Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 9 AUGUST 1876

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LEGISLATIVE COUNCIL.

Wednesday, 9 *August*, 1876.

Absence of the President.—Real Property Act Amendment.—Adjournment.

ABSENCE OF THE PRESIDENT.

Honorable members having repaired to their places, at the usual hour of meeting, the Clerk read a letter setting forth that the President was unable to attend the House owing to an attack of illness; whereupon, the Chairman of Committees, the Hon. D. F. ROBERTS, took the chair, pursuant to the Standing Order of the 25th May, 1864.

REAL PROPERTY ACT AMENDMENT.

The POSTMASTER-GENERAL said: Honorable gentlemen—The Real Property Act of 1861 of this colony was, as you are aware, founded upon the South Australian Act which was framed by Mr. Torrens, a gentleman to whom all the Australian colonies owe a lasting debt of gratitude for the improvement of their laws regarding real property, and it was intended, as its title states, "to simplify the laws relating to the transfer and encumbrance of freehold and other interests in land." At the time of its passing, doubts were felt whether the objects aimed at would be attained; but experience of the operation of the Act during fifteen years has proved that in all essential points the anticipations of its promoters have been realised. It was impossible, however, in the nature of things, that an Act which created practically a revolution in a branch of the law that had been the growth of centuries, and which was framed by a non-professional man, should be perfect in all its details; and it is therefore not surprising that from time to time certain minor defects have made themselves apparent, and that an opinion has been gradually gaining ground that an amendment of the statute should be introduced. But notwithstanding its admitted imperfections, honorable gentlemen will be gratified to learn that in no single instance has the administration of the Act been so faulty that any claim has been made upon the assurance fund, and that in only three instances has it become known that persons legally entitled to property have been, by the operation of the Act, deprived of their just rights. One of these instances was the notorious case of Mr. Merry, of Toowoomba, with which honorable gentlemen are familiar, and which originated in a mistake made by a surveyor licensed under the Act. The other two instances have not been brought under the notice of the public: they were cases in which persons representing themselves to be the heirs-at-law of deceased registered proprietors, by means of false declarations, were enabled to secure possession of property to which they were not legally entitled. The Bill before the House has been framed so as to prevent, as far as possible, the recurrence of such cases as those to which I have just referred, as well as to remedy all the defects that have been brought under the notice of, or become known to, the Government. As the subject is one of very considerable importance, honorable gentlemen will feel themselves entitled to a somewhat detailed explanation of the defects that exist in the law, and of the manner in which those defects are proposed to be dealt with. I think that can best be done by referring *seriatim* to the provisions of the Bill; and I now ask honorable members to bear with me while I proceed to

examine the measure in detail. The first three clauses being introductory need no special comment. The fourth clause should be read in connection with clauses 24 and 25. It will be observed that the fourth clause proposes the repeal of section 85 of the Principal Act—the Real Property Act of 1861. That section is the one under which the two persons to whom I have just referred were enabled to acquire fraudulent possession of the properties of deceased registered proprietors. It provides, as honorable members will see, that where any person claims that the estate or interest of any deceased registered proprietor in land has become transmitted to him in consequence of the death of such proprietor, he is enabled to authenticate his claim by a declaration in in writing, which must also set out whether within the declarant's knowledge the land is liable for any outstanding interest or encumbrance. Nothing further is required of the claimant, unless the Registrar-General considers the claim defective, when he may ask for further evidence. It must be obvious to honorable gentlemen that, as the Registrar-General would not know of any suspicious circumstances connected with the claim of any applicant under that section, if the declaration were in the ordinary form, the claim would be considered sufficiently authenticated, and the applicant would be enabled immediately to have transmission recorded in his favor, and thereafter to exercise the rights of a registered proprietor in dealing with the land. The stipulations of the section are very bald, indeed; and it must be apparent that any man making out a plausible case by a declaration, which would not create any suspicion of the claimant in the mind of the Registrar-General or the Master of Titles, might become the registered proprietor of a valuable estate. The applicant might be a person who, from his knowledge of the way in which the deceased registered proprietor dealt with his land, or from acquaintance with his family, or from getting improper possession of his title deeds, would be enabled to trump up a case which would be apparently straightforward; and, as no publicity is given to the application, the chance of detecting the fraud is very small, indeed; while, at the same time, the actual heirs may not have had notice of the death of the late registered proprietor. Now, clause 24 of this Bill, read in connection with clause 25, requires the proof of transmission to be authenticated in a much more complete manner than the statute does. It will be observed that—

