Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

THURSDAY, 10 JUNE 1875

Electronic reproduction of original hardcopy

LEGISLATIVE ASSEMBLY.

Thursday, 10 *June*, 1875.

Removing Timber from Private Property. — Adjournment.—Public Prosecutor.

REMOVING TIMBER FROM PRIVATE PROPERTY.

Mr. THOMPSON rose for the purpose of drawing attention to a matter of some importance, although he did not intend to go at any length into the subject. Certain of his constituents had addressed letters to him complaining of the injury done to them through the Government, by their overseers, going on to their private land, and taking away the timber for road purposes, whilst it would cost very little more to take it away from Crown lands. His complainants were Messrs. Hughes and Cameron, and Mr. Challinor, of Ipswich—the case of the latter gentleman being particularly hard, as he had, when clearing his land, picked out the best of the timber, and reserved it for fencing purposes. He understood that the honorable member for Bundamba had made a complaint to the Government, on behalf of his constituents, to somewhat the same effect; and that a promise had been made to him that the practice should cease, on the understanding that timber could be got by contract cheaper; but he had learned that day that no such promise had been given, and that the grievance was still going on. He believed that the same practice was also being complained of in the neighborhood of Brisbane, and that in one case, a loss, estimated at about £90, had been occasioned to the owner of the land. He thought that the sooner the whole matter was put on a proper basis the better, as good timber was becoming exceedingly scarce in the neighborhood of Ipswich. The Government had large timber reserves of their own, and, therefore, he considered that they should not resort to the practice of taking valuable timber from off private property. He would conclude by moving—

That this House do now adjourn.

The SECRETARY FOR PUBLIC WORKS said that the matter to which the honorable member had alluded had been brought very prominently under his notice on several occasions. He had not heard any complaint from the neighborhood of Brisbane, but there had been several instances near Ipswich and Bandamba, where parties who had taken up land had objected to the Government exercising their right of taking timber therefrom for road-making purposes. He believed that, under the Act of William IV., the Government had power to take sand, gravel, or indigenous timber from off private lands for the construction of roads and bridges; and, in fact, in every deed of grant he had seen, there was that right reserved to the Crown—a right which had always been exercised, but not to the same extent, perhaps, as now, when timber was very scarce, owing to so much land having been taken up, and to the quantity of timber which had been cut off land which was not sold. In many cases, land had been taken up for the sake of the timber upon it, and for no other object; and he had been informed by the Engineer at Maryborough, that land on which there was a large quantity of ironbark, had been taken up as second-class pastoral land, at a nominal rental, the persons taking it up expecting to make a large profit by selling the timber to the Government. He thought it would be advisable that a short Bill should be passed, defining the rights of the Government; but he need hardly say, that if any restriction was placed upon the Government taking timber for making bridges, it would very much enhance the cost of those works. He would also point out that, as the construction of roads and bridges was of very great benefit to the farmers and residents in a district, he considered that they received some compensation for the loss of their timber. He might also state, that some of the very people who complained of timber being taken from their ground, had no compunction whatever in taking timber from Crown lands for fencing and other purposes. With reference to the cases mentioned by the honorable member, he was informed by the road overseer that, although there was Government land near to where the work was being done, there was no suitable timber upon it. He had, however, given instructions to the foreman of works to call for tenders, and he thought that it was quite probable that the owners of timber would cuti t and supply it to the Government quite as cheaply as the Government could themselves, as they had to purchase bullocks, and pay men to draw it in.

Mr. DOUGLAS said that he had been given to understand that some conditional purchasers had objected to the right of the Government to cut timber on their conditional purchases, and that, at Maryborough, the bench of magistrates had decided in their favor, ruling that although the Govern-

ment could enter upon freehold property, they could not enter upon land taken up on conditional purchase. He thought that that was a very important matter, as, owing to the reservation in deeds of grant, it acted very unfairly to the freeholder.

Mr. J. Scott mentioned, that although there was a reservation in deeds of grant, there was not any in the conditional purchases. As regarded men cutting timber on Crown lands, there was an Act which empowered them to do so, on taking out a license.

Mr. Thompson said that the gentlemen to whom he referred had not, he ventured to say, been in the habit of removing timber from Crown lands; and in the case of Mr. Challinor, that gentleman had cleared a large paddock for lucerne—reserving only the best trees for fencing, for which he had actually called for tenders. In the other case, that of Messrs. Hughes and Cameron, the complaint was, that the Government were cutting down timber in wholesale quantities on their land, which adjoined that of Mr. Challinor, although they required that timber in order to comply with the fencing conditions required by the Act. He could not see anything in the Road Act giving power to take timber, but only sand, stone, and gravel; and even they were surrounded with a great many safeguards. The Act would certainly have stated so, had it been intended that timber could be removed, because there was a special clause referring to cases where branches of trees had to be cut down. With regard to the provision in the deeds of grant, he did not know how it had got there, as the old deeds had no such reservation as regarded timber, but simply gold, silver, and coals. He thought it was only of late years that the word "timber" had been inserted.

Mr. C. J. Graham thought that it was perfectly right that public rights and interests should be protected; but, at the same time, the insertion of the reservation of timber in deeds of grant was not just. It would be much better to proclaim large reserves, in which the timber should be strictly kept for Government purposes, and if that was done, there would be no occasion to go on to private property. There had been places where large areas had been proclaimed for that purpose, but those areas had been subsequently very much reduced in extent. In nearly all parts of the country, it was the case that the best timber was found on the very worst land; and, as had been stated by the honorable Minister for Works, there was near Maryborough a great deal of very fine timber on land which was only taken up by persons for the sake of selling the timber—as it was, in other respects, worthless, being mostly ironbark ridges. It would be quite open to the Government to reserve those places for timber reserves; and, if the principle of reservation was carried out in its integrity, and adhered to, he did not think they would hear complaints from private individuals of having their property encroached upon.

The question was put and negatived.

ADJOURNMENT.

Mr. Pechey rose to move the adjournment of the House, in order to give him an opportunity of referring to an answer which had been given at an earlier period of the day, by the honorable Minister for Lands, to a question put to him by the honorable member for Toowoomba. The question was:—

"Has the Minister for Lands received a copy of the resolutions agreed to at a public meeting of the inhabitants of the Clifton district, in reference to the disposal of the reserve; if so, has any and what decision been arrived at by the Government?"

The answer to that question was "No." Now, as he (Mr. Pechey) had had charge of those resolutions, and had caused a copy of them to be sent to the honorable Minister for Lands, he was at a loss to understand how it was that they had not been received. His reason for now referring to the matter was, that if it went back to the country that the resolutions had not been received, there would be a laugh at his expense.

Mr. Buzacott said he was desirous of giving the honorable Minister for Works an opportunity of supplying to the House a further explanation with regard to a reply to a question which the honorable gentleman gave to him on the previous day, respecting the collection of tolls on the Dawson Railway Bridge. He took that course, because he conceived that the answer was, in fact, rather discourteous to him as a member of that House, and as a representative of a constituency. He did not say that he had any reason to complain, so far as he was personally concerned, because he did not know that there was any ill-feeling between the honorable member and himself. He had always taken an opportunity, when desirable, to complain of the honorable member reopening old sores, and he had found, that whenever any discussion was going on in which the honorable member could create ill-feeling between the two sides of the House by reopening old sores, he did so. Now, because he had discountenanced that sort of thing, because he had no sympathy with the opening up of those old sores, the honorable member had offered a discourtesy to that House, and to his constituents. He had asked the honorable member on the previous day:—

"Is it usual to levy tolls on railway bridges in this colony?"

To that question the answer was, "No." He then asked—

"Are the Government aware that a heavy toll has just been imposed on the railway bridge at the Dawson River?"

The answer was—

"No tolls are collected on the Dawson Bridge."

Now, he had not asked that question because he wished to create any discussion, or to give honorable members opposite an opportunity of entertaining themselves at his expense; but he observed that, when the answer was given, honorable members opposite appeared to enjoy it, and seemed to think that he had received a check that he deserved.

HONORABLE MEMBERS: No, no.

Mr. BUZACOTT was not aware that he had been guilty of any discourtesy, or that he had gone beyond the privilege which he, as a member of that House, possessed, of asking a question, especially as he had been informed that a very heavy toll had been enforced on the Dawson Bridge, which pressed very seriously upon persons who had occasion to cross that bridge. He did not know whether the honorable member had ordered the tolls to be levied, or whether they had been collected without authority; but he did think, that when his constituents had complained to him about the matter, he had a right to inquire, especially as there had been no notice of the tolls in the *Government Gazette*. The answer led the House to believe that it was quite untrue that tolls had been levied; consequently, he had been very much surprised to see, shortly after receiving that answer, a telegram in the *Telegraph* newspaper to the following effect:—

"The abolition of the tolls on the Dawson Bridge has given great satisfaction."

Now, if there had not been tolls, how could there be any ground for that satisfaction? But there had been tolls—tolls which were very heavy indeed; for, by a calculation he had made that day, it would appear that a teamster would be charged 18s. The people in Brisbane complained of the very small toll they had to pay on the bridge; but, when a heavy toll such as he had mentioned was imposed, without any notification through the *Gazette*, he thought the House was entitled to know why it was levied. He hoped honorable members would coincide with him that the answer which had been given to him was incomplete, and was not the whole truth. He was sorry to have to bring the matter forward, but, as the representative of an important constituency, he could not allow the honorable the Minister for Works to give him what certainly was a most discourteous answer.

The SECRETARY FOR PUBLIC WORKS would inform the honorable member that a notification of the imposition of tolls at the Dawson Bridge appeared in the *Government Gazette* of the 30th of October last, so that the honorable member could hardly plead ignorance. He was, however, informed by the Chief Engineer, that the tolls were a great nuisance, and interfered with carrying on the railway works, and, on the recommendation of Mr. Ballard, they were abolished. It appeared to him very strange that, just when the tolls were abolished, the honorable member for Rockhampton should have taken up the matter; and he was certainly at a loss to understand how the answer was discourteous, as it was strictly true. Before the telegram appeared in the newspaper, he had received a report from Mr. Jardine, stating that he had removed the man who collected the tolls.

Mr. BUZACOTT: When was that report received?

The SECRETARY FOR PUBLIC WORKS: It was received some time last week.

Mr. C. J. GRAHAM said that, notwithstanding the imposition of the tolls had been gazetted, in October last, the honorable member for Rockhampton was, in his opinion, perfectly justified in asking the question, as he (Mr. Graham) and others had crossed the bridge without any toll being collected He thought the dirty insinuation that the honorable member had asked the question after having received information, was worthy of the honorable member who made it, inasmuch as the telegram appeared in the *Telegraph* newspaper on Wednesday, and the honorable member for Rockhampton gave notice of his question on Tuesday afternoon. As to the answer to the question on the previous day, it was not such an answer as should have been given, as the honorable Minister for Works did not state whether he was aware or not that tolls had been levied, but simply not say that tolls had been collected until a said that no tolls were now collected. He did few days ago, which he might have done. The House, however, fully understood the facts of the case, and no insinuation would have any effect upon it.

Mr. IVORY said he had never heard a more disingenuous answer to a question, and if it was to be the style of answers to be expected from the present Ministry, he did not think they would be worthy of much consideration.

Mr. DOUGLAS thought that the conduct of the honorable Minister for Works should be looked upon simply as a harmless joke. He did not blame Ministers for sometimes fencing questions, as he believed that they were often put in such a leading way, that Ministers were not always justified in giving a direct answer. However, it was a very harmless thing after all, and he was sorry that the honorable member for Clermont should have thought fit to depart from his usual courtesy in the remarks which he had made.

Mr. MOREHEAD said he had been rather amused with the remarks from the honorable member for Maryborough, who defended the principle of Ministers fencing questions; he was not more surprised at them, however, than he was surprised at the answer given by the honorable Minister for Works. No question could have been more simple than that of the honorable member for Rockhampton, and nothing could have been easier than for the honorable Minister for Works to have given a direct answer.

Mr. ROYDS said he had had the pleasure of a long acquaintance with the honorable member for Maryborough, and certainly had been extremely astonished to hear him making a statement, which induced the House to believe that it was his opinion that words were intended to conceal thought. He considered that the honorable Minister for Works was bound, from his position as a Minister, to have stated to the House whether tolls had been levied on the Dawson Bridge, and not merely to have said that "no tolls are collected." He certainly thought that there had been a little discourtesy shown to the honorable member for Rockhampton, and also, a want of respect to that House, in the answer that had been given.

Mr. GROOM said he rose for the purpose of corroborating what had fallen from the honorable member for Aubigny, as to the resolutions of the meeting held by the inhabitants of the Clifton district having been forwarded to the honorable Minister for Lands. That meeting was held on the 26th of April, and it was now the 12th of June, and yet no answer had been received. The questions he had put that day at the request of the farmers in the district, who thought that the Government were doing the very best they could to play into the hands of speculators. The farmers considered that a homestead of 80 acres of the Clifton land, was equal to 340 acres on iron-bark ridges, as it was highly adapted for agriculture; but they thought that the Government, by placing on that land the high upset price of £12 an acre, were only playing into the hands of speculators, as it was a perfect farce to suppose that farmers could afford to pay such a price. He thought that the honorable member for Aubigny, who was a staunch supporter of the Government, had been treated with very scant courtesy; and if that was a sample of the treatment to which the settlers on the Darling Downs were to be subjected, the sooner he (Mr. Groom) changed his seat in the House the better. He contended that the resolutions must be in the Lands Office, and if the present honorable Minister for Lands was not aware of their existence, surely some of the subordinate officers in the department must know something about them, or else there must be great laxity of discipline. For his part, he strongly protested against the 3,000 acres of land which had been resumed at Clifton having such a high price fixed upon them as £12 an acre, as it was only, as he had before remarked, playing into the hands of capitalists, who would get every bit of it. He felt very strongly on the matter, as he knew that there were a large number of persons who were looking after that land with the object of settling upon it, and it was not fair to those people to deal with it as the Government were doing.

Mr. PETTIGREW thought the Government would not be justified in giving away land for 10s. an acre for which they could get £12 an acre, and thus cause a loss to the country of £11 10s.; nor did he believe in having the land sold to men at a low price, who, as soon as they obtained their deeds, would sell it again to the big men. He thought they heard too much of the Darling Downs, and of the little men, for if the little men wanted land, they could get plenty of it in West Moreton. At any rate, if the Government could get £12 an acre for land on the Darling Downs, they should take it.

Mr. THOMPSON said he could not understand the policy of the Government with regard to the land on the Darling Downs. The homestead area which had been selected by Mr. Coxen had remained open for some time, and contained some of the best land that could be found. They were not taken up, however, for a long time—at Yandilla for instance; and then what did the Government do, but throw them open under the conditional purchase clauses of the Act, and allow them all to fall into the hands of two persons—one of whom was a surveyor, he believed. He considered that that was not the proper way to deal with homestead lands, as those two people would do nothing with them, but merely keep them until they could get their deeds, and then sell them to some capitalist; whereas, if the land had been retained as homestead areas, it would have made a nice settlement for a large number of selectors.

