisted in passing it through the House. The honorable member then moved,—"That the motion be amended by the omission of all the words following the word 'be,' with a view to the addition in their stead of the words 'referred for the consideration and report of a select committee, with power to send for papers and persons, and leave to sit during any adjournment of this House.' (2.) That such committee consist of seven members, and be selected by ballot."

Mr. BLAKENEY said the only portion of the observations that had fallen from his honorable friend the member for Maryborough that he could agree with was the latter, namely—his amendment. Where there was such a diversity of opinion, so many statements met by counter-statements, he thought it would be best to have the subject investigated by a committee. The honorable member for the Warrego, who had introduced the Bill, in the pertinent observations he had made, dwelt upon what had been said by legal members of the House when the original Act was introduced, and the great sacrifices they had made. Well, that Act had never made the slightest difference to him (Mr. Blakeney), nor would the Bill, if it were passed, make any difference; therefore, his remarks might be taken as perfectly disinterested. He remembered that at that time, an honorable member, who was the only solicitor in the House, advocated the passing of the Act, and urged it upon the Attorney-General, knowing, from his experience, that it would be a great boon to the colony; but he did it, also, knowing, from his business, how great a sacrifice it was for him. But when the honorable member did that, it was not to open the door to every quack who chose to come forward and call himself a conveyancer. What he meant was, that, instead of getting ten guineas for a conveyance, under the old and cumbrous system of conveyancing, under the simple system of the Real Property Act, the cost would not be more than two or three guineas. That honorable member's intention had been simply the reduction of the cost of conveyancing, and not the letting in of a flood of unlicensed persons to act as conveyancers. The English law had wisely provided that certain professions should be carried on by persons properly qualified. The honorable member might as wisely bring in a Bill to amend the Act which the Parliament had passed for the registration of medical practitioners in Queensland, and let in every quack who chose to impose on the public to act as a doctor, as to interfere in the way proposed with the legal profession.

Mr. R. CRIBB: That is a life or death affair.

Mr. BLAKENEY: Yes; life or death, as the honorable member said. Property was sometimes as important as life or death. No doubt, the honorable member would like to bring in a Bill to do away with solicitors and barristers, and to let everybody practice.

Mr. R. CRIBB: A very good thing.

Mr. BLAKENEY: The honorable member had attempted it once or twice himself, but was pulled up, and very properly; because the Judges had rules of practice in their courts. He (Mr. Blakeney) cited the 13th section of the Act which the Bill modestly proposed to abrogate, and thereby to do away with all the attorneys in the colony. The Bill, if passed, would probably do away with all conveyancing, which was one of the most lucrative branches of the profession. Torrens' Act simplified the law and compelled the lawyers to reduce their charges, perhaps, two hundred per cent. If the clause which it was proper to repeal were swept away, every person could become a conveyancer who chose to set himself up as such—every person in the community could become a conveyancer. If a man became his own conveyancer—which he admitted could be done—it was contrary to the spirit of British legislation. That professional men, who had spent their early days and large sums of money in learning their profession, should be deprived of one of the principal

sources of their livelihood, was a monstrous thing—it would be unworthy of any Legislature. And the scope of the Bill was to allow others, for "fee or reward," to do what it was proposed to take from the legal practitioners! What right had the House to do so? The Judges had said, *in re* Lindo, that one of the greatest benefits to the public was, that business connected with conveyancing should be confined to certain men who were practitioners of the Supreme Court—officers of the court—over whom they could hold a strict hand, and check or punish if they thought proper. It was a convenience to the public that such a practice should obtain. How could the court exercise control over unlicensed conveyancers, if they committed a fraud or were guilty of any abuse in the practice of conveyancing? But with attorneys of the court it was different, for they would be strictly dealt with. There was nothing to which the courts of law looked with more jealousy than that the men to whom property was entrusted should be men of integrity and honor. But, if a flood of unlicensed men were let in, the consequences would be ruinous to the community. That was why he agreed with the last portion of the statement of the honorable member for Maryborough, that it would be a very desirable thing to send the whole subject to a committee; and he had no doubt that the effects of what had been done by unlicensed persons since the Real Property Act came into force would be shewn by the committee.