> "The heir-at-law devisee tenant by the curtesy or dower or other person claiming to be entitled to any estate or interest in land of the deceased proprietor is to be entitled to any security of a deceased person upon any land"

must apply in writing to be registered as proprietor of the estate, interest, or security, and must, further, deposit the certificate of death, the will or probate of the will of the deceased proprietor, or any settlement under which he claims; or, in the case of intestacy, he must give every possible evidence of heirship and substantiate his claim by declaration;—that he must surrender up existing grants or other instruments of title of the land or security; and, further, that his application must be advertised in the same way as an original application to bring land under the provisions of the Act. Every possible publicity is thereby given to the application of the claimant, and in the case of a fraudulent claim being presented, the parties interested will be enabled by the lodgment of a caveat to prevent any fraud being perpetrated. Clauses 5 and 6 are intended to supply an omission in section forty-one of the principal Act. It will be seen, on reference to that section, that the contributions to the assurance fund, in respect of lands being brought under the Act, vary in amount according to the value of the land. If the Registrar-General is not satisfied as to the correctness of the value declared to, he may require the applicant to produce a certificate of value under the hand of a sworn appraiser. No provision is made as to how such appraiser is to be appointed and sworn. It would be quite possible for the appraiser to be the nominee of the person interested in the land. As the Registrar-General is the officer to be satisfied, and as he can have no personal interest in the application, it is manifest that the appraiser should be a person in his confidence. Clauses 5 and 6 of the Bill accordingly provide that the Registrar-General shall appoint the appraisers, subject to the approval of the Governor in Council, and prescribe the form of oath to be taken by them before entering upon their duties. Clause 7 is intended to remedy a serious defect in section 29 of the Principal Act. By that section, any applicant to bring land under the Act may withdraw his application at any time prior to the issuing of the certificate of title, upon lodging with the Registrar-General a request in writing to that effect, and upon doing so is entitled to the return of the abstract and all instruments of title deposited by him for the purpose of supporting his application. Such a provision is perfectly fair in the case of an applicant who proposes to bring land under the statute in his own name; but it would be obviously most unjust, where the proposal is to bring the land under the statute in favor of a second person, who is a purchaser for value, that the applicant should be enabled, on his own motion, to withdraw the application. As the law now stands, however, he could do so—he has an absolute right to do so—and thus he might defeat the claim of such a purchaser. For example, it would be quite possible for a vendor to sign an application in favor of a purchaser, to let the matter proceed for some time, and, before the issue of the certificate of title, to give notice to the Registrar-General

of his intention to withdraw, then get possession of the title deeds, and, immediately afterwards, while the purchaser is under the belief that his title is being pushed forward in due course, to convey the land under the old system to another *bona fide* purchaser, who might register his conveyance in due course, not knowing of the previous sale, and who would be secured in the possession of the property. Clause 7 aims at avoiding all possibility of such a fraud being perpetrated, by providing that no applicant shall—

"withdraw or materially alter his application without the consent of every person who would in the event of such application being granted be entitled to a certificate of title on such application and that such consent shall be evidenced by an endorsement"

