

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

WEDNESDAY, 5 JULY 1865

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LEGISLATIVE ASSEMBLY.

Wednesday, 5 July, 1865.

Claims against Government Bill, 2^o.—The case of W. H. Richards and Co.—Savings Banks Act Amendment Bill.

CLAIMS AGAINST GOVERNMENT BILL.

On the order of the day being called on for the resumption of the debate on the motion of Mr. Walsh,—“That the claims against the Government Bill be now read a second time,”

Mr. DOUGLAS said, that as he moved the adjournment of the debate on the previous evening, it became him to make a few remarks on the measure at the present time. Without asserting that the measure before the House was absolutely the best that might possibly be passed, he thought this might be said of it: that it did ask to meet, and went a long way towards meeting, a want which had been much felt lately, and which in all probability would continue to be felt in an intensified form. The measure that had been moved by his honorable friend, the member for Maryborough, in a way which he thought entitled it to the consideration of honorable members, was met by the honorable and learned Attorney-General with the most decided opposition. Of course, that opposition was in accordance with what the honorable and learned gentleman considered to be his duty, but he thought the honorable gentleman would have displayed a little more sagacity, if he had entrusted to some of those honorable members on whom the Government usually depended for support the task of mildly deprecating the measure, and had, by doing so, felt his way as to the disposition of the House with respect to the measure. Had he done so, he would have attained his object better than by the course he had pursued. The honorable and learned gentleman said he would oppose the measure to the utmost in his power, as he considered it was detrimental to the best interests of the country, and was contrary to the constitution of the country. The honorable gentleman at the head of the Government failed to meet the question in the way that measures such as he had described this to be were usually considered to be met. The usual way was not to meet them by a direct negative, but by an amendment, to the effect that the Bill be read a second time that day six months. He thought the honorable member would have moved such an amendment, but he failed to do so, and the argument was then taken up by the honorable member for the Western Downs (Mr. Watts), who appeared to feel very strongly on the measure, though, at that period of the debate, the light that was subsequently thrown on the measure by the honorable and learned member for Fortitude Valley had not dawned on his mind; and after having heard that honorable member's views on the subject, the honorable member for the Western Downs might be prepared to reconsider his determination. He thought the

honorable and learned member for Fortitude Valley displayed an amount of forensic ability and knowledge of constitutional law that the House was rarely favored with; and he, for one, had listened with great pleasure to the explanation of his honorable and learned friend. He regretted to find that the opinion of the honorable and learned gentleman, who advised the Government on questions of law, was of a totally different character, and did not at all compare with the speech of the honorable and learned member who preceded him. The honorable gentleman at the head of the Government, in opposing the Bill, went off at score by alluding to the petition which was presented a few days ago from Mr. Richards, and by his remarks he seemed desirous of leading the House to infer, that because that gentleman's case was still pending, this Bill had been introduced. Now he deprecated such allusions. Attention might have been called to the question more strongly by that case, but there were more cases of a similar nature. He trusted the House would not mix two things that were quite distinct, notwithstanding the attempt of the honorable gentleman at the head of the Government to induce them to do so. He had not the legal experience, nor had he the same facilities as the honorable and learned member for Fortitude Valley to enable him to deal with the legal bearings of the question; and, therefore, he would not attempt to add anything to the lucid statement of that honorable member; but, he should like to allude to the common sense view which all honorable members might take in respect of such a measure. The statement of the honorable gentleman at the head of the Government was to the effect that the measure infringed on one of the primary principles of constitutional law; and he understood him to contend that the Executive for the time being was, as it were, a committee of the House, empowered to carry on the business of the country, and that he conceived any legislation which interfered with their final decision on any matter, would be contrary to the constitutional law of the colony; but he (Mr. Douglas) denied that such was the case. Reference had been made to other colonies. He might not be able to prove that such a measure as the one now before the House was in force in other colonies, but perhaps some other honorable member might. He found, however, that in May, 1861, an Act was passed by the Legislature of New South Wales for the amendment of the law as to claims against the Crown. The Act was reserved for the signification of Her Majesty's pleasure respecting it, and that, he thought, set aside the assertion that the measure before the House introduced machinery that would over-ride the constitution. The first clause of the Act was as follows:—

"A petition of right may if the suppliant think fit be intituled in the Supreme Court of New South Wales in that jurisdiction thereof in which the subject matter of such petition or any material part thereof would have been cognisable if the same had been a matter in dispute between subject and subject and if intituled in the common law jurisdiction of the said court shall state in the margin the venue for the trial of such petition and such petition shall be addressed to Her Majesty in the form or to the effect in the first schedule hereto and shall state the christian and surname and usual place of abode of the suppliant and of his attorney if any and shall set forth with convenient certainty the facts entitling the suppliant to relief and shall be signed by such suppliant his counsel or attorney."

The second clause, which was perhaps the most important one, was as follows:—

"The said petition shall be left with the Colonial Secretary by whom it shall forthwith be submitted to the Governor for his consideration and in order that he may if he should think fit in the name and on behalf of Her Majesty grant his fiat that right be done and no fee shall be payable on so leaving or receiving back such petition."

Now, in that clause there was an admission of the principle which the honorable gentleman at the head of the Government said would be a subversion of constitutional government.

The COLONIAL SECRETARY: No, no.

Mr. DOUGLAS: He understood the honorable gentleman to say that the Bill before the House would subvert the principle of constitutional government—that the Executive Council was a committee of the House for the purpose of carrying on the Government of the country, and that from their decision there could be no appeal.

The COLONIAL SECRETARY: No, I did not.

Mr. DOUGLAS: Now, in a neighboring colony, they found there was an appeal from the decision of the Executive Council to the Governor. It was true it was not in the same form as the course of appeal proposed in this Bill, still it went clearly against the statement made by the honorable the Colonial Secretary, that the principle of the measure would be a subversion of constitutional law. He believed that a similar measure was passed in Victoria. He had been unable to lay his hand on it, but at a later period of the discussion, he might be able to do so. Those cases shewed that the rights proposed to be dealt with by the Bill, were recognised in other colonies which also had constitutional government. He thought there were good grounds, in common sense, why they should pass the Bill before the House, and he would confine his remarks to some of those, as he considered the legal aspect of the question had been fully dealt with by the honorable and learned member for Fortitude Valley. He would ask why, in the name of common sense, any responsible head of a department or a Government, in its collective

capacity, should possess an immunity which no private individual in the community possessed? Everybody might be sued at law in their private capacity, or as members of powerful corporations, and were the members of the Government as such, individually or as a body, to be the only exception? and was the subject to have no redress from the decision of the elected committee of the Legislative Assembly? As he understood the honorable gentleman at the head of the Government, the Executive Council for the time being were a law to themselves, and that was the legitimate consequence of there being no appeal from their decision except to that House. Now, he thought it was most objectionable that in matters of law there should be an appeal to the House. It was the proper functions of the House to pass laws, but it was to those gentlemen who, on account of learning, high intelligence, and who had been characterised by incorruptible principles, had been raised to high judicial functions, it was to them they must go for the interpretation of the law. He now wished to refer to one other position, in which members of the Executive Council might find themselves placed in a small community. He did not wish for one moment to reflect on the conduct of the Executive Council, or on any member of it, or to imply that they were actuated by any other than the most honest motives. In a small community, however, members of the Executive were very differently situated, as regarded public opinions, than they were in a large community; and he thought that members of the Executive should, as far as possible, be placed apart, or be in a position to exercise an unbiassed judgment, so far as public opinions were concerned, on any matter that might come under their observation. He had no desire to impute to the honorable the Secretary for Lands and Works anything that might lead to the opinion that he swerved from what he considered to be his path of duty. But he only wished to allude to what ought to be a matter of public opinion. The honorable gentleman occupied, not only a high position as a member of the Executive, but also a high position as a lawyer, and such being the case, it subjected him to remarks that he might have a large practice on the part of the Government. He knew that the honorable member had been retained in certain cases in which the civil rights of parties were involved; and, therefore, considering the legal sagacity and acumen of the honorable gentleman—and apart from his position in the Executive, he should have no hesitation in committing any case he might have to bring before the Supreme Court to the care and management of the honorable gentleman—he could not divest his mind of this impression, that the honorable gentleman might have sometimes to appeal in his own case to the Executive Board, of which he was a member; and his appeal in such a

case would be from himself, as a lawyer, to himself, as a member of the Executive. It might be thought by some that the honorable gentleman should give up his practice in respect of his position as a member of the Executive.