Mr. DOUGLAS said, that he must congratulate his honorable friend, as he had done at a previous stage of the evening's proceedings, upon the amusing vein he had pursued on the present occasion, and by which he had illustrated the admirable effect wrought upon a community by a system of mediators. The honorable member had explained to the House how it was necessary for the welfare of mankind—for the welfare of those persons who did not know how to conduct business—for the welfare of ignorant men—that there should be established a class of persons calculated to inform them, for their own good, upon matters of interest to themselves. Such he understood to be the opinions of the honorable member, in general. But in professional matters the House were able to see how easily men were swayed by their peculiar idiosyncracies. He believed that the question narrowed itself down to this: whether the Real Property Act was to do away with the system of mediators; whether the law, so far as that Act went, should be made, not the abstruse science it had been, but a simple matter of practice. If there were matters which the ignorant or unlearned did not understand, why then, as he took it, the machinery of the Act which provided a Master of Titles—that safeguard for the illiterate—which provided the registry office —was useless. If we were to be at the expense of the large staff of the Registrar-General's office; if we were to be at the expense of a Master of Titles; if we were to go to further expense in supplementing the salary of the Master of Titles; if we were to take upon ourselves all these responsibilities —if we were going to pay a thousand a-year to the Master of Titles, who was to be the public conveyancer;—what was the object of doing those things, if we were to revert to the old system? Feeling that, he should hardly be justified in voting for the amendment of the honorable member for Maryborough. That honorable member had received such contradictory statements, on the one side from lawyers, and on the other from the public, that he could not make up his mind as to who was right. Was it to be expected that the lawyers would give him any other statement than what would suit themselves? —or, that the agents would agree with the lawyers? The honorable member for Maryborough had been told of poor men who, while imagining they were engaged in effecting a conveyance of their property, were actually parting with it altogether. The frauds he spoke of might occur in any business. There were rogues in all professions; and he (Mr. Douglas) affirmed that such a thing was quite as likely to occur to the poor or illiterate man who put himself into the hands of the lower class of attorneys or solicitors, as it was in the hands of an agent. He believed that the Act provided for the safety of the public in a sufficient degree; that it had been found to work well in South Australia; and that it had been found to work well here. Although offences had been committed under it, and men had done things they ought not to have done, no lawyer could have prevented that. Therefore, the House should be very chary of interfering with what he thought was a reform in conveyancing. The Attorney-General, who had spoken as usual, so temperately and exhaustively upon the subject, had hardly satisfied him (Mr. Douglas) upon one point. He thought the honorable gentleman had said that the Judges, in laying down their decision upon the subject, had not so much vindicated the law as they had indicated to a considerable extent what they deemed was expedient in the matter. Now, whatever deference the House might pay to the rulings of their honors, still, in this matter, they had a function of their own to perform, and that was to lay down what the Judges were to administer. That being the case, it was for the House to take their honors' recommendation with some considerable hesitation, knowing that it did still emanate from an exclusive profession. Though their opinion might be conscientious, it must be regarded with some jealousy, as infringing upon the somewhat revolutionary principle of law which had been established. He should vote for the second reading of this Bill, because he thought the machinery of the Real Property Act was sufficient to detect any errors that had arisen, or that might arise, if

a very strict supervision were exercised in every case. Every day property was being brought under the Act, and before very long he anticipated the whole of the landed property of the country would be brought under it. If any change was required, it was a change for increased efficiency in the staff of the Registrar-General's office. He had heard of delays arising—he had heard that two or three months were occupied in passing titles through the office. Those delays were not necessary, for if the utmost efficacy were given to the Act, the Master of Titles would devote his time wholly and solely to the business of his office, and by that means save the community from all unnecessary delay. He very much deprecated the delay which the appointment of a committee would entail upon the House. That committee might delay to bring up their report;—they might be gentlemen not favorable to the Act, and their report might not be such as the House would expect, or the Bill might be kept back to the end of the session. Then, again, in the other branch of the Legislature, objections might be raised, and so the public might be left for a whole year to the tender mercies of the lawyers.

