Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 28 MAY 1874

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THE

PARLIAMENTARY DEBATES

DURING THE

FIRST SESSION OF THE SEVENTH PARLIAMENT OF THE COLONY OF QUEENSLAND, AUSTRALIA,

APPOINTED TO MEET

AT BRISBANE, ON THE SIXTH DAY OF JANUARY, IN THE THIRTY-SEVENTH YEAR OF THE REIGN OF HER MAJESTY QUEEN VICTORIA, IN THE YEAR OF OUR LORD 1874.

[VOLUME 2 OF 1874.]

LEGISLATIVE COUNCIL.

Thursday, 28 *May*, 1874.

Explanation.—Insolvency Bill.

EXPLANATION.

The Hon. G. SANDEMAN moved the adjournment of the House for the purpose, he said, of drawing attention to statements made in another place, which appeared in "Hansard," and in which his name was mentioned. He could only say that he was extremely surprised to see such statements made; and he should content himself meantime, by taking this opportunity to state that they were utterly untrue, and that he intended, in a short time, as a member of the House, to place the matter on its proper footing. He should take the proper steps to do so at a very early period. He must say that considering the quarter whence the observations came they had not wounded him very deeply; but his object was to maintain the dignity of the Council and of honorable members. With those observations, he begged leave to withdraw the motion.

Motion for adjournment, by leave, withdrawn.

INSOLVENCY BILL.

The Hon. W. D. Box moved the second reading of a Bill to provide for the Distribution of the Estates of Insolvent Debtors amongst their Creditors and their Release from their Debts and for the Punishment of Fraudulent Debtors and for other purposes. He said he did so with considerable anxiety, because he desired very much to elicit the sympathies of honorable members, and to succeed in obtaining their assistance and support in getting the measure passed into law. He wished some other member had charge of the Bill who, by means of his eloquence, could point out more clearly than he could pretend to do, the particular clauses of the Bill—who could show the spirit and the principle of the measure. Though he could not take credit to himself for the power to do that, yet he could state most distinctly that no honorable member could be more anxious than he was to get the Bill through the House. The Bill sought to repeal

the Insolvency Act of 1864, which was now law in this colony. The object of that repeal was widely known, and certainly to most honorable members present. When he told the House that in other countries—Great Britain and Victoria, and generally throughout the world—where insolvency laws were in force, they contained similar provisions to the Bill now before the House, honorable members would think that Queensland should not be behind other countries in the direction of law reform. The Bill was founded upon the Insolvency Act at present in force in Great Britain—its principle was derived from the Scotch Insolvency Act—and that Act had been lately adopted in the colony of Victoria. Therefore, the founder of the Bill was able to have considerable help and assistance, and could take advantage of precedents, in drafting it. The measure now submitted to the Council was very wide in its operation. In a community like this, always more or less depending on trade and commerce, it must necessarily be so. The Act of Victoria had improved the trade of the country very much, and the commercial relations of persons engaged in trade in the colony were improved. The Bill was a very good one. A strong reason why the Act of 1864 should be repealed was well known to many honorable members. A judge of the Supreme Court of Queensland had said that it was almost impossible under that Act to prove fraud. Such a statement must recommend any measure of reform to the House, and it must relieve them of considerable anxiety when such a Bill as the present was brought forward, in which was embodied all the latest improvements in the law as approved by the most advanced mercantile communities, in substitution of the present Insolvency Act. It must be fresh in the minds of honorable members that only the other day, in court, in Brisbane, an insolvent was accused of such conduct that if a proper law was in force, he would be liable to be punished; his conduct was known publicly. What was the answer of his attorney in the case? The attorney told the judge that certain clauses of the Act would not come into operation against him, unless the insolvent applied for his certificate. As he did not want his certificate—he was afraid to ask for it—he could not be punished; the judge had not power to put in force the fraudulent clauses against him. The grand principles of the Bill were two. In the event of any person trading in this colony not being able to pay twenty shillings in the pound on reasonable demand, that person's property should be placed in the hands of his creditors, the persons most directly interested in the estate, and they should be the persons to distribute his assets. The practice, now, was to place estates in the hands of official assignees, under the direction of the court. But it had been shown that the amounts distributed amongst creditors in estates bore no reasonable comparison to the assets realised; therefore, the system in force in Great Britain and Victoria was proposed for adoption by the Bill. If the Bill should become law, the creditors would be entitled under its provisions to administer the estate of any person seeking the protection of the court. The second great principle of the Bill was the avoiding of centralisation by the administration of the affairs of an insolvent as near as possible to where he resided or carried on his business. It was true that the adjudication of insolvency must be made by a judge of the Supreme Court, but the administration of the estate of the insolvent might be, by the direction of a judge of the Supreme Court, conducted in the District Court nearest to the insolvent's premises, or wherever else the court might direct. True, the provisions of the Bill would throw some extra work on the District Court judges; but if the bulk of the people would be benefited by it, he (Mr. Box) did not think the District Court judges could complain. The grand principles of the Bill were perfectly clear—that the distribution of the assets of an insolvent should be in the hands of the creditors in the estate, and that the administration of the affairs of the insolvent should be, as nearly as possible, local. The Bill, as honorable members would see, was a very long one, 229 clauses; and it was almost impossible to comprehend the various matters with which it dealt in a brief statement—directions to trustees, directions to creditors, and all the various arrangements for administering the estates of persons seeking the protection of the court. It was a very comprehensive measure, and its provisions reached cases that were now beyond the power of the judges of the land; and such provisions were very much wanted. When the Bill got into committee, if it should get so far, he should be able to point out to honorable members that nearly every one of its clauses was founded upon existing law. There were some clauses adopted from the English law—

The Hon. H. B. Fitz: Scotch law.

The Hon. W. D. Box: English law. The bulk of its clauses were founded upon existing laws adapted to this country; and, as honorable members would find, most excellently adapted. The English Act 32 and 33 Victoria, chapter 71, was the grand one, as honorable gentlemen would find. He mentioned it, that if they chose to do so, they could refer to it for themselves. The Bill was divided into thirteen parts, for the sake of convenience. In Part II., clause 11, the powers of the judge in insolvency were set forth:—

"Every judge in insolvency shall for the purposes of this Act in addition to his ordinary powers as a judge of the Supreme Court or District Court have all the powers and jurisdiction of a judge of the Supreme Court in its equitable jurisdiction and the orders of such judge may be enforced accordingly in the same manner as those of a judge of the Supreme Court in such jurisdiction or in such other manner as may be prescribed."

And clause 15 said—

"The Supreme Court of Queensland shall be the court of appeal in insolvency and all decisions and orders of courts in insolvency and examining courts under this Act shall except as hereinafter provided be subject to appeal to the said court But decisions and orders of the courts in insolvency relating only to claims to prove debts of less amount than *thirty pounds* or relating only to the possession payment or delivery of property or money of less value than *thirty pounds* shall not be subject to appeal."

If the trustees in an estate desired to appeal, or if the creditors desired to appeal, the Supreme Court should be the court of appeal from the District Court which might have been directed by the Supreme Court to deal with the insolvency. There was another very important matter in this connection, and that was, that questions of fact might be tried by a jury, under clause 23:—

"If in any proceeding in insolvency there arises any question of fact which the parties desire to be tried before a jury instead of by the court itself or which the court thinks ought to be tried by a jury the court may direct such trial to be had before itself or some other competent court accordingly and shall settle the form in which such question of fact shall be stated for trial and give all necessary directions for the purpose of such trial."