The SECRETARY FOR LANDS AND WORKS : I have done so.

Mr. DOUGLAS : The honorable gentleman said he had given up his private practice.

The SECRETARY FOR LANDS AND WORKS : I have done so as far as regards any matter that might come before the Government.

Mr. DOUGLAS : Well, that was a partially satisfactory solution of the question, and he was satisfied the honorable member had made that statement, and he was sure there were many persons outside who would be satisfied to have the assurance which had been given by the honorable member. He should leave other honorable members to deal with the details of the matter. It was sufficient for him to believe there was no necessity to place the Government in a superior position as regarded actions at law to any other members of the community. The honorable gentleman at the head of the Government had stated that if the Bill were passed, it would give rise to a large number of law suits, and occasion a very great deal of expenditure on the part of the Government ; but that difficulty was in some respects met by provisions in the Bill ; for under them, any one suing the Government would have to give security for the costs of his case, and any one having that obligation resting on him, would make sure that he had a good case against the Government before he came into court. The honorable gentleman had also mentioned, as an objection to the measure, that juries were apt to give a verdict against the Government in all cases, because the Government was the party best able to pay, or to bear loss. Now, he must say that he was far from believing that juries were actuated by such a principle ; and, besides, it should be remembered that if a jury perverted their trust, there was the right of appeal. It would always be competent to the Government to move for a new trial, or appeal to the highest judicature of the mother country, as the Government, being satisfied they had a good case, could always appeal to the Privy Council, and there obtain the best decision that could be obtained ; so he did not think there were any good grounds to fear that the anticipations of the honorable gentleman at the head of the Government would be realised ; and surely no one would be so foolhardy as to go into the court against the Government unless he was certain he had a good cause ; for he would know that the Government had a long purse, and would be able to push the matter to the utmost extremity. For similar reasons, he thought it was not likely that cases would be very frequently brought against the Government. The Government should remember that they

derived their power from the Legislature ; and, if they set aside the laws, what redress was there for the subject, if no appeal was allowed to the Supreme Court ? It was also the fact, that the principle of the Bill before the House was adopted in a measure of a similar nature in the United States of America, and the Supreme Court there was the final court of appeal, and had even the power of over-ruling legislation which was contrary to the fundamental principles of the common law. The honorable gentleman was himself amenable, if he did wrong, to be tried as a criminal, and every honorable member, if he did wrong, was as liable to be tried as the worst vagrant in the colony. No one possessed an immunity, because of his position, nor did the honorable gentleman at the head of the Government possess any immunity because he was a member of the Executive. Now, why should they not go a step further, and say that he had no immunity in the matter of civil rights, and that the Government should not enjoy an immunity that no other honorable member enjoyed ? That they should not do so was justified by the course of legislation on the subject in the other colonies, and was justified by the fact that a petition in the mother country was hardly ever refused. It had been stated that the Executive had refused petitions ; and, in the other colonies, previous to the passing of the enactments he had referred to, petitions had also been refused. He knew of the case of a gentleman, in Sydney, who had a large claim against the Government, and he was well-advised that he had a good claim, for he spent a large sum to obtain the best legal advice on the point, and the matter, on being brought under the notice of the Law Officers of the Crown, advised that the right to sue should be granted to the person he referred to ; but the Government did not accede to the recommendation of their own law advisers. On the contrary, they refused to grant the prayer of the petition for permission to sue. Under the Crown Lands Act, cases of the gravest injustice, he believed, had occurred, in which the Government had acted, no doubt, with the best intentions, and he was satisfied that if the evil went on unchecked, it would be difficult to find a remedy. He believed, however, that the Bill before the House would provide a sufficient remedy for such cases. It might require some modification in committee, but he was sure that this measure, or some such measure, was highly desirable, in order that private individuals having a *prima facie* claim against the Government should have the right of suing the Government in the Supreme Court.

The SECRETARY FOR LANDS AND WORKS : In offering a few observations to the House on this question, it is not my intention to follow up the honorable member who last addressed the House, or to follow the mode of argument that has been advanced by

honorable members on the other side of the House, because, with the exception of the honorable member who had just sat down, not one honorable member who has addressed the House in support of the Bill, has yet put before the House the true object for which the Bill is desired. If the honorable member who introduced the Bill, or the honorable and learned member for Fortitude Valley, had really stated and fully propounded the object of the Bill, honorable members would have then been in a much better position than they are now, in determining if such a measure ought to be encouraged. It will be in the recollection of the House, that the whole of the arguments advanced in support of the measure, were arguments that proceeded on the assumption that the Government had committed some breach of contract. Now, the honorable member who introduced the Bill referred to the case of a contract being entered into by the Government with some person for the construction of iron-clad vessels. If the honorable gentleman supposed that the Government would for one moment resist any attempt to recover from them any just claim, or that the Government would refuse to a contractor the right to go into the court with such a case as the one the honorable member alluded to, he was very much mistaken. I defy any honorable member to shew that the right has been refused; and, as I stated last night, there has been but one case to which any reference has been made which stands in that position, and I shall only again refer to it incidentally; but I would again draw the attention of honorable members to this, that the principal argument advanced was that it was impossible to sue the Government, as the permission of the Government to allow themselves to be sued would not be given; and an observation had been made of this character, that as the Government could not be sued, it would be useless for any one to enter into a contract with the Government. Now, what was the inference from that but this: that if the Government refused to give the right of petition, the man was without a remedy? Now, I am not aware of there being any such case. I am aware of a case that was brought forward about two years ago. The gentleman spoke to me about it, and I told him I did not consider he had a case, but that if he desired to try the question in a court of law the Governor would be advised to give his consent to a petition praying for the right to sue. Well, I do not know of any other case, and that was the advice I gave to the party, which I think shews there was no desire on the part of the Government to take advantage of the law as it at present stands. But, after all, that is not the question before the House. The arguments that have been used may be arguments in favor of the Bill, but they are not arguments to shew what the intention of the Bill is. The Bill has an

object, however, and it is a very important one, and it aims at much higher game than securing the right of suing the Government on a breach of contract. In point of fact, if the Bill got its proper title, it would be "a Bill to abolish and prohibit the survey of runs." (Laughter.) Honorable members laugh, but that only confirms me that they do not understand the consequence of their own act. This is a Bill, the effect of which would be to prohibit and abolish the surveys of runs, the adjustment of boundaries, and the issue of leases. That is substantially what should be the title of the Bill, and it is the object for which the Bill is intended. Now, in order that the House may be put in possession of sufficient data to determine this point, I shall refer to a few matters of fact. Honorable members have, no doubt, all heard of the old Orders in Council under which tenders for runs were given in, and runs were taken up. Now, a great many honorable members are under the impression that those Orders in Council have been repealed, and are not now in force; but a greater mistake than that could not exist, for the Orders in Council are not only still in force, but are acted upon every day, and must continue to be acted on till the expiry of all the leases issued under them; and they have years to run yet. It will be in the recollection of honorable members who happened to be members of the House during the first session of Parliament, that the honorable member for the Burnett, who then held the office of Treasurer, produced in the House a tracing of the country taken up as runs under tender, which comprised the whole, or the greater part of two districts. Now, in many cases the runs overlapped each other, and in some cases they actually stood on the paper the one above the other. As honorable members will see, this occasioned great difficulty in the way of adjusting boundaries. In New South Wales they never had the same extent of difficulty, because there they had not had the same extent of country taken up and occupied under the Orders in Council. When Mr. Thomson was at the head of the Government in that colony, he attempted to introduce a system of survey to provide a mode of adjusting and dealing with those overlapping runs; but after he had done so, he had to give it up, as it was impossible to get correct data to proceed upon; complaints were also made by applicants, that they could not get the country for which they tendered, but this was because in many cases the tenders were for country that did not exist. When Mr. Donaldson succeeded Mr. Thomson, he attempted the same thing; but he, also, had to give it up. Now, I believe the Government of Queensland have attempted to deal with the matter. A Land Board was appointed, who had under them the local commissioners and survey officers,