Mr. R. Cribb quoted the preamble and the first clause of the Real Property Act of 1861, to shew that the intention of that statute was to repeal all previous "laws, statutes, acts, ordmances, rules, regulations, and practice whatsoever relating to freehold and other interests in land, so far as they may be inconsistent with the provisions of this Act, or the bringing of land under the provisions of this Act." He said he could not view the Act in any other light; and the Bill before the House he regarded simply as a declaratory measure to remove any doubt that might exist. The honorable member inveighed against the old system of conveyancing, which the Act of 1861 abolished, and narrated certain instances of the expense and hardship which were entailed on persons interested in landed property by the old system. He recollected, he said, buying an allotment of land not more than a quarter of an acre in extent, and with it there were deeds which, at the lowest rate of professional charges, cost eighty guineas. Under the old system, the deeds would have gone on accumulating with every transfer, and so would the expense; and if one of the links in the title were dropped, the whole would have to be gone over again. Under the Real Property Act, all that expensive process was swept away; and a simple and complete title was given by the Registrar-General every time the land changed hands. That was the first intention of the Act, the simplifying of the title to land. The second intention was, to get rid of the expense of conveyancing. Certain forms, which were given as schedules to the Act, were to be filled up by the persons interested in the transfer of the land, and the real question of conveyance was settled by the Registrar-General. The party filling up the forms need not know anything about a conveyance of land; all he had to do was to fill up the forms correctly—and they were simple enough;—and if he made a blunder, what was the consequence? The forms were simply rejected, and the person who had made the blunder could apply to another person to correct it. The conveyance was not made by filling up the forms; it was made by the Registrar-General. The House knew that in this colony there had been large subdivisions of land, and some of the allotments had gone, to his knowledge, as low as one pound or thirty shillings each. Was it to be supposed that people who sold those lots were to go to a legal gentleman for assistance in drawing up a conveyance, and pay him five pounds for what was not necessary, but as a protection to his own pocket? The only good argument that he had heard was, that the right of conveyancing being confined to the profession was for the safety of the person owning the land. But that did not hold, because the safeguard was the Registrar-General. As an instance of the costs incurred under the old system, the honorable member referred to the case of a gentleman who had left Brisbane five or six years ago, and gone to Ireland to bring an estate in that country under the Encumbered Estates Act, and to get a title to that estate, and to pass it through the office, had cost him five hundred pounds. The Attorney-General had made a long speech on the question, but he had floundered about shockingly. The Judges had gone wrong; and he (Mr. Cribb) had heard how they had gone wrong. It appeared that the plaintiff, Thomson, had filed certain affidavits in the court, that a certain person had made a conveyance, and had got a fee for it; but the man complained of had omitted to file any counter affidavit; and, therefore, the Judges had to go on that evidence, and that evidence alone.

Mr. Lilley: No, no.

Mr. R. Cribb: They said that the case was entirely with the defendant; yet, that as they had to go on the affidavit, that a certain person had made a certain conveyance, and charged for it, he had brought himself under the pains and penalties of the law, and he must suffer them.

Mr. Lilley: No, no.

Mr. R. Cribb: He knew it was so.

Mr. Lilley: He was in the case; and he knew it was not so.

Mr. R. Cribb: If the case had been managed as it ought to have been, the verdict would have been the other way. He considered it was a great hardship upon the person, that he was committed to the hands of the sheriff for contempt of court, and then, as a great mercy, the Judge offered to enlarge him upon paying the costs—about £80. That was punishment enough, because a man had earned half a guinea as a conveyancer.

Mr. Lilley: Two guineas.

Mr. R. CRIBB: Well, two guineas; but nineteen and sixpence had gone to the Registry Office as fees. Yet honorable members were told that the man had nothing to complain of. Because he had earned one pound two and sixpence he had been punished enough. There could not be the slightest doubt in his (Mr. Cribb's) mind that, by the first clause of the Act, anybody could fill up the forms of conveyance. The Attorney-General, however, had said it was not the intention of the Legislature that every one should do so; and hinted that the Legislature might make it clear. Well, that was what was intended by the Bill; which, in effect, simply declared that anybody could do it. There was some reason why it should not apply to "all other lands" than those already under the Real Property Act, because it required some skill under the old cumbrous system to effect a conveyance, and perhaps an ignorant man might make a mistake. What did he find? Innumerable instances of mistakes in bringing land under the Real Property Act made by members of the legal profession. He knew an instance in which a man sold an allotment of land bought from the Crown to another; a solicitor was entrusted to make the conveyance, but he actually conveyed the adjoining allotment, instead of the allotment that had been sold. Supposing that a good deal of capital had been expended upon that land, the real purchaser had no title at all to it. He could quote many more instances. There was one in which land had been sold, re-sold, and passed through several hands; and when, after all, it was to be registered under the Real Property Act, it was discovered that, the very first step in the transfer from the original purchaser was wrong. Nothing but the proof of fraud could upset a title, if once a man got a title under the Act. If the Registrar-General should make a mistake, a fund was provided out of which the sufferer would be paid, but the person holding the certificate of title kept his land. The honorable the Attorney-General had said that if a select committee were appointed to inquire into this matter they would be able to show that great abuses had taken place under the Act. If the honorable and learned gentleman was satisfied that such was the case, he ought, before this time, to have moved for a select committee to inquire into, and report upon, the subject. But he would inform the honorable member that a select committee sat during the first session after the passing of the Act, to inquire as to its working, and the evidence taken before the committee went to shew that the principal blunders in the working and operations of the Act, were made by lawyers; and he believed that arose from the fact that the Act was too simple for them. The committee had not an opportunity of bringing a report before the House, as Parliament was dissolved before the inquiry was concluded. The honorable the Attorney-General also drew a very strong picture about a person being drawn into an agent's office, and not being allowed to leave till he was well plucked, but he could assure the honorable and learned gentleman, from personal experience, that such was particularly the case with a person who might enter a lawyer's office. As to those whom the honorable the Attorney-General described as ignorant men, he could assure the House that they were less likely to be plucked than those who were not so ignorant, for they were especially careful that they did not pay more than they received value for, and that they looked very carefully after their own interests. What the honorable the Attorney-General therefore said on that part of the subject was, in his opinion, all bosh. He believed that between seven thousand and eight thousand titles had been taken out under the Act, and if there had been an overcharge in any one of those, he would ask whether, under the previous system, persons had not been robbed to a greater extent? The honorable member for North Brisbane (Mr. Blakeney) asked what right non-professional men had to charge for filling up those forms? and to this question he would reply by stating that their right was that of charging for the services they rendered. The honorable member also gave a glowing account of the hold the Supreme Court had over solicitors, as they were officers of the court. Now, he did not think the House should pay much attention to that, and he would ask the honorable member whether a solicitor, whose mistakes he had alluded to, would, had those mistakes not been discovered in time, have been called upon to compensate his client for any loss he might have sustained? He hoped the second reading of the Bill before the House would be carried without a division, and that it would be passed into law, that they might be able to shew to the community that they did not mean the Real Property Act to be a mere nullity; that they did not mean that the Supreme Court should be able, by reviving an obsolete law to crush the Act, and that when the Legislature passed a measure, they did not mean that it should be an absolute nullity, but desired it to be carried out in its integrity. With those observations, he would cordially support the motion for the second reading of the bill.