If the Bill should pass into law, that clause would be very valuable—it must recommend itself to any Englishman. Part IV., section 44, dealt particularly with what constituted acts of insolvency. When honorable members heard that under the existing law of Queensland it was almost impossible to get a man adjudged insolvent—that unless a return was made to the Supreme Court that an action brought against him for £50 was unsatisfied, he could not be forced into the insolvent court—even though he had called his creditors together and had offered them seven and sixpence in the pound—though he had told his creditors that by continuing his business he was losing money;—they would be satisfied that that reform in the law was needed. Lots of men had come down from the country and asked their creditors in Brisbane to accept a composition, and yet they could not on that account be forced to place their estates in court for administration in insolvency. He believed he was correct in stating that in one particular instance a man refused to go into the court under the following circumstances:—The bulk of his creditors were not secured, but had ordinary bills current, which, of course, they could not claim under until they fell due; a few creditors had judgments against him. The whole of his property would have been swept away by those judgment creditors, because the insolvent refused to file his schedule, if the bulk of his creditors had refused to accept a composition of ten shillings in the pound. In the event of the sale of the estate by the few judgment creditors, they would have got everything for themselves; the bulk of the creditors, the unsecured creditors, would have got nothing at all. He (Mr. Box) believed that that person made a lot of money out of his insolvency. Therefore, honorable members would agree with him when he told them that it was absolutely necessary to describe in the Bill what were acts of insolvency. By clause 44, if a man called his creditors together and admitted his inability to pay his debts, or offered a composition of less than twenty shillings in the pound, that was an act of insolvency. If an unsatisfied judgment of £50 was out against him, that was an act of insolvency. In that respect the law was not changed, but was the same as now existed. If a man had given a bill of sale over all his property so that he might defeat, or with the view of defrauding, the rest of his creditors, that was an act of insolvency. But, of course, if he gave a *bona fide* bill of sale, and took care to secure his other creditors, nothing in the Bill would upset it; that bill of sale would be as good a security to the holder as ever. At present, what did men do? They gave bills of sale, the other creditors knowing nothing about the transaction, perhaps; in sixty-one days, in walked the holder of the bill of sale—it had been registered and had run the current time—and took possession of everything, the other creditors getting nothing out of the estate. If a bill of sale was *bona fide*, all other existing debts of the giver being provided for at the time it was executed, it was good, and no debts contracted subsequently to its execution could upset it; but if a man having debts right and left, gave a bill of sale to one creditor without satisfying the rest of his existing debts, that bill of sale was void, and the execution of it was an act of insolvency; that was to say, the trustee could upset the bill of sale, and take possession of the property in the insolvent estate, and distribute it amongst the creditors generally. A person who acted in such a fraudulent way, now, could not be brought under the pains and penalties of the law, unless he applied for his certificate; which he need not do. It must be seen that the effect of the Bill was actually to improve the position of the man affording accommodation to another carrying on business. He who wanted accommodation must disclose the true state of his affairs, if he borrowed money. At present, lots of men having bills of sale knew no more about the position of the persons who executed them than he (Mr. Box) did; but they knew that a man could defraud his just creditors at the time of making the bill of sale. Subsection 12 of clause 44, prescribed for the particular cases which he (Mr. Box) had told the House of, as often happening with men coming from the country to Brisbane and offering their creditors a composition and declining to file their schedules. A man could be adjudicated insolvent by the

Supreme Court upon the petition of any creditor or creditors—

"If at any meeting of his creditors a debtor shall have admitted that he is unable to meet his engagements or shall offer a composition of less than twenty shillings in the pound in cash and having been requested by a majority of the creditors present at such meeting to present a petition under Part III. of this Act shall not within forty-eight hours after such request (or such further time as may be rendered necessary by illness distance or other sufficient cause) have presented such petition."

The matter of local administration was assisted very much by the provision for the use of the telegraph; that was to say, affidavits and other matters necessary under the Bill might be transmitted by telegraph to and from the local or district and principal registrars. The court being the official trustee and manager of estates, the clerk was authorised to transmit petitions and other matters by wire. The effect of that would be, that persons trading far away from Brisbane might petition for an adjudication in insolvency without the trouble and expense of coming personally to Brisbane. Clause 87 described the sort of property which was divisible amongst creditors. It exempted, as the present law did, property held by insolvent on trust for any other person; tools of trade, if any, and the necessary wearing apparel and bedding of his wife and children, to a value not exceeding twenty pounds; but it provided, in sub-section 3, that

"All such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him during its continuance,"

should be divisible among the creditors in the estate. Sub-section 4 provided that the insolvent's benefit from his power over any property at the time of his insolvency should be for the benefit of his creditors. Sub-section 5 set out, further, that the creditors should have the benefit of

"All goods and chattels being at the commencement of the insolvency in the possession order or disposition of the insolvent by the consent and permission of the true owner of which goods and chattels the insolvent is reputed owner or of which he has taken upon himself the sale or disposition as owner Provided that things in action other than debts due to him in the course of his trade or business shall not be deemed goods and chattels within the meaning of this section."

It provided further

"that nothing in this section contained shall affect the validity of any preferable lien on wool or crops or mortgage of sheep or cattle under '*The Mercantile Act of* 1867' or of any security by way of mortgage over any machinery which may be in the possession of the insolvent for the purpose of being used by him in his trade or business or of any bill of sale registered under the said Act before the first day of July one thousand eight hundred and seventy-four."

That was, those securities should be protected —they should not be void. Clause 88 enacted that any action pending by insolvent for libel, or damage to his person by a railway accident, or other circumstance in which he was particularly interested as a member of society, apart from his trade, should not be affected by his insolvency; that was to say, the cause of action should not be voidable by insolvency. Clause 89 provided that at a general meeting of creditors, they should elect a trustee; but, further on, if the creditors neglected to elect one, the registrar of the court was to be the trustee of the insolvent estate. Clauses 92 and 93, and sub-sections, carefully indicated what the creditors should do at their meetings. Clause 94 set out that a certificate of the appointment of the trustee under the hand of the court should be sufficient evidence. Clause 101, and the several sub-sections, carefully indicated the duties of trustees and committees of inspection. He (Mr. Box) desired to call the attention of honorable members to the nineteenth sub-section, which provided that at any meeting of creditors, the bulk of the creditors might agree by resolution that the trustee, as now, should be the sole trustee and director of the estate. Clause 102 was very important, indeed:—

"Where the property of any person has been taken in execution in respect of a sum of not less than fifty pounds and sold the sheriff or in the case of a sale under the direction of the district court the bailiff or other officer of the district court shall retain the proceeds of such sale in his hands for a period of fourteen days and upon notice being served on him within that period of an insolvency petition having been presented against such person shall hold the proceeds of such sale after deducting expenses on trust to pay the same to the trustee."

The sheriff would not, as now, instantly pass over to the execution creditor the proceeds of the sale under an execution; but he would retain such proceeds for fourteen days, until the whole proceeding had time to be known to the public, and the other creditors of the person whose goods had been seized and sold could, if they chose, make their debtor insolvent. This they might do in various ways, by petition and otherwise, as he (Mr. Box) had already pointed out. The provision was an excellent one, and carried out the principle of the Bill entirely—that no sacrifice of the property of an insolvent should take place for the benefit of one creditor and to the detriment of the bulk of his creditors. Clause 105 was what he had before pointed out to the House:—

"Every conveyance assignment gift delivery or transfer of any property and every dealing with property which would under this Act be deemed an act of insolvency shall be and are hereby declared to be absolutely void against the trustee of the insolvent appointed under this Act."

If the Bill should become law, a bill of sale not given *bona fide*, or at the execution of which the insolvent had not discharged his other debts, should become void against the trustee

in the estate; the property of the insolvent over which he had given the bill of sale would be distributed for the general benefit of his creditors; and the creditors would not have to try in court to upset the bill of sale, as it would be ineffective. Clauses 106, 107, 108, and 109 were worthy of attention, as being very important. The spirit of the Bill was shown therein very plainly, as they described what conveyances could be set aside and what would be deemed fraudulent. Clause 109 referred to bills of sale and other conveyances given *bona fide*, and showed that such were not opposed by the Bill. He was sure that honorable members did not wish to interfere with fair and legitimate transactions. If a man in business could obtain from a capitalist money to carry on and extend his business, and did discharge all his other debts, it was quite right that the capitalist should make what terms he liked, so long as he did not injure the public. He (Mr. Box) hoped that those provisions would pass in their entirety. Some honorable members might object to the time, six months, for which a man must have paid his debts, to make such transactions secure; but he did not object to it at all, as a fraudulent preference must be guarded against in every way practicable. Clause 112 was framed entirely for the protection of persons who had dealings with an insolvent—not creditors, but persons who had bought of him. There had been cases where persons who had been indebted to an insolvent had paid him and had been compelled afterwards to pay the assignee. Clauses 114 and 115 referred to the power of the court to discover an insolvent's property, by summoning persons suspected of having such property; and the insolvent must answer questions put to him by the court, though his answers might criminate him. Part VI.—Clause 122 required that an insolvent should aid in the realisation of his property for the benefit of his creditors; and clause 123 prescribed the conduct of a trustee, which must have regard to the resolutions of the creditors or the committee of inspection. Clause 125 gave the insolvent or any creditor power to appeal from the trustee to the court; and clause 130 provided that the trustee, if he chose, might disclaim onerous property belonging to the insolvent, such as mining shares on which calls had become due. Clause 132 contained very careful and distinct instructions how trustees should deal with property. Clause 134 allowed a trustee to accept a composition offered by the insolvent, if he should think it wise, and to submit it to the court in satisfaction of, and for a general settlement of, the insolvent's affairs. Part VII. of the Bill referred to the close of the insolvency and the certificate. Clauses 167 and 176 should be read together. Taken apart they might seem very severe. He anticipated that some honorable members might think that they were too severe; but, when they were seen embodied in the same measure, and when they were taken together, he thought they would be perfectly satisfactory to honorable members generally as needful for the protection of all persons in the trading community. The court had power to appoint a sitting for the last examination of the insolvent, which examination might be adjourned—

"(1.) If the examination and accounts of the insolvent are not satisfactory and it appears to the court that his failure to give further or better information or accounts is attributable to any neglect or default on his part.