upon the request to withdraw, which is required to be lodged under section 29 of the Principal Act to which I have already referred. Clause 8 of the Bill is intended to clear up what may be called an ambiguity in the Principal Act. By section 44 of that Act, it will be observed that the registered proprietor of land shall hold the same absolutely "free from all encumbrances, liens, estates, or interests whatsoever," except those which are "notified by entry or memorial" on the register book. Whether intentional or not, no provision is made in any part of the Act for the registration of a lease for any term less than three years. The result, therefore, is, that when a person applies to bring under the Act land which is subject to a lease for any term less than three years, he procures a clean certificate of title without any notice of such lease being in existence; and there is nothing in the Act which will prevent him from conveying his land to a third person not having notice of such lease, and thus defeating the claims of the lessee. Clause 8 provides that the lessee shall not be interfered with;—it runs, that the "rights and liabilities of the proprietor, lessee, or tenant," in such cases shall not be affected by the land being brought under the Act. In connection with this, I shall now refer to clause 12, which provides for the registration of leases for a less period than three years, the leases being executed in the form prescribed by the Act. As I have already mentioned, there is no provision in the Principal Act for the registration of such leases; the only stipulation with regard to leases being contained in section 52, which provides that all leases for any term exceeding three years shall be executed in the form prescribed, and must be registered. There is no reason why leases for any lesser term should not be recognised. In point of fact, it is very possible that such leases may be of considerable importance both to lessors and to lessees; as honorable members will see that the length of time for which a lease is made is no indication of its importance. A property might be let for a considerable sum per annum, though let for only a short time. Therefore, the clause providing for short leases is embodied in the Bill. Clause 9 is of considerable importance, and will, no doubt, receive very serious attention, as it deals with the subject of priority of registration. Section 43 of the Principal Act provides that no instrument shall be effectual to pass any estate or interest in land, or render such land liable as security for payment of money until such instrument shall have been registered. It further provides that if two or more instruments executed by the same proprietor, purporting to deal with the same estate or interest shall be presented "at the same time" for registration, that instrument shall be registered which is accompanied by the grant or certificate of title affecting the land proposed to be dealt with. Section 56 provides that bills of mortgage and bills of encumbrance shall be registered in the order of time in which they are produced for registration, and shall be entitled to priority, one over the other, according to the date of such registration and not according to the date of each instrument itself. These are the only provisions in the Principal Statute affecting the question of priority of registration. They are perfectly good so far as they go. But, as they do not deal with every possible case, further provisions are necessary. These, honorable gentlemen, are contained in the clause of the Bill to which I have already directed your attention. In effect, the clause is this: not only bills of mortgage and bills of encumbrance, but also all instruments, in all cases, except one, to which I shall presently refer, shall be entitled to priority of registration one over the other, according to the dates of their production for registration, and not according to the dates of the instruments themselves; and, for the purpose of determining such priority, the Registrar-General is required to endorse upon every instrument registered by him the day and the hour of the production of such instrument for registration. The exception to this general rule is the case where an instrument is produced for registration but cannot be registered in consequence of the non-production of the instrument of title relating to the estate or security proposed to be dealt with; and where, subsequently, another instrument, executed by the same proprietor, and purporting to deal with the same estate or security, is produced for registration, and is properly accompanied by the deed of grant or other instrument of title; and in this case it is provided that this latter instrument so accompanied shall have priority of registration. The reason for this is obvious. Purchasers, or other persons interested in dealings with land under the Statute, are aware that the production of the instrument of title is necessary to procure registration of any transaction affecting land; they will, therefore, stipulate in any transaction with the registered proprietor for the production of his instrument

of title; and, having once secured that, and knowing that registration cannot properly be effected in its absence, they will suit their own convenience as to the production to the Registrar-General of the instruments under which they claim registration. A *bona fide* purchaser will certainly not part with his money, nor enter into negotiations for acquiring an interest in land, unless the certificate of title is produced to him, or its absence be satisfactorily accounted for. A non-professional person cannot be aware of the need for immediate registration; he will avail himself of delay, perhaps from not having funds for the stamp duty or the registration fees; or some other contingency may arise which will prevent the immediate registry of his instrument. If it were possible for another person to step in before the one holding the title, fraud might be committed. This clause of the Bill is intended to prevent such fraud. It provides that the person who has armed himself with all the material necessary to procure registration shall be the first person entitled to registration. If it were allowable that priority could be secured by the mere production of an instrument purporting to deal with the land unaccompanied by the instrument of title relating to that land, there would be nothing to prevent a fraudulent vendor, or mortgagor, or encumbrancer, immediately after he has dealt with his property for valuable consideration, again dealing with it in favor of a second person, who might be in fraudulent treaty with himself, and who by promptly lodging his conveyance or security, as the case might be, with the Registrar-General, might secure registration to the exclusion of the *bonâ fide* purchaser, or mortgagee, or encumbrancee. Clause 10 provides that instruments when registered shall take effect from the date of their production for registration, which date shall be expressed in the certificate of title or other instrument issued by the Registrar-General. This is an important improvement on the existing Statute. As matters now stand, some considerable delay, extending from three weeks to three months, may elapse between the production of the instrument for registration and the registration being effected. In the meantime the vendor, or, rather, the alienor, ceases practically to have any personal interest in the land affected, and any injury sustained would be by the alienee. But, as the title of the alienee does not accrue until actual registration, he would have no means of enforcing in his own name any claims that may have accrued between the date of lodging his instrument for registration and the registration itself. The effect of clause 10 will be to confer upon him, from the date of the presentation of his instrument for registration, every right that may accrue out of the land or security in which he has an interest. Clause 11 deals with a matter more of detail than of principle. Under section 35 of the Principal Act, it is necessary that every instrument presented for registration shall be in duplicate, and that the Registrar-General shall file one of the originals in his office and deliver the other to the person entitled thereto. There is no necessity in the cases of transfers of estates in fee simple for duplicate originals, as the certificate of title which is issued to a purchaser is all the evidence he can require of his title. The second original is simply waste paper, and imposes upon a purchaser unnecessary expense and trouble. It is, therefore, proposed to do away with it, and to confine transfers of this character to one document. As regards leases, the case is different. According to the present system, one of the duplicate originals is handed to the lessee; the other is retained in the office of the Registrar-General; the lessor having no original document in his possession showing the nature of the transaction between himself and his tenant. It is desirable that the lessor shall be placed in the same position as he is generally placed in under the old system of conveyancing; and the clause proposes, therefore, that leases shall be in triplicate—one of which shall be kept in the Registrar-General's office, another handed to the lessor, and another to the lessee. Clause 13 introduces an important modification with regard to bills of mortgage and bills of encumbrance, by providing that where the words "the money intended to be secured belongs to the mortgagees or encumbrancees (as the case may be) upon joint account," are inserted in a bill of mortgage or encumbrance in favor of more than one mortgagee or encumbrancee, there shall be transmitted to the survivors and survivor of the mortgagee or encumbrancee the joint rights at law and in equity of the original mortgagees or encumbrancees. The effect of this will be, that where money is advanced on joint account, as in partnership transactions, and one of the partners dies before the mortgage or encumbrance is discharged, it will be unnecessary to go through the cumbersome method at present in force of having transmission of the deceased partner's interest in the mortgage or encumbrance recorded in favor of his personal representatives, who are compelled to have transmission entered up in the ordinary way, and after that transmission has been entered up, are required to join with the surviving partner in either releasing, or exercising the power of sale over, or otherwise dealing with, the land included in the security. But, in order that no injustice may be done by a person representing himself to be the survivor of a person who is not actually deceased, a proviso is inserted in the clause that transmission shall not take effect in favor of such survivor until it has been registered in the ordinary way, by notice and otherwise, as required in regard to the registration of transmission of other interests. Of course, original mortgagees will themselves provide for such a contingency, by inserting the words given in the clause as I have mentioned.