Mr. DAVIS said, he had found that the quacks who assumed to be competent to effect conveyances under the Real Property Act of 1861, were so ignorant as to the duties required, that in some cases when persons desired to effect a mortgage, they were led into executing a conveyance, and, therefore, he would support the amendment proposed by the honorable member for Maryborough.

Mr. LILLEY said, that though he labored under the disadvantage of being a lawyer, he thought that in the observations he should have to offer to the House on this subject, he should be fully as disinterested as the honor-

able member for East Moreton (Mr. Cribb), for he believed that honorable member was an extensive practitioner under the Act. He did not mean to say that the honorable member did not consider himself highly capable of effecting conveyances; and he had given them his opinions as to the interpretation of the Act, which was against that of the Judges of the Supreme Court. Having giving them this amiable and self-sufficient opinion, the honorable member, he had no doubt, considered himself well able to convey property under the Real Property Act, or any other Act. Now he wished, in the first place, to observe that it did not matter one farthing to him whether the Act before the House were passed or not, for during his experience as a professional man, he did not think he had made one guinea by conveyancing; and if the Bill before the House were passed, it would not affect him to the extent of a single farthing. He had no interest in the matter, except that he had some regard for the other branch of the legal profession, and his regard for the other branch of the profession was solely in a public point of view. His support for the Torrens' Act in this colony was adverse to his own interest, and very much so, for he had no hesitation in saying that the effect of its becoming law was to sweep away at least one-half of his income. At the same time, it was not his intention to throw the working of the Act open to the whole world, and to create a class over whom, both practically and legally, there was no hold by the Supreme Court. Now, he had a regard for the other branch of the profession, and whatever might be said against them, honorable members must admit that they were considered worthy of being entrusted with matters of the highest importance—even with matters that affected the private happiness of individuals. Those very gentlemen who attacked them had been obliged to have recourse to their learning and skill in order to save them, and that for the very good reason that they were unable to save themselves. Those gentlemen, therefore, ought to have a higher opinion than they appeared to have of the branch of the profession to which he referred. Not only had they been under the necessity of resorting to them for legal assistance, but for business knowledge also. He made those remarks, not for the purpose of reflecting on some honorable members, but for the purpose of strengthening his argument. They all knew that in every civilised community where law had grown to a great extent, and that sometimes owing to the caprices of litigants themselves —even in democratic America—there was a class of the community who made it their business to study and practice the science and the profession of the law. The Real Property Act, however, recognised a monopoly, as it provided for a class of surveyors who had to undergo an examination and be licensed before they could practice under the Act. If they were approved of after examination, they were licensed and authorised to act. Now, he maintained, that for a similar reason, as surveyors had to undergo such a test, there should also be some test required as to the competency of those who professed to carry out the other provisions of the Act. It was never intended, he held, that the Registrar and Master of Titles should do all the conveyancing of the country. It was intended that the Master of Titles should confine himself to testing the titles for the purposes of the insurance clauses. One of the mischiefs that had arisen from permitting a wholesale practice was, that persons had not confined themselves to the mere filling up of forms, but had entered into the whole system of conveyancing, the drawing up of wills, and other legal instruments, some of which it was a very dangerous thing to meddle with. That, he had no doubt, had caused an evil which they had not yet fully realised, but which they would yet realise; and he had no doubt that the free system of conveyancing, by unskilled persons, which had sprung up, would yet bring a great deal of practice into his net; for the result of it would, he had no hesitation in saying, be a great many actions at law, which would be very profitable to advocates. But, he would again ask, why should they not require a test as to the ability of the person to carry out the provisions of the Act? A test was required from medical men, barristers, solicitors, and, in the case of almost every mechanical business, an apprenticeship was required; yet, in respect to a matter of so much importance as the conveyancing of land, the House was asked to agree to a measure providing that a person who was unskilled and untutored in respect to such matters should be allowed to undertake the duties of a conveyancer, the proper performance of which was essential to the public welfare. As to overcharges, he thought that any mischief of that nature could be easily prevented by having a scale of fees provided for the regulation of all charges under the Act. The surveyors, however, at present had a monopoly, and they could charge whatever amount they might wish; and some of them, he believed, charged two, three, and four guineas for the services they rendered. There was no check upon them, and he thought the interests of the public required that there should be some. The honorable member had said these certificates were indefeasible, and had quoted a case of misdescription which could not be rectified. It was quite wrong to say that the mistake could not be repaired. If the parcels were misdescribed, all that was necessary was to identify the real parcels with those in the deed. It was expressly declared in the Act that a wrong description of boundaries should not vitiate a certificate. It was the practice of the solicitors, at least when he was one, to obtain descriptions of the land from surveyors. He knew that when he was a solicitor he never made a description in a deed without getting it from a surveyor; so that if there