"(2.) If it appears to the court that the insolvent has wilfully disobeyed any order of the court in his insolvency.

"(3.) If the court shall think it fit that an adjournment should be made."

The object of the sitting for the last examination was that the insolvent might have an opportunity of meeting his creditors previous to applying for his certificate.

"166. When the whole property of the insolvent or so much thereof as can in the joint opinion of the trustee and committee of inspection be realised without needlessly protracting the insolvency has been realised for the benefit of his creditors or a composition or arrangement has been completed the trustees shall make a report accordingly to the court and the court if satisfied that the whole of the property of the insolvent has been realised for the benefit of his creditors or that so much thereof as can be realised without needlessly protracting the insolvency has been so realised or that a composition or arrangement has been completed shall make an order that the insolvency has closed and the insolvency shall be deemed to have closed at and after the date of such order.

"If no such order has been made at the time of granting a certificate of discharge as hereinafter provided the court shall on granting such certificate also make an order that the insolvency has closed."

The Hon. G. HARRIS wished the honorable member would be good enough to explain the clauses which he considered would be severe? He seemed to be under a misapprehension as to their working. If would be satisfactory if he explained what he considered would work oppressively.

The Hon. W. D. BOX: He had stated that he thought it was possible honorable members, taking the two clauses separately, might understand that they would work oppressively.

The Hon. G. HARRIS: In what way?

The Hon. W. D. BOX: As to the way in which a man would get his certificate. A hindrance was put in the way of a man getging his certificate, and some honorable members might consider it oppressive. But, taking clauses 167 and 176 together, they would not be found to be oppressive, as might appear if they were taken separately. At the close of the insolvency, by order of the court, a copy of such order was to be published in the *Government Gazette*. The certificate, as shown in clause 169, might be

granted on certain conditions. If the court thought—

"(1.) That the insolvency has arisen from circumstances for which the insolvent cannot justly be held responsible or

"(2.) That a special resolution of his creditors has been passed to the effect that his insolvency has arisen from such circumstances as last aforesaid and that they desire that a certificate of discharge shall be granted to him or

"(2.) That the gross amount realised in the estate is equal to the total amount of debts proved in the estate ;—"

then the court would grant the certificate. The law in Victoria was, that a man should pay seven shillings in the pound. He believed that there were lots of estates which could not pay that. He should mention one case, in which a man came to town and offered ten shillings in the pound, and to pay it at once. The creditors refused, and what did that man do? A short time afterwards, his creditors unanimously asked him to go into the insolvent court. He would not file his schedule, he said ; but he called his creditors together again, and after a good deal of arguing, he said, "I'll give you fifteen shillings in the pound, on my own bills." The creditors knew very well that the man had sent his goods—which he had purchased from them—here, there, and everywhere ; and they refused his offer. But what did he do, then? He offered them twenty shillings in the pound! The creditors said, "We have your bills for that amount, now." He would not go into the court. He got a friend to endorse his bills for fifteen shillings in the pound, and he gave his own bills for five shillings in the pound. Such a case could not occur if the Bill became law. There was another case, the other day. Goods had been carted away before a fire up to Oxley Creek ; and they were brought back again. They were seized under an order of the court. Against persons who acted in the manner described in the cases referred to, clause 169 would operate if it was in force ; and he (Mr. Box) hoped that honorable members would see that there was some reason—he considered there was great reason—for some amendment of the insolvency law of this colony. No person trading in this colony could deny that. Whether an application had been made or not under that clause, the next clause provided that the insolvent might make an application for a certificate, which might be granted by the court under the following circumstances :—

"(1.) At the expiration of twelve months from the date of adjudication with the assent testified in writing of a majority in number of the creditors whose debts amount to ten pounds and upwards who have proved in the estate.

"(2.) At the expiration of two years without the consent of any creditor."

Very likely some honorable gentlemen thought the insolvent would be hardly used if he could not get his certificate for two years ; but it must be borne in mind that if the Bill should become law, it would change the position of the insolvent from what it was under the existing law—it would give him a position. There was a very valuable clause, to which he had before directed attention, regarding the "status of undischarged insolvents"—clause 176. An undischarged insolvent was not known to the law, now, but an uncertificated insolvent was :—

"Where a person who has been made insolvent has not obtained his discharge then from and after the close of his insolvency the following consequences shall ensue—

"(1.) No portion of a debt provable under the insolvency shall be enforced against the property of the person so made insolvent until the expiration of three years from the close of the insolvency and during that time if he pay to his creditors such additional sum as will with the assets realised in the estate make up twenty shillings in the pound on all debts proved in the insolvency he shall be entitled to a certificate of discharge in the same manner as if an amount equal to twenty shillings in the pound on such debts had originally been paid out of his property."

The effect of that was, that after the close of the insolvency, and after the notice of it was gazetted, a man could go to work, and he need not fear anything for three years ; and if he was able to take up his debts—as lots of men were able to do—and pay them, he could do so. Under the present law, an uncertificated insolvent was liable to be sued for debt any day ; under the clause just read, an undischarged insolvent could not be touched by his creditors—for three years he was protected, and could work for himself, and could take advantage of the opportunity to do more if he was able.

"(2.) At the expiration of a period of three years from the close of the insolvency if the insolvent has not obtained a certificate of discharge any balance remaining unpaid in respect to any debt proved in the insolvency but without interest in the meantime shall be deemed to be a subsisting debt in the nature of a judgment debt and subject to the rights of any persons who have become creditors of the debtor since the close of his insolvency may be enforced against any property of the debtor with the sanction of the Supreme Court or a judge thereof but to the extent only and at the time and in manner directed by such court or judge and after giving such notice and doing such acts as may be prescribed in that behalf."

It must be some extraordinary matter, if an insolvent could not obtain his certificate in that time, considering the preceding provisions under which he could obtain it. Under the present law, as he (Mr. Box) had said before, an uncertificated insolvent had no status in the community, and the Bill would give him a distinct and positive status. If, for instance, it was the case that a wealthy corporation was suing a man for spite, he would

be protected. Though old debts might be subsisting against an insolvent, if he got into difficulties again they would not affect detrimentally the rights of his later creditors. It was needless to dwell longer on those clauses. When honorable gentlemen came to consider them together, they would conclude that they were most suitable to this colony. For himself, he could say that he was exposed to all the dangers that every trader was likely to be subjected to; but he did not fear in the least the effect of those clauses. He should support those clauses. If they became law, their effect would be to improve materially the conditions of trade and the state of credit in the community, and to enable business men to go into undertakings that they would not attempt now, and society at large would be benefited. Part X. of the Bill consisted of regulations as to compositions with creditors. That was a restoration to creditors of the opportunity of making and accepting compositions; that was to say, if creditors were called together, and they were satisfied with the composition proposed, it could be at once carried out, as under the present law. Part XI. referred to disabilities, and he did not think that honorable gentlemen would object to them:—Clause 206 enacted that if members of Parliament should become insolvent, their seats must become vacated; and clause 207 further provided that, as long as they were insolvent, they should be incapable of occupying a seat in Parliament. Clause 208 provided that men in the commission of the peace should not enjoy the honor of acting as justices if they became insolvent, until they were newly assigned by the Governor in Council. Part XII. related to offences and the punishment of fraudulent debtors. He believed the several provisions in that part of the Bill were very necessary, because of the numerous cases of fraud that had come before the court; and he was satisfied that they would be very useful. They carefully and distinctly set out, in plain English, what should be cases that would lead to punishment. There was one which was new, and which he should call attention to—sub-section 17—as the only provision in the Bill which he could not find for honorable members in the statute books of Great Britain. It would be a misdemeanor, for which an insolvent would, upon conviction, be punishable—

"If he has omitted to keep proper books of account showing the true state of his affairs unless the jury is satisfied that he had no intention to conceal the true state of his affairs or to defraud."