who were also in the service of the Government. Under this system, when a tender was sent in, instructions were issued to the local commissioners of the district for his report as to the country tendered for. When that was done, and the report considered, instructions were sent to have the run surveyed. The Land Board, as honorable members are no doubt aware, is uncontrolled by the Government, and is an independent institution, upon whom devolves the acceptance or refusal of all tenders sent in under the Orders in Council. As I have stated, the Government were endeavoring by this means to get rid of the difficulties with which they were surrounded, but from the immense number of tenders sent in for country which did not exist, for country that was partly taken up, it was impossible to arrive at any satisfactory arrangement. I may state, for the information of honorable members, that during the last three years the Government have succeeded, with the concurrence of the parties interested, in surveying and adjusting the boundaries of 40,000 miles of country, and those who it was ascertained had the right, had leases issued to them. Now, as the Government went to the trouble of having the country surveyed, no leases will, under the Act, be issued by the Board, except in accordance with those surveys, and no court of law can control the action of the Land Board under the Orders in Council. By the means we have adopted, we are in a fair way of settling all disputes, and giving every man a lease who has a fair right to it. But if the Bill before the House pass, there will be an end of all this; for if it becomes law, and the Government attempts to survey runs and get from the proper officer an amended description—they can be taken into the Supreme Court. (Cries of "Oh, oh.") Honorable members may cry "Oh, oh," but to me it is as plain as a pikestaff that if after the passing of this Bill the Government survey runs, fix boundaries, and issue leases, every case will be brought into the Supreme Court. I have stated what I conceive to be the object of the Bill, and I will now state what I consider will be its consequences; and the first I would mention is, that I believe no Government would remain in office if they were to be subject to law suits in consequence of the action of the Land Board. If such were to be the case, there would be an end of the matter as regarded the good that had been done, or was likely to be done, by the present system. Now, to put a case: suppose the honorable member for Port Curtis were to call on the Chief Commissioner of Crown Lands, and say to him, "I have a station at Broad Sound, and my neighbor is encroaching upon it, and I wish to have a survey, that the boundaries of the two runs may be fixed, and leases issued for the runs so surveyed." Well, if the Government were to take one

step to comply with the request of the honorable member to have a survey, they would be put into the Supreme Court at once by the other party. The only answer, therefore, the Government could give to the request of the honorable member would be that they declined to survey the run at all. The result, then, of the passing of the Bill would be that we should have here the same system as exists in New South Wales, where the right is determined by possession; and the squattages in Victoria are nearly in the same position. If the Bill were passed, surveys of runs could not be granted. If the Bill were passed, it would interfere with the Chief Commissioner in the discharge of his duties, and with every officer in connection with the department of the lands, and if it did so to any great extent, the department, it is clear, would be perfectly useless; because, if the boundaries of runs were disputed, they could not be dealt with by the Board, and if justice were to be done to the parties in the Supreme Court, it would be better to take the matter there at once. I think I have shewn that this is a very important Bill, and that the House should look well to it. The colony is in a very peculiar position as to the adjustment of claims, and in that respect is in advance of other colonies, and its mode of deciding titles to country are much better. I, therefore, trust the House will not by any action of its own give up the position we occupy in that respect.

Mr. HALY said he should support the Bill, for the very reason that the honorable the Secretary for Lands and Works said he should not support it. He had a case of overlapping in his run and he would like to go into court and see that he had his just right. When the Minister for Lands in New South Wales tried to bounce him into paying a sum he did not owe, and he objected to it, the Minister said to him that with one stroke of his pen he could leave him without one blade of grass to his sheep. He then asked the Minister "if he would not be amenable to the law if he did so?" and the reply he got was, "You have yet to get my consent to that." He remarked in reply to that—"But, of course, you would give me that?" and the answer was, that he would not. Now, from such experience, he considered that if the squatters were to be under the direction of any one man, the sooner they left the colony the better.

Mr. MACKENZIE said, that when the Bill was brought forward, he had some doubts as to how he should vote, because he was afraid that to adopt it would be to go from one extreme to another, but the last two speeches had decided him to vote in favor of the Bill, but not from any feelings of a party nature. He was sorry to hear the honorable the Secretary for Lands and Works throw out such a threat—for he took it that his statement, that no Government would remain in

office if such a Bill were passed, was a threat. The Land Board was, no doubt, appointed to deal with all cases of disputed boundaries that might be brought before it, and from having been a member of the Board he could affirm that it was the desire of every member to adjudicate on those cases to the best of their ability, and he was sure there was not one member who did not desire to see justice done. But many cases were brought before the Board in which it was clear there should be a right to sue. He should be sorry to see the Government placed in the position referred to by the honorable the Secretary for Lands and Works; but he thought that might be obviated by his adoption of certain safe-guards, and it should be borne in mind that the measure would refer not only to the present but to future Ministers. Of two evils, he thought the course proposed by the Bill was the best; and it should be remembered, that the Bill referred, not merely to the surveying of runs, but also to the paying of rent for the runs. As to the case cited by the honorable member for Port Curtis as having occurred in New South Wales, it had come under his own observation. The Commissioner was appointed under an Act of Parliament for seven years; but his period was afterwards reduced to three years. The gentleman consulted the most eminent counsel in Sydney as to his right to compensation for loss of office at an earlier period than that for which he was appointed, and he was advised that he had a good claim. He then applied to the Government for leave to sue in the Supreme Court, but his application was refused; and he still remained without compensation to this day. He knew of another case of a gentleman who owned a great deal of land under an original grant, but lost it through a flaw in the title. With the view of having his rights tested, he applied to the Government for leave to sue. The petition was granted, and he brought his case before the Supreme Court, and he got a verdict for £5,000; and every one knew that it was a perfectly just verdict. He would also refer to a case of his own. Under the old Act he tendered for a run on the Dawson. By one of the clauses in the Act, the tenderer was required to pay for only as much land as was available, as a good deal of the western and northern country was covered with scrub, and it was thought unjust that parties should have to pay for unavailable country. Shortly afterwards, regulations were framed containing a provision that the allowance for unavailable land should not extend beyond one-half of the run; that was, that under any circumstances, the tenderer must pay for at least half of the run. In 1861 his tender was accepted; the Commissioner reported that there was so much available land, and he paid two or three years' rent into the Treasury, in conformity with the Commissioner's report,

and obtained receipts. The run was afterwards sold, and he was called upon to pay up arrears, because it had been under-estimated; that was to say, he had only paid for the land reported to be available, which was less than half the run. He refused to pay the difference, and the Secretary for Lands and Works said that, unless he did so, the run would be forfeited. A short time afterwards, the person who purchased the run had a similar demand made on him, and, in consequence of the threat that the run would be forfeited, he paid the amount of alleged arrears. Supposing the arrears had not been paid, and the run forfeited, there would have been no appeal. The station was now about to be again transferred, and the holder had applied to him to pay him back those arrears. Now, he thought it was only fair that, in a case of that kind, where a person considered he was unjustly treated, he should have an opportunity of appealing. The honorable the Secretary for Lands and Works had said that if the Bill before the House were passed, there would be no end of actions against the Government, and no end of presenting petitions for select committees to inquire into claims. If the honorable member thought so, it clearly shewed his conviction that there were many cases in which there were good grounds for appeal. The objection of the Government to the Bill appeared to amount to this: that they had been so long in office, and so much accustomed to have everything their own way, that they did not like anything that entrenched upon their settled arrangements. Now, he could not deal with the matter in that light, and he considered the Bill was one that, with certain safeguards to prevent such occurrences as the Government apprehended, should be allowed to pass. He thought the honorable member for Fortitude Valley had placed the matter in a clear and reasonable light; and he trusted the honorable the Secretary for Lands and Works would withdraw the threat he had uttered, for he did not see that such difficulties as he anticipated would arise under the Bill.