Clause 14 is also of importance, and is intended to avoid unnecessary delays and difficulties which arise in transactions with benefit, building, or friendly societies. It proposes that it shall be the duty of some officer of every such society, legally constituted under Acts for the time being in force, to forward to the Registrar-General from time to time the names of the officers in whom the property of the society may by law be or become vested, and also notice of the death, resignation, or removal of such persons; and information of the appointment of new trustees; as well as copies of the rules of the society. The clause further provides that when any land under the Act is mortgaged or encumbered to such society, the mortgage or encumbrance must be made not in favor of the individual officers by their proper names, but in favor of the officers denoted by their official style; and that when any instrument affecting the land included in such mortgage or encumbrance is executed and presented for registration, purporting to have been executed by the persons in whom the property of the society, and the right to deal with such land appears to the Registrar-General to have been vested at the time of the execution of the instrument, he shall register the same; and no person claiming under such instrument shall be affected by reason of the property having been vested in contravention of the rules of such society as to individual trustees. The effect of the clause is practically this:—That the officers for the time being of any friendly or building society who are entitled by law to hold the property of the society shall be the persons to take and discharge any mortgage or encumbrance. Such officers are a fluctuating body; the same individuals do not continually hold the same position in the society; and, as the law now stands, the result of a change of officers is, either that those vacating office must convey their interest to the incoming trustees, or the matter must stand over until the time arrives for operating in connection with the security. When that time arrives, possibly a considerable period has elapsed, and none of the original trustees or others in whose favor a security has been executed can be found—they are perhaps dead, or have left the colony. In the case of death, it is necessary to have transmission recorded in favor of the personal representatives of the deceased, those personal representatives being united with the surviving trustees to fulfil the trust, after they have ceased to have any interest in it whatever. Where trustees are not dead, but have gone elsewhere, they have to be sought out, and if they cannot be found, there is practically no means, except by recourse to the Supreme Court, to get either a conveyance under power of sale, or the release of the mortgage registered. The Bill will simplify very much the proceedings in such cases, and the clause contains provisions against improper use being made of it. We now come to clauses 15 to 20, which are not second in importance to any others in the Bill. These provide for land being transferable subject to a charge or security in favor of the transferror or subject to any easement. I may point out to honorable gentlemen of practical experience, that in very many transactions affecting the sale of land under the Real Property Act, a large amount of the purchase money is not paid at the time of sale, but is intended to be secured by mortgage over the property proposed to be conveyed. There is no means, however, of executing the conveyance and the mortgage contemporaneously. The conveyance must first be registered and the certificate of title issued in favor of the purchaser, and, after that, the mortgage can be dated, and then lodged for registration. As a rule, not less than six weeks elapse between the lodgment of the conveyance and the issue of the certificate of title. In the meantime, as expressed by the words of section 97 of the Principal Act:—

"No vendor of any land under the provisions of this Act shall have any equitable lien thereon by reason of the non-payment of the purchase-money or any part of the purchase-money for the same."