If, by any legislation, a division could be made between persons engaged in trade and persons in professions, the framers of the Bill would have been glad to do it; but it had not been found practicable. Therein was the only argument that could be brought against sub-section 17 of clause 209. Clause 211 prescribed the penalty for fraudulently obtaining credit.

The Hon. J. TAYLOR: Hear, hear.

The Hon. W. D. BOX: A man must do that with his eyes open, if the Bill should pass—he would purposely court punishment:—

"Any person shall in each of the cases following be deemed guilty of a misdemeanor and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year with or without hard labor that is to say—

"(1.) If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud.

"(2.) If he has with intent to defraud his creditors or any of them made or caused to be made any gift delivery or transfer of or any charge on his property.

"(3.) If he has with intent to defraud his creditors concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him."

He (Mr. Box) should no longer take up the time of the House. If honorable members had read and carefully digested the Bill, they would, as he hoped they would, agree to the second reading, and take it through committee carefully, that it might soon become the law of the land. The intention was, that it should come into force and effect on the 1st October, this year. The action of the present insolvency law was, of course, continued, as provided in clause 6 of the Bill. He now left the Bill with confidence in the hands of the House.

The Hon. J. TAYLOR: One word in explanation———.

The Hon. G. HARRIS (being called on) said he had listened very patiently indeed to the remarks of his honorable friend, Mr. Box, in introducing the Bill under his care; and he must say that he felt disposed to go with him in much that he had submitted for the consideration of the House, having no doubt that the measure had received very close attention from the honorable gentleman in its preparation and otherwise. But he should take this opportunity of saying that he felt somewhat surprised that, in the compiling of such an important Bill to reform and amend the insolvency law of the colony, he, as one small member of the commercial community of Queensland, should never have received the slightest intimation of what was going on.

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: No one of those engaged in the work had said to him, "Well, Harris, you are engaged to a certain extent in commercial pursuits and operations; what do you think of this, or that?—do you think this will work in accordance with your experience, or otherwise?" He begged to state to the House distinctly that no such courtesy had been extended towards him. As a member of the Chamber of Commerce of Brisbane, he had received a small printed circular informing him that the Insolvency Bill was on

the table of the Chamber, if he thought proper to go and look at it. He did not think it was necessary that he should take that trouble, seeing that in due course of time the Insolvency Bill would be brought under his notice in the Council, he being a member; but he did think he had a right to expect and to demand that he should have had a little of that courtesy and attention shown to him that it was usual for one man to extend to another, when an endeavor was being made to adapt laws to the colony which were considered to be most suitable to its circumstances. He had given the subject of the Bill very considerable attention indeed. He was not now acting entirely on his own knowledge, but he had taken the trouble of seeking the assistance of a high legal character, which he thought would enable him to explain to the House fully that there were certain very serious objections to the Bill, and against the House affirming the second reading on the present occasion, which would, of course, be accepting the principle of the measure.

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: Of course therewas a chance of altering any part of the Bill in Committee of the Whole, but the measure was one that struck at the entire commercial business of the country, and it was one of such importance that, as a matter of course and right, it should have been introduced by the Government and not by any private member in another place.

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: He had noticed that, in another place, the Bill had been passed through its various stages very hurriedly, indeed; and that only four honorable members spoke upon it at its second reading, one being the learned gentleman who introduced it in the first instance. He believed he was correct in saying that that gentleman had prepared the Bill under the direction and advice of two gentlemen who were probably pretty well known in commercial circles in this colony. But, was it not extraordinary that a measure of such vital importance, affecting the entire business of the country, should have been debated by only four members, in a place containing forty-two members, and passed without a division? It had been hurriedly passed; for he noticed that one gentleman stated that he wished it delayed for a week, that he had tried hard all one Sunday to wade through its various clauses and to understand them, but had failed in doing so. But it had passed for all that; and, after being so hurriedly passed, it was now presented for the consideration of the Council. There was another very important matter: it might be remembered by honorable gentlemen that action had been taken by some of the judges of the land, who desired to be placed in a position to give their opinion on the merits and details of the Bill.

The Hon. H. B. FITZ: Hear, hear.

The Hon. G. HARRIS: So far as he was aware, that request had been refused. He thought that in dealing with a question of such vast importance as the Bill embraced, the best plan for Parliament to pursue was to obtain the best evidence possible in regard to it—for instance, to obtain the evidence and assistance even of the judges of the Supreme Court and of the Metropolitan and other District Courts.

The Hon. H. B. FITZ: Hear, hear.

The Hon. G. HARRIS: In fact, the evidence also of such merchants, and capitalists, and others as were engaged in trade generally should be obtained. He did not desire that the Bill should be thrown out; but honorable members might think, after what they would hear, that it would be well to go to that extent. Some change might be necessary in the insolvency law of the colony; but as it was the duty of honorable members, and he durst say it was the pleasure of the Council, to make the law as good as possible, they must set about it in the proper way. He should, at the conclusion of his remarks, move for a Select Committee on the Bill.

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: No doubt, if the Bill became law in its present shape it would create a great amount of litigation. He had this on the authority of other gentlemen in the city who were fully competent to give an opinion; and they said that the lawyers would have great work under its two hundred and thirty clauses which more or less contradicted each other. The present Act, with some few alterations, would meet all that was required in checking dishonest traders and protecting those who were honest. A great deal had been said about it, and there was no doubt that the Bill was intended solely and purely to do away with bills of sale. As honorable members might be aware, bills of sale were in existence all over the world—in England, on the continents of Europe and America. What were they more than mortgages? Nothing. A bill of sale was simply a mortgage under a different name. And, it was observed, every day, that bills of sale were released, and that notice of such releases was published in a monthly circular that was distributed to those who chose to become subscribers to it for the purpose of receiving such information. He was sure that the House would pause before becoming parties to doing away with existing securities, and thus injuring the position of those persons who had obtained those securities or the promise of such securities, for valuable consideration given. There was no doubt about it, that many of the banking institutions of the colony viewed the Bill with great distrust, indeed, and thought it would affect their position materially. For that reason, the House should obtain the evidence and the ideas and opinions of those gentlemen, professional and mercantile, who were able to give such valuable assistance to

honorable members in their desire, which he was sure was very strong, to pass an Insolvency Act which would meet the views of all parties and suit all classes of the community. The Bill was, as his honorable friend, Mr. Box, had stated, a combination of the Scotch laws. To his (Mr. Harris') mind, it was much too Scotch! That was the main element in it—its essential characteristic. He should like to see a little more English—and Irish, too—and other interests, too, considered in it, which he regarded as quite as important as those of the Scotchmen!

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: He did not at all approve of this "hole and corner" arrangement ———

HONORABLE MEMBERS: Hear, hear.