Mr. MILES said, it was his intention also to vote for the Bill. He had never heard such rubbish as the speech of the honorable the Secretary for Lands and Works, for there was no argument in it whatever. The honorable gentleman had told them that the Government had surveyed large quantities of land and had adjusted several runs. The speech of the honorable gentleman, on the whole, amounted to this: that the Government was a part of the House and nothing more; and the honorable the Chief Secretary stated that the House was the proper tribunal to try such cases as the Bill proposed to deal with—that was, that any individual who considered he had a grievance against the Government should come to the House for redress, and that the Legislative Assembly was the proper place

to obtain such redress. Now, with all respect for the honorable gentleman, he was obliged to say that he did not agree with him, for they all knew that party feeling ran high in the House, and that strong personal allusions were sometimes used. The honorable gentleman uttered a threat, to the effect that if the Bill was carried, the Ministry would go out of office. But he would ask him if he meant by that that he considered there should be no redress of grievances to those who felt aggrieved unless by the favor of the Executive? He thought that all the Government could desire, in the way of a safeguard, would be secured by the provision the honorable member for Fortitude Valley proposed, which amounted to this, that all suitors who desired to sue the Government should lodge security for costs. He did not desire to impute any sinister motives to the Government, for he believed it was impossible to have a more honest and sincere Government than the present, but it should be remembered that they were not always to have the same Government. They might some day have the honorable member for Maryborough at the head of the Government, and he should like a Bill of this kind to be in force that he might be able to keep him in check; for it was the mover of the Bill before the House that he was afraid of. He could also inform the House, as some other honorable members had done, that he, too, had had something to do with respect to disputed runs, but he had heard of the Land Board to-night for the first time. He knew of a Land Board that consisted of only one man, and he asked if the Government was prepared to leave the disposal of everything in the hands of one man? After all, he did not think the Government had so much to fear from this measure becoming law, for he did not think any one would dispute the decision of the Government, unless he was pretty confident in the first place that he had a clear and a just claim, especially if the provision of the honorable member for Fortitude Valley were inserted in it, as he would have to give security for costs. For his own part, he would put up with a good deal of injustice before he would try a case in the Supreme Court against the Government. He believed the Government had been blamed for much they were not guilty of, and he must again repeat that he had every confidence in the present Government. Notwithstanding all he had heard said as to the probable effects of the Bill, as to the difficulties in which it would place the Government if it were carried into law, he hoped it would be agreed to, and he for one should support the second reading of it.

Mr. PUGH said, that so far from this Bill having been introduced in connection with the case of Richards, the honorable member for Maryborough, he understood, commenced framing the Bill about a week after he entered Parliament, and he did not

become aware of the case of Mr. Richards, of Springsure, till about a fortnight ago. Honorable members would, therefore, he hoped disabuse their minds of any impression that the Bill was brought in with reference to that particular case. For his own part, he looked on the Bill as intended simply to place the Government in the same position as a private individual would be in respect to any contract, so that if a person felt himself aggrieved by the Government, he should be allowed, as a matter of justice between man and man, to enter an action against them. In the colony of Victoria there was an Act in existence under which the Government could sue and be sued, and it was passed in order to meet the numerous cases that arose in connection with the Government railway contracts; and he understood there were persons now in Brisbane who had brought actions under that measure in the Supreme Court of Victoria. It had been stated by the honorable member for the Western Downs, that if this Bill became law it would occasion a great deal of expense to the Government, in consequence of the number of actions that would be brought under it. Well, the honorable member, who was a supporter of the Government, must certainly have a very strange opinion of them before he could make such a remark, for the necessary inference from it was that he must believe they had committed a great many irregularities, otherwise he would not expect there would be many cases to bring into court. The opposition to the Bill by the Government seemed to resolve itself into this, that they seemed to think they would be robbed of a certain part of their power if the Bill were to pass into law, and that it would be unconstitutional to take that power from them; but that it would not be unconstitutional to do so was proved by the fact that the thing had been done in other colonies already. The whole line of argument pursued by the honorable the Secretary for Lands and Works seemed to proceed on the idea that the Bill was directed against the Government with which he was connected, and he left out of sight the broad principle of the Bill altogether. The same might be said with respect to the honorable the Colonial Secretary, for that honorable gentleman seemed desirous of inducing honorable members to believe that the Bill was only brought in to meet a particular case. As to the right of petition, he did not see how any one could dispute it, for it was a fundamental principle of the British constitution that no one should be refused his just rights, and that justice should not be delayed. Referring to this, *Chitty on Prerogative* said:—

“With respect, however, to injuries to the rights of property, as such injuries may be, and generally are, committed through the medium of the King's agent, and by misinformation or inadvertence, the law has furnished the subject with a decent and respectful mode of removing the

invasion by informing the King of the true state of the matter in dispute; and, as it presumes that to know of any injury and to redress it are inseparable in the royal breast, it then issues, as of course, in the King's own name, his orders to his judges to do justice to the party aggrieved."

Further on in his work the same authority said:—

"In every case, however, in which the subject hath a right against the Crown, and yet no *monstrans de droit* or transverse of office lies, a petition is the birthright of the subject, and is sustainable at common law, and this not only in the case of real property, but of chattels, real or personal, or liquidated damages."

Then, as to the mode of proceeding, he said:—

"It is the very essence of petition that it should contain nothing of a mandatory nature. The petition is, however, substantially, as well as nominally, a petition of right."

It might be said that the Government admitted all that, but they must bear in mind, in dealing with a question of this nature, that nations were beginning to be governed by usage as much as by law, and that usage, in some instances, had grown up into law, and was accepted as such. The right of petition had not, he believed, been refused at home in any single instance, and that it should be granted was looked upon in England as a matter of course, but here it appeared the subject was to be made to look upon it as a matter of favor. The honorable the Secretary for Lands and Works, in the course of his remarks, threw out what was taken by the honorable member for the Maranoa to be a threat, to the effect that if the supporters of the Government supported the Bill the Government would resign, and such, indeed, was the effect of the honorable gentleman's remarks. The honorable gentleman had tried to throw a complete haze over the whole question; and honorable members might have imagined from his speech that the Bill under consideration was one for the amendment of the land laws. But it was nothing of the kind. All that was sought by this Bill, so far as the land laws could be considered as involved was, that a person having sent in a proper description of the run for which he tendered, and having complied in other respects with the law as it now existed, should, in the event of any irregularity on the part of the Government by which the tenderer was subjected to loss, be enabled of right, and not of favor, to have redress by appealing to the Supreme Court. Was the person aggrieved to be refused redress, though he had done all that was required of him, and to be referred instead to that mysterious Board which the honorable member for the Maranoa had never so much as heard of? He thought that many of the grounds of argument against the Bill might be met if the honorable mover would, in committee, insert a clause having this object,—that when a petition was sent in

to the Governor, praying him to appoint a nominal defendant, if a Judge of the Supreme Court certified that there was a good ground for action shewn in the petition, the prayer of the petition should be granted; and if the Judge certified that there was not good ground of action, the prayer should be refused. He thought such a provision, with a clause giving security for costs, would fully meet all the objections that had been brought against the Bill. So far as he could see, the question, as it now stood before the House, resolved itself into this: were they to remain subject to a petty tyranny or not? If they were to be refused the right of petition, on the strength of the maxim that the Crown could do no wrong, he agreed with the honorable member for the Burnett (Mr. Haly) that the sooner they left the country the better. He should support the second reading of the Bill; and he felt sure that if the alterations proposed were made, all grounds for the Government objecting to the Bill would be taken away.

Dr. CHALLINOR said that he was in favor of the principle of the Bill, because he believed there was a natural tendency in all governments to throw the shield of protection over their officials, to cover their delinquencies or their errors of judgment; and the Bill would have very good effect in preventing such errors and delinquencies. If their officials knew that their conduct might be submitted to an investigation in a court of law, they would be more particular in their conduct, and not shew partiality to one person more than to another. The House knew that such things had occurred, even in the colony of Queensland, and that officers connected with the Crown lands of the colony had been superseded by the Government. The Bill would have a tendency to make Ministers more guarded in their actions than they otherwise might be, when those actions were likely to be called in question in a way which would expose them to a publicity that they would be anxious to avoid, and much more than if brought before the public by a select committee of the House. Its principle, he thought, was certainly admitted by the Act which was at present in force, and which set out that—