Mr. MORGAN said he felt quite as strongly as any honorable member as to the desirability of preserving homestead areas for the purposes for which they were intended, and not allowing them to go into the hands of speculators; but he thought that, in the present instance, if the Government had caused a township to be marked out, and had decided upon selling those township lands at an upset price of £12 an acre, they were perfectly justified in so doing. With regard to the other portion of the Clifton unalienated lands, he thought the Government would act wisely if they made the blocks according to the homestead system, in blocks of 80 acres, as there was a good supply of water. He did not think the Government intended to put up that land at auction, as it would pay the lessee to buy it if it was put up to auction at £10 an acre; in fact, he thought it would be wrong to put it up to auction.

Mr. MILES said he most certainly condemned the system pursued by the Government with regard to the lands, and thought, if they were going on with the same system, they might just as well put a stop to immigration—and the sooner they did so the better. He knew the land in question very well, and had not the slightest hesitation in saying, that it could not be put to a better use than being allotted in homestead areas, for, if it was put up at auction, it would all go into the hands of capitalists. With respect to the complaint of the honorable member for Rockhampton, in reference to the answer received by him from the honorable Minister

for Works, on the previous day, he might say, that he had noticed over and over again that the Government used their utmost ingenuity to frame an answer so as not to give any information at all. He thought that the conduct of the honorable Minister for Works had been most unbecoming, in not having stated that tolls had been collected, even if they had been abolished. He was so fully convinced of the uselessness of asking questions with the expectation of getting straightforward answers, that he had given up doing so.

The SECRETARY FOR PUBLIC LANDS said, in respect to the matter raised by the honorable member for Aubigny, that he could reiterate the answer he had already given, that he had not seen the resolutions in question—that he had no information on the subject, and could get no information at his office as to whether they reached there during the time of his predecessor. With regard to the lands he thought he had already given a plain answer, and that appeared to have given rise to as much dissatisfaction as the opposite course would have done; however, it was to be hoped that he would gain experience if a straightforward answer was to meet with the same reception his had done. Only one township allotment had been sold at £12 an acre, but he did not see any necessity for throwing those lands open as homestead areas, when it was already provided that they should be sold by auction.

Mr. W. GRAHAM thought that in putting £12 an acre on the land in question, the Government were in possession of some knowledge which induced them to do so, as any land worth £12 an acre was not suitable for homesteads. Mr. Commissioner Coxen went up and selected the very best land for homestead areas that could be found; and they should have been reserved as homestead areas; but instead of that, at Yandilla, as stated by the honorable member for the Bremer, they were only open for a very short time, and were then brought under the conditional purchase clauses of the Act, and, of course, immediately taken up. On two or three occasions, it had been mentioned that one of those selections was *bonâ fide*, and some doubts had been thrown on the other. The honorable member for the Bremer mentioned that one of the two persons was a surveyor; but surely that was no reason why he should not have taken land up. He, however, was in a position to say that both men were *bona fide* selectors, and had taken contracts for having their land fenced; both had bailiffs residing on their land, and one had stock on it already, whilst the other was in treaty for some. He could confidently say that both were *bonâ fide* men.

Mr. GROOM: No.

Mr. W. GRAHAM: What those persons intended to do with their land after they got the titles, of course, he could not say. He had merely risen to say, that the good land picked out by Mr. Coxen for homestead areas should be retained as such, and not be sacrificed by being sold at auction. He thought it was a great mistake to sell land at 30s. an acre, as at Cecil Plains; but, certainly, £12 an acre was not a mistake when the Government could get it.

The COLONIAL SECRETARY thought the honorable member for Toowoomba had been under some misapprehension, as the allotment sold at £12 an acre had nothing whatever to do with the land to which that honorable member referred; it was simply a sale of town lands.

Mr. GROOM said that, as a matter of personal knowledge, he could positively state that the land gazetted for sale next month was part of the Clifton Reserve. He had been over the land, and inspected it himself.

Mr. PECHEY said he was willing to believe that the Government had done everything for what they considered the good of the country in the action they had taken in the matter then under discussion, and he considered that they were entitled to a little sympathy from the House, and also leniency, from the fact of their having been so lately deprived of one of their colleagues who was at the head of the Lands Department. The resolutions which were passed at a meeting of the inhabitants of Emu and King's Creeks had been forwarded by him to the "Honorable T. B. Stephens, Land Office, Brisbane," and how it was that they had not got into the hands of the present head of that department, he could not explain. In regard to the question which had arisen, he quite agreed with one honorable member, who argued that it would be of much more benefit to the country that those lands should be given to *bonâ fide* settlers than that they should remain as they were. It was a subject which he had brought before the House on a former occasion, and he believed the fact was that, knowing how all the lands along the railway line from Toowoomba to Warwick had been locked up from settlement, the object of the late Minister for Lands was to prevent the land in the Clifton reserve from being monopolised, as the surrounding lands had been. Whether, however, all the steps which had been taken by that gentleman and by the present honorable occupant of the office had been judicious or not, was another question. Although he deplored to hear the honorable member for Toowoomba express his intention of leaving that side of the House, at the same time, he must say, that if he thought any action had been taken by the present Government with the view of throwing the land in question, or any other, into the hands of monopolists, he should himself immediately cross over the House; but he did not think that such was the case. There might have been some injudiciousness in dealing with some of the blocks resumed—Cecil Plains, for instance, but he thought that, apart from pleasing his own constituents, he had a duty to perform

to the whole colony, and whether he sat on the Ministerial or the Oppposition benches, he thought it was his duty to furnish Her Majesty's Government with a revenue to support that Government; in that respect, there was some truth in the remarks of the honorable member for Darling Downs. That honorable member, however, made a mistake in stating that land worth £12 an acre would not be fit for homesteads; from that statement, he imagined the honorable member thought the most worthless land should be reserved for that purpose, and the most valuable go into the maws of the monopolists. He trusted, that whatever further action was taken by the Government, they would always keep in view the necessity of settlement on the land as being superior to filling the Treasury. Where land had been sold where there was already a railway constructed, it should be made to pay by the passenger and goods traffic which must follow settlement; and he conceived that the Treasury would receive a great deal more by the consumption of dutiable articles by a number of settlers, than by selling land at £12 an acre. Before sitting down, he must say that he did not consider that the answer given to the second question put by the honorable member for Toowoomba was entirely satisfactory, as it was not pertinent to the question. Of course, however, it must be remembered that the honorable Minister for Lands was new to his duty.

Mr. MacDonald said he understood the honorable member for Darling Downs to say, that land worth £12 an acre was too valuable —not for homesteads—but to give away under conditional purchases, as a man frequently took up land with the view of ultimately selling it to the capitalist. He knew from his own experience, that such had been the case in Victoria. In that colony, the Government had preferred to allow the selector to take for 15s an acre, land for which capitalists had offered £2 an acre; and what was the result? Why, that the selectors would almost starve upon the land until they could get their titles, and then they would sell it to the very men who at first offered to purchase it from the Government.

Mr. Buzacott said, by way of personal explanation he might state that as soon as he received information on the subject, he took the first opportunity of bringing it before the House; and he had not the slightest intimation that the tolls had been withdrawn until after he received the answer.

Motion withdrawn.

PUBLIC PROSECUTOR.

Mr. Palmer moved—

1. That, in the opinion of this House, the office of Public Prosecutor should be made a permanent and non-political appointment.

2. That this Resolution be forwarded to the Legislative Council for their concurrence in the usual way.

He said he thought, after the discussion they had already had on this question, honorable members must have pretty well made up their minds how they would vote on this motion, and he did not propose to go at any length into it. He thought it must be self-evident to every honorable member that it was most desirable the office of Crown Prosecutor should be totally separated from every political connection which it might have with the Ministry of the day. He did not propose, nor would the motion, if carried, in any way prevent the Ministry from having a legal adviser in that House; they might have an adviser, as Attorney-General or under some other name, a member of the Cabinet. They had a wide choice in the selection of a name—they might call him Minister for Justice, or Minister for Education, or any other name they liked; and it was not in any way meant to weaken the Government, so far as having a legal adviser in the House was concerned. But, he decidedly thought, the longer they lived the more it was borne home to them, that the position of Crown Prosecutor in this colony should be entirely independent of all political considerations. He looked upon that office as one of the most important trusts that could be confided to any man in the colony, for it combined the position of Public Prosecutor with that of the grand jury of the colony; and, although he must say that, so far as he knew, and so far as public opinion went, the various gentlemen who had filled the office of Attorney-General, had fulfilled their duties as the grand jury of the colony satisfactorily in every way; it would be still more satisfactory if the public felt perfectly convinced that no political bias ever actuated them in any of their actions. He thought it was also a matter of very great consequence that the Public Prosecutor of the colony should conduct all actions of the Crown, without involving any expense upon the colony, further than the salary he received; and they had proof from the returns placed before them this session that such was not the case at present, nor had it been the case, at any time, so far as the return showed. It had been the practice at all events since 1869, for the Attorney-General to receive fees in certain cases; but, on looking over the return he noticed this difference—that up to the advent of the present Attorney-General to that position, the fees paid in every instance, so far as a hurried inspection of the return enabled him to judge, had been paid for defending the Crown against actions brought by other parties. Right down the list, so far as he could see, that was invariably the case.

The Attorney-General: Hoffnung's case.

Mr. Palmer: Yes; he saw there was one case—Curphy *v.* Huffnung, in which fees were paid to Mr. Bramston. It was a Customs' case, and entirely outside the question he was endeavoring to place before the House. Under the head of Mr. MacDevitt, he saw

"application of Edward Ball for writ of prohibition—Brief to oppose application," which he did not understand at all. He should think that was part of the duty of the Attorney-General, but he would leave it to the legal members of the House to say whether it was or not. One thing that struck him with surprise was the absence of Mr. Lilley's name from the return.

The ATTORNEY-GENERAL: It did not go back further than 1869.

Mr. PALMER: Mr. Lilley had been Attorney-General since 1869.

The ATTORNEY-GENERAL: No.

Mr. PALMER: Why could they not have the returns since Separation?

The ATTORNEY-GENERAL: There had not been time to get them ready; they were only asked for yesterday.

Mr. PALMER: Well, the fact was that, up to the advent of the present Attorney-General, the fees paid had, in every case, been paid for defending the Crown, and, in his instance, in every case they had been in connection with actions brought against parties by the Crown. He thought that the House would agree with him that that was not a proper style of proceeding. They had heard a great deal about the dignity of the legal profession; but he thought, if the Attorney-General was paid for the work, he should do it without any additional fee whatever, and that it would be much more satisfactory if the House came to that conclusion. He had held that opinion for a considerable period—that it would be far better to have a Crown Prosecutor to do the entire business of the Government without any fee or reward. He knew it was a moot question at home at the present time whether it was not more advisable to carry that out than to have an Attorney-General, as they had here, or something in the same way, comparing a small thing with a very great one; and it was also a moot question whether, if a Crown Prosecutor were appointed, he should be allowed to have any private practice or not. That was a question he was not prepared to go into at the present moment; but he thought they should say it should be a non-political appointment, and it would be time enough, if the motion were carried, to say then what the salary and duties should be. And he might mention that, in the event of the motion being carried, he had no intention whatever of leaving it in that position; he should introduce a Bill to define what the duties of the Crown Prosecutor really were, and what his salary should be. He looked upon the appointment as of so much importance that he would be willing to pay him a salary equal to that of a puisne judge. He thought the objection taken by the honorable the Attorney-General, when the question was last mooted, that no man of any standing in the profession would accept the appointment if he were deprived of private practice, would hardly carry any weight. They had had an example of a gentleman who was at the head—decidedly at the head—of the legal profession in the colony, and of high standing in that House, thinking it worth his while to accept a puisne judgeship; and he had no doubt they would be able to find plenty of available talent, of the very best description, to undertake the office of public prosecutor at even a less salary than that of a puisne judge. He believed they would have a large number of applications for the appointment at the present salary of the Attorney-General, at £1,000 a-year. However, that was a question for future consideration; the question he now asked the House was, whether it was advisable, in their opinion, that it should be made a permanent and non-political appointment? The question had been a good deal argued in the House during debates on other subjects, and he would not detain the House further than to move the resolution, reserving to himself the right, in reply, of combating any arguments that might be brought forward.

The ATTORNEY-GENERAL said he thought honorable members on both sides of the House did not know much about the question that was raised by this motion, and he would endeavor to give them some information on the subject, so that they might know exactly what was proposed. The honorable member for Port Curtis had admitted that he did not know exactly what its effect would be, because he said he had not made up his mind as to what should be the duties of the office.

Mr. PALMER: I said nothing of the sort. I did not say I had not made up my mind; I said I proposed to define the duties by Bill, if this motion is carried.

The ATTORNEY-GENERAL: The honorable member did not give the House to understand what were to be the duties of the officer he proposed to appoint. As the motion stood, it was—

"That, in the opinion of this House, the office of Public Prosecutor should be made a permanent and non-political appointment."

By which he understood the honorable member to include the office of grand juror of the colony: and he also suggested that it would be desirable that the officer, whoever he might be, should perform the civil business of the Crown without receiving any fee or reward. Now, honorable members might think the duties of Public Prosecutor were very arduous. If he was to receive a salary of £2,000 or even £1,000 a-year, it would be expected that his duties would be sufficiently arduous to warrant such a salary. It would be obvious that, if the resolution were passed, it would necessitate the appointment of a new officer at a large salary—an officer who must have the name of Solicitor-General; and there was no objection, as far as he could see, to a Solicitor-General being appointed, if the House thought fit to vote the salary for him. He hoped honorable members would pardon him if he here pointed out that the

other day, when he was speaking without book, he said there was power by which the Government could at any moment appoint an officer to perform the duties of Attorney-General, so far as Crown prosecutions were concerned; but he found that that applied only to Brisbane, and Circuit Courts, when the Attorney-General was not present. The bill must be filed by the Attorney-General or the Solicitor-General. There was no power to appoint any person to act, except in their absence. Under the thirty-second section of the Supreme Court Act, a person might be appointed in the absence of Attorney-General from court; but, if he were present, it could not be done; and it was necessary under the statute that the officer to be appointed should be called the "Solicitor-General." He thought, when it was remembered that £400 a-year was paid to Crown Prosecutors in the District Courts, and that was not thought, and he believed was not found to be very remunerative, and that they had had to increase the salary of the Crown Prosecutor in the North to £500 a-year in order to get a good man to accept the office, that would be some guide as to what was to be the salary of the officer who was to occupy the still more important position of grand juror, and conduct all criminal prosecutions. He thought it would be very moderate to fix the salary at £700 a-year, and he did not think the honorable member for Port Curtis had ever suggested that the salary should be anything like so low. Probably, £1,000 a-year would not be considered too much; but he would take £800, which would, no doubt, be considered a reasonable salary for the discharge of the extremely difficult and important duties the honorable member had spoken of. Now, when honorable members came to think of that salary, they would naturally ask what proportion would the work of that officer bear to the whole work of the Attorney-General, for which he received £1,000 a-year? One would reasonably suppose that, if it were found necessary to appoint a new officer at that salary, his work should be nearly as great as that of the Attorney-General; but he had no hesitation in saying that the duties of grand juror did not amount to more than one-fifth of the public work of the Attorney-General. He would call attention to the duties of the Attorney-General, as defined by a memorandum signed by the honorable member for Port Curtis himself. Honorable members would be aware that the Attorney-General was now, and would, under the proposed alteration, be still the head of the legal department, and the confidential adviser of the Government on all legal matters; and he could state, from his short experience in office, that it was absolutely necessary the Government should have a confidential legal adviser present in the Cabinet, where legal advice was constantly required. The duties of the Attorney-General, as defined in the order published on the 8th of July, 1871, bearing the signature of the honorable member for Port Curtis, were—

> "The administration of justice generally;
> "Judicial establishments;
> "Advising the Government on all legal questions;
> "Preparation of all legal instruments and contracts.
>
> "He will be responsible for the supervision and control of—
>
> "The officers of the Supreme Court and of the District Courts;
> "The Crown Solicitor;
> "The Parliamentary Draftsman."