The Hon. G. HARRIS: Preparing Bills to suit the opinions of a very small section of the community, indeed—probably not exceeding two or three in number;—engaging the best legal assistance that could be obtained, at a very considerable cost, for the purpose of putting their peculiar views into shape. It was monstrous to suppose that a measure of such importance should have passed in another place, and only four speakers have discussed it upon the second reading, including the learned gentleman who had prepared and introduced it. The Bill not only did away with bills of sale, but it also did away with, as he stated before, any agreement to give a bill of sale for valuable consideration. That was a very extraordinary position to place the country in. Say, for instance, that any banking institution, any capitalist, or merchant, or whatever it might be, had made an advance of £5,000, or more or less, upon the understanding that when called upon to complete the security, the person receiving the advance should complete it by giving a bill of sale over his property; why should that understanding be violated, or that arrangement upset or interfered with? The advance was made with confidence in the party receiving it, the capitalist not feeling disposed to ask for a document so formal as he was entitled to, and being satisfied with a promise that he could have the security when required. And such transactions were recognised. The Bill called upon the House not to respect past transactions even; it was retrospective legislation. At all events, that was the effect the Bill would have. The House should be well satisfied before passing such a measure that that was a correct principle. At present they had no evidence favorable to it; and they should have some proof that it was proper before they permitted the Bill to become law, or even to advance further. It would be extremely harsh that any unfortunate or honest insolvent should be left entirely in the hands of one creditor as a trustee, or two or more creditors as a commitee of inspection, as the case might be. Before he could obtain his release, he would have to undergo much hardship and be in great difficulty. The House knew very well, and no honorable member better than he (Mr. Harris), himself, that in this colony many insolvencies had unfortunately taken place, and assignments had been very numerous, indeed—he thought he had suffered from them as much as most persons;—but, notwithstanding that, he should be no party to passing such a Bill as the one now before the House, until they had at least the advantage of the advice, evidence, and assistance of those who were capable of giving them on such a question. He hoped the House would agree with him in believing that it would be best to refer the Bill to a Select Committee. He did not believe there was such a measure in existence in any part of the world. As he had said, it was a combination of Scotch Acts with a little mixture of two or three others, and completely according to the ideas of two or three gentlemen resident in Brisbane. Those ideas he did not for a moment pretend to say were not correct; but he did say that to give them the effect of law would be most detrimental, indeed. He hoped that the Honorable Mr. Box would not misunderstand him, and think that he made those remarks simply because the honorable gentlemen had the Bill in charge; he made them merely in support of his own views and opinions. If a Select Committee, after taking evidence, should report that the Bill was right and proper, he should be very glad indeed to support it. He should have liked most to have seen the Bill introduced by the Government. Perhaps it was something to say for it that three out of the four gentlemen who debated it in another place had the same view of it. There was a clause which honorable members should notice, providing compensation to official assignees, in the event of the Bill becoming law, for loss of office. He did not see that that was at all necessary. If a gentleman occupied a position as clerk in any mercantile establishment he received his month's notice, or a month's pay, and there he was done with. The official assignees were not, as far as he was aware, under the Civil Service Act; and he was at a loss to understand why such provision was made for them. It might be satisfactory to honorable members that he should say that in a measure of this kind he felt as much interest as most persons, and that he had as great a desire to see a good law come into operation —the Bill, in proper form—as any one could have. He thought he should be in order in stating that honorable members knew that Judge Hirst, at all events, desired that he should be examined with reference to the Bill; and that it would be easy for the House to procure his evidence, and the no less valuable evidence of other gentlemen. One matter that the Honorable Mr. Box had mentioned as provided for in the Bill was, that if a member of Parliament should become insolvent, he would be incapable of holding his seat, which thereupon became vacant. That was a matter that he (Mr. Harris) did not think

the Bill could in any manner deal with, simply because it was one affecting the Constitution.

The POSTMASTER-GENERAL: It was provided for by the Constitution Act.

The Hon. G. HARRIS: That made it all the more necessary that the Bill should be submitted to a Select Committee. Shortly and generally he had explained pretty well all that he wished to say on the Bill; and, desiring not to detain the House any further, he begged to move, by way of amendment—

That this Bill be referred to a Select Committee;—such committee to consist of the Hon. H. B. Fitz, Hon. J. Taylor, Hon. G. Sandeman, the Postmaster-General, Hon. W. D. Box, and the Mover.

The PRESIDENT: My attention has been drawn to clauses in the Bill which seem to me to interfere very much with its being properly put before the House. By the 48th Standing Order of this Council, it is provided that

"No clause shall be inserted in any such draft foreign to the title of the Bill" ——.

Now, this Bill purposes to be "a Bill to provide for the Distribution of the Estates of Insolvent Debtors amongst their Creditors and their Release from their Debts and for the Punishment of Fraudulent Debtors and for other purposes." Yet it contains, amongst others, a disability clause of the Constitution Act:—

"If any person being a member of the Legislative Council or Legislative Assembly is adjudged insolvent or has his affairs liquidated by arrangement or makes a composition with his creditors under this Act his seat in the Legislative Council or Legislative Assembly shall thereby become vacant."

And it proposes further, in the next subsequent clause, to intrude into the Constitution Act by enacting in regard to the incapacity of persons to sit in Parliament. Therefore, the Bill interferes with, and is opposed to, the Standing Order which I have read.

Question—That the Bill be referred to a Select Committee—put.

The Hon. J. TAYLOR said he had read the Bill very carefully through, and he agreed with the motion of the Hon. Mr. Harris. It was a measure of vast importance for any private member to bring in, and he maintained that it ought to have been introduced by the Government. The Navigation Bill had been brought forward by a private member, and now the Insolvency Bill was in the hands of a private member. All ordinary arrangements were capsized;—what did the Government mean to do? When he rose at the close of the Honorable Mr. Box's speech, it was to put a question. That honorable gentleman had brought the poor insolvent up to the third year, but he had not told the House what he would do with him afterwards. If the insolvent paid his debts in three years, then he would get his certificate! If he did not pay, what was to be done with the poor fellow, after that? The Bill was an arbitrary measure, in every sense. It was made for the creditor and not for the debtor. He (Mr. Taylor) held bills of sale—he had some in his possession, now—and he was perfectly satisfied with them. He maintained free trade in business as well as in everything else. Let men like the honorable member who had charge of the Bill look after themselves, as he looked after himself. If the leader of the House chose to lend a man £500, and if he (Mr. Taylor) chose to do the same afterwards, he must take the consequences. What did the large traders do? They employed travellers who went all over the country, who forced their goods upon the people, who compelled them to buy; and there was no doubt that, by the travellers, more goods were sold—aye, five times more—than the people who bought them knew what to do with. The people could not get rid of them up the country; and the consequences followed. He had seen the commercial travellers, half-a-dozen of them together, jogging along shoulder to shoulder, from Sydney, from Melbourne, from Brisbane, to force the goods of their principals on the unfortunate country storekeepers. The latter went into the insolvent court; and now the man who had encouraged, who had led, who had forced, them there, came forward to make the poor wretches slaves for life! What for? For buying from them. He disapproved of the Bill. There was no doubt that it had not been before the mercantile public. It had been got up in a "hole and corner" manner.

The Hon. F. H. HART: It had been before the public six years.

The Hon. J. TAYLOR: And a precious matter it was, now! However, it appeared that the Honorable G. Harris, the biggest trader in the colony, knew nothing about it. It was the old thing over and over again: new comers ousting the old ones. The Honorable Mr. Box stated that he was selfishly and greatly interested in the Bill.

The Hon. W. D. BOX: Not selfishly, strongly.

The Hon. J. TAYLOR: He trusted that the House would have the common sense to take some evidence—some more than that of the Honorable Mr. Box. The judges of the Supreme and District Courts, and the traders, himself (Mr. Taylor) amongst the number, could give good evidence. He had suffered from bills of sale; but he had some now, and he was satisfied with them. What had honorable members opposite suffered? Perhaps a few thousands, or hundreds, of pounds, he supposed; yet they brought forward a Bill to restrain a man who had by accident got into a difficulty.

The Hon. F. H. HART: No, no.

The Hon. J. TAYLOR: What was he to say? A man owed money and came to him, saying that he wanted so much to keep himself straight. He trusted the man, said "All

right," and let him have what he wanted. There was some roguery about it, when legitimate business was to be stopped by a Bill. He (Mr. Taylor) should like to know how many there were in the whole boiling of those who got up this precious Bill who had suffered by bills of exchange? Bills of sale were to be abolished, but a bill of sale over "machinery" —Oh! that was all right. He could take a bill of sale over that, but over nothing else. The Bill was unjust in every sense of the word. The Honorable W. Box said that when a man had paid twenty shillings in the pound he could have a release! What a likely thing. And so on, all through the piece: the Bill was in favor of the creditor only and made the debtor a slave for life. Clauses 206 to 208 provided as to disabilities of members of Parliament becoming insolvent, and as to members of Parliament being insolvent, and as to justices of the peace in the same condition;—all must vacate their positions:—

"206. If any person being a member of the Legislative Council or Legislative Assembly is adjudged insolvent or has his affairs liquidated by arrangement or makes a composition with his creditors under this Act his seat in the Legislative Council or Legislative Assembly shall thereby become vacant.

"207. If any person shall be adjudged insolvent or have his affairs liquidated by arrangement under this Act he shall be incapable of being nominated to the Legislative Council or elected as a member of the Legislative Assembly."