was any error in the description, it was the surveyor who was to blame. Now, he would ask, who were the movers in this matter? Was it not the surveyors, who, having got a monopoly under the Act, desired to keep it, and to get another from the solicitors? He believed that if the fees were properly regulated no hardship whatever could possibly accrue to the public; and they would have the benefit of legal skill and knowledge, which they were now in a fair way of losing. A respectable solicitor—and, whatever some people might think of lawyers, there were many such—if he made a mistake in a deed, was liable for it, and could be made to pay for it. Again, as to solicitors, it was well known that if a man went to a respectable solicitor, he would be advised, if he had not a good case, not to take it into court. It was a libel on the profession to say anything to the contrary. If the great body of respectable solicitors and barristers—and he spoke as though he were not one himself—if the great body of solicitors, and barristers, and others connected with the legal profession, were not men of high principle, how many mistakes and agitations could they have raised for their own advantage? Everyone knew what secrets were imparted to solicitors—sometimes connected with property, and with the dearest interests and happiness of families; and it was hard that any honorable member should stand up in that House and echo the parrot cry of some who spoke from interested motives or from mere thoughtlessness. It was a common expression that all lawyers were great rogues; but there were others, who were not lawyers, who were great rogues. Those who had cheated him most, were those who professed something more than mere honesty, and the pious gentlemen had sometimes swindled him. After all, there were men in all professions, grades, and classes of society, who did not believe that honesty was the best policy, and who used all means to circumvent their neighbors. This was a matter into which inquiry might well be made by the House. He thought the honorable member for Maryborough, who was not a lawyer, was right when he said they should act upon due inquiry, and if a sufficient body of evidence were taken to satisfy any reasonable man that this Bill ought to pass, he would give it his support. He would never consent to look at it from a merely professional point of view, but would look at it solely from a regard for the public interest, and whatever they might do in respect to any profession or any class, their first object should be to act with a due regard to the public interest. If an inquiry, as proposed, were instituted, he should, in that spirit, enter upon the discussion of the matter when the report of the committee was brought before the House, and he might say that the profession would not look at it from any other point of view. It was, he believed, impossible for a man, whom a measure of this kind would affect to a very great extent, to be altogether disinterested in the consideration of the matter. No one would expect that a man, seeing that half his income would be taken away by it, should be able to set aside his private feelings, and look at the question with perfect indifference. He believed that if a body of men were examined as to their competency to carry out the Act, and were appointed, if found competent to do so, it would be to the public interest. The examination, he also thought, should go to the general character of the man, as well as to his knowledge of the Act. A scale of fees might be laid down, by which the public would be protected from overcharge, and in this way an honorable profession would receive its fair share of labor, and its fair share of reward. It was no use to say that they should not consider that profession, for they must consider it as much as any other. Everyone knew that lawyers were compelled to undergo a long course of study to fit them for their profession, and that they were compelled to go through a rigid examination to prove that they were competent to enter upon the practice of the law. In this way they had to give, as it were, hostages to society for their skill and good character. Now, he thought, they should not hastily do away with such a security. However, the matter was entirely in the hands of the House, and if honorable members thought this security should be taken away without inquiry, and the work of conveyancing handed over to those who gave no guarantee as to ability or character, let them do it. The public would not be long in finding out the evils that would thereby be occasioned. It was for the House to say what should be done. He had stated his reasons for opposing the motion, and whether they were satisfactory to the House or not, he felt that he had expressed what were his convictions in the matter, and that therefore he had done his duty both to himself and to the country. As to the judgment of the Supreme Court, he might state that the decision their honors the Judges came to was not owing to the want of certain affidavits being lodged on the part of the defendant, as alleged by the honorable member for the Warrego and the honorable member for East Moreton (Mr. Cribb); and he might also add, that he gave an opinion corresponding with that of their honors the Judges, long before they gave their opinion. He was asked by a number of gentlemen if they were allowed to practice under the Act, and he told them that they were not, and their honors the Judges gave a similar opinion. As to there being any vindictiveness in the bringing of the case before the Supreme Court, he, as the counsel who appeared against Lindo, could assure honorable members that there was no desire on the part of the plaintiff that punishment should be inflicted. All that was desired was to have the point at issue determined by the Supreme