That was not a trifle.

> "He will correspond with—
>
> "The other Ministers, on all questions on which his legal opinion may be required;
> "The Judges of the Supreme Court, the Judges of the District Courts, the Sheriff, and officers of the Supreme and District Courts, in certain matters;
> "Coroners, or justices holding magisterial inquiries;
> "Benches of Magistrates, in all legal matters."

These were the duties of the Attorney-General as defined by that minute, exclusive of the duties of grand juror and Crown Prosecutor, of which it was proposed to relieve him. Now, he had taken the trouble to inquire and to ascertain what proportion the duties of grand juror and Crown Prosecutor bore to the whole work of the Attorney-General, and he found that since he had been in that position, besides the work mentioned in that minute, which was, in fact, to superintend the whole judicial establishment of the colony, in connection with which there were a multitude of papers and cases coming in every day—he found that, exclusive of that, he had given over one hundred opinions to different departments of the Government; he had had to revise, verbally and in writing, the accuracy of about thirty-five different sets of bye-laws and regulations, for the Government and different municipal and local institutions. Against that the total amount of work there had been to perform in connection with the duties of grand juror had been to peruse fifty-five sets of depositions; and he would venture to say, that on the average, one out of every two of the opinions he had given was a great deal more trouble than going through a set of depositions and finding a bill; and the regulations and bye-laws also entailed much more work, if it were properly done, than perusing depositions. He only said this to show the work; not because the duties of grand juror were pleasant to perform; in fact, they were the most unpleasant duties attached to the office; but so far as the duty of Crown Prosecutor was concerned, it sometimes amounted to no more than a pleasant holiday in the country, without additional pay. But although the work of filing a bill was the most unpleasant work in the office, it bore the smallest proportion

in the work of the Attorney-General. If that were so—if they thought the arrangement that had been in force since Separation, was such that a salary of £1,000 a-year was sufficient, which he thought it was, for an officer who had to perform four-fifths as much work as that connected with the office of Crown Prosecutor, then he should expect to find some strong reason for altering the arrangement which had stood all these years without any serious objection. He should expect to hear some stronger argument for the change than that some honorable members thought it would be desirable. In the history of Australia he had only heard of two instances in which corruption or partiality had been suggested in connection with a political Attorney-General. With respect to one, he could only speak from hearsay; he believed it was once suggested in the case of Mr. Plunkett, in New South Wales; and once in this colony, about ten years ago; and in that case it was not a suggestion of political partiality, but it arose from the gentleman holding the office of grand juror being a practising barrister, and not Attorney-General. He believed there had never been a case in the whole history of Australia, in which it had been ever seriously charged, much less believed, that an Attorney-General had been actuated by political motives or feelings in the performanace of his duties. He must confess, that under these circumstances, he could not see why they should pay a man £800 a-year for performing the work of Public Prosecutor, which was rather pleasant work, so far as prosecuting in the Supreme Court was concerned. He would have to sit in his office, if he had one, for about an hour once a-week; that would be all. He had no doubt honorable members were not aware of this; and it was rather strange that objections of this kind had only been taken at odd times. He found similar objections had been brought forward once or twice in Victoria, when there was a difficulty of obtaining an Attorney-General, and it was the same in New South Wales, where the difficulty still existed. In that colony, they appointed what they called a non-political Attorney-General, and he believed he was right in saying, that when they tried to carry out the system, that officer ceased to be a member of the Cabinet, but it was found necessary, and he was obliged to attend the Cabinet, of which he was not a member, and also the Executive Council once a-week. That was what he had been told by the gentleman himself; and the succeeding Ministry had an Attorney-General in the Cabinet performing the duties as before, although he was not a member of either House of Parliament.

Mr. GROOM: He was a member of the Upper House.

The ATTORNEY-GENERAL: He did not think so; but, at any rate, he thought he had shown that they should require some stronger reason than any that had been brought forward for the appointment of a new office of Solicitor-General with a large salary. There was another part of the honorable member's speech to which he would call attention. He said the Solicitor-General—he (the Attorney-General) would call him that, because he would have to have that title, unless a new statute were passed—should do all the civil work of the Crown, and there were some serious difficulties in connection with that, which he would point out, and he would like to know how they were to be solved. He found by the return, which he had been glad to lay on the table that afternoon, even in its unfinished state, up to 1869, that it had been the practice to pay fees to the Attorney-General for the time being when he performed certain work. In fact, what was at the root of all this was, what were the duties of the Attorney-General? Did he undertake the office with the understanding that he was to conduct all the civil business of the Crown in the Courts, or did he not? If he did he was entitled to no remuneration, and if he did not, then he thought the question was at an end. If his salary did not cover the work, what objection could there be to his receiving remuneration for that work? He had no doubt that in settling the question long ago as to what were to be the duties of the Attorney-General, and whether his salary was to cover the conduct of civil cases for the Crown, these matters were seriously weighed. He could understand in the old days when the Crown paid no costs and received none, which was the law until a few years ago, even in this colony, until the statute of 14 Victoria: if that were the case now, it might very properly be said that the Crown had a certain amount of business to be performed, and an officer could be appointed at a fixed salary. But that had been all altered; the Crown was now in the position of an ordinary suitor. If the Crown lost, the Crown had to pay, and if it won, it recovered expenses. He would point out that, if they determined upon a fixed salary, the expenses would be very great. In ordinary cases there were two counsel; there would be the Solicitor-General, who would conduct the case, and another; and if the Crown won, they would give the opposite party the singular advantage that he would not have to pay for two counsel but only one; he would pay only part, the Solicitor-General being a salaried officer paid by the Crown. He believed the answer to that was, that the money should be taken and paid into the Treasury; but he would point out that costs were paid as an indemnity to the party gaining the case, and fees to counsel could not be recovered unless they were actually paid. That difficulty, he thought, could not be got rid of. Supposing the Crown was plaintiff, and won, was the defendant to be charged with one set of costs or two? It seemed to him, that unless they could prevent that difficulty it would be no benefit to the

Crown, but there would be a benefit to the defendant. They were asking a fee for the party litigating, but they were not willing to give it to the Crown: for the sake of persons who litigated with the Crown in the wrong, some officer should be appointed to do all the work without fee. He must confess it was of little consequence either way, but it was impossible to harmonise the two things. He knew some honorable members had a strong objection to fees, and thought all lawyers were extortionists who ought to be abolished; but there were others who did not hold such strong views, and he addressed himself more particularly to them. It had been said that a change had been instituted since he became Attorney-General, in this respect—that in all cases in which fees had been received, the Crown had been the plaintiff, and in all previous cases it had been the defendant. Now, he could not see what difference that made, except that all the cases brought up to the present time, including one that had been discussed in the public prints, were legacies from the previous Government.

Mr. PALMER: No.

The ATTORNEY-GENERAL: They were, every one of them, legacies from the previous Government.

Mr. PALMER: No.

The ATTORNEY-GENERAL: And it had become, as he understood from the debates in that House and from the expressions of honorable members, many of whom he saw sitting on the opposite benches, a crying shame that these questions were not settled. He could inform honorable members that, at least, in one very important case, he entreated the parties on the other side to become themselves the plaintiffs. He pressed and entreated them to bring the matter to an issue. He suggested every possible way he could to enable them to raise the question, and offered to give every possible facility for doing so; but they declined, saying they had had enough of that sort of thing before. There were cases now which had been pending for years—the Queen *v.* Davenport and Tooth—and it was understood last session that these questions were to be settled; the parties would not settle them, and the Crown had to settle them; and so far from it being extraordinary for the Attorney-General to authorise the commencement of proceedings of this kind, he would point out—he was sorry that it should be necessary for him to give the information—that no proceeding could be commenced in England without the *fiat* of the Attorney-General, who also held a brief in the case. There was no more harm in what had been done here than in that. If an honorable member contemplated commencing a heavy suit he would probably ask his (the Attorney-General's) opinion first, and supposing he were to say there was a good cause of action, that would be exactly analogous to the Attorney-General issuing his fiat in Crown cases. It was required of him by the Government to say if there was a good case. And unless these cases were not to be brought to an issue at all, there was no reason why the Crown should not bring the action; and if the facts were as he assumed them to be, that the Attorney-General was not expected to do civil work, there could be nothing said against his receiving fees from the plaintiff or the defendant according to the universal practice. He was sorry that he should have to justify his position in any way, but possibly it was as well that he should do so. He wished to point out that, in one breath they proposed to give a liberal salary to cover all the work as Crown Prosecutor and Minister for Justice, and all the civil work besides, and if they said the duties of Crown Prosecutor alone were worth £800 a-year, what did he do for the other £200 a-year? If £1,000 a-year covered all the work the Attorney-General had to do, and, as he had pointed out, the duty of Crown Prosecutor was not one fifth, how about the remuneration for the other four-fifths? There was another matter he would point out, and he was sure the honorable member for Bowen, whom he was glad to welcome as another member of the profession in the House, would agree with him. He believed it had been said that the office of Attorney-General was the only one in which the occupant could receive fees in addition to his salary; but it was the only office of the Government in which he had to abandon a large part of his private practice.

HONORABLE MEMBERS: No, no.

The ATTORNEY-GENERAL: If the honorable member for Port Curtis accepted office there was nothing to prevent him from carrying on his station and receiving the income. He need not be there personally.

Mr. MOREHEAD: How do you know?

The ATTORNEY-GENERAL: There was nothing, so far as he was aware, to prevent a gentleman who was a member of the Government, and the occupier of a run, from carrying on his business, or any part of it. He was not bound to sell his cattle or his sheep, or any part of them; and neither was he aware, that if a merchant accepted office he was obliged to abandon any part of his business.

An HONORABLE MEMBER: The Minister for Lands.

The ATTORNEY-GENERAL: He was not aware that the Minister for Lands was obliged to abandon any part of his business; but it was a fact that the Attorney-General on accepting office was obliged to do so. He had to abandon all criminal business, and all cases in which the Crown was interested.

Mr. PALMER: McDonald *v.* Tully!

The ATTORNEY-GENERAL: That was an entirely different case. There the gentleman who had occupied the posit on of Attorney-General had been counsel for the plaintiff, before he became Attorney-General, and after accepting that office he followed the universal practice, of which innumerable instances could

be cited, and retained his brief. He (the Attorney-General) did not wish to justify a case which did not demand justification, or to make a defence when no defence was necessary; but he merely wished to point out some facts which honorable members did not seem to be aware of. The Attorney-General was debarred, to a great extent, from private practice, and he could not see why, if he did work not included in the salary he received, he should not be paid for it. With regard to appointing an officer to do the civil business of the Crown, it was only when there were large accumulated arrears of litigation, as there were when he went into office, that the work was heavy; and he could say, that if those cases had been disposed of two years before, he should have made more profit out of them by acting for the defendants than he did by being Attorney-General.

Mr. MCILWRAITH: How?

The ATTORNEY-GENERAL: Because he was counsel for the other side, and he knew that the junior counsel for the defendants in those cases got a great deal more out of them than he did, and he was leading counsel for the plaintiff. He would point out, that except in instances such as he had referred to, where there was an accumulation of business, the average fees paid to the Attorney-General in any one year would probably not amount to more than £100. He believed there was about £800 paid to Mr. Bramston, of which nearly £500 was out of one case alone—Williams' case; and the amount paid to another Attorney-General, Mr. MacDevitt, was over £200; so that taking that case, which was an exceptional one, and leaving out other exceptional cases, the average was not more than £100 a-year. Taking all the litigation from the commencement of the colony to the present time, the average of £100 a-year, would cover all the civil business, excepting, of course when there was an accumulation of litigation. The cases which had been disposed of under the Acts of 1866 and 1868, except so far as one or two now pending were concerned, had settled all the questions necessary to be decided by courts of law; and when the remaining questions were settled, he expected that, for the future, there would be a small amount of civil business on the part of the Crown. He hoped it would be so, because it was a very undesirable position for the Crown to be fighting with its subjects. His principal object in rising was to let the House understand exactly what was the nature of the duties to be performed, and for which it was proposed to pay so liberal a salary.