He is left practically without security, and entirely at the mercy of the purchaser. It is true, he may have armed himself, as is generally the case, by a mortgage executed in due form by the purchaser purporting to secure the balance of the purchase-money, but that mortgage cannot, as I have suggested, be dated until after the issue of the certificate of title in the mortgagor's favor, and if, in the meantime, the mortgagor should die, the vendor would be compelled to protect himself, in the first instance, by lodging a caveat to prevent any dealing with the land, and, in the second instance, by the expensive course of resorting to the Supreme Court to compel the deceased's devisees or heirs-at-law to execute a mortgage in his favor. The vendor also runs the risk of the mortgagor, as soon as the certificate of title issues in his favor, withdrawing it from the Registry Office and conveying or mortgaging the land, for valuable consideration, to a third party, who has had no notice of the original agreement between the vendor and the purchaser first alluded to. The remedy proposed in connection with this matter is very simple. A form is prescribed in the schedules of the Bill, by means of which a vendor can in one instrument convey land to a purchaser and secure to himself payment, with interest or otherwise, of any unpaid balance of purchase money, as effectually as if a bill of mortgage or a bill of encumbrance in the ordinary form were executed and duly registered; a certificate of title on the registration of such an instrument being issued in favor of the purchaser, subject to the charge or other security created by the

original document. Clause 18 thus specially provides, that

"Every memorandum of transfer and charge creating a charge or security registered and delivered to the transferror shall have the same effect express and implied as a registered bill of mortgage or bill of encumbrance executed by the transferree in favor of the transferror creating the same charge or security as that created by the memorandum and registered on the day of the date of the registration of the transfer and immediately after such registration would have had."

Clause 21 is intended to clear up some ambiguity which has been found to exist in section 113 of the Principal Act. That section is as follows:—

"The benefits and liabilities in respect to any covenants or powers under the provisions of this Act shall in case of a married woman extend to and be implied against such married woman and her husband conjointly during coverture;—"

I have no doubt that the intention of the framers of the Act was, that the husband of any married woman registered as a proprietor under the Act should be responsible for any covenants that his wife might enter into. The question was raised in a case that was brought under the notice of one of our District Courts, where the husband of a married woman who had executed a mortgage with his consent was sued under the wife's covenant for repayment of purchase money; and the Judge decided that, notwithstanding the words of the 113th section, the husband was not liable The case does not appear to have been fully argued on that occasion; but as doubts seem to exist, clause 21 of the Bill proposes to remove all such doubts by providing that whenever any bill of mortgage or bill of encumbrance, or any memorandum of transfer and charge, is executed by a married woman with the written consent of her hushand, the husband shall be bound by the covenants expressed or implied in the instrument to the same extent and in the same manner as if he had been a party to, and they had together executed, the instrument.

The Hon. G. HARRIS: Take them all together.

The POSTMASTER-GENERAL: Clause 22 deals with a subject upon which I think there is likely to be some variance of opinion; that is, with regard to the creation of equitable mortgages:—

"And be it enacted and declared that any equitable mortgage or lien upon land or any estate or interest in or security upon land or any instrument affecting land may be created by deposit of the instrument of title and such deposit shall subject to the provisions hereinafter contained have the same effect on the estate interest or security sought to be charged as a deposit of title deeds would have had before the passing of this Act."