And, so on. Why, the Brisbane Chamber of Commerce was becoming a greater authority than the Governor and the Parliament. It was a great institution, no doubt about it! Any person becoming insolvent, or being so, should be incapable of being nominated to or sitting in the Legislative Council? Who was solvent? He asked, again—If an honorable member was called upon to pay his debts, who could say he was solvent? It was absurd to talk. Again—

"208. If any person being assigned by Her Majesty's commission to act as a justice of the peace is adjudged insolvent or has his affairs liquidated by arrangement or makes a composition with his creditors under this Act he shall be and remain incapable of acting as a justice of the peace until he has been newly assigned by Her Majesty in that behalf."

He (Mr. Taylor) wanted to know what right the framer of the Bill had to import such clauses as those into it? Those clauses would put out of the way the whole constitution. Such a piece of presumption he never witnessed in his life before, and he was astonished that the Honorable Mr. Box had taken charge of the Bill. No wonder the representative of the Government would not take charge of such a Bill. He knew better than to do so, when there were such clauses in it. The Bill was objectionable in every sense of the word. Though he should support its reference to a Select Committee, he would much rather see it thrown out, and the existing Act repealed, so that there should be free trade—and let every man protect himself. That had been his principle for years. But some Brisbane men would protect themselves by a cruel Act.

The Hon. W. D. Box rose, and asked the permission of the House to speak.

The POSTMASTER-GENERAL: The honorable member was perfectly in order in speaking to the amendment.

The PRESIDENT said the Bill was an infringement of the Standing Orders, which, he apprehended, must be adhered to; if so, the Bill was one that he had no right to put to the House.

HONORABLE MEMBERS: Hear, hear.

The Hon. H. B. FITZ: After the remarks that the House had just heard from the President, and taking the whole matter into consideration, he wished to offer a few observations. He had received a communication from the Chamber of Commerce at Maryborough, and also a communication from Rockhampton, requesting him to oppose the Bill. The whole colony, he believed, was very much against it, in its present shape. He believed with the Honorable Mr. Harris, that such an important measure should have been introduced by the Government. He had inquired of one or two gentlemen whom he regarded as authorities, and they had assured him that they never knew an instance of a measure of such importance as an Insolvency Bill being introduced by a private member. The Bill was one that went to the very root of all commercial transactions in the country, and it should be carried through Parliament by the hands of the Government. Taking everything into consideration, he felt disposed to support the motion of the Honorable Mr. Harris, for referring the Bill to a Select Committee. A short time ago, Judge Shepherd and Judge Hirst petitioned the Legislative Assembly to be heard by counsel at the bar of the House. Their principal object was in reference to the Insolvency Bill, which would throw a large amount of extra work upon them, for which they would have no remuneration. They have both said to him—"For goodness' sake, don't pass that measure until you have some evidence upon it." He regarded the Bill as the most one-sided affair that he ever saw in his life. If the Council did anything, they should legislate for rich and poor alike; they were not to make laws for one party; protection should be given to the debtor as well as to the creditor. No wiser step could be taken than to act on the suggestion of the Honorable Mr. Harris. He was one of the largest merchants in the colony. There was not an estate before the court in which he was not more or less a creditor, from the extent and magnitude of the transactions of his firm; and he had suffered as much as any one from the defective insolvency law. When the House had the opinion of a leading mercantile man that the Bill was not adapted to the requirements

of the colony, they should treat his suggestions with respect. The Bill had been prepared by two merchants of the city; and, although the Honorable Mr. Box had said it was founded on English law, yet he (Mr. Fitz) had been told that the Bill was adapted principally from the Scotch law. As it would, perhaps, be wisest to get rid of the whole thing at once, he should move—

That the Bill be read a second time this day six months.

The Hon H. G. SIMPSON said he was afraid the House were only wasting time. He understood from the President that there were certain clauses in the Bill so inconsistent with the Standing Orders that it could go no further—that the House could not proceed with the Bill. He was very sorry for it; because he believed that the Bill was an exceedingly good one, and that it was very much wanted. No doubt, it was open to alteration; but he could not agree with the Honorable Mr. Fitz's views. If the President decided that they could not go on with the Bill, it would be best not to discuss the matter further, but proceed to other business.

HONORABLE MEMBERS: Hear, hear.

The Hon. F. H. HART: If the President ruled that the Bill could not be gone on with, of course, there was an end; but he did not feel inclined to sit down and listen to only one side of the question. The Honorable Mr. Taylor, the Honorable Mr. Fitz, and the Honorable Mr. Harris had given expression to their own views; and the first named honorable member had brought certain charges against gentlemen in the city, who, he said, had prepared the Bill.

The Hon J. TAYLOR denied most positively that he had said anything of the sort.

The Hon. G. HARRIS rose to a point of order, and asked that the President would be good enough to convey to the House his opinion as to whether the Bill could be discussed or not.

The PRESIDENT repeated his opinion in the terms before given; and, in regard to the title of the Bill, said he presumed that the words, "other purposes," must have reference to the preceding portions of the title itself. They could not mean that the Bill should deal with matters foreign to its general purport, or to what the Bill was intended to provide for, as explained in its title. In Part XI. two clauses were introduced having reference to the disabilities of members of Parliament, which were peculiarly portions of the Constitution Act, with which Act the Bill had no more right to interfere than it had with any other law having no relation with the subject of the estates of insolvent debtors. Therefore, he thought the Bill came under the forty-eighth Standing Order; and he presumed that, in accordance with that Standing Order, it was not admissible. But it was for the consideration of the House, as he would point out, before giving an authoritative decision, whether the Standing Order did not refer to Bills when first brought in. A Bill, when first brought in, ought to be examined, to ascertain whether it contained any infraction of the Standing Orders. But there was no examiner of Bills; and, ordinarily, as in this case, the fault could not be discovered until the Bill was brought forward for second reading. Nevertheless, the Bill was before the House with that fault. There was an infraction of the Standing Orders on its face; and his opinion was, that the Bill ought to be altered. Those clauses ought to be withdrawn, and the Bill brought in again without them.

HONORABLE MEMBERS: Hear, hear.

The PRESIDENT: But, he left the matter with some diffidence to the House. If they took his ruling, that was the ruling.

The Hon. H. B. FITZ: Do you rule, sir, that the Bill cannot be debated?

The PRESIDENT: No; I am not prepared to say it cannot be debated. I am prepared to say it ought not to be put.

The Hon. A. H. BROWN, speaking to the point of order, asked the House to consider whether they had not already accepted the Bill, and whether they had not to some extent condoned the irregularity.

HONORABLE MEMBERS: Hear, hear.

The Hon. W. D. BOX: As the difficulty had arisen after the House had received the Bill, read it a first time, and ordered it to be printed, and also after the second reading was made an order of the day—upon his undertaking that the clauses which were objectionable should be struck out, could not the House continue to discuss the Bill?

HONORABLE MEMBERS: Hear, hear.

The PRESIDENT: I think the House would be wise to take the promise of the honorable member; because, no doubt, the Bill has passed beyond its first stage, and this error ought to have been discovered before it got through its first stage. Therefore, if it meets with your approval, and, with the view of meeting the question that has arisen in the Standing Orders of the House, I shall put the amendment, that the Bill be referred to a Select Committee. I do not know how anyone could have conceived the idea of importing clauses into it foreign to the purport of the Bill.

The Hon. J. TAYLOR: Suppose the clauses were not struck out? The House had only the honorable member's word.

The PRESIDENT: My opinion is, that the Bill, as it stands, is in contravention of our Standing Orders.

The Hon. H. B. FITZ: He begged to move, to test the question—

That this Bill be not received, in consequence of the irregularity.

The Hon. H. G. SIMPSON: He was afraid his honorable friend was rather late. The Bill had been received, read a first time, and ordered to be printed.

The Hon. A. B. BUCHANAN said he did not think it could be the wish of the House that

the Bill should be thrown out on a quibble. The President had ruled that the Bill having gone through its preceding stages, could be discussed, and the second reading put, if the House were willing to take the promise of the Honorable Mr. Box. He thought the Bill should be proceeded with, on the distinct understanding of that promise, and that honorable members should not take advantage of a quibble.

The Hon. D. F. ROBERTS objected to the word which had been used by the Honorable Mr. Buchanan. The President had ruled a certain thing; and what the honorable member meant by "a quibble," he (Mr. Roberts) did not know. He did not think there were any quibblers in the Chamber.