Mr. THOMPSON said, in about the third speech he made in the House, he addressed himself to this subject, and he instanced a case which had taken place in New South Wales, where the Attorney-General, Mr. Martin, had been accused of following a party from court to court, and the possibility was suggested that the case might come before the Executive, and there also he would have an opportunity of getting his friend into a notch, as Mr. Robertson called it. Mr. Martin's conduct had also been questioned in another case, known as the case of "White-headed Bob." He prosecuted the man as Attorney-General, and afterwards took a brief on his behalf, and tried to prove he was not guilty of the crime for which he had previously prosecuted him. If they took that as the position of the Attorney-General of this colony, it must be at once acknowleged that it was wrong. He thought the honorable the Attorney-General had treated the question on too narrow a basis altogether, and he appeared to have been influenced too much by the clamor about fees in the Crown cases. The honorable member must be prepared for such attacks if he held the position of a Minister, and he (Mr. Thompson) was glad the honorable gentleman was getting it to-night, and not himself. He was sure he was quite able to defend himself, and he (Mr. Thompson) thought he had said quite sufficient on that subject, when he said that. Now, this was a far wider question than honorable members might be aware. It might be divided into branches—the position of the Attorney-General as Civil adviser to the Crown, and his position as Public Prosecutor in matters of crime. His position as Public Prosecutor was simply this:—He filed or did not file a bill in cases which came before him, and he prosecuted or did not prosecute the party. Now, he contended that the person charged with the duty of conducting public prosecutions should not only have that power, but he should also have charge of the whole of the proceedings from their initiation to the conclusion; and if the idea of the honorable member for Port Curtis were carried out, he thought it should be carried out in its entirety. According to the opinion of the Lord Chief Justice of England, the proper scheme was this:—The Public Prosecutor should be charged with the detection of crime, the apprehension of the party, the conduct of the case in the inferior court, and of the whole matter right through from beginning to end. He should have subordinate officers to carry out these things, and it would be his duty to see that everything was properly done; and by that means the present failures of justice which arose from private prosecutions, and the setting of the police in motion by private individuals, would be done away with. It had been pointed out in some of the English journals—the *Times*, the *Spectator*, the *Saturday Review*, and others—that, under the English system of prosecution, which allowed private parties to put the police or some one else in motion before the country bothered itself about the matter, was essentially wrong in principle; because the party might not have the means to prosecute, he might not have the time, and he might not have the ability; and the policeman or person to whom he went might be incompetent to take up the matter

when it was represented to him. The whole matter was receiving very great attention in England; and if they were to make reforms here, now was the time to do so, before they got into certain grooves, which they might not be able to get out of. Their present system had this merit, and it was about the only merit he could see in connection with it—the merit of economy. It was undoubtedly the cheapest system they could adopt. They got a first-class Attorney-General to do a certain amount of work at a very reasonable rate; and they had also a Crown Solicitor, who did the work of his office at a very reasonable rate. In reference to that part of the system he would here interject this remark: It was found to work badly in New South Wales, that the Crown Solicitor should have private practice and work irrespective of his public duties. It was, therefore, made a distinct department, and they must not shut their eyes to the fact that it was a very expensive department; and if they took up this matter, they must do so, knowing that if they got a good thing they would have to pay for it. The £700 or £800 a-year, mentioned by the Attorney-General, would not be anything like sufficient. He thought the honorable the Attorney-General looked at the matter, if he would excuse him for saying so, in a chicken-hearted way. If that honorable gentleman was going to be a reform lawyer, and the law as it now stood interfered with the proposed change, let the Acts be altered. They were there to alter them, and he objected to the argument in which the honorable gentleman pointed out that a Solicitor-General would have to be appointed, and so forth, because they could remodel the whole system. So far he had been arguing in regard to the position of the Attorney-General in connection with crime. Now, he thought the Attorney-General was a politician, and he defied the most pure-minded politician in the world to be free from a certain bias. The mere companionship of political friends was sufficient to bias any man, even of the strongest mind. From the argument of the honorable the Attorney-General one would suppose that they were dealing with perfection, but they were not; they were dealing with human nature, and whether it was the present Attorney-General, or any other Attorney-General, he was subject to all the influences that would be brought to bear upon the weakness of human nature. One Attorney-General might have a passion for popularity, and he would necessarily take the popular view in connection with prosecutions. He would not be conscious of it; they were not generally conscious of such influences; they all fancied they were doing right. Another Attorney-General might be easily influenced by those around him, and he might take strong views in consequence of that. He thought he understood the honorable the Attorney-General to have said something about certain conditions with which he took office, and one of those conditions was that the dummy question should be settled. If so, he did not say that that was improper; he did not wish to enter into the question at all; nor did he think that they should make it a personal question; they should deal with it as an abstract question. The honorable member, however, admitted that he took office on the condition that that question should be settled, and, coming in with that view, did he not have a bias? Whether he had or had not, had nothing to do with the argument; but putting it in that way, he stood in a very anomalous position. The very attack that had been made upon him in these matters showed that he stood in that position. It should not be possible that the person prosecuting in the interests of the public should be liable to attacks of that kind; he should not be subject to the pressure he had been subjected to in that House; it should not be possible to say he had received fees he should not have received. He thought the Attorney-General was justified by precedent and other ways in receiving those fees, but still he should not be in a position in which he could be taunted about such matters, which, necessarily, must be disagreeable. The English scheme, as proposed by the Lord Chief Justice of England, would meet all this. The idea was to have a number of professional prosecutors, who should be well paid, and who should devote themselves entirely to their official duties, and have no private practice. It was useless simply detaching the Public Prosecutor, or the department for public prosecution, for that was what it would come to, from politics; they must also detach it from private practice, because, standing in the position of public prosecutor, a man had no right to have attorneys to whom he should be under obligations for briefs or patronage, or anything else; he should be perfectly independant. He had heard it charged against a judge in New South Wales, he need not mention his name, but he had heard it said in court, when a case had been going on, "That judge is always biassed when that attorney has a case in court, because he always patronised him and gave him his briefs." He mentioned this to show that these things were alleged, not only in regard to public prosecutors, but also in regard to judges. They could not keep this thing too pure or free from the slightest suspicion of doubt or bias. So far he had been dealing with the question of public prosecutions, and some of the arguments would apply to both cases. He now came to the position of the Attorney-General as civil prosecutor; and what was his position in that case? He thought a case that had arisen would illustrate the evil of the matter more than anything else. The Attorney-General was a member of the Cabinet; he was a member—an influencial member of a party; he sat in front of a number of supporters who where constantly

raising a cry for certain proceedings to be taken, and if he were a man liable to be influenced by the applause of his fellows, and there were very few good men who were not—in fact, it was one of the strongest motives to human action that a man should gain the applause of those with whom he was associated—he would naturally endeavor to carry out their wishes. In fact, a sort of mesmeric feeling arose from being associated with a lot of men of one opinion, and there was a certain bias to go in that direction; and a man would use his utmost endeavours to acquit himself to the satisfaction of those whose cause he adopted. Well, that man came to that House, and he was subjected to taunts of all sorts from those who did not approve of what he had done; and if he were a weak-minded man, which he did not think the present Attorney-General was, he would naturally be disinclined to touch these matters in future. If, in short, the position which the Attorney-General took in regard to civil prosecutions was merely the outcome of political action—not on the part of the present Government, or the last Government, or any particular Government, but of all Governments since Separation to the present time, he stood in a very anomalous position indeed. He had long had an exceedingly strong opinion on this subject, and he thought it would be worth a little money to clear the atmosphere of their judicial proceedings from all suggestions of any taint of political influence or any influence of that sort whatever. The honorable the Attorney-General, among other matters, referred incidentally to the case of McDonald and Tully, and that case, he thought, illustrated the evil of the existing system. It was now quite possible for the Attorney-General, as Crown Prosecutor, to give advice to Government, and to appear on the other side.

The ATTORNEY-GENERAL: No.

Mr. THOMPSON: He thought it had happened. He thought Mr. Lilley was engaged for the prosecution, and afterwards, on taking office as Attorney-General, it became his duty to advise the Crown in the matter.

The ATTORNEY-GENERAL: No; it could not be his duty to advise the Crown in the matter.

Mr. THOMPSON: He might dismiss the second part of the question by stating that the system, as carried out in Scotland, he conceived to be the best; and he believed that England and her colonies were the only places where there was no public prosecutor distinct from other offices. He might say, that in this colony there were exceptionally good police, or the results of the present system would be more apparent; but it was manifestly wrong, as he had endeavored to show, that prosecutions should be left entirely to them. Crime was a declaration of war against society, and it should therefore be put out of the power of any private individual, when a crime was committed to be able to condone that crime, or to protect the person committing it. It was well known that there were cases of almost daily occurrence in which crimes were condoned, such as embezzlement, or offences in which private interests were concerned, and he would venture to say, that nine cases of embezzlement out of ten were allowed to go unpunished from that very cause. Now, if crime was a declaration of war against society, it was manifestly wrong that it should be in the power of any private individual to let the offender escape unpunished; he should not be allowed to go unpunished; either from want of means, negligence, or incompetence; and on the other hand, it should not be left to the police, who were sometimes dilatory in acting, sometimes unwilling to act, and sometimes over zealous in the performance of their duty, and indiscreet. The whole system should, in his opinion, be placed under the superintendence of one head, who should be a lawyer of good standing, who should not be influenced by private practice, and whose duty it should be to see that a man who had committed a crime was detected, apprehended, committed for trial, and finally brought to justice. There was an anomaly in our present system, namely, that the Attorney-General only came in at the tail, when the important portion of the work was done; the most important part of the work was either left to an ordinary police constable, or to a sergeant of police, in the country districts, but rarely to the latter, so that really it was a wonder that the present system gave the amount of satisfaction it did. But the colony was small, and in sparsely populated countries, instances of wrong, which arose from the present defective system, were not so prominent as they would perhaps be in older and larger communities. In England, where the system was supposed to be a very admirable one, and where all the justices were lawyers, and the machinery for the detection and punishment of crime was more complete, they had come to the conclusion that the system was wrong from the beginning, and that they must revert to the Scotch system. That was yet to be done, as soon as some lawyer would undertake to act upon the recommendation of the Judicial Commission which had been sitting in England on the subject. To revert again to the position of the Attorney-General of the day. He had pointed out that the legal adviser of the Government, the position of the Attorney-General was an anomalous one; for, being a politician, he was naturally subjected to a variety of influences; to that of his constituents, that of his colleagues, and that of his supporters—all of which must have certain weight with him if he was faithfully dealing with them; so that his position was entirely anomalous, as he was frequently placed in a situation where his duty and his inclination must clash, which was a position no man should be put in

without there being a safeguard. That safeguard would be given if the Attorney-General, retaining his title, had only certain legal duties attached to his office; but anything in the shape of prosecutions should be under the one head, who had no other duties to perform. He had been rather called to task when referring to the case of McDonald *v.* Tully, and he believed he had been rather in error in regard to the details of that case. They were, however, he thought, as follows:—A leading counsel took a brief for the defendant—the Crown, although Mr. Tully was nominally so, being the plaintiff. Subsequently, that counsel became a Minister and Premier, and appointed another gentleman Attorney-General, who appeared in court for the Crown when it was defendant, whilst he, as Premier, appeared for the plaintiff against the Crown, and as Premier, on a subsequent occasion, took the plaintiff into a court of appeal, and stopped him from getting his verdict. He would ask the House whether there could be a more apt instance of the bad system which the colony had adopted; he certainly thought that they need not hesitate in sweeping away such a reproach to our system. He thought the position of Attorney-General deserving of the utmost consideration, and that, whether he would earn his thousand a year by being merely legal adviser to the Government, was of no consequence; for, if there was no salary attached to the office at all, he believed that there would be plenty of gentlemen, leading members of the Bar, found, who would be willing to take the position merely for the honor attached to the office. He had not the least doubt that they would always be able to get a leading member of the Bar to take the position as an honorary one—that was, presuming that his politics agreed with those of the Government in power. It appeared, however, from the remarks of the honorable the Attorney-General, that his duties were really very arduous, much more so than he (Mr. Thompson) thought. By the honorable gentleman's own statement, it appeared that he had the superintendence of the whole judicial department of the colony, in addition to numerous other duties, and from being the political responsible head of the department, he had to appear in the courts his own officer in various offices. That, he thought, showed that there was something wrong in the system. He did not intend to put forward any argument founded upon the present Attorney-General, as he believed that that honorable gentleman had done his duty as far as he could; but if he was to have the superintendence of all the judicial departments, the sooner that position was relieved from the imputation of being biassed from political influences the better. In dealing with matters of the sort, it was no answer to say that there had been no instance of an Attorney-General so far forgetting what was due to his office as to allow himself to be biassed; that was no answer, inasmuch as that House should legislate knowing what men were, and what they were likely to be. It was almost as bad to say what might happen, as to say that it had happened; the very circumstance that opponents who had been attacked should have it in their power to say that it had occurred, was highly detrimental to Her Majesty's Government. The aspersions cast upon the present honorable Attorney-General had been cast upon the last Attorney-General, who, in company with himself (Mr. Thompson), had been engaged in certain prosecutions. That would always be the case, so long as the system continued. He should most cordially support the motion of the honorable member for Port Curtis, and he hoped that that honorable member would not let the subject drop, but that there would be a total reform in the system. The present, he considered, was the time to effect that reform, before there were too many vested interests, and they had got into a groove out of which they could not get.

Honorable Members: Hear, hear.

Mr. Groom said he should consider it his duty to vote for the motion of the honorable member for Port Curtis, and, in doing so, he should carry out the opinion he had frequently expressed in that House and elsewhere, that the office of Attorney-General should be made a non-political office. He thought that when the honorable member for Port Curtis last addressed the House on the same subject, it was on a motion made by himself (Mr. Groom), and, therefore, in supporting the present motion, he would only be acting in accordance with his previously expressed opinions. He thought, however, that the motion should have gone farther, and that not only should the office of Attorney-General be made a permanent office, but that also the office of Crown Solicitor should be made permanent—and, if he was allowed, he should add a few words to the motion to that effect. The returns which had been laid on the table of that House that afternoon, only referred to the office of Attorney-General, and would have been more satisfactory if they had been more extensive;—they only showed that during the time Mr. Bramston was Attorney-General, he made £800 independent of his allowance: that was not very much, certainly, but he thought that when returns were made of the moneys paid to the Crown Solicitor, it would be found that that gentleman had received from £800 to £1,000 a-year in his private capacity. Honorable members appeared to think that expense should have something to do with any change that was made, but he considered it should not;—he considered that cost was secondary, so long as there was a pure administration of justice in which people could have full confidence. It had been stated that the expenses in connection with the land prosecutions were as moderate as possible; but he contended that when a solicitor

was receiving fees, there must be a strong disposition to protract cases. He knew that when the land cases were going on at Toowoomba, several witnesses were summoned and were not called, and yet all the expenses of summoning them appeared in the bill of costs. The honorable Attorney-General appeared to think that it was very necessary that the Cabinet should have the assistance of a legal adviser, and he (Mr. Groom) did not see why they should be debarred from having it. In New South Wales that was the case, and it had been discovered to be very inconvenient to have an Attorney-General absent from the Cabinet. As it was proposed by the new Education Bill that there should be a Minister of Education, he thought that the Attorney-General might also fill that office. He considered that the honorable member for the Bremer had placed very clearly before the House arguments in support of the separation of the two offices of Attorney-General and Public Prosecutor, and he should, therefore, consider it to be his duty to vote for the motion. He wished, however, to move the addition of the following words to the motion :—

And that the office of Crown Solicitor shall, from the end of the year 1875, be made a permanent office, the holder to have a fixed salary, and to be debarred from private practice.

In making that amendment, it had been pointed out to him that the expense of making the Crown Solicitor's office permanent would be very considerable; but he really looked upon that as of very little consequence when compared with the advantages which would result from the change. On looking over the New South Wales Estimates, he saw that the Crown Solicitor of that colony kept two clerks, and received a salary of £1,200 a-year; but he thought that, as there was not so much work here, plenty of gentlemen could be found who would be willing to accept the office at £1,000 a-year. However, the returns which had been laid on the table of the House satisfied him that the office of Attorney-General should be made non-political, and that the office of Crown Solicitor should be permanent, the holder of it receiving a sufficient salary to compensate him for giving up all private practice.