Court. There was no question as to the sufficiency of affidavits. The whole question rested upon the circumstance that Lindo gave a receipt for a transfer of land. The honorable the Attorney-General, and the honorable Mr. Bramston, argued that the filling up of the form was not a conveyance, or the filling up of a conveyance within the meaning of the Act, 11 Victoria, number 33. That was the sole question that was brought before the court, and the case had nothing to do with the absence of affidavits. On that point their honors the Judges decided that the defendants were not entitled to practice, and that if they did so, they would be liable to pains and penalties.

The ATTORNEY-GENERAL said he would not object to the appointment of a select committee, but he hardly thought their labors would be productive of the result anticipated by the honorable member who had moved the amendment. Perhaps it would be satisfactory to the public to ascertain whether the gentlemen who had taken upon themselves to perform the duties which the court had decided to belong to the legal profession, were a class of people whom the public would desire to aid in continuing that system under Legislative sanction. He thought the evidence taken before the committee would open the eyes of the public upon that point, very materially. Although it might be proved that frauds had been committed by this or that person, he thought a grave question would still arise whether, under any circumstances, non-professional men should be allowed to practice, unless they had proved themselves to be qualified by passing some kind of examination which would satisfy the public mind? He did not suppose the honorable and learned member for Fortitude Valley, or any other member, would object to a measure sanctioning the admission of certain gentlemen who were prepared to pass an examination, in order to qualify themselves to carry out the provisions of the Act, in the same way that licensed surveyors did. He thought Torrens' Act had been misquoted by the honorable member for North Brisbane (Mr. Brookes). It appeared to him to be a system framed to facilitate the transfer of real property as cheaply as possible. He did not understand that the framer of that Act intended any new profession should be created, to be under no control whatever. As the honorable and learned member for Fortitude Valley had observed, it appeared that Mr. Torrens, in framing the Act, had intended so to simplify the transfer of land that every man could be his own attorney. But he surely never meant that, if a person could not do so himself, he was to employ a man of no profession, and under no control whatever, who, without fee or reward, should carry out the provisions of the Act. That would be to raise up an entirely new profession; it would open the door to fraud, and would offer no security to the persons who were chiefly interested. He thought the honorable member for Port Curtis had fallen into an error, though it was probably an error that any honorable member might fall into. He had understood that honorable member to say that, as there was a Master of Titles and a large staff of clerks, there could be no danger of the titles being bad. Now he (the Attorney-General) ought to know as well as anyone what the peculiar duties of the Master of Titles were intended to be, and what, in point of fact, they were. The office of the Master of Titles was inserted in the Act with a view to have some competent person to investigate the titles of those persons who possessed property before the passing of the Act, in order to see that a proper certificate was given. Such a scrutiny was necessary in the case of persons who purchased land prior to the passing of the Act. But the titles to land bought since the Act was passed were as clear as noonday, and therefore the office of the Master of Titles would be done away with when all the property previously alienated had been brought under the Act. That officer had performed the additional duties of solicitor, which was a separate office in South Australia, and, therefore, he had been a very useful officer, and had greatly assisted the Registrar-General. The Legislature, in passing the Act of 1861 with its special enactments, evidently intended that licensed surveyors alone should be empowered to act, and not irresponsible persons, without profession or qualification. And, further, he doubted if there was anything in the Act which allowed non-professional persons to take any fee or reward. For, although a person might fill up the form himself, and keep within the provisions of the Act 11 Victoria, No. 33, section 13, it was a very different thing to employ another person, not qualified by the Act, to transact his business for him. And if such a person took fee or reward, he would be liable to a penalty. He contended that it was never contemplated by the Act to raise up such a class of persons in connection with dealings in real property, and he should therefore oppose the Bill before the House.