The Hon. A. B. BUCHANAN: He did not say there were "any quibblers." He said that to throw out the Bill on account of those clauses being in it would be to take advantage of a quibble; and he said so still.

The PRESIDENT: The honorable member means, a point of order: it is a point of order which is not material to the merits of the Bill itself.

The Hon. G. HARRIS maintained that the ruling of the President should be respected. So far as his own position was concerned, he felt that he was not able to go further in this matter, in consequence of the ruling of the President. He had been informed from the chair, that the errors existing in the Bill prevented it from being discussed ———

HONORABLE MEMBERS: Hear, hear; and, No, no.

The Hon. G. HARRIS: Until it was amended and was in proper shape and form. If the President stated otherwise, he was bound to submit to his ruling. But the position in which he found himself, was, that the Bill was contrary to the Standing Orders. Notwithstanding that the Bill had passed its previous stages, the error was now discovered; and, as soon as it was discovered, the duty of the House was to submit to the President's ruling—the only authority they had to go by.

The POSTMASTER-GENERAL, referring to the practice in another place, where the House could disagree with the ruling from the chair, which also was competent to the Council, urged that the President should give a positive ruling before the House went into committee; as, otherwise, the Honorable Mr. Hart was in possession of the floor and should be heard.

The Hon. H. G. SIMPSON said he had not understood the President to have given a ruling beyond saying that the case was one for the decision of the House.

The PRESIDENT: Of course, honorable gentlemen must feel that I am placed in a very invidious position, being asked to rule in a case which may throw out a Bill of so much importance, and one of so much public interest as the one under discussion. But I have only to do my duty, when my attention is called to any infraction of the Standing Orders of this House. I was not aware, until my attention was drawn to it, after I had taken the chair this afternoon, that any clause of this nature was contained in the Insolvency Bill. I never dreamt that such a Bill would contain such a clause, or that anyone would have thought of introducing such a clause into an Insolvency Bill. On reference to the Standing Orders I have found, as I stated before, that

> "No clause shall be inserted in any such draft foreign to the title of the Bill;"—

and, I must read this, which I did not read before;—

> "and, if any such clause be afterwards introduced, the title shall be altered accordingly."

That clause provides that if in the course of the discussion of a Bill in committee clauses are inserted which have no reference to the title of the Bill, the title must be altered. But the provision is positive as to when a Bill is introduced—it shall not contain any clause "foreign to the title of the Bill." It is unfortunate that in the course of procedure in reference to this Bill it has passed its first reading, which, as honorable members are aware, is a mere matter of form. Any honorable member is entitled to present a Bill, and to move that it be read a first time, and that it be printed. No one is aware, nor can the officers of the House be aware, of its provisions. From this cause the present difficulty has arisen. I am not willing to take upon myself to say that it is such an infraction of the Standing Orders as to justify me in ruling that I cannot put the Bill to the House. I think, myself, that it would be wise for the House to remit the Bill to a Select Committee from its own hands.

The Hon. F. H. HART: Of course, honorable members must bow to the ruling of the President. As he understood that his ruling would prevent the Bill going on in its present shape, he begged to move the suspension of the Standing Orders.

The PRESIDENT: I cannot put that. The question is, the amendment—that the Bill be referred to a Select Committee.

The POSTMASTER-GENERAL: Then, the honorable Mr. Hart was in order in speaking to the question?

The PRESIDENT: Yes; to the reference to a Select Committee.

The POSTMASTER-GENERAL: And the proceedings, so far as the introduction of the Bill was concerned, were good?

The PRESIDENT: No; I did not say so.

The Hon. D. F. ROBERTS: As he understood the President, it was a difficult question, and he would not rule on it.

The PRESIDENT: I say that the Bill itself is in contravention of the Standing Order; but there is so much doubt about the proper construction of the Standing Order, that I should be sorry to obstruct by my own individual opinion the passing of a Bill of

so much importance, and which is looked upon by the public with great interest.

The Hon. G. HARRIS: Did he understand that he could speak to the question?

The PRESIDENT: The question is now, upon the amendment for reference to a Select Committee.

The Hon. G. HARRIS: He was exceedingly sorry—if the President would permit him to interrupt him—but he was not at all clear on the point. If the President could not put the original question to the House, his (Mr. Harris') amendment could not be put.

The PRESIDENT: I do not rule that I cannot put the question. I ruled that the Bill contains clauses not in conformity with its title; but there is so much doubt about the construction of the Standing Order that I was unwilling on my own individual opinion to stop the progress of the Bill. I have acquainted the House with what I believe to be the defect. If the House does not object, I say that it is wiser to proceed, and allow the motion of the Honorable Mr. Harris to be put.

The Hon. H. B. FITZ: The House must not lose sight of the fact, that if the Honorable Mr. Harris' amendment should not be carried, the President would be placed in the same position as if it had not been moved, and he could not put the question that the Bill be read a second time.

The PRESIDENT: It is very possible that in passing the Select Committee the difficulty might be got rid of.

The Hon. H. G. SIMPSON: As the President was clearly very unwilling by his decision or judgment to prevent the Bill being properly discussed, the simplest plan would be to relieve him of his responsibility; and let the House decide by a majority of honorable members present as to whether the contravention of the Standing Orders should be overlooked.

The Hon. G. HARRIS protested that the House should abide by the President's ruling, that he could not put the question.

The PRESIDENT: When my attention was called, this afternoon, to the disability clauses in the Bill, I consulted the Standing Orders to see if there was anything in reference to the matter; and I found that order which I have read. But that order, strictly speaking, refers to a Bill in the first stage. It is open to argument that, after passing the Bill through its first stage, we have condoned the irregularity. I do not think so. The Bill simply contains a fault in itself; but, it is not desirable, I think, on a mere point of order, to refuse to discuss the measure. Such a course would not satisfy the public out of doors—that this House should throw out the Bill on a point of order. It is evident that if the honorable member's motion for a Select Committee is carried, the Select Committee can remove any defect existing in the Bill, and make it so that it may come before us again in a proper state. I shall put that question to the House.

The Hon. F. H. HART: He need scarcely tell honorable gentlemen that it was his intention to vote against the amendment. It would, he thought, be quite competent to make any alteration or change that might be necessary when the Bill got into Committee of the Whole. He looked upon the reference of the Bill to a Select Committee as tantamount to shelving it.

HONORABLE MEMBERS: No, no.

The Hon. F. H. HART: Well, he could not see the object of it. The House, in committee, could call to the bar any gentleman whose opinion they desired to get, and gain all that was desired by the proposal to refer the Bill to a Select Committee. He felt very strongly about the Bill. It was more than ten years since his attention was first called to it. Although the Honorable Mr. Taylor had made a great point about its not having been brought in by the Government, yet, he (Mr. Hart) could assure the honorable member that the Bill had been in the hands of several Governments, and yet was never brought forward by any Governments. Some six years ago, at the request of the then Attorney-General, the Honorable Justice Lilley, the Chamber of Commerce framed a Bill which he promised to introduce in the lower House, but pressure of other business caused the measure to be crowded out session after session. The Honorable Mr. Pring next took it in hand, and sent the Bill with amendments back to the Chamber of Commerce to be discussed; the amendments were discussed, some were agreed to, and some were not. The Honorable Mr. Bramston, then, being a member of the Chamber of Commerce, told the Chamber that the Bill should be brought before Parliament; but the result was, that he was obliged to say that the pressure of Government work was so great that he had not a chance of introducing it. Now, he (Mr. Hart) believed that the present Attorney-General could not see his way to introducing the Bill as a Government measure. Those were the circumstances that led to a private member, with the sanction of the Government, taking the Insolvency Bill in hand in another place. The present Bill was not exactly the same Bill that was sent up to the Attorney-General half-a-dozen years ago by the Chamber of Commerce. When the framer of this Bill took the subject in hand, he had the Bill sent up by the Chamber of Commerce, and he also had the English and Victorian Acts, and he embodied provisions from all of them and adapted them to the requirements of this colony. He (Mr. Hart) believed that those clauses referring to the disability of members of Parliament were not in the draft of the Chamber of Commerce; and this was the first time he ever saw them.

The Hon. J. TAYLOR: How did the clauses get in?