Mr. STEWART said that when he saw the resolution on the business paper, he felt disposed to give it his support, but on different grounds altogether from those put forward by the honorable member who had just spoken. He had felt disposed to advocate making the office of Attorney-General and Crown Prosecutor non-political at a fixed salary, as he had been under the impression that the amount received by the Attorney-General outside of his salary was altogether beyond what it should be. He thought that the honorable the Attorney-General, when speaking on that point, said, that if he was not allowed to receive fees outside of his salary, he would be placed in a different position from any other member of the Government; but he (Mr. Stewart) did not agree with that, for he was quite satisfied that there was more than one member of the Government, who sacrificed quite as much as the honorable member would be called upon to do.

Mr. PALMER: Hear, hear.

Mr. STEWART: He could not agree with the honorable member for Toowoomba, who wished to make the change in consequence of what had happened in connection with the recent dummying cases; and he could not agree with that honorable member, that the Attorney-General might have been advised by his colleagues and constituents to take action, which he would not otherwise take—or, in other words, that he might have been biassed by them. He recollected that last session, when the present honorable Attorney-General was sitting on the cross benches, the honorable gentleman stated that there was a remedy for those dummy cases, without occasioning any legislation—a statement which some honorable members doubted, and asked why it had not been put in force. The honorable member had since shown the remedy, and he (Mr. Stewart) considered that he deserved the thanks of the country for what he had done in those cases; he had done his duty, and had done what should have been done long before. So far from any political influence having been brought to bear, he did not believe that when the honorable member accepted office he had those actions in view. The honorable member for the Bremer had, he thought, supplied some very strong arguments why the motion should be passed; but on the other hand, after hearing the speech of the honorable Attorney-General, he had entirely changed his views, so far as the Public Prosecutor was concerned, and thought that matters should remain as they were until they had received some further information. The honorable Attorney-General stated, that a Cabinet would constantly require the services of a legal adviser, if there was no Attorney-General in the Cabinet; that might be the case where a Government had no confidence in an Attorney-General who was non-political. He did not know that any honorable member of that House would be disposed to stand by the dictum of one particular barrister, for he knew that barristers differed most materially in their opinions of the same case. He did not see why a Ministry should be bound to take an Attorney-General's opinion in whom they had no confidence, and he must say, that the statement of the honorable Attorney-General had staggered him very much in the opinion he had previously formed. Another argument which had been adduced, was, the extra expense that would be incurred; but it appeared, from the remarks of the honorable member for the Bremer, that the cost would not be very much greater than under the present system. He must say that at first, on the score of economy, he had been inclined to support the resolution, as he had

been led to believe that the sums paid in fees to the Attorney-General had been something enormous; but he thought the outcry had been made much more of than there was any occasion for. Notwithstanding the outcry of a portion of the community, he was fully prepared to believe that there were quite as many people who were able to judge of the case, who were willing to believe that the honorable Attorney-General had done what he had in regard to the dummy cases from purely patriotic motives. He quite agreed with the appointment of a Crown Prosecutor to conduct all criminal cases, and to attend to all prosecutions from the very commencement; and he felt much stronger on that subject from facts which had come within his knowledge in connection with a case in the Brisbane Police Court. In that case, there was a person who was pecuniarily interested in getting up a case against a certain party about some insurance, and he got the police to assist him in doing so. When the case came on, the counsel for the prosecution was asked for whom he appeared, and, on his saying for the Insurance Company, he was told that they did not appear in the matter; he then said that he appeared for the police. That was an instance in support of the appointment of a Public Prosecutor. He did not think the police were the best prosecutors, as they were inclined to run their cases, whether the party was guilty or not, until they succeeded in getting a conviction; they considered that it reflected credit upon them to get a conviction. At any rate, he thought a prosecution should not be left to anybody in the police, either an inspector or sergeant, or, as was sometimes the case, a constable. It had been mentioned by the honorable member for the Bremer that he had no doubt any leading member of the Bar would accept the office of Attorney-General, if there was no salary attached to it, for the honor of the office; but if that was the case, the same remark might be applied to all the members of a Government. In his opinion, however, the Attorney-General was entitled to remuneration for his services; and, until he had heard the debate that evening, he had felt disposed to vote for a good round sum to a non-political Attorney-General, who should have no private practice at all, and who should conduct all cases. It had been argued by the honorable member for Toowoomba, that expense had nothing to do with the matter; but he thought it had, and he did not think he would go so far as to have a Crown Solicitor who should be required to act solely for the Crown. That, however, was a matter which he thought required a little more light thrown upon it by the honorable Attorney-General and the honorable member for the Bremer, so that the lay members of the House might have more data upon which to form an opinion. The honorable member for Port Curtis had confessed that he did not understand all the bearings of the case, and he (Mr. Stewart) certainly thought it was for the lawyers to show how the matter could be carried out, before the non-legal members could vote on the resolution. Another argument which had been raised was, that fees must be paid by the Crown, as, of course, people must be sued, and if no fees were to be paid by the Crown, and a jury gave a verdict for the Crown, with costs, the opponents would have the benefit of the costs of the Crown Prosecutor; on that point he thought the honorable Attorney-General had made a very fair case for opposing the resolution, until some further arguments were advanced, and some better reasons given. He thought, also, that the present honorable Attorney-General was entitled to great credit for his prosecution in the recent dummy cases, because, if those people intended to evade the law, and had done so, it was only right that they should abide by the consequences.

Mr. PETTIGREW said that at first he was inclined to give the resolutions a much more favorable consideration than he now was. He quite agreed with the first resolution, but it had a tendency, as usual, to a little centralization. He thought honorable members had forgotten that there was another court besides the Supreme Court, where the Crown Prosecutors decided whether a bill should be filed or not. Those gentlemen travelled about the country, and could not possibly therefore be under the influence of the officer proposed to be appointed, nor could he have any knowledge of them. He was aware of a case in the North, where one of those Crown prosecutors arrived at a court at which a man was tried for a very serious case of cattle-stealing; the man was dealt with, and the Crown Prosecutor afterwards turned round and abused the magistrates for having committed him for trial. He also knew of another case which came under his own knowledge, in the South—a very serious case—which took place not a hundred miles away from that House, where the Public Prosecutor received £50, and would not file a bill. Those Crown prosecutors hardly ever saw the bills before they were filed, as they were filed by the magistrates; the District Courts in the country sat four times in the year instead of twice, as was the case with the Supreme Court, and a prisoner was committed from court to court, except in cases of murder; so that he thought a Public Prosecutor would not be required, except for Brisbane; and, probably, would only be required there for the purpose of taking a sum of money out of the Treasury. Now, they had doctors and lawyers coming up with something fresh every session; they seemed to always want some fresh laws by which they could benefit themselves; in fact, there was no class so bad—not even the cormorant squatter. The lawyers went to that House in such an insi-

dious way, telling them that no laymen could understand how good such-and-such a law would be, but that good was never found out by any one till he received a lawyer's account, and then he found how very good it had been for him. After all, the honorable Attorney-General had not got so very much out of the country—at any rate, he had not done the best out of it. Mr. Pring got £95 in five years, Mr. Bramston £807, Mr. MACDEVITT £239, and, probably, the present holder of the office, in a shorter time, had taken £592, making in all a total of £1,733 paid in fees to those gentlemen. Now, it had been shown that it would cost £4,000 to start the new department, as clerks would be required; and he thought that the Attorney-General should have a little more to do, namely, that he should direct the Crown Prosecutors, or the benches of magistrates, that they should send down bills to him to file, instead of taking that responsibility upon themselves. He knew, as a fact, that some of the Crown Prosecutors never looked at their briefs till they arrived at the place where the court was to be held—then, again, briefless barristers were frequently deputed to perform the duties of those gentlemen, and they were in the habit of making arrangements with attorneys by which the position of the parties for trial was ascertained—if they had money, then a bill was filed; and if they had not, there was no bill filed. He knew of instances innumerable — and he wished the honorable Attorney-General to pay attention to what he was about to say—where no bill was filed until the very day of the sitting of the court—in the meantime, the attorney said to the prisoner, "You will get three years," and if the man was innocent, of course that would make him very anxious to have every effort used to get him off—a guilty man was not so particular. Well, then, the man's friends would be very anxious, as much money would be got as possible for the lawyer, and after all no bill be filed. He hoped the honorable Attorney-General would take an early opportunity of straightening those outside Crown prosecutors; he also thought that the House might just as well allow the Crown Solicitor to remain as he was for another year. The question of expense was a very serious one, and he thought that if the honorable Attorney-General would only simplify the law, and make every man his own barrister, the House would vote him £5,000, and, if possible, give him a title.

Mr. JOHN SCOTT thought the honorable member who had just spoken had shown by the statements he had made, that the present system was as rotten as it could be. He stated that the Crown prosecutors were corrupt——

Mr. PETTIGREW rose to order; he had referred to one case in the North and one in the South.

Mr. J. SCOTT: Well, he did not know what the honorable member meant, but if a Crown prosecutor waiting to see whether a man had money before he filed a bill against him was not corruption, he did not know what was. The honorable member could not have shown a greater necessity for having a Public Prosecutor who should really and truly hold the position of Grand Juror than by the statements he had made. The honorable member for Brisbane appeared to have misunderstood the duties of a non-political Attorney-General, when he stated that he would be the adviser of the Government, as he (Mr. Scott) had understood the honorable member for Port Curtis to say, that there could still be a legal adviser of the Government in the Cabinet, but that the particular Attorney-General should attend to all the duties at present performed by the Attorney-General, and should be non-political. He would, however, leave that to be more fully explained by the honorable member when introducing, as he hoped he would, a Bill into the House on the subject.

Mr. MACROSSAN did not suppose that anything he could say would throw light on the matter—and he should have given a silent vote had it not been for the statement made by the honorable member for Brisbane—that the outcry for making the position of the Attorney-General non-political had arisen from one portion of the community——

Mr. STEWART: I did not say so.

Mr. MACROSSAN had taken down the words at the time. He did not belong to that portion of the community who found fault with the honorable Attorney-General for the part he had taken in regard to the land prosecutions, but he had always been in favor of the office being non-political, and the honorable member had also said that he was in favor of it until he heard the arguments of the honorable Attorney-General himself against it. The honorable member also said, that if the appointment was non-political, Ministers would require his advice, and that he must have their confidence. Surely that was no reason why the office should not be non-political, because, as he (Mr. Macrossan) apprehended, that advice would be chiefly on matters of dry law. He did not think it would be much inconvenience to Ministers if the office was non-political; at the same time, the Attorney-General might advise them as at present. He thought if this question were left to the lawyers, nothing was likely to be done, and that if that House did not take action in the matter now, it was very likely to be postponed for a long time. He quite agreed with the honorable member for Toowoomba that the honorable member for Port Curtis had not gone far enough, and that he ought to have included the amendment; and he hoped he would see his way to accept it. As for himself, he would vote for the amendment as proposed, and he hoped the honorable member for Port Curtis would continue the course he had indicated, and bring in a Bill to settle the matter finally.

Mr. McIlwraith said he considered that this matter was one of very considerable importance, but there had been an element introduced which was rather embarrassing than otherwise. The honorable member for Port Curtis did not, in his hearing, use any argument that was not applicable to any other Attorney-General besides the present occupant of the office; and he thought the debate ought to be conducted apart from personal reference to the present Attorney-General. He was quite willing, for the purpose of argument, to take the position of Mr. Bramston, the late Attorney-General; and he might point out, that it had not been from the action of the honorable member for Port Curtis or any honorable member on that side of the House that the discussion had taken such a disagreeable turn as it had. They had tried to discuss it thoroughly on its merits, and he thought the concessions made by the honorable member for the Bremer must have satisfied the honorable the Attorney-General that he had gone a little beyond good taste in referring to his private business at all. The honorable member admitted that it had been the custom of every previous Attorney-General to take fees where they conducted prosecutions for the Crown; and in addition to that he said, and no one was a better judge of such matters, that the fees in the cases referred to were moderate; in fact, he (Mr. McIlwraith) thought he said they were not more than would be paid to a junior barrister. The question had been argued on that side of the House quite irrespective of the present occupant of the office; and he thought the argument brought forward by the honorable member for Port Curtis, to show that the political position the Attorney-General held incapacitated him from the proper performance of his duties as Public Prosecutor, had not been attempted to be answered by any member of the House, except in one way, and that was, that it would be very much more expensive to have a Public Prosecutor than to have the present position of affairs. That was the argument, and it had some weight; but they had simply the authority of the honorable the Attorney-General as to the fact, and he had advocated the matter on grounds so thoroughly false to his (Mr. McIlwraith's) mind, that he gave little credence to it. Even if there would be greater expense, he thought they ought to face that expense to get such a grand reform carried out. To illustrate the position of the Attorney-General, he would refer to the case of Mr. Bramston, who held that office in the late Ministry. When a private citizen had claims against the Crown, and originated a suit, the matter, no doubt, came under the consideration of the Cabinet, of which the Attorney-General was a member; and he, doubtless, would have very considerable weight in bringing the Cabinet to a conclusion, whether proceedings should be taken to defend the action. Then, if action were taken, to defend the suit, he would be the party to carry it out, and he was the party who would be benefited, because he would be paid. He believed it was the custom here, and at home, that fees should be paid in those cases, but it was an abominable custom, and they ought to get rid of it, simply because it caused motives to be misconstrued; and it had been so in the case of the present Attorney-General. In fact, the honorable member took what had been said, although it did not refer to his private position, as an attack upon himself, because he had initiated certain proceedings lately in which he had got a large amount of fees; and that showed how people would insist upon looking at the matter. They ought to have their public officers in such a position that their motives could not be questioned, and that they should not derive any direct pecuniary benefit from any judgment in a particular case. He could not see in what respect the Attorney-General differed from any of his colleagues. Some honorable members might not acknowledge the simile, or the resemblance, but he held there was no difference whatever. Take the honorable the Colonial Treasurer, and let them suppose that the whole of the police were going in for new clothing. That would be a matter in which he could give as good a judgment as any man; he would be able to give an opinion as to the quality of the material, and everything connected with it, and then if the whole matter were handed over to him, and he were paid say ten per cent., no doubt the duty would be perfectly well performed, and it would be exactly similar to the duties performed by the Attorney-General at the present time. Then take the honorable the Minister for Works. He was a professional gentleman, and as such, he could use exactly the same arguments as the honorable the Attorney-General had used, to show that he should not be excluded from getting the emoluments connected with his profession. The honorable the Minister for Works had earned many a fee for laying out claims on the gold fields, and supposing they came to a decision in the Cabinet to lay out all claims at Gympie afresh, and that the Minister for Works should take the opportunity, when he was up there, to lay them out; there was no one more competent to do it, and he would do it as cheaply as any one else, but would any one tell him (Mr. McIlwraith) that it would not be looked upon as a swindle? Then, again, take the honorable the Colonial Secretary. If he should determine upon a certain prosecution, and, instead of using the means adopted before, he handed over the case to the solicitors' office in which he was a partner. It could not be in better hands, and the work would be carried out, perhaps, better than before; that was exactly the same case as that of the Attorney-General, but everybody would say it was dishonest. There was not a single member of the Government who