There is some doubt at present whether equitable mortgages of land under the Real Property Act can be created; but the better opinion seems to be that they can, and the Bill declares such to be the case and provides that an equitable mortgagee can protect himself and give notice to other parties of his claim by lodging a caveat setting forth the amount of his charge or lien. I am not quite sure, myself, whether it is desirable that such a thing as an equitable mortgage in connection with the statute, where registration is the essence of every transaction under it, should be recognised; but the provisions have been included in the Bill, to give notice how the law at present stands, and to elicit from the legislature a decided expression of opinion on the point. Under the Statute, no instrument is effectual until it is registered, and it is inconsistent with that provision to provide that the deposit of a deed without registration shall create an equitable mortgage. Clause 23 is intended to meet cases in which members of the commercial community feel themselves largely interested, and in respect of which they have for some time past been agitating for an amendment of the existing law. Section 70 of the Principal Act provides that in every lease there shall be implied a covenant against the lessee to pay rent, rates, and taxes, and also a covenant that he shall "keep and yield up the demised property in good and tenantable repair." The effect of these covenants, when not expressly modified by the lease itself, is, that when the demised premises are destroyed by fire or otherwise, without the default of the lessee, the lessee is still bound to keep on paying the rent until the end of the term, and is responsible to the lessor for the state of the buildings. The proposed alteration of the law by the Bill will have the effect of compelling the lessor to be the insurer of the buildings to be demised, and of relieving the lessee from responsibility to pay rent after the destruction of buildings by fire or otherwise without his own default. This is an alteration in the law entirely in favor of lessees. There is nothing, however, to prevent a lessor not satisfied with the alteration from making such stipulations at the time of the execution of the lease as shall place him in the position he would be in were the law not altered; but the change will compel him to look after his own interest when the lease is being prepared. Clauses 24 and 25 I have already discussed. Clause 26 supplies an omission in section 86 of the Principal Act, which contains provision for the registration of the appointments of official trustees in insolvency, whereupon they are enabled to exercise all the privileges of registered proprietors in respect of land owned by an insolvent at the time of his insolvency. Cases frequently occur where an insolvency is annulled. No provision, however, is made in the Principal Act for the registration of the order annulling the adjudication of insolvency; and, consequently,

when such an order has been made, the person who has been relieved from his insolvency is compelled to get a conveyance from his late official trustee, in order to have his property re-vested in himself. This entails quite an unfair expense and delay upon him, and the Bill provides accordingly for the registration of the order annulling an adjudication of insolvency in precisely the same way as the adjudication order is itself registered; the effect being, that when an annulling order is registered, the property is re-vested in the person who had been previously adjudged insolvent. I now come to what will, perhaps, be considered by most persons the most important clauses in the Bill: these are the 27th and the 28th, which provide for the registration of sales by the sheriff or the registrars of the district courts. In the 91st section of the principal Act, provision is made for the registration of judgments and writs of execution; by the Common Law Process Act of 1867, and by the District Courts Acts, the Sheriff and the registrars of the District Courts are enabled under writs of execution to sell the land of judgment debtor; and by the Common Law Process Act the Sheriff is required to execute, after he has sold the right, title, and interest of any judgment debtor in land, a deed of bargain and sale. As land held under the Real Property Act is not transferred by deed of bargain and sale, there is no means of registering such an instrument, and purchasers are accordingly compelled, in order to secure a title to the land they have purchased, to resort to the expensive machinery of the Supreme Court, and procure a vesting order, which seldom costs less than from £20 to £30. The remedy proposed is a very simple one—by prescribing a form of conveyance to be executed by the Sheriff and stipulating that judgments and writs of execution shall be advertised in the *Gazette* issued next after their registration, in order that all persons who may have any unregistered subsisting claims may proceed to register them at once and protect themselves; failing which, for fourteen days after the registration of the writ of execution, the Sheriff's or Registrar's conveyance shall be registered to the exclusion of all unregistered instruments. So that purchasers from the Sheriff can be assured that in due course they will be able to get a a title without resort to the complicated machinery of the Supreme Court. Clauses 29 to 32 deal with matters of detail affecting the lodgment of caveats. Section 99 of the Principal Act requires the Registrar-General to notify to the person against whose right or application to deal with the land a caveat has been lodged, the fact of such lodgment. The address of such person is not required to be given by the caveator, nor is it provided in what manner the notice shall be given to him. Clause 29 of the Bill accordingly stipulates that the name and address of such person shall be given by the caveator, and clause 30 provides that the notice to him may be sent through the post in a pre-paid letter. The Bill goes still further, and provides against the possibility of a person who has once lodged a caveat, which has been dismissed, afterwards lodging a similar caveat, and thus from time to time entailing considerable expense upon the caveatee for the express purpose of annoying and harassing him. Clause 32 deals with this subject:—

"Whenever any caveat shall have been ordered to be removed by any order made by the Supreme Court or a judge thereof, it shall not be lawful for the same person to lodge another caveat on directly or substantially the same grounds upon which the caveat so ordered to be removed was lodged."