"Whereas disputes and differences have arisen and may hereafter arise between the subjects of Her Majesty the Queen and Her Majesty's local Government in the colony of New South Wales the subject matter of which disputes and differences has arisen or may arise within the said colony and whereas the ordinary remedy by petition of right is of limited operation and is insufficient to meet all such cases and is attended with great expense inconvenience and delay be it therefore enacted"—

and so forth. Persons having claims against the Government might petition in the matter, and such petition was to be lodged with the Governor; and, with the advice and consent of the Executive Council, it might be referred

to the Judges to say in which way the claim was to be tried. But in the whole of the Act there was not the slightest reference to any injury being sustained by, or to any interference with the privileges of, the constitution. Whenever the prerogative of the Crown was supposed to be interfered with, the Governor, with the advice of his Executive Council, could certify in writing his opinion to that effect endorsed upon the petition, and refer it home for the advice of Her Majesty's Council. As the law stood, it provided against vexatious and frivolous trials; but it not only did that—it gave the Government power to deny substantial justice to the subject, and that was not a power to be entrusted to any Government. It appeared that that power reserved to the Governor in Council was not considered desirable by the Parliament of New South Wales; for an amended Act was passed in 1861, by which the power was taken from the Executive Council, and reserved exclusively to the Governor. It was very possible that the Governor might refer a claim made upon the Government to the Law Officers of the Crown, to ascertain whether or not there was a *prima facie* case, and that might be a sufficient protection to the subject if the law officers were not members of the Cabinet; but, being members of the Cabinet both in New South Wales and this colony, he (Dr. Challinor) did not think the power ought to be left even with the Governor to decide as to the right of entering an action. He was quite in favor of the views put forward by the honorable member for North Brisbane, Mr. Pugh, that the Government and the colony would be sufficiently protected from frivolous and vexatious actions by calling on the Judges themselves to certify that there was good ground of action in the petition of the claimant; and that the plaintiff in the case should deposit costs to cover the action. He might go even further than that, and provide—as in the case of magistrates who were so protected—that double costs should be given where the verdict was for the defendant. If that protection was thrown around magistrates of the territory, he thought it would not be unfair that the same protection should be thrown around the Government to save them from vexatious and frivolous actions. Those means of protection were in his mind before the matter was mooted in the House; and they were such as would commend themselves to the common sense of the House. It certainly did not seem right that any person should be a judge in his own case. But as the law now stood, the Government were judges in their own case. The House could very well see that where there was an error of judgment, and that a case brought before the court would not affect the standing of the Government, they would not offer any objection to a petition; but if their conduct in the matter was not such—he spoke of no Government in particular—as to

admit daylight, to use a common expression, they would not willingly consent to it. If ever the time should arrive in this colony when the Law Officers would not be members of the Cabinet and responsible to Parliament for the advice they gave the Governor, the New South Wales law might answer; but that state of things was not likely to arise, and the House must legislate for the present. He should not like to entrust such cases as were likely to arise yet awhile under the Bill to a common jury; he was quite sure that the evidences the House had before them of the verdicts given by common juries were not such as would lead them, in the present state of the colony, to regard with complacency the trial of those cases by common juries. There was a general tendency to lean to the weak side, not because it was right, but because it was weak. On that ground, he thought the cases ought to be tried by special juries. There was no reason, as far as he knew, for supposing that the verdicts of special juries were not of such a character that, taking them as a whole, they could be accepted by the Government. As had been already stated by the honorable member for Fortitude Valley, if a verdict was against evidence, the Judges had the power to grant a new trial; and, as had been pointed out by the honorable member for Port Curtis, there was after that the right of appeal to the Privy Council. It had been stated that the Bill would affect the administration of the Crown lands, and would be a very great source of expense to this colony; in fact, it had been pointedly alleged that it would be necessary to put a sum of £100,000 on the Estimates every year to meet the contingencies that might arise from suits against the Government under the Bill. If that was the case, in his opinion the Crown lands were not held at a rent commensurate with the claims for compensation. In the New South Wales Act of 1861, there was a great deal that would meet the approbation of the honorable the Minister for Lands and Works. By that Act, not only could the Government be made parties to an action, but third parties could be brought in; and individuals who came into possession of Crown lands improperly were, under the 12th section, liable to be mulcted in damages and costs, a verdict being given therefor by the court. Besides, there was a proviso in the 7th section, which was to the effect that no subject should be entitled to sue under the provisions of the Act who was not previously entitled to sue the Government; so that, if it prevented any legislation for the past, it would not affect those Crown lands to which the honorable the Secretary for Lands and Works had referred; it would not affect the lands leased under the Orders in Council. If the Government thought it would interfere with them, still he saw no reason why a good Bill should be rejected, because things had

arisen in the past that could not be amended. He thought the Bill ought to be passed. He found that, arising out of the Orders in Council of 1847, an Act of Council was passed in New South Wales, authorising the Governor to appoint a commission for settling disputed boundaries of runs under the Orders in Council; and if those parties who had been referred to by the Minister for Lands and Works refused to submit to the adjudication of that honorable member, the course for the Minister was to appoint a commissioner.

The SECRETARY FOR LANDS AND WORKS : That is repealed.

Dr. CHALLINOR : He was not aware of it ; but it would be desirable to have some special legislation for that purpose.

The SECRETARY FOR LANDS AND WORKS : The Court of Claims.

Dr. CHALLINOR : It had been stated before in the House that no petition of right was refused as a rule, and that there was scarcely any known exception to it. He believed there was one recorded by the author of *The Lives of the Lord Chancellors of England*, in the life of Lord Eldon. The author combated the idea that it was a right which could not be refused by the Crown, and he went on to say—

“ But with great deference I deny this doctrine. By the law and constitution of England a suit cannot be maintained against the Sovereign without the Sovereign's express consent. That consent cannot be properly withheld where there is any feasible ground of suit, but ought to be withheld where clearly and certainly no relief can be given. The Attorney-General is answerable to Parliament for the advice he gives upon this subject, as he would be respecting the granting of a writ of error, or of a *nolle prosequi*. There is no authority for the contrary doctrine ;—it is not at all supported by the analogy of a writ sued out by one subject against another—and in some instances, without the possibility of any advantage to the petitioner, it may lead to a great waste of public money, and of public time.”

Therefore, that was a reason why he (Dr. Challinor) said that all petitions should be referred to the Judges, to see at first that there was a good *prima facie* cause of action. Under the present law, the Government were liable to be sued, and they referred to the Judges to say in what way the case was to come before the court for trial; the whole principle of the Bill was admitted, the only difference being that now the Governor and the Executive had the power to refuse their consent for a trial at all. That was a power which the Government ought not to possess. They would be sufficiently protected in the ways already pointed out—in the first place, by referring the case to the Judges; and, in the second, by causing claimants to deposit the costs of the action in a double or treble ratio; and, in the case of a wrong verdict, the Judges could grant a new trial, or the Government could refer to the Privy

Council. Rather than that the House should not pass the Bill, he would consent to a proviso that it should not extend to anything in the past; and, as he thought it could be made a good measure in committee, he supported the second reading.

Mr. R. CRIBB said he had a few words to offer in opposition to the second reading of the Bill. A great deal had been said about the petition of right; but he wished to point out that the Crown had held for all time the right which it was now sought to take away. That, of itself, was no reason why it should be continued. If it was liable to abuse, the sooner it was altered the better; but there should have been some reasons shewn by those honorable members who supported the Bill why that right should be revoked and the Bill passed; they should have given the House some instances wherein that power had been abused by the Government. He had listened to all the arguments which had been advanced during the debate, and he had not heard of one such instance. With respect to the Bill, he could not see how it could be improved, or simplified in committee. The House had been told by the honorable member for Fortitude Valley that they had no machinery for pleading; and he (Mr. Cribb) thought that was the very best thing, because he knew what pleading meant, and that it never meant justice; he knew that it was a mere game of chance. In the only case in which he was involved, before he came to this colony, he consulted a man known to fame, Mr. Mosely, of Covent Garden; and, having stated his case, that gentleman expressed his opinion in this way: “ Well, I will take it to the very best pleader that I know—it all depends on the pleading.” When he (Mr. Cribb) asked him if he meant to say that it all depended on the pleading, and that the justice of the case had nothing to do with the decision, he was answered—“ Oh, no; it is all in the pleading!” The House were better qualified to arrive at a just judgment than all the special pleaders. The House were told that if a jury did make mistakes, the Judge would direct them. They had seen enough of juries to know that even after the Judge had given his direction twice, the jurors had given their verdict against the Judge's direction; and, finally, the case was sent home and decided by the Privy Council in the very way that the Judge had directed. He knew another case in which the honorable member for Fortitude Valley was engaged, which, by his special pleading, was decided contrary to justice; and the honorable member knew it, too. There was another trial in which the jury went against the direction of the Judge; and when a new trial was granted the honorable member for Fortitude Valley had the same success; and, although the plaintiff might have had another new trial if he had moved for it, he was by that time completely ruined

by the injustice he had suffered. Supposing the second reading of the Bill should be passed, he really did not see a great deal in it; if those safeguards were introduced into it which had been mentioned, he could not see any harm in it. Indeed, if he were a member of the Government, he should be glad of the Bill, as it would take a great deal of responsibility off his shoulders. One of the safeguards was to insist that the claimant should pay the costs into court—a security for costs was no good; the money should be paid down. If the second reading of the Bill passed—and he (Mr. Cribb) would not vote for it—he hoped it would be altered into a much improved form in committee.