did not stand in the same position, and who could not do his work as well as the Attorney-General in his position. The honorable the Attorney-General said, if they wished that that officer should not do anything except the duties of his office, and that his emoluments were to be confined to the salary of the office, they would not get a man of any standing in the colony to take the position; but he did not believe that. He believed they would get just as good lawyers in this city, if they were exclusively confined to the salary they received, as the Attorney-General. With the exception of lawyers, he did not believe there was a man in the House who did not sacrifice something of his private interests by so doing. And why should lawyers have an additional impulse given them to come into the House? Why should others be handicapped in the race, and the prize be left to lawyers? Why should he not claim, if he took office, that he should be paid a sum equal to what he could make at his profession, the same as if he had been a lawyer? He could see no difference between lawyers and any one else; and if the motion should have the effect of excluding lawyers from the House altogether, they should not look upon that contingency with considerable alarm. He did not know that they benefited very much from the assistance of lawyers; and with regard to Mr. Lilley, he did not consider him at all as a lawyer in that House. He was a politician; and he (Mr. McIlwraith) never objected to a lawyer coming into the House as a politician, but he objected to him coming in as a lawyer, and coolly telling them that he would not take office unless he received the same consideration as if he had Government practice and private practice outside. One remark of the honorable the Attorney-General showed him, as much as anything else, the great necessity for this reform, and that was, the position he took up with regard to the cases in which he had been actually employed. He said he was retained by some of the parties against whom the prosecutions were conducted, and he considered it his duty, however, being Attorney-General, to act on the Government side. They had, therefore, a case in which he was retained on behalf of certain clients, and, unless he adopted the other alternative, of standing out altogether, he transferred his abilities to the other side, by which he was paid at the time. They had another case mentioned by the honorable member for the Bremer—McDonald *v.* Tully—in which a member of the Government took exactly the opposite course.

The ATTORNEY-GENERAL: He did not say he had changed sides; he did not say he had gone from one side to the other. There was no case pending in which he transferred his services from one side to the other.

Mr. McILWRAITH: He understood the honorable gentleman to say, before he became Attorney-General he was adviser to certain clients.

The ATTORNEY-GENERAL: He said he held a retainer for them; that was not advising them.

Mr. McILWRAITH: That would suit his argument just as well; the honorable member held retainers in these cases, and, on becoming Attorney-General, he considered it his duty to act on the other side; and they had a case exactly the opposite, in which a gentleman, who was retained by a private client, on becoming a Minister of the Crown, thought it his duty—not to do as the present Attorney-General had done, but to act the other way—to act for his client against the Crown. While there was this uncertainty, it was bad both for the Government and for private clients. They did not know on which side the Attorney-General was going to act; and it was a most embarrassing position for the Government and the Attorney-General and private clients. There was the case of Mr. Williams, railway contractor. He sued the Government, and had the benefit of the talents of the present Attorney-General in that suit; and now, when the case came on again, would he consider it his duty to go on the other side, or stand out altogether, or to act for Mr. Williams? But there was another and a stronger argument than that:—There was scarcely a duty to be performed by the Attorney-General that he could not find a substitute to do it; and he held that the office should be political entirely and exclusively; and that the occupant ought to have no duties outside the duties for which he was paid by the Government. He would not exclude him from private practice, because he thought it would be doing an injustice to exclude him any more than they should exclude any of his colleagues from following the business in which they were occupied; but he should receive no emoluments from the Crown beyond his salary. He would relieve him from the duties of Crown Prosecutor and Grand Juror; but he should be adviser to the Crown, and he should come into that House as a politician, and take the same chance they had all to take.

Mr. AMHURST thought the question, which was not a political one, was one which most honorable members knew very little about. It referred to the practice of the law, and the difficulties of carrying out legal business in a proper manner. The motion, as he understood it, was to divide the present office of Attorney-General, who held various offices under that name. He was Public Prosecutor; he had to give his opinion in all cases in which the Government were concerned; he advised them generally; and he had also the onerous duty of revising the bye-laws of various societies, the bye-laws of the various municipalities, hospitals, and other institutions; and whenever a grant of land was made or promised to

be made for certain purposes, the bye-laws had to be submitted to that officer. He believed, as the honorable the Attorney-General had said, only one-fifth of the business he had to attend to consisted in performing the duties of Public Prosecutor. He thought there had been a great mistake made as to his position as Public Prosecutor. They had heard what the Lord Chief Justice of England said on the subject, and also something about the Scotch scheme; and although he had not the pleasure of knowing anything about that scheme, he knew something of the practice of the English Bar, and he knew the position of affairs here and in England were entirely dissimilar. There it was maintained that it was an injury to the cause of justice that the people should have the power to prosecute criminally, and it was held that the State should do it. They did not say the Crown Prosecutor should also be one of the grand jury; and surely the House was not, by this motion, going to do away with one of the greatest and most important safeguards of the English law. The Attorney-General here was the highest Public Prosecutor, and he was also grand juror. Perhaps some honorable members did not know what that was. It was the duty of the grand jury of the colony to see, before a man was put in the dock, that there should be sufficient evidence to entitle the prosecution to bring the action against him; that he should not be put before the gaze of the public and put to shame by standing a trial unless there was sufficient cause for it. That was supposed to be one of the greatest charters of the liberty of England—that no man should be considered guilty until he was proved to be so, and it should not be interfered with on any frivolous pretext. He thought, for performing the duty of Public Prosecutor, £250 or £300 a-year would be sufficient, but would they get a man for that, who would be competent to fill the position of grand juror as well? The country, he was certain, would never like it, and he was sure, also, that they would be dissatisfied with the man who took such a position. Then it might be said that the Attorney-General should be grand juror as well, and he should have a man under him who would have to obey the orders of his superior. But they would gain nothing by that, because, practically, the position of affairs would be as it was now. There had been some arguments brought forward with reference to the case which, he thought, ought to be taken in a legal point of view, as to whether or not it was advisable that this change should be made. The honorable member for the Bremer made it his chief stand-point against the present system, that the Attorney-General held a position in which he was liable to be biassed, and he had gone so far as to say that he might be biassed in favor of those from whom he received briefs. Well, supposing a judge was appointed; before he could become a judge he must work his way up; he must be a barrister, and some attorney must give him a start, and the honorable member pointed out that when he became a judge, he would be always biassed in favor of the attorney who engaged him; but if that argument applied to the Attorney-General it applied equally to every judge who was appointed. He had never heard the argument started before, and he thought if there was anything in it, it was dangerous. The honorable member for Maranoa, in referring to the matter, pointed out that the Attorney-General was once retained in a case, and then as Attorney-General, he had to give it up; and the honorable member showed he was utterly ignorant of what "a retainer" meant. It simply meant that the party retained should not appear on the other side, and it was a very usual thing to do, and he therefore thought that argument was perfectly valueless. That honorable member had also said that the Attorney-General was supposed to be different from every other Minister, and that he had more bias than any other Minister in everything he did. Well, in reference to that, he (Mr. Amhurst) would take the prosecutions that had taken place. The honorable the Attorney-General was accused of having initiated them, but he (Mr. Amhurst) did not think he did so. He was only one of the Executive which consisted of five members, and they, he presumed, merely said, "We want to do so and so; we want to reclaim certain lands of the Crown which we believe have been illegally taken away from us," and the Attorney-General would then give his opinion. He could say he had the pleasure of reading the arguments of the honorable the Attorney-General in the cases referred to; they consisted of dry legal questions, and he was sure no lawyer in this colony could have argued them better. He had won his case, and he (Mr. Amhurst) could see no reason why he should be accused of bias simply because, having great ability and knowledge of the law, he was successful. If he had lost it, they would have laughed at him, and now that he had won it, they abused him. He was not the person who initiated the proceedings, and as to being biassed, he would take a similar case with respect to the Minister for Works. He believed there was a proposition to make a railway from Maryborough to Gympie, and another to Mount Perry, and if the Minister for Works determined upon the one to Mount Perry as the best to try the experiment, they might as well say he should not have done so, because he was biassed in giving his decision in favor of one in place of the other. He could not see that the Attorney-General stood in a different position from other people, except that he was a lawyer—a member of the legal profession, which was one of the most arduous in the world. They must know not only the law, but also all the arguments and decisions upon new laws, or

new or modified interpretations of the law, and every new case, and it was not so in any other profession. He knew it had been compared to engineering, but he thought that once a man was a competent engineer, he knew all about his profession. He knew all about bridges and other similar works, and in fact everything was done by "the rule of thumb." He understood the chief thing an engineer had to find out was, how many cubic yards of material would have to be transferred from one place to another, and what profit he could make. But in the case of a lawyer, he had to find out the similarity, in all its branches, of the case before him, to other cases, and if there were the slightest dissimilarity it would alter the whole bearings of the case. He should not trouble the House longer; but as to the grand juror, he considered that the man who represented that important position should be the Attorney-General, and the head of the Bar in this colony. He ought to be in a position where he could be attacked, and on his behavior and conduct, as a member of the Cabinet, the existence or downfall of the Ministry should depend. He said it was absurd to appoint an Attorney-General who should not be responsible. The Attorney-General was one of the Executive; they were bound to him and he to them, and if he did anything in the way of misbehavior or partial conduct, the whole of the Ministry should fall. Therefore, he said, the Attorney-General ought to be kept in the same position that he was at present.

Mr. MILES regretted that he could not congratulate the honorable member for Bowen on the speech he had made on this subject, but he believed the honorable member was "a limb of the law," and perhaps this accounted for it. The whole of the arguments he had brought forward had nothing whatever to do with the question before the House. He (Mr. Miles) had not heard anyone accuse the honorable the Attorney-General of not being quite capable of transacting the business of his office, and he at once disclaimed any possible feeling against that honorable gentleman in connection with these prosecutions, or in reference to the fees charged. He believed, so far as those fees were concerned, the Attorney-General had only followed the practice of his predecessors. It was not on these grounds he should support the motion, but on very different grounds; and he at once repudiated having any connection with those parties to whom the honorable member for Brisbane alluded, as supporting the motion on the ground that these prosecutions had taken place. He thought that honorable member was not justified in making such imputations, because the honorable member for Port Curtis had introduced the motion clearly and distinctly on its merits, without imputing any motives whatever. He also regretted the remarks of the honorable member for Stanley, in accusing the Crown Prosecutor of following a course of corruption. He thought it was unmanly to find an honorable member getting up in his place in that House and accusing officers of the Government, who were not in a position to defend themselves. It was very easy for him to get up and attack persons who were powerless to defend themselves; but he (Mr. Miles) knew as much as the honorable member for Stanley did of these gentlemen, and he knew nothing of any malpractices. And, after all, the cases in the District Court were cases of minor importance; all capital cases were tried before the Supreme Court, and it was the Attorney-General who had got to find a bill. He thought it was quite time the office of Attorney-General should be made non-political, and he sincerely hoped the motion would be carried. He was sure no honorable member would accuse him of extravagance; he watched over the expenditure of public money as carefully as any member in that House, but he could cheerfully vote a sufficient sum to pay a handsome salary to this officer. He felt he would be justified in doing so, because, by adopting that course, they would secure the confidence of the public that justice would be done, and that they would not be prosecuted politically; and if anything would convince him that the office should be non-political, it was the speech of the honorable member for Brisbane. That honorable member dwelt upon it, that it was absolutely necessary they should have a political Attorney-General, so as to keep the Government right, and, in fact, to prosecute their opponents. That was exactly the honorable member's argument. The Attorney-General at present held the position of grand juror; he had to decide whether he should find a bill; he then had to prosecute, and, if it were a capital offence and the man were convicted, then, as a member of the Executive, he would have to assist in deciding whether the law should be carried out or not. He said that was a position no Attorney-General should hold; and, if there were nothing else but that, it would be sufficient to induce him to vote for the motion of the honorable member for Port Curtis. He knew nothing about the charges of the Crown Solicitor, whether they were too high or too low, and he was quite prepared to vote a sufficient salary for that officer to discharge the duties of his office, and give up private practice. He did not care whether it was £2,000, £3,000 or £4,000 a-year; because, he maintained that, so long as they could ensure public confidence that justice would be done, a matter of £2,000 or £3,000 was of very small importance. There was no department in connection with the whole government of the country that should be more carefully guarded than that of the administration of justice; and he hoped, if the motion were carried, the honorable member for Port Curtis would lose no time in bringing in a Bill to give effect to it. He was sure that by doing so he would do great service to

the country, and he trusted that, when a division was taken, there would be a majority in favor of the resolution.

Mr. DICKSON said it appeared to him that the lay members of that House had taken upon themselves to decide this question more emphatically than the legal members, who, he should conceive, were the best judges. The aspect in which he looked at the question was, that there ought to be some advantages to the public corresponding to the heavy expense which, it was admitted, would be necessary for the creation of a new department. The remarks of the honorable member for the Bremer had been most pertinent to the subject, and he pointed out that in England, the system had been carried out by largely-increased machinery; but he did not infer from his speech that he advocated the introduction of the same machinery to this colony. Although his speech was very instructive, he (Mr. Dickson) did not think he recommended particularly that it was desirable to create a new office apart from that of Attorney-General. As a layman, he must speak rather modestly on this question; it was one he had desired more to acquire information upon than to deliver any authoritative opinion. It was a matter that had been exercising the public mind at home; and he believed, although they might not that evening arrive at any definite result, yet, sooner or later, the creation of the office of Public Prosecutor apart from the political office of Attorney-General would be effected; but he questioned whether they had arrived at that period when they should carry out the legal machinery which would be requisite at the expense it would necessarily entail. The expenses in connection with the office of Attorney-General at the present time were about £25,000 per annum, and he believed there would, so far as he could see, be no corresponding benefit in increasing that expenditure, as it must necessarily be increased by the creation of the office of Public Prosecutor, which, he took it, would be the establishment of a subordinate department; and that gave rise to the question as to whether there were to be two distinct heads, the Public Prosecutor and the Attorney-General. Were they to be totally independent? and who was to give instructions to the Public Prosecutor? If he was to be subordinate to the Attorney-General, and was to receive instructions from him, he failed to perceive how absolute exemption from political influence was to be maintained. If he were to take instructions from the Attorney-General, he (Mr. Dickson) imagined that, however much it might be endeavored to guard against political influences, apprehensions might arise of some political bias being introduced in the course of the instructions. If, on the other hand, the offices were totally independent of each other, he did not see how the thing would work harmoniously or successfully. The Government might advise a certain course which the Public Prosecutor might refuse to carry out, and it would be a kind of *imperium in imperio* which would not work satisfactorily or beneficially to the true interests of the colony. It might be perfectly true that the present system was not altogether as perfect as might be desired, but he did not think honorable members, in the course of their remarks, had shown that there had been any great miscarriage of justice, or that the present system had been a failure. Only one case had been cited, but it had not been shown that there had been any injustice. There had been a whisper about the purity of judicial proceedings, and it had been inferentially remarked that some miscarriage of justice might arise; but it had not been shown that there had been anything of the kind up to the present time. He believed if the new office were created, it would be only affording a fresh field for Government patronage; and it would increase the departmental expenditure of the Government, which was increasing every year, to the exclusion of public works, which ought to participate to a corresponding extent with the increased revenue of the colony. In that view of the case he certainly thought it was untimely to try and create a new office of this kind; and he considered that had the honorable member for Toowoomba not introduced the amendment, the best service that could be done would have been to move the previous question. That, if carried, would have the effect of postponing the consideration of the matter to a future time, because he believed the matter was one which would attract public attention, and when the circumstances of the colony showed that such a change would be prudential, it would be carried out. He thought the time was not mature for such a change, and that it would be unwise to increase the expenses of the legal department unnecessarily, and when the benefit to the colony would not be corresponding or commensurate to that increase. He should, upon those grounds, oppose the motion.