There is no provision in the Principal Act by means of which a person interested in land, but not notified by the caveator to the Registrar-General as the person against whom the caveat is aimed can step in and contest the validity of the caveat, and accordingly the preceding clause, 31, provides that

"Any person interested presently prospectively or otherwise in land or any estate or interest in or security upon land or any instrument affecting land whose right to deal therewith or to have any entry made in the register with respect thereto is forbidden by any caveat or who is otherwise prejudicially affected by such caveat"

may step in and contest the validity of the caveat. Clauses 33 to 36 deal with the question of licensed surveyors. The provisions of the Principal Act on this point are very meagre indeed, being contained in section 118, which simply enacts that

"Upon the application of any person producing a certificate of competency signed by the Surveyor-General or other officer who may for that purpose be appointed by the Governor in Council the Registrar-General shall license such person as surveyor for the purposes of this Act."

No control is given to the Registrar-General over incompetent or negligent surveyors. The Bill proposes that lists of licensed surveyors shall be advertised annually; that the surveyors shall be responsible for the accuracy of their work, and shall be liable to correct their errors, and that they shall do so at their own expense, whenever the person employing them or the Registrar-General shall request the correction. If any surveyor is guilty of neglect, or want of skill, or untrustworthiness, or inability to perform his duties, the Registrar-General may cancel his license; but, in order that the cancellation shall not unfairly affect him, an appeal is allowed to a board consisting of not more than five persons, to be appointed by the Governor in Council. By these means it is hoped that greater accuracy of work will be secured and less liability exist to the recurrence of any catastrophe such as that which arose in the case of Mr. Merry. Next we come to clause

37 of the Bill, which may be read with section 33 of the Principal Act. I hardly think it is necessary; but, as doubts have been entertained as to the full powers of the Supreme Court, it is here provided that a vesting order of the court shall be registered. Clause 38 deals with the question of ejectment, and provides that

"Whenever an action of ejectment shall be brought against a registered proprietor or any person holding a grant or certificate of title in any case other than the case of a fraudulent proprietor in which an action of ejectment is not barred by the principal Act if the defendant or any person through whom he claims shall have made improvements on the land since obtaining a certificate of title thereto,"

then, whether or not he admit the plaintiff's title, he can give notice to the plaintiff of improvements made on the land, and set a value on them, and on the land as distinct therefrom; and if a verdict be found for the plaintiff or his title be admitted, the jury shall assess the value of the alleged improvements, and shall also separately assess the value which the land would have possessed if the improvements had not been made. And no writ of possession shall issue in such case unless the plaintiff shall first pay into court for the defendant the value of the improvements, deducting only the costs, if any, to which he shall be entitled in the action. The plaintiff must either pay for the improvements within a defined period, three months, after the verdict of the court; or if he is not in a position to pay for the improvements, he can have judgment against the defendant for the value of the improved land as assessed, with costs, and upon satisfaction of the judgment the defendant will be entitled to retain possession. Clause 39 is one of some importance, and provides that where an instrument is executed in favor of a person for the registration of which provision is made in the Act, it shall, until registered, be deemed to confer upon that person a right or claim to the registration of his estate, interest, or security; so that, in the event of the death of the person in whose favor the instrument is made, his personal representatives will be enabled to step in and claim under it. I come now to the 40th clause, which provides that nothing contained in the Bill shall be construed to take away or affect the jurisdiction of the courts of law and equity on the ground of actual fraud, or over contracts, or agreements for the sale or other disposition of land, or over equitable interests generally. The intention of this clause is to put trusts, as nearly as possible, in the same position under the amended law as they occupy under the old system of conveyancing; and to protect beneficiaries in precisely the same way as they were protected before the Real Property Act was passed and the old law reformed. This is very desirable. Under existing circumstances, any measure professing to go further with trusts would have to be very exhaustive in its character, and should be entered upon with great caution. I regret that I have had to claim the attention of honorable members so long; but the subject being of importance, I felt it to be necessary to explain the Bill fully, so that you may have its principles clearly before you. The subject is one of primary importance to the community at large; and there is no doubt that legal men are very much interested in it. Some suspicion may, therefore, attach to me when I display anxiety to see this measure passed; but I can assure honorable gentlemen that, if the Bill is carried, the lawyers will be much worse off than they are under the existing system of dealing with real property under the Principal Act.

HONORABLE MEMBERS: No, no.

The POSTMASTER-GENERAL: I beg to move, now—

That the Bill be now read a second time.

HONORABLE MEMBERS: Hear, hear.