The Hon. F. H. HART: He did not know. He was surprised to have heard the Honorable Mr. Harris say that he had not been

consulted about the Bill. Neither had he been consulted. He was told that the framer of the Bill had not consulted anyone, but that when he had framed the Bill, he, as an act of courtesy, sent the draft down to the Chamber of Commerce for every member of the Chamber to see it—not for the committee alone. He confessed that he had not had time to look at it, and he never saw the Bill until after it was introduced in the Lower House. Both the Honorable Mr. Fitz and the Honorable Mr. Taylor had made a great deal about the Bill being a Scotch Bill.

The Hon. J. TAYLOR rose to order. He never used the word in his life. He did not know Scotchmen.

The Hon. F. H. HART: He had so understood the honorable gentleman. It was founded on the English Insolvency Act. That Act was introduced in the House of Commons, in 1867, by Sir John Coleridge, then Attorney-General, who said that several attempts had been made to amend the English law, and had failed; that a Royal Commission, after careful inquiry, had resolved to adopt the Scotch law; and that he had modelled the Bill upon the Scotch Act in existence, which had been found to have worked very satisfactorily. The Attorney-General was greatly complimented by members of the House of Commons upon bringing in such a measure; and, since it became law, it was found to work admirably in England. He (Mr. Hart) could not understand why it should not work well here. A great deal had been added to it in order to adapt it to this colony. He did not presume to give an opinion authoritatively, but, as far as his individual conviction went, he thought the Bill would answer the purposes for which it was designed. He had asked visitors to this colony—merchants, bankers, and others, from the other colonies—to read the Bill, and give him their opinions upon it; and the general opinion was that it was an excellent measure, and superior to the Victorian Act, which was considered a very good one, indeed. The Honorable Mr. Taylor's objection seemed to be, that the Bill would do away with bills of sale.

The Hon. J. TAYLOR: Hear, hear.

The Hon. F. H. HART: Well, he, for one, thought that if there was a single good point in the Bill, that was it. He looked upon bills of sale as swindling by Act of Parliament. To take a bill of sale under any circumstances, with one exception, was tantamount to assisting a man to defraud all his creditors to favor one. If a man had only one creditor, then he was not doing an act of injustice in giving that creditor security over all he possessed; but if he had more than one, to give a bill of sale to one was most objectionable in every way. Honorable members knew that, according to law, a bill of sale, to hold good, must have been registered sixty days before an insolvency; and, therefore, everyone had been surprised by the ruling of one of the judges that a mere scrap of paper—a mere scrap of writing—undertaking to give a bill of sale, permitted that bill of sale to be legally put in five days or a week before an insolvency. The Honorable Mr. Taylor was very hard about commercial travellers.

The Hon. J. TAYLOR: Hear, hear.

The Hon. F. H. HART was understood to say (*amid the confusion of audible conversation*) that he had nothing to do with them. He did not know whether the communications received by the Honorable Mr. Fitz from the Chamber of Commerce at Maryborough and from Rockhampton should have very much weight; as, judging from a leading article which appeared in the leading newspaper of Maryborough on this important matter, he should be little inclined to take notice at all of anything from that quarter. The article said that the Bill had been recommended to Parliament by the Brisbane merchants, and went on to argue that they were men not very likely to be affected by an act of insolvency, but that it would affect the Maryborough traders very considerably. That was paying the Maryborough men themselves a very doubtful compliment, indeed. He should be very cautious about receiving any information from that quarter. He hoped sincerely that the House would allow the Bill to pass the second reading. The Bill might be regarded as an instalment of law reform. He did not say it was perfect; but it was an instalment of what the mercantile community had been waiting for many years. The needful alterations could be made in Commitee of the whole House. He should most certainly oppose the Honorable Mr. Taylor being put on the Select Committee, if a committee should be appointed, after the remarks the honorable gentleman had made.

The Hon. J. TAYLOR: Hear, hear.

The Hon. A. H. BROWN was understood to say that such a decided feeling had been expressed against the Bill, and also by some of the proposed committee, that he should move an amendment changing the names before the House.

The PRESIDENT: If you can come to an agreement with the proposer of the motion—otherwise, the committee must be appointed by ballot.

The Hon. A. H. BROWN suggested the names of the Messrs. Harris, Box, Hart, Fitz, Thorn, and Roberts.

The Hon. G. HARRIS said he was perfectly willing to submit to the honorable gentleman's suggestion.

The Hon. F. H. HART said, if it was in order, as he had not been asked, he most certainly declined to sit on the committee.

The Hon. H. B. FITZ said the Honorable Mr. Hart, with his commercial knowledge and experience, would be far better on the committee than himself; and he should be glad if the honorable member would serve instead.

The Hon. W. D. Box asked the mover to be good enough to withdraw his name from the committee.

The PRESIDENT: If the honorable gentleman is elected, he must serve, of course.

The question was then put for the appointment of the Select Committee, the following names being accepted, by consent of the mover of the original motion:—The Hon. G. Harris, the Hon. W. D. Box, the Hon. F. H. Hart, the Hon. G. Thorn, the Hon. D. F. Roberts, and the Hon. H. B. Fitz.

The House divided.

Contents, 8.	Non-Contents, 8.
Hon. J. Taylor	Hon. F. H. Hart
„ G. Harris	„ A. B. Buchanan
„ D. F. Roberts	„ F. T. Gregory
„ A. H. Brown	„ W. D. Box
„ W. F. Lambert	„ W. Thornton
„ G. Sandeman	„ J. Gibbon
„ W. Wilson	„ H. G. Simpson
„ H. B. Fitz.	„ G. Thorn.

The PRESIDENT: The numbers being equal it devolves upon me to give the casting vote. I give it in accordance with the rule which I have always followed, and which is approved in the House of Lords: where the numbers are equal, the casting vote is given so that the question at issue shall not be carried; and this question is resolved in the negative.

Question—That this Bill be now read a second time—put.

The Hon. H. B. FITZ contended that that question could not be put, on the ground of the previous ruling of the President.

The Hon. A. H. BROWN maintained the contrary view. He should regret to see the Bill shelved without proper consideration. The matter could be discussed in Committee of the Whole, and the title of the Bill could be altered or the clauses objected to rejected.

The POSTMASTER-GENERAL urged that the President should give a positive ruling. The House, he was quite sure, would not be like gentlemen in another place, who ignored the ruling of the Speaker, but would bow to the President's ruling.

The Hon. A. B. BUCHANAN said he could not agree with the Honorable Mr. Fitz's interpretation of the President's ruling, that the Bill could not be put. The House had been advised by the President that it would be wise to debate the Bill on the undertaking of the mover that the objectionable clauses should be withdrawn.

The Hon. J. TAYLOR: The President's ruling was positive, that, owing to clauses 206 and 207 in the Bill, the second reading could not be put. It was surprising that honorable members had objected to the Select Committee. They must be afraid of something behind—that the evidence would be too strong against them. He (Mr. Taylor) hoped the President would give the ruling he had already given.

The POSTMASTER-GENERAL: The Honorable Mr. Taylor was out of order in discussing the Bill; and he was making a second speech.

The Hon. J. TAYLOR: He had not interrupted the honorable member, and he would not be interrupted by him. The House was re-commencing, again, and he should go on until he was stopped. He was astonished at an honorable member striking off three members of the Select Committee because they were prejudiced.

The PRESIDENT: The honorable member is out of order, because he is discussing again the question of the Select Committee, which the House has by vote decided.

The Hon. J. TAYLOR submitted to the ruling of the President; and again expressed his hope that his ruling on the question before the House would be repeated.

The Hon. A. H. BROWN rose to correct his honorable and warm friend. He had said that it was notoriously unfair that honorable gentlemen who had declared that they were hostile to the Bill should be on the committee; and, therefore, he had proposed the names of three others—whom he might, perhaps, have thought were more conscientious.

The Hon. H. B. FITZ called upon the honorable member to retract his words. He wondered where the honorable member's conscience was?

The PRESIDENT: The honorable member is out of order. I now rise with much pain, I confess, to give my decision on the question which has been submitted to me. My ruling in this matter, is, that the Insolvency Bill has been brought in in contravention of Standing Order, No. 48, inasmuch as it contains clauses which are "foreign to the title of the Bill," and therefore ought not to be put.

HONORABLE MEMBERS: Hear, hear.

The PRESIDENT: I was in hope the House would have referred the Bill to a Select Committee. By that means the danger and difficulty could have been got rid of. The House in its wisdom has not thought fit to do so; therefore I am driven, I say, with very great pain, to decide that the question cannot be put.