Mr. THOMPSON said he did not wish to add much to what he had already said on the main question. He felt, however, that if they were going to deal with the subject at all, they would have to adopt the amendment of the honorable member for Toowoomba in some shape, although he regretted that it was brought in here, because it seemed to point to individuals or officers who were not to blame, and who were admirable officers. He thought the principle must be conceded, that if they were to have a department at all, they must have the means to its establishment. Now, he wished to clear away a few cobwebs that had arisen in connection with the subject, from imperfect knowledge, or from the heat of argument. There had been a great deal made out of the position of grand jury. The position of the Attorney-General as grand juror was to

find a bill, and he (Mr. Thompson) thought that was one of the most objectionable, and the Attorney-General himself said it was the most disagreeable, duties he had to perform. It was one that required a great amount of discretion, and it was often almost a toss-up whether it should be "Yes" or "No." Now, it was the opinion of the best lawyers in England, that, under a proper system, the grand jury might be abolished altogether, and the only reason why it was maintained appeared to be, because country gentlemen liked to take an ostensible part in public business. In fact, it had presented itself several times as a nuisance. So far for the magnificent palladium of the grand jury. It was a mere shadow. In this colony it was something more than a shadow; it cast upon one individual the most invidious task, that individual being particularly liable to be charged with bias. He did not know that a case in connection with a criminal prosecution had ever arisen in this colony, where the Attorney-General had been charged with bias; but it was manifest he stood in that awkward position, and that his duty and his inclination must very often clash.

The ATTORNEY-GENERAL: No.

Mr. THOMPSON: He said it must be necessarily so. It was manifest that one man had no right to have the sole power of saying whether a man must be committed for trial, if that man were in a position where he was liable to be taken to task for bias—not whether he was liable to be biassed, but whether he was liable to be taken to task for it; because the matter would be bruited about in the public papers, and a feeling of insecurity would arise in the public mind. With regard to the Attorney-General of England, his position, so far as he (Mr. Thompson) had been able to ascertain, was this:—In the first place he was never a member of the Cabinet; he had a seat in the House of Commons, as a rule, although he (Mr. Thompson) believed instances had happened where he had not been able to get a seat for a long space of time. Formerly, and up to lately, he was paid entirely by fees; he (Mr. Thompson) was not quite sure, but he believed he was paid entirely by fees.

The ATTORNEY-GENERAL: Hear, hear.

Mr. THOMPSON: From that had arisen the custom of the Attorney-General taking briefs and charging fees in Crown cases. When they imported the office of Attorney-General into this colony, it seemed to have been forgotten that the Attorney-General in England got fees because he had no other emolument; and it was taken for granted that the Attorney-General here had a right to fees. Lately, however, it had been found in England that those fees came to too great an amount, and it became advisable to pay him a fixed salary. The Solicitor-General had also been put on the same footing. Then, in nearly every department of the Government there were standing counsel, and perhaps half-a-dozen barristers might be employed in connection with one department; but they could not expect to have anything of the kind here. The Attorney-General of England was, therefore, totally different from the Attorney-General of this colony. But this was not a question of fees; it was a question of position. Was it right that a man should be in a position where his interest clashed with his duty, or where his inclination clashed with his duty? Was it right that he should be in a position where attempts might be made to bias him politically? Was it right that he should be in a position that, having acted to the best of his judgment and ability, and, as he conceived, in accordance with right and justice, he should be liable to be taken to task for the fees he had received? Were these things right—without giving them application to Mr. Bramston or any one else—were they right? He had always contended, from the first time he had a seat in that House, that the system was radically wrong from the beginning, and he hoped sufficient force of public opinion would be raised to enable a measure such as that which the honorable member for Port Curtis expressed his intention to introduce, to be passed. In England, the course of public opinion had taken a long time to grow up. Vested interests and the conservative power of the Bar, which was a tremendous power there, were so great, that it was only after long years that public opinion had gained sufficient strength to effect any change in these matters; otherwise they would have had this reform long ago. He thought any argument from England, or, in fact, from any analogy, would not apply. They must go to general principles, and this question involved a distinct principle of right and wrong. A man should not be placed in a position when his interests or his inclination could clash with his duty, or where the doing of his duty should be made disagreeable to him in one way or agreeable in another. Something had been said about a misapprehension on the subject of retainers, and he would point out that a retainer was this: "I give you so much money, one guinea, or five guineas, or whatever it may be, on condition that you take my side;" so that a retainer was a totally different thing from a brief, and it made no difference in the argument at all. A man retained, was a man paid to take a side, and once he received a retainer, he (Mr. Thompson) did not think a high-class barrister would feel at all comfortable if he had to go on the other side. He had not much more to add, except a small comment on the remarks of the honorable member for Stanley. He thought the honorable the Attorney-General ought to have paid great attention to that honorable member, and he hoped he had made a note of his remarks. Now he happened to know something in connection with these District Court prosecutors, and although he did not for an instant charge corruption or anything of that sort, the pro-

ceedings were extremely unsatisfactory in many cases. He could instance one case where the Crown Prosecutor appeared to have been actuated in a perfectly wrong manner. He did not intend to give it any particular application, but it came under his notice that there was a great failure of justice on account of the action of the Crown Prosecutor in that case. If the system they wanted to introduce were established, all the Crown Prosecutors would be under a certain head. He did not say that the Attorney-General should go to the Police Court, as some one said; but he thought there should be some officer who should have the control of these prosecutions from the outset, which was not at present the case, prosecutions in their preliminary stage being conducted by the police. In England, it was the justices' or magistrates' clerks who took the office of prosecutors, and in all cases they had been attorneys or barristers, legal men, who were perfectly competent for the conduct of cases at that stage; but the clerks of petty sessions here had no such status, nor were police constables trained as lawyers; and the consequence was, that many cases fell to the ground at the outset, from the want of a proper prosecutor. It might be said that these things were in the department of the head of the police and under the Colonial Secretary, and he maintained it was a very undesirable state of affairs that it should be so. He objected entirely to the Colonial Secretary for the time being having anything to do with judicial matters, or having any controlling power over the benches or the law in any way. Let there be a responsible Minister charged with the whole affair, from beginning to end. Let there be a permanent prosecutor, who should be free from all imputations; who should be free from any party, and who should be well paid, and in in as independent a position as a judge, and who should stand aloof from all the cavil and all the outcry that might be raised against him. It might also be said that they would be liable to all these evils in any other case—that these men who might be appointed would also be liable to bias; but it was a tradition that it was one of the most admirable features of the British constitution that the undersecretaries had always been faithful to the public, and never allowed political considerations to bias them. One of the great safeguards of their system of government was, that they had faithful officials, who would ride over all political storms, and still guide the ship in safety, whoever might be the captain. He thought that was a strong argument in favor of the motion.

The ATTORNEY-GENERAL said he rose for the purpose of correcting a few errors that had been fallen into by the honorable member who had just spoken. He was rather surprised to hear that honorable member point out that the present District Court prosecutors did not give satisfaction, and then propose that the whole of the Government prosecutions should be placed in the same hands.

Mr. THOMPSON: I did not say it; I totally deny it.

The ATTORNEY-GENERAL: Or under the same system.

Mr. THOMPSON: He objected to their being sent abroad without control, to do as they liked.

The ATTORNEY-GENERAL: They were officers of the Department of Justice, and he understood it was not usual for them to take any serious responsibilities upon themselves without consulting the head of their department. But now he understood it was proposed that there was to be a head of the department, who would be responsible to no one; the District Court prosecutors should be responsible to the head of the department, but he was to be responsible to no one. He rose, however, to correct errors, not to continue the argument. The honorable member for Bremer had spoken about the agitation in England respecting the Public Prosecutor, but he had not told the reason of that agitation. In England, the prosecution was carried on at private expense. For instance, in a murder case, it was the parent or the family of the murdered person who carried on the prosecution. There was no means, under the English Constitution, unless the Treasury should interfere, to enable a prosecution to be carried on in the first instance, and it was that which gave rise to the dissatisfaction, and it was that part the Lord Chief Justice proposed to amend. But they had nothing of the sort in this colony. The prosecution was carried on at the expense of the police and not of the individual; and he knew, from his own experience, that when there was any difficult case in the Police Court, it was the custom of the police authorities to apply to the department for professional assistance, which was always given; so that the grievance which existed at home did not exist here. Another mistaken fact was with regard to the duties of a grand jury. The honorable member, with, as it seemed to him, singular inconsistency, objected to the Attorney-General being grand juror, and said that there should be a permanent prosecutor as grand juror.

Mr. THOMPSON: Only as part of the system.

The ATTORNEY-GENERAL: He did not know whether the honorable member meant that one officer should be grand juror and Crown Prosecutor, or whether there were to be two new officers. As he understood the honorable member, the head of the department was to initiate proceedings and carry them on to the conclusion. That was, that man should first accuse a man of being guilty of a crime; he then had to do his utmost to get him committed for trial, and he was then to prosecute, and, if possible, to convict him. That seemed to him to be utterly inconsistent with the duty of a Crown Prosecutor, who

should decide on the case as laid before him. He (the Attorney-General), when asked for an opinion in advance, always said he had only to deal with a man when he was committed for trial; and such a system as that proposed would be very dangerous to the liberty of the subject. The system of grand juries was established because benches were liable to make mistakes, and it was thought desirable that there should be some one to intervene between them and the person charged with the offence. It had been contended that grand juries were unnecessary, but that was because, in some instances, they were no better than benches of magistrates, and that was the reason why they were considered to be a nuisance; but it was not so here. There was another error with regard to the Attorney-General of England not being a member of the Cabinet. True it was there were only thirteen members of the Cabinet, who formed a committee of the Government, which was too large for the convenient transaction of business, and the Attorney-General was a member of the Government. The Attorney-General of Ireland was a member of the Irish Cabinet, and he (the Attorney-General) thought the position of that officer was more analogous to the position of the Attorney-General of this colony than that of the English Attorney-General, who could issue a writ without the intervention of the grand jury; and had all the powers of the grand jury. He did not think it necessary to refer to the question of fees, on which question enough had been said that evening. He merely rose for the purpose of showing that the honorable member's objections were all entirely inapplicable; and that the position he advocated of letting the person who started the prosecution decide whether the man should be indicted, would be fraught with the most serious dangers to the liberty of the subject.

Mr. DOUGLAS said he should have preferred the course suggested by the honorable member for Enoggera of moving the previous question, if he had followed it out, because that would more represent his own state of mind than any proposition he had yet heard. He was not satisfied that they would not have a change of system; it was quite possible they might; but he thought the honorable member opposite might have his doubts, because the other day, when they were discussing a question having reference to the Crown Solicitor, he understood the honorable member to say, that when he had investigated the *pros* and *cons* of that question, a few years ago, he had satisfied himself that the analogy of New South Wales would hardly be followed here—satisfactorily, at any rate—because it would involve largely increased expenditure. He thought, if they adopted the proposal of the honorable member for Port Curtis in this instance, they would probably, also, have to apply it to the Crown Solicitor's office; and the probability was, they would then find themselves landed in the creation of a new department, which would, at any rate, require an outlay of something like £4,000 or £5,000 a-year. As he understood the honorable member, he recommended that the Attorney-General should be placed in almost as absolutely an independent position as the puisne judges. That position would involve a very considerable annual expenditure; and they should, therefore, consider whether the arguments in favor of the change were sufficient to justify the increased expenditure. The honorable member for the Bremer had laid particular stress on the position of the Attorney-General as grand juror, and following that up, he said the position of grand juries in England was one which had become almost effete; that they were only supported in position because country gentlemen were not willing to give up part of their privileges. The honorable member admitted that the functions of a grand jury or a grand juror were almost imaginary, and he (Mr. Douglas) took that to be the case; that all the cases which came before the Attorney-General might be disposed of by a man of less ability, who might be able to say whether there was a case at all to go to a jury, and if he saw there was a distant probability of conviction, then he was bound to act as a grand jury, and a bill would be filed. They saw also that these functions, high as they were supposed to be, were delegated to men whose conduct had been criticised, the Crown prosecutors in District Courts, who acted as grand juries; and he, therefore, did not think any great importance could be attached to the functions of the Attorney-General as grand juror. It seemed to him that the head of the Bar should be, if possible, in that House and in the Cabinet. In one other way only could they secure responsibility for the proper management of the department, and that was in this way:—It was true it might be equally effected by the constitution of the office of a Minister for Justice, but that would increase the expense and would be only a transfer of the name. It seemed to him that if they placed the Crown Prosecutor or the Attorney-General, as they might call him, independent of the House, they would lose a great advantage they had now. At the present time, if the Attorney-General's conduct was to be questioned, they could arraign him before them for any malversation of office. They had had no experience of any cases in which the practical administration of the department, from a legal aspect, had been called in question; he had not heard of any, and the Attorney-General was there to answer for himself and his officers, and that, he thought, was an important advantage. Exception had been taken, whether properly or not, to the action of some Crown Prosecutors, and they had the Attorney-General present to answer for that; and if a serious indictment were brought against them in the

House he would be there, he (Mr. Douglas) presumed, to justify or to admit the correctness of the charges. That was an advantage it seemed to him they would lose if they created a Crown Prosecutor who was to have absolute control of subordinate prosecutors, but whom they would have no power to question, and who would, in fact, be in the position of a judge. It was possible some gain might be obtained by that independence, but it seemed to him very doubtful that they should, in that way, apply an experiment of which they had as yet no experience. He would, therefore, at present, adhere to present usage; and especially so as any change would involve a considerable increase of expenditure.