Mr. COXEN said, that when the second reading of the Bill was moved on the previous night, he was very much in doubt as to the way he should vote. Some honorable members alleged that there were Acts in force in New South Wales and Victoria of a similar character to the Bill; and other honorable members stated that there was no such measure in existence. Since that, however, he had had time to search the library and the annals of the law, and he found that there was an Act in force in New South Wales—but not the same as the Bill—which would meet the requirements of this colony. That Act took the power of allowing an action upon a petition from the Executive and lodged it with the Governor. He should be much inclined to support a measure of that kind. He had not been able to see the Victorian Act yet. He hoped, however, if the Bill passed the second reading—and really such a measure might be passed without in any degree lessening the dignity of the Government—that it would, in committee be framed after the example of the New South Wales Act. That Act was passed in 1861, and he had not heard that there had been any improper proceeding under it. The Victorian Act, he understood, was passed some time in 1857, and he hoped shortly to be able to examine it. He should not oppose the second reading of the Bill; but reserved to himself the right to vote against the third reading, should it not come out of committee in a shape that he could approve.

The COLONIAL TREASURER: I think honorable members will agree with me that this Bill has now had its full measure of consideration, and has been fully argued on both sides. Indeed, I should not have troubled the House with any remarks on the question, had not one of the reasons which fell from the honorable member, Dr. Challinor, struck me—that the Bill would effect improved action in certain cases which would be brought before the Government to deal with in their Executive capacity, by leading to greater carefulness and attention on the part of the Government and their officers in dealing with cases that may subsequently be inquired into before the public. It

appears to me that if this Bill does pass, instead of having the effect anticipated by the honorable member, it will only have the effect of transferring those actions from the hands of the Executive to the hands of the Judges of the Supreme Court of the colony, and thus placing the Government in the position that it will matter less to them than it possibly can at present, how they act in those cases of great responsibility, whose determination the Bill proposes to take from them and place in the hands of the Judges. After hearing the arguments on both sides, I maintain that the motives which prompted the Government in setting forth their views with respect to this Bill have sound foundation. The principal argument relied on by the head of the Government, and other honorable members, is, that this Bill will entail great expense on the country. It is very clear that lawyers, and many others who would not otherwise have opportunities of getting anything out of the Government, will now have abundant opportunities of making money. A large sum must be provided for in the Estimates every year to meet the cases that will arise under such a measure. It is perfectly clear that before this Bill was brought forward, no pauper, no man of straw, could come before the country with a case in which there was no shadow of a grievance, and put the Government and the country to expense;—but this is the state of things which the Bill, if passed in its original shape, will bring about. I must, however, admit that, in consequence of the suggestions which were thrown out by the honorable and learned member for Fortitude Valley, I have altered my views of the subject. The Bill must assume a very different shape, and a different position in my estimation, if, after it has passed through committee, it embodies the alterations suggested by that honorable member. Then it would be impossible for persons to take into the Supreme Court an expensive action without the sanction of the Judges, who would decide whether there is a case or not to be tried before them. And there is another suggestion, which is a good one indeed, namely—that the petitioner or claimant must lodge money in court sufficient to defray the costs of the action. Therefore, I do admit, that since those suggestions were thrown out, the Bill has assumed—as it seems to honorable members generally, as well as myself—a very different and less unfavorable shape.

The question was then put, and affirmed *nem. con.*

THE CASE OF W. H. RICHARDS AND CO.

Mr. WALSH moved—“(1.) That a select committee be appointed with power to call for persons and papers, and leave to sit during any adjournment of this House, to consider and report upon the allegations contained in the petition presented to this

House, on behalf of W. H. Richards and Co. (2.) That such committee be composed of seven members, and consist of the Secretary for Lands and Works, Mr. Blakeney, Mr. Sandeman, Mr. Dalrymple, Mr. Mackenzie, Mr. Watts, and the mover." He stated that the position he occupied in respect to this motion was simply this:—About a fortnight ago, he believed, he was requested by Mr. Richards to look into the matter in dispute between him and the Government, with the object that, if he thought Mr. Richards had sufficient cause to complain of the treatment received by him from the Government, he should table such a motion as this which he now brought before the House. He had never heard of the case before; he had not even known that there was such a squatter in Queensland as Mr. Richards; and he had to confess to the House that, at the present moment, he was not fully acquainted with the facts of the case. However, it appeared to be an extraordinary case, and one that would demand some consideration from honorable members, before they could understand it. It seemed to have considerably bothered the heads of the Government, and of the departments; and, from the voluminous correspondence that had taken place on both sides, there had been great difficulty in dealing with it. But he had been led to think, from the cursory examination he had given it, that something more than a mistake had been committed with respect to the petitioner—that a direct injury had been sustained by him from the Government, in his position as a tenant of the Crown. If such was the case, and if it was true, as Mr. Richards averred, that he was unable to obtain redress in any other way—and he (Mr. Walsh) submitted that, as the law at present stood, there was no other means of redress—than by appealing to the House, the case was one which they would be fully justified in considering, and equally they would be justified in recommending that some relief should be granted to the petitioner. The facts were somewhat as follows:—Messrs. Richards and Co. became possessed by purchase of certain runs in the Leichhardt district. The tenders under which they became possessed of them were sent in, some in 1858, some in 1859; the runs were reported upon, and the boundaries of some of them were slightly altered by the Commissioner, and Messrs. Richards and Co. received from the Government information that, as the runs were reported upon, and as they were altered, so they would be conveyed to themselves. Subsequently, it appeared that a neighbor's tender had been sent in to the Government. Messrs. Richards and Co.'s tender was sent in on the 13th November, 1858, for the run particularly in dispute; while the tender from the neighbor was not sent in till early in June, 1859. Everybody knew that, under the Crown

lands regulations of this colony, he possessed the first right to a run who first sent in his tender for it, and that any alterations made in the boundaries of the run never affected the application or the right of the tenderer. Well, the petitioner averred that his tender was incontestably the first; but, by some accident, the tender of the neighbor was reported upon first, and the run granted to him infringed upon, or overlapped, the country tendered for by Mr. Richards; and, consequently, by the neighbor's tender having been thus accepted, although the tender of Mr. Richards was sent in first, and through the mistake the Government made, the petitioner and his co-partners became great sufferers. It was further averred that the necessary notice was given to the Government by the petitioners upon their seeing in the *Government Gazette* that a lease was about to be issued to the neighbor; and they lodged a caveat or caveats in due form, and represented that if the lease should be issued for the country in question they would be injured. But, notwithstanding that, the lease which deprived them of what they considered their just rights was issued to the neighbor, whereby the petitioners had received very serious injury. Well, seeing that matters had gone so far against them, they averred that they did that which was their next bounden duty, and made a direct application to the Government on the subject: they represented the injuries they had received, their losses, the almost total prostration of their hopes as squatters, and they waited in person on the Government; but they found out that it was too late—that the Government could afford them no redress. The fiat of the Chief Commissioner of Crown Lands or of Ministers had gone forth, and there was no help for the petitioner in that quarter. The great seal of the colony had been put to the lease granted to the trespasser, and Messrs Richards and Co. were almost without hope. They had but one resource left; they were duly instructed that there was hope in the alternative left to them of making an appeal to the Assembly. They resolved to avail themselves of it, and with all humility, with all propriety, they petitioned for leave to proceed against the Government for the damage, for the injury they had received through the ignorant, the faulty carrying out of the land regulations. That petition—he (Mr. Walsh) was sorry to say it, so immediately following the remarks of the honorable the Secretary for Lands and Works—was not acquiesced in. The petitioners were duly informed by gentlemen well versed in the law, that they had as just a ground for action against the Government as men could possibly have. They were told distinctly that the Government would not allow them or any one else to take into the Supreme Court of the colony a case connected with the land law; and although the Government did not dispute that some

injury had been done to the petitioners by some subordinate, they simply said—"We cannot give you any redress; and, although there is the court in which you could seek it, we will not allow you to seek it there—whether right or wrong, we will not do so." The petitioners averred that they were duly advised to have recourse to the last remedy left to them, and that was to petition the Legislature for an investigation into the circumstances of their case; and it was on the strength of the statements made in the petition—and which he (Mr. Walsh) saw no reason to doubt—and from reading as much of the correspondence before mentioned as he had been able to read, that he felt justified in asking the House to accede to the motion.