Mr. SANDEMAN said the question before the House appeared to him, not a mere legal question, but one which affected the community at large. It was a most important, and, at the same time, a most vexed question. While, on the one hand, the members of the legal profession were desirous of protecting the poor and ignorant man from the practices which had hitherto obtained among the dealers in land; on the other hand, the land agents were anxious to cut down as much as possible the exorbitant charges of the lawyers. With such a variety of opinions on the subject, he thought the fairest way to deal with the question, would be to refer it to the consideration of a select committee. He was aware of the objection frequently entertained to select committees; but he thought the community at large were interested in the question, and that would be the best way to

arrive at a fair conclusion. He would, however, suggest that the committee should be composed of seven, instead of five members, in order that the question might be thoroughly and properly ventilated.

Mr. FORBES observed that there had been a great deal of recrimination in the course of the debate, as to the honesty of lawyers and land agents; and, no doubt, there had been deficiencies in both cases. In his own experience, he could state that in a case where an attorney was employed for him, three mortgages out of four had proved worthless. He knew another instance in which five guineas were charged by an attorney where the property itself was only worth £10. He believed the intention of Mr. Torrens was, not to raise up, but to break down a monopoly. He did not think that, by referring the matter to a select committee, any good result would be arrived at. He hoped the honorable member for Maryborough would withdraw his amendment, and allow the decision of the House upon the question to be taken at once. If the House chose to stultify itself by adopting a course of retrospective action, it was as well that the fact should be known. The public out of doors would not be satisfied, and he thought those honorable members who were not so well versed in these matters, should give way to those who were more conversant with them, and better able to decide.

Mr. PUGH said it appeared to him that the amendment of the honorable member for Maryborough would have the effect of shelving the question altogether. The question at issue was not whether certain persons who were not learned in the law should make conveyances, but whether they should be permitted to fill up a certain form required by the Act, such form being merely a memorandum of transfer. He thought if the Real Property Act contained no serious provision against it, great frauds would probably be committed. But he contended that the 142nd section of the Act, which provided that "persons making false oath or affirmation shall be held guilty of perjury, and would be liable to be imprisoned, in addition to damages recoverable by the party damnified," offered every security to the persons interested. He should vote against the amendment, because he did not think any good was likely to result from the appointment of a select committee to be composed of seven members, a majority of whom might belong to the legal profession.

Dr. CHALLINOR said that one principal objection which had been advanced by the honorable and learned Attorney-General against the transfer of land by non-professional persons, was the great expense to which they put their clients. But he knew of one case where solicitors had charged twenty guineas for the mortgage of property which was already under the Real Property Act. He had also been credibly informed, that there were, in the Registrar-General's office, deeds of mortgage of land held under the Real Property Act, which had been drawn up under the old form of registration, and were consequently null and void; and they had been drawn up in the office of a country solicitor. He quite agreed with the honorable and learned Attorney-General, that it was distinctly stated, when the Act was passed, the office of the Master of Titles was to examine into the titles of land previously purchased which had to be brought under the Act, and not land which of necessity came under it. The honorable and learned gentleman had admitted that under the Real Property Act, the transactions would be so simple that the office of Master of Titles would be unnecessary. He thought it was not for the easement, if he might use the term, of solicitors that the Act was passed by the House, but to relieve the difficulties and expenses previously in the way of dealing with real property—not to simplify matters for professional men, but for non-professional men. He thought that protection should not be afforded to any particular class, but to the public generally. Under the old system, he admitted that it was necessary to confine all such transactions to lawyers; but, under the Real Property Act, he contended, it was quite unnecessary for the protection of the public to render it illegal for any person, who had not undergone an examination, to convey property under the Act. Besides, the honorable and learned Attorney-General would lead the House to infer that the agents were the responsible persons in filling up the forms. He (Dr. Challinor) did not take that view of the case. He thought it was the duty of the Registrar-General to examine all applications, and to reject them if they were contrary to law. Then, again, there was another way by which the public were secured, which had not been alluded to. No property could be brought under the Real Property Act without advertisement. It appeared to him that every care was taken to protect the interests of the public. Then, if members of the legal profession had considered that it was the intention of the Act to confine the transfer of land to them, why had they allowed the matter to stand over for four years? It appeared to him that they had been seeking for a flaw in the Act; and it was not until an Ipswich lawyer had shewn them how to do so that they had taken any action in the matter. The Act, he was convinced, was never intended to confine the transaction of business in connection with the conveyance of land exclusively to the legal profession. He had recently read a paragraph in a local newspaper, which quoted the opinion of the present Lord Chancellor, who said that lawyers were of all men the most backward in any movement to alter or simplify the law. That was the opinion of the highest legal authority in England; and honorable members need not be afraid to express a similar opinion. He