Mr. MOREHEAD said he wished to quote something for the information of the omniscient Attorney-General on one point. That honorable member said the honorable member for the Bremer was wrong in the statement he made with reference to the position of the English Cabinet. He said the English Cabinet consisted of thirteen members.

The ATTORNEY-GENERAL: He said he thought that was the number.

Mr. MOREHEAD: He would now proceed to educate that honorable and learned member, and he believed his lesson would be of immense importance to him on future occasions. He thought no opportunity should be lost of giving additional enlightenment to that walking encyclopedia. He found the following to be the case:—

"Every Cabinet includes the following ten members of the Administration:—The First Lord of the Treasury, the Lord Chancellor, the Lord President of the Council, the Lord Privy Seal, the Chancellor of the Exchequer, and the five Secretaries of State. A number of other Ministerial functionaries, varying from five to eight, have usually seats in the Cabinet."

The Attorney-General was not included in this number. The honorable gentleman also stated that the Attorney-General of Ireland was a member of the Irish Cabinet; but there was no Irish Cabinet, and he thought he wandered a long way from the subject when he rushed off to Ireland. He saw very serious objections to the existence of the present state of affairs as far as the position of the Attorney-General of this colony was concerned, and he would now say a few words on the proposition of the honorable member for Port Curtis. He certainly did think the power of political prosecution should be taken out of the hands of any Attorney-General. He did not, for one moment, impute that the present Attorney-General, or any one who preceded him in that office, had been actuated by any such motive; but there was a fearful power at present placed in the hands of the Attorney-General, and he thought the time had come when it should be put a stop to, and he hoped the House would be of the same opinion. And he had, further, to say that the time had also come when the country should know what they were actually paying their Attorney-General. The information upon which, to a great extent, the motion had been founded, had been drawn forth by a motion brought forward by himself and a subsequent motion by the honorable member for Toowoomba; and the effect of these motions had been something startling on the outside public. They found they had been greatly mistaken as to the sums of money which the Attorney-General for the time being was drawing from the public Treasury, and he hoped they would all agree that the time had arrived when that state of affairs should come to an end. He thought, if they allowed the present state of affairs to go on, they should have monthly or quarterly returns of the extra fees the Attorney-General was drawing in addition to his salary. He thought they had a right to demand that, and he sincerely hoped the House would carry out the proposition tabled by the honorable member for Port Curtis, which, he thought, would not in any way be treated as a party question, and he should be very sorry if it should. As a question of general state policy, no one could admit that the present state of affairs was a right or a proper course to pursue.

Mr. FRASER admitted that this was a most important question, and he was sure there could be but one wish on the part of honorable members on both sides of the House, and that was to arrive at the best and wisest conclusion they could respecting it. He, for one, should regret very much to be found voting against anything in the shape of sound constitutional reform. He had listened with very considerable attention to the arguments advanced in favor of this resolution; and, he must confess that, notwithstanding all his diligence and attention, his ideas had been rather more confused than enlightened; and this could be accounted for by the advocates of the proposed alteration having enunciated as many different opinions as there had been different speakers. For instance, the honorable member who moved the resolution proposed that the office should be non-political. The next most important speakers on that side, the honorable members for Bremer and Maranoa, proposed that it should still continue to be a political office -that the Attorney-General should hold the position, and do all Government business, the same as any other member of the Cabinet. Another observation, made by the honorable member for Bremer, and by the honorable the Attorney-General also, was to the effect that the contemplated change would also necessitate a change in the existing state of the law. If that were the case, he held the first step to take should be to make the change in the law, and then make the office conform to that change. He thought the question which ought to sway honorable members in coming to a decision on the resolution was, what advantage would the colony derive from the proposed change?

He was not aware, so far as he had been able to learn, that it had been brought as an accusation against the present or any previous holder of the office, that any miscarriage of justice had taken place; and he quite agreed with the sentiment expressed by the honorable member for Enoggera, that it would not be wise or right on their part to make a change of this kind—a change by which, it was admitted on all hands, the country would be put to a considerable amount of additional expense, without benefitting in any respect from the result of that expense. He had no doubt that, in course of time, as the colony increased in population and importance, and the legal business of the colony increased, it would necessitate a change of some kind, and he was sure the introduction of the matter, by the motion, now brought forward by the honorable member for Port Curtis, was a step in the right direction. But he could not see his way clear to support the resolution on the present occasion. He declined to follow in the wake of some of the remarks that had been made that evening, because, as had been usual in discussions lately, a vast amount of material had been imported into the discussion which had nothing to do with the merits of the question. He simply rose to state the reason why he felt called upon to support the present state of affairs. He could not see his way clear, and there had been no information given, and no argument advanced to satisfy him that he should be justified in voting for the motion in its present form.

Mr. PALMER said he regretted that so much extraneous matter should have been imported into their deliberations on this subject, and he thought they had to thank the line of argument taken by the honorable the Attorney-General for a great deal of it. That honorable gentleman had treated the matter as an attack upon himself, which he (Mr. Palmer) never meant, nor did he mean it to be an attack upon any Attorney-General, or upon that office, in any possible way. All the honorable gentleman's arguments had been simply a defence which was not required, seeing that he was not attacked. If the motion he had tabled were carried in its entirety, it would not in any way affect the position of the Attorney-General in the Cabinet or in the Ministry; and why should the honorable the Attorney-General have taken up so much of the time of the House in defining his own duties and defending his own position? Any reference that had been made to him in regard to fees for prosecuting private individuals on behalf of the Crown had been used merely to illustrate his position. He (Mr. Palmer) had before stated in that House his opinion as to his perfect right to receive fees, in accordance with the precedent established by previous Attorneys-General. He did not dispute that for a moment, and he did not see why the honorable member should be so very touchy in defending himself when he was not attacked. The object, as he said before, in alluding to fees at all, was to show how unwise, how improper, and how impolitic, it was that the Attorney-General should be paid fees for conducting Crown business. This was not a new matter with him. On taking office, five years ago, he strongly objected to the Attorney-General of the day receiving any fees. He had stated that more than once, and he had also stated that it was only after mature deliberation, and after obtaining the best advice from the neighboring colonies, that Mr. Bramston took fees. And he also stated, although he retained his objections to the last hour he was in office, that he did not blame the present Attorney-General for following the example of his predecessors; but he said it was a bad practice, and the sooner it was put a stop to the better. He supposed he could say that without attacking the Attorney-General's position at all. He maintained that the Attorney-General was the same as any other officer of the Crown, and was bound to do the best he could for the colony without further fee or reward; and he could not allow that, simply because he was a lawyer, he was to be exempt from the same rule as his colleagues. That honorable gentleman had had the kindness to make a personal allusion to himself (Mr. Palmer), and said he lost nothing by attending that House. But what did he know of his (Mr. Palmer's) affairs, or how could he possibly know what he lost? He knew he could not gain anything, except, possibly, a paltry salary when in office; but he could form no idea of what any honorable member, or any of his colleagues lost. If this motion were carried, the appointment of a public prosecutor would in no way interfere with there being a legal member in the Cabinet, whatever they might please to call him. He believed, according to their traditions, it was of little importance that they should have a legal adviser in the Cabinet. He could only say, from his own experience, that he could always have done very well without one, for all the information he had ever got from the Attorney-General; and he believed if the honorable the Colonial Secretary were to speak out he would say the same, and he was sure if he (the Colonial Secretary) took the opinion of the Attorney-General he followed his own. He (Mr. Palmer) looked upon the position of the Attorney-General in the Cabinet as very trifling. He had never met an Attorney-General yet who was much good for general business; and a legal opinion was seldom wanted in the Cabinet, and when it was wanted on other matters he declared he would rather give a fee to a barrister, and pay him on the spot, and he would depend more upon it. He had got an idea that the legal mind was so constituted that it could not give an opinion unless it actually saw the fee before it. No prospect of getting salary at the end of the month could

compensate for the absence of that fee, and he cared very little for an opinion unless it was paid for on the spot. They were not attacking the Attorney-General; he might remain in office as long as the honorable the Colonial Secretary might choose to keep him there. Of course the honorable member was, no doubt, quite aware that if the honorable the Premier chose he could make the office non-political to-morrow. His position was, therefore, not very safe if he did not behave himself. If he (Mr. Palmer) could only convert the honorable the Colonial Secretary to be of his opinion, to put the Attorney-General out of the Cabinet and make him a non-political officer, he had the power to do it, at a moment's notice. But he would much rather convince the House to that view, than convince the honorable the Colonial Secretary, because, so long as it was at the option of the Minister at the head of any Ministry to have the office of Attorney-General political or non-political, there would be constant changes and variations. That had occurred in New South Wales, where one Ministry put the Attorney-General out of the Cabinet, and another wished to take him in and did so. And, in fact, it had been done here; this method of making the office of Attorney-General non-political was not a new theory with him. The last Attorney-General, appointed by the late Ministry, was made a non-political appointment.

The COLONIAL SECRETARY: Sold his seat.

MR. PALMER: The honorable the Colonial Secretary talked about selling, and he thought that honorable gentleman had better say nothing about it. It was a touchy matter, and he would recommend him to avoid it. He had endeavored to show that the carrying of this motion would not affect the legal position of the Attorney-General in the Cabinet, so long as the Premier might please to keep him there, and he thought it was only diverting the argument from the real question at issue to have alluded to it at all. That question was this: Was it better for the interests of the colony at large that there should be a Crown Prosecutor—he drew a distinction between the Attorney-General and the Crown Prosecutor, whose duties would be quite apart from those of the Attorney-General as a Minister of the Crown—was it better for the interests of the colony that they should have a Crown Prosecutor holding no political office; who would not be biassed by the politics of the day; who should be paid a fair salary, and be required to devote his whole attention to the business of his office, and superintend the entire judicial arrangements of the colony; and who should not take fees or have private practice, but be simply a paid officer of the Crown—he did not care how highly he was paid, so long as his position was made sure and certain, and they could get the best man—or that they should have the judicial department of the colony varying from year to year, and, perhaps, from month to month? Should they have a man permanently appointed, who would be likely to be up to the whole of the ropes of the department, or have the occupant of the office changing with every Ministry, or during the duration of that Ministry, as they had had? He thought there could be no doubt whatever, that in the interests of the colony, and the interests of justice, the change he proposed should be made. The chief objection raised by honorable members opposite was the expense, and he admitted there would be additional expense; but, at the same time, did they not think, that with a properly qualified legal gentleman at the head of the department a great deal of the expense the country had now to pay might be saved? They had had to pay the expenses of hundreds of witnesses, some of whom were brought down from the extreme end of the colony to attend courts where the cases never came on; and might not they save a great deal of these expenses, if the gentleman at the head of the department devoted his whole time in inquiring minutely into cases, and seeing if there was any chance of a conviction, which was not done now? It was no use saying the Attorney-General did look into the cases, because it was well known that in the North there had been instances in which witnesses had come a thousand miles, and the cases never came into court; that was within the knowledge of members of that House. Another objection raised by the honorable the Attorney-General was that no man of any standing in the profession would accept the appointment without private practice, and they were told further that fees must be paid before they could be recovered, but he did not look upon that argument as carrying any weight at all. The Crown Prosecutor should not be paid any fees, whether he won or lost a case, and in no way could it be supported that he should get fees except in the way suggested by the honorable the Attorney-General—to say a man was guilty of one thing and punish him for another. That was the only way in which the argument that the Public Prosecutor should recover fees, could be supported:—"If you cannot convict a man of one thing, go at him in another way, and get it out of him in costs." The Public Prosecutor should be paid an ample salary, and the subject should not be called to pay that officer anything. There was another portion of the honorable the Attorney-General's speech, in which he informed them, as a very clinching argument, that the duty of Crown Prosecutor only involved one-fifth of the whole of his duties. Now, he thought the time the Attorney-General devoted to the whole of the duties of his office was very insignificant indeed, in proportion to the time he devoted to other purposes—to private practice. He had watched the career of a number of Attorneys-General, and he

had never noticed that they devoted themselves very much to the service of their country. He did not think they burned much midnight oil in the interest of the country, judging from what he had seen of the amount of private practice they got. But supposing the present duties of Crown Prosecutor did not take up more than one-fifth of the time, there was an answer. In the first place he should devote more time than he did to the duties of the office; and, in the next place, it would, of course, be the duty of the member bringing in a Bill on the question to define what the duties of Crown Prosecutor should be; and, in doing so, they could take a great many things away from the province of the Attorney-General, and then if he had not enough work left they could tack on some other duty. For instance, if the Education Bill should pass, no one would be more suitable to fill the office of Minister for Education than the Attorney-General, and he was sure he would then have no reason to complain of not having plenty of work to do. With reference to the amendment of the honorable member for Toowoomba he had no objection to it substantially, but he thought it would rather embarrass the motion by pressing it at the present time. If the motion were carried, and they made the office of Public Prosecutor non-political, they must, as the honorable member for the Bremer said, give him a department, and it would be essential that the Crown Solicitor should be placed in the same position—that he should be debarred from private practice. If the honorable member wished to press the amendment, rather than lose the motion, he (Mr. Palmer) was prepared to accept it; but he believed it would be much better to withdraw it, on the understanding that if the motion were passed and a Bill were introduced it would include the office of Crown Solicitor, and provide that he should be obliged to devote his whole attention not only to the criminal business of the colony but to the civil business as well. He sincerely hoped the motion would pass, and he was certain that if it did not pass now it would before very long. He was perfectly satisfied that public attention having been directed to the present state of things, pressure would be brought to bear on members of that House, and that something of the sort he had proposed would, if not soon, before very long be carried into effect.

Mr. GROOM said, rather than embarrass the resolution in any way, he would, with the permission of the House, withdraw the amendment, on the understanding just given by the honorable member for Port Curtis.

Amendment withdrawn accordingly.

Mr. DICKSON said, as the honorable member for Toowoomba had withdrawn the amendment, he wished to test the feeling of the House by moving the previous question. He did it in order to allow honorable members an opportunity of not voting altogether against the measure, which they might consider desirable in the future, but which was not suitable to the present circumstances of the colony. He therefore moved the previous question.

Previous question put—That this question be now put—

The House divided.

AYES, 15.

Messrs. Palmer, McIlwraith, Thompson, Ivory, Buzacott, C. J. Graham, Morehead, Miles, W. Scott, Macrossan, Groom, Lord, Black, W. Graham, J. Scott.

NOES, 19.

Messrs. Griffith, King, Macalister, Dickson, Foote, Hemmant, Fryar, Douglas, Fraser, Beattie, Low, Edmondstone, Stewart, Kingsford, Morgan, Hodgkinson, Pettigrew, Pechey, Amhurst.