The SECRETARY FOR LANDS AND WORKS said it was not his intention, on the part of the Government, to oppose the appointment of a select committee. On the contrary, the Government entered most heartily into the desire of the honorable member that such a committee should be appointed. Before, however, he spoke on the question, he wished, in justice to the Government and the Land Board, to make one or two remarks in answer to some observations which had fallen from the honorable member for Maryborough. He understood the honorable member to say that the gentleman referred to in his motion, Mr. Richards, had been refused permission to sue the Government. The inference he drew from that remark was, that it was in the power of the Government to afford an opportunity to the honorable member's constituents to bring an action; and with that knowledge within their power, they had refused permission. Such was not the fact, for he believed this case was the first submitted to the Executive since he had taken office, and the course which was adopted on the occasion was, to refer it to the Law Officer of the Crown for his opinion. That opinion, which was quite in accordance with his own, was that, as the law stood, even if the Government were disposed to send the case to a court of justice, there was no authority for the exercise of such jurisdiction. That was the reason the Executive declined to give their consent. With regard to the motion before the House, as he had just stated, the Government had no intention of opposing the appointment of a select committee. On the contrary, when Mr. Richards waited upon him, which he did only upon one occasion, although the honorable member said that he made repeated applications—he presumed he meant applications to the heads of subordinate departments—and the question of petitioning the Legislature was mooted, he (Mr. Macalister) entirely agreed with him that that was the proper course to adopt—that if an error had been committed by the Land Board, or by any officer of the Government, the House would, no doubt, find a remedy for it. He must, however, in

justice to the Land Board and the officers appointed by the Government to look after those matters, express his opinion that the gentleman in question had not one iota of title to the country he laid claim to. It was stated that his tenders had been accepted before his opponent's tenders were sent in. But according to a schedule which he (Mr. Macalister) held in his hand, it would appear that the tenders of the person who opposed him were accepted on the 17th July, 1861, while the tenders upon which he based his claim to the country in dispute, some of them were accepted on the 17th July in the same year, and others on the 5th September in the following year. He also held in his hand a plan, forwarded by the local commissioner who reported upon the tender originally. According to that tracing, the tracks of the commissioner were distinctly laid down, and the boundaries of each run marked; and it would appear that the creek from which the run of Mr. Richards really commenced, was within a few miles of the Mackenzie River. Now, when there was a number of runs in the same locality, the Board in deciding any disputes referred to them always took one tender as the key tender, and from that decided upon the boundaries of the others. According to the key tender, then, the Mackenzie River was within a few miles of the creek from which the commissioner commenced his operations. But the country claimed by Mr. Richards, in place of the country allotted to him by the commissioner, was mentioned in his tender as being situated on a creek twenty-six miles distant from the creek on which it was placed by the local commissioner, and that creek was the one which the local commissioner and the Land Board allotted to the tenders of Mr. Richards' opponent. If that statement were correct, and he saw no reason to doubt it, Mr. Richards could have no possible claim to the country in question. Those were the circumstances which, as far as the Government were concerned, he considered necessary to place before the House. Leases had been issued, not for the country taken up by Mr. Richards—no leases had been issued for that—but leases had been issued for the country set down by the commissioner and the Board as the property of his opponent, and falling under his tender. It might be said that the Government ought not to have issued those leases. But in point of fact, what they said, and what had been said all along, was that the country claimed by Mr. Richards had no connection whatever with the country he tendered for. And, again, there was no doubt that Mr. Richards had been carrying on a correspondence for the last fifteen or eighteen months with the department of Crown lands, and he had ample intimation as to the course which the Land Board intended to recommend the Government to pursue. He (Mr. Macalister) thought it right to make these remarks, in order that

the statement of the honorable member for Maryborough should not go forth without a statement setting forth the other side of the question. The committee would, of course, take evidence; and he had no doubt—as, indeed, he hoped—that a searching investigation into the particulars of the case would be instituted. That was what the Government desired; they had nothing to lose, and they had perfect confidence in the Land Board, and in the officers connected with this particular duty; and he had no doubt the result of their inquiries would be, to clear the Government entirely from the imputations which had been cast upon them. He had a small alteration to propose;—as the honorable member for North Brisbane (Mr. Blakeney) would probably be absent from town for a considerable time, he would suggest that the Chairman of Committees be appointed in his stead.

MR. MACKENZIE said he had a perfect recollection of the case having been brought before the Land Board when he was a member of it; but his memory did not serve him as to the details. He recollected, however, that there was a great deal of overlapping in the tenders for the country in question. Considering that there was such a great discrepancy between the statements of the honorable member for Maryborough and the honorable Minister for Lands and Works, he thought the best course to pursue was to refer the question to a select committee. There were a number of rumors current at that time, to the effect that the Crown Lands Commissioner of the district was, in some way, mixed up with those tenders, and it was, therefore, desirable to have the matter thoroughly sifted.

MR. DOUGLAS said he imagined the petitioner would be perfectly satisfied with the investigation proposed by the honorable member for Maryborough, as he would be certain to receive a just decision from gentlemen who were fully competent to deal with the question. He (Mr. Douglas) had looked into the case cursorily, and had formed an opinion of it, as far as he could judge of it from the maps. There was one matter, however, which he thought required correction—there seemed to have been almost an unnecessary haste in issuing the leases. If he had been correctly informed, the petitioner (Mr. Richards) had only three days' notice that they would be issued, and he had, he believed, also lodged a caveat against them. He thought it was hardly desirable to have anticipated the result of that caveat by issuing the leases, because Mr. Richards could otherwise either have continued to hold his country, or could have instituted proceedings in the Supreme Court against his opponent. He believed that priority of occupation was the rule upon which the Government usually acted in deciding upon opposing tenders. Now, Mr. Richards had not only occupied the country before any

one else, but he continued to hold it, although, of course, the issue of a lease to his opponent would render it difficult for him to prefer any claim in equity for the country. So far, he was of opinion that there had been undue precipitation in issuing the leases.

THE SECRETARY FOR LANDS AND WORKS explained that, as he had already stated, there had been a long correspondence on the subject of the leases, and Mr. Richards had ample intimation of the course the Government intended to pursue. The proposal to issue the leases was made before he (Mr. Macalister) took office. As to the remark of the honorable member for Port Curtis, that the case between the two contending parties might have been tried in the Supreme Court—that was the very thing the Land Board wished to avoid. They sat, not for the purpose of encouraging litigation, but to give an equitable decision upon all cases in dispute.

MR. R. CRIEB proposed the additional appointment, as members of the committee, of the honorable member for the Burnett (Mr. Mackenzie), and the honorable member for Western Downs (Mr. Watts), which was agreed to.

MR. WALSH expressed his satisfaction at the manner in which his application for an inquiry into the case had been met by the Government.

The question was then put and passed, the committee being composed of the Secretary for Lands and Works, Mr. Blakeney, Mr. Sandeman, Mr. Dalrymple, Mr. Mackenzie, Mr. Watts, and the mover.

SAVINGS BANKS ACT AMENDMENT BILL.