did not think the legal members in the House would attempt to say that it was intended by the Act to confine the transfer of land entirely to them on account of the reduction it would occasion in the costs of transfer; because it was said that the alteration would have given them ten conveyances instead of one, and thus they would have made up in quantity what they lost in price. He might say that the Act had very much simplified the lawyers' work. It was not, however, framed for their advantage, but for the benefit of the public. If the honorable member who moved the amendment had had the same experience in committees chosen by ballot as he had, he would never have moved it; for he (Dr. Challinor) was aware that when it was desirable to carry any particular point, it could always be effected by getting a committee chosen by ballot. It was said, also, that advantage would be taken of the poor man who could not read nor write. But the documents had to be witnessed before a magistrate, whose duty it was to see that the declaration was understood and properly made. The responsibility rested upon the magistrate, and not upon the agents who filled up the forms. The honorable member for North Brisbane (Mr. Blakeney) would have the House to believe that the question debated was not one in which he was interested. But he (Dr. Challinor) had heard of such persons as conveyancing barristers, who were employed to give their opinion on conveyancing, and those opinions were frequently taken upon questions which were likely to come before the Supreme Court. He did not intend to say anything about fraud in connection with this question, except that he believed that any person, whether land agent or not, who dealt fraudulently, could be punished—if not by that Act, by some other Act. Conveyancing, in fact, had been rendered, to a certain extent, an exact science by the Act of 1861, because there were schedules prepared to deal with every possible transaction in land that could be supposed. Those schedules, he believed, contained the gist of the law, and it merely remained for the parties concerned, or their agents, to fill up the necessary forms. As it was impossible to give the particulars of each case in the schedules—whether the transaction were a purchase or mortgage—so it was impossible to describe every piece of land; those descriptions were therefore left to the licensed surveyors, in order that no mistakes might occur. The conveyances under the Act were not subject to litigation, else what benefit had the new Act over the old? He admitted that two blacks could not make a white, but he could not understand how a lawyer would attempt to defraud a lawyer, though the member for Fortitude Valley might have been defrauded by persons professing to be pious. He was sure the intention of the House was to simplify the Act, and that it was not the intention of the House that conveyancing should be confined to a particular class. At the same time, if the members of the legal profession made reasonable charges, there was no doubt that they would get an increase of business, since the public would, of course, be glad to obtain the best article at the cheapest rate. He should, therefore, oppose the amendment, and support the motion for the second reading of the Bill.

Mr. Taylor said there was one thing for certain that all honorable members would agree upon, and it was—that the Real Property Act was a very good measure. He thought, when the Act was passed, that even a blackfellow could make a conveyance under it; and he was sure that if a clause to that effect had been proposed, it would have been passed, such was the feeling of the House. The honorable member commented on the observations of the honorable member for Ipswich (Dr. Challinor) upon the disinterestedness of the honorable member for North Brisbane (Mr. Blakeney). There was one thing he did not care for, and that was, that parties having a deed direct from the Crown should have to pay towards the insurance fund under the Act; for they could not possibly derive any benefit from it. When a demand was made of him for the money, on one occasion that he had registered some land under the Act, he paid it, but under protest. He had paid £16, though it was upon land purchased by him direct from the Crown. The title from the Crown could not be disputed, and why should parties who had it pay for bad titles? He should vote for the Bill, because he believed that the Act was passed with the object of enabling anyone to act as a conveyancer. He did not believe in the committee.

Dr. Challinor, in explanation, stated that in referring to the honorable member, Mr. Blakeney, he had said that the honorable member was not so disinterested as he might make it appear, in reference to a return to the old system.

Mr. Walsh begged, with the permission of the Speaker, to make a suggestion, that the committee consist of seven members instead of five. He did this in consequence of the representations made to him by many honorable members. He did not think it would be jeopardising the Bill to refer it to a select committee.

There being no objection, the amendment of the honorable member for Maryborough was altered as suggested.

The question was put, the amendment was negatived, and the original motion was agreed to, and the Bill read a second time.