THE COLONIAL TREASURER: Sir—I beg to move that this House will, on Thursday, the 6th July next, resolve itself into a committee of the whole, to consider the desirability of introducing a Bill to amend the Government Savings Banks Act of 1864, with a view to granting an increased rate of interest to depositors. Sir, the Government have considered that this is not an inconvenient time to introduce the subject of this resolution. The Government Savings Banks Act of 1864 has now been in operation sufficiently long to test its adaptability for the purpose for which it was passed, and it has been found to be most satisfactory in its working up to the present time, with the exception of the portion of it which is alluded to in this resolution,—I mean as to the interest on deposits under the Act. It has been found that objections have been made to the Government Savings Bank under the Act of 1864, not alone by the public generally, but by the trustees and others interested in savings banks previous to the passing of this Act. The Government, therefore, think it well to introduce this Act now, as they intend to take over the Moreton Bay Savings Bank into the hands of the Treasury, under the

provisions of the Savings Banks Bill. But it has been found that in all probability there will be a considerable amount of withdrawals unless the rate of interest paid by the Government Savings Bank is increased. I find that the Government Savings Banks Act came into existence on the first of January of the present year, when fifteen branch offices were established. On the 30th June there were 514 depositors in those banks, representing £10,435 9s. 8d., or an average of £20 6s. for each depositor. There was received from the trustees of the Moreton Bay Savings Bank, on the 1st July, £23,063 2s. 1d., being £22,007 17s. 4d. to the credit of 517 depositors, and £1,055 4s. 7d. profits since the Moreton Bay Savings Bank was established in 1855. Of the sum handed over to the Government by the trustees, there was, in cash, £4,330 1s. 1d.; Queensland Government debentures, £4,000; and lent on mortgage, £14,733 1s.; making a total of £23,063 2s. 1d. The total sum in the Government Savings Bank on the 1st of July was, consequently, £33,498 11s. 9d. to the credit of 1,031 depositors. Now, I shall state, for the information of the House, the estimated receipts and expenditure for the first twelve months, under the new Government Savings Banks Act system. The receipts may be based upon an average business of £45,000, during the first twelve months. Carefully estimated,—say £14,000 lent at ten per cent., the amount existing at the present time on mortgage will make £1,400; and £31,000 deposited at six per cent., will make a sum of £1,860; or, together, £3,260; which, in the first twelve months, it is estimated will be received on account of the Savings Bank. There would then be the necessary expenditure for two clerks in the Treasury at £480; two clerks at the Brisbane office to receive deposits, £625; twenty branch offices at an average of £15, or, altogether, £300, and interest to depositors on £40,000 at four and a-half per cent., £1,800, making a total of £3,205, which leaves at the end of the twelve months a balance for other expenses of £55 to the credit of the bank. I have stated the rate of interest on deposits at four and a-half per cent., because honorable members are aware that although five per cent. is the sum supposed to be received on deposits, yet as interest is not allowed by the Government on broken portions of a month, or on any sum less than one pound, I have calculated one-half per cent. as the profit the Government will make, which will go towards meeting working expenses. Besides this, there is the sum of £1,055 4s. 7d. to the credit of profit and loss account, to assist the Government Bank in the early period of its establishment, when it has been handed over by the late bank to the Treasury. It will consequently appear to honorable members that this bank should pay its own expenses. The question with honorable members, then, is whether the

receipts in the shape of assets over and above the expenditure, will be sufficient to meet the expenditure. Now, I think there will not be a large sum over the amount that must necessarily be paid for the carrying on of the bank during the first year or two of its existence. But, when honorable members consider the difference between the interest proposed by the Savings Banks Act of 1864, which was three and three-quarters per cent., and that which is now proposed by the Savings Banks Act Amendment Bill, which I now bring under the notice of honorable members, they will, I have no doubt, agree with me, that that difference and the increased security which a Government Bank holds out, will be sufficient to bring a large increase of business, which again will increase the profits to meet the expense of carrying on the Government Savings Bank. I have no doubt the machinery for carrying on the Government Savings Bank will be of much use. I have no doubt it may be found that the same machinery, if not sufficient, will be very useful indeed towards carrying out a measure which I hope, before the session is at an end, will be brought under the consideration of honorable members—I refer to a Government insurance scheme, which will be brought forward by the Government before many days. That is another reason why we are desirous there should not be a debtor balance to the sum necessary for carrying on the Government Savings Bank over its receipts and profits. That is the principal object of the resolution before the House; but there is another object which will be introduced in the Bill if this resolution is carried and adopted by the House. It is with reference to the title of the trustees of the old Savings Bank to the securities handed over by them to the Treasury or Government Savings Bank. It was not, if I am rightly informed, contemplated when the Government Savings Banks Act of 1864 was brought before the House, that there would have been a large sum still out on mortgage, and which must be met some day subsequent to the coming in force of this Act. By the handing over by the trustees of securities held by the old bank to the new bank, there will be a number of releases to be signed or taken over by the Government; and it is considered that it will be necessary to introduce a short clause in this Bill to give power to the Colonial Treasurer to take over the securities, and stand in the position legally of the trustees of the Moreton Bay Savings Bank. I trust this will be a subject that will meet with the approval of honorable members; and with those remarks I shall content myself by moving the resolution standing in my name.

Mr. TAYLOR said, that when the Act of 1864 was before the House, he stated that he considered it to be a bad move to reduce the interest from five to three and three-quarters per cent.; and experience had

proved it to be a fatal mistake. It was all very well to increase the rate of interest now, but a great many deposits had already been withdrawn. He had himself withdrawn three sums of trust money amounting in the aggregate to £500, and he had been able to invest it in mortgages at ten per cent. He believed that if the rate were increased to six per cent., a very large amount of money might be deposited in the Government Savings Bank, because of the security such an institution afforded. At the present time money was exceedingly scarce, and that being the case, how the Government expected to get deposits for five per cent. he could not imagine.

Mr. R. CRIBB thought the rate of interest should not exceed five per cent. The Savings Bank was intended for small sums, upon which the rate of interest proposed was, he thought, sufficient to obtain a large amount of deposits. When the moneys deposited by any one person amounted to a large sum, he could then find more valuable investment for it otherwise.

Mr. MACKENZIE reminded the House that last session he objected to the low rate of interest proposed in the Bill that was then brought forward and subsequently passed, and stated that some such course as was now proposed would become necessary in a few months. Five per cent. might be sufficient, but he thought it would be more economical in the end to give six per cent. As a rule five per cent. was considered a fair interest by depositors, as they could draw out their deposits when they liked. He would cordially support the Bill.

Mr. DOUGLAS said, he had previously urged the impolicy of limiting the amount that might be deposited in the Savings Bank, as it prevented very large deposits being made. He was satisfied that if there was no limit, large sums would be deposited, because five per cent. with the power of withdrawing at a week's notice, were far better terms than the ordinary banking establishments gave. The Government would then be able to avail themselves of large balances, and thus have the use of money at a cheaper rate than by selling debentures. No doubt the honorable the Treasurer was feeling his way gradually for the establishment of such banks; and he did not himself mean to say that it would be wise to enter on large operations, and therefore it might be well that the amount should still be limited, but the limit, he thought, was too small. He hoped, that as those institutions were extended, the public would take advantage of the opportunity they afforded for the accumulation of savings. He knew there was a difficulty in investing trust moneys, because private individuals could not buy debentures, and he did not think trustees were strictly justifiable in investing trust moneys in almost any other security. No doubt they were justified in law in investing the

money on mortgage securities, but those varied very much in value, and especially in long minorities of children; and he therefore thought it would be wiser for trustees to buy Government debentures which could not be exceeded as securities, or to deposit their trust moneys in the Government Savings Bank at a fair rate of interest. Five per cent., he considered, was a fair rate of interest, and the money was as secure as if it was in the Bank of England, or as if invested in consols.

Mr. FORBES agreed with a portion of what had been stated by the honorable member for Port Curtis, but he thought that some honorable members who had previously addressed the House, had taken a very narrow view. There were many cases in which strangers coming from England brought from £1,000 to £5,000, which they deposited in the banks at no interest at all. Now, if the amount that might be deposited was not limited, the Government might be able to avail themselves of those moneys, while the depositors would also be benefited. Many of those persons greatly distrusted ordinary banking establishments, on account of the failures of such institutions in the provincial towns of England, and they would, therefore, gladly avail themselves of the security afforded by a Government Savings Bank. He did not, himself, think there were any good grounds for such fears as regarded joint stock banks in this colony; but, still people, from the failure of banks in England, could not rid themselves of a feeling of distrust, and he had heard many express great objection to lodging money in the banks. Viewing the question, then, in that light, he thought the Government would do well to alter the rate of interest to six per cent., and also remove all restriction as to the amount that might be deposited. He thought that if that were done, the institution, under proper rules that might be formed, could be made to work well, both for the country and for the benefit of the depositors.

The motion was agreed to.