The Hon. F. T. GREGORY observed that after the very lucid exposition given of the measure before the House by the Postmaster-General, he should be very sorry to detain honorable gentlemen by going into a long discussion upon what he conceived to be its defects; because he thought such discussion would properly come on when the Bill should be in a more advanced state than at present. His object in rising was to move an amendment on the motion just made; and he acted from a strong conviction that the Bill was one of such great and vital importance to the interests of the whole community as ought not to be dealt with lightly. He was quite sure honorable gentlemen would agree with him, that in dealing with such a measure there might not be, under the forms of the House and otherwise, the time bestowed upon the revision and amendment of the Bill which its importance demanded, and that there should be appointed a select committee of members who were willing to devote their time to its revision. He was satisfied that it was absolutely necessary to take the evidence of those persons who were well acquainted with the working of the Act, such as the Master of Titles and the Registrar-General, and probably of some legal gentlemen besides. The measure was originated by a layman; and the Postmaster-General had done him justice by saying that the original Act had proved a very perfect one, and worked uncommonly well, at the same time that the honorable gentleman proposed its amendment. From the consideration of the Bill by honorable gentlemen who would form the select committee, it was likely to produce as good results as if left wholly to professional men, who would see difficulties that the committee would sweep away by a less hesitating course

than legal gentlemen would be willing to adopt. He moved—

That this Bill be referred to a Select Committee, with power to send for persons and papers, and to sit during any adjournment of the House. Such committee to consist of the Honorable C. S. Mein (Postmaster-General), A. H. Brown, H. G. Simpson, W. H. Long, E. I. C. Browne, and the Mover.

The Hon. A. H. BROWN said he rose simply to express his approval of the amendment proposed by his honorable friend, Mr. Gregory; and he thought it was one that would, perhaps, secure for the Bill that consideration which it deserved. The Council was very much indebted to the Postmaster-General, not only for the Bill, whose value he recognised, but for the clear manner in which that honorable gentleman laid it before the House. The subject was of great importance, and, as far as he (Mr. Brown) could judge, the House would approve of the Postmaster-General's endeavour to deal with the existing law by amending it; at any rate, he hoped so. But honorable gentlemen could not deal with it too carefully. His honorable friend, Mr. Gregory, had not moved the amendment in a spirit of opposition; far from that, judging by what he had said to him privately. They wished to deal with the subject in a dispassionate way; and this could be done better in select committee than in the House. Therefore, they trusted that there would be no objection on the part of the Postmaster-General to the course proposed. They would assist the honorable gentleman very materially in advancing the Bill through the House, and the committee would improve it very much.

The POSTMASTER-GENERAL regretted very much that he could not see his way clear to consent to the amendment. The Bill had been before the House since the 27th of July; and he thought honorable gentlemen could discuss it on its merits without needless delay. Although he was not aware, by experience in Parliament, of what he was about to refer to, yet, as an outsider, he had been an observer of results; and the effect generally of referring a Bill to a select committee was to burke it entirely.

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

The POSTMASTER-GENERAL: For some years past the feeling was abroad that the amendment of the Act of 1861 was required, and that it was necessary to bring about desirable reforms for the purpose of facilitating operations under the Act. It must be familiar to honorable gentlemen what were the requirements of the public in reference to the Act. There was nothing to prevent them bringing forward amendments on the Bill in regard to those matters which they knew of—as many as they thought desirable. He did not think that any persons outside the House were more competent to deal with the question than honorable gentlemen themselves; and he failed to understand why they should be considered more competent. He foresaw that if the Bill was now referred to a select committee, the session would have well passed over before anything was done to advance it; and, probably, another twelve months would have elapsed before the House heard anything further about it. In other words, the measure would be burked. The Bill provided for the amendment of the law on the leading points which it was known required amendment. If it did not go far enough, there was nothing to prevent honorable members bringing forward amendments to make it more comprehensive than it appeared to them. He recommended that the House should amend what were known practically to be defects in the law as it stood. The Bill had been carefully revised by the Attorney-General and by himself, and they had endeavored, as far as they possibly could, to obviate any defects. Other honorable members might know of more: if they did, he should render any assistance in his power to give effect to reforms which they might bring before the House. He felt that the better plan for the House to adopt was not to refer the Bill to a select committee, but to go on with it in the ordinary way.

The Hon. G. HARRIS: He had had no idea that the Postmaster-General would have attempted to address the House again so quickly———

The POSTMASTER-GENERAL: He had looked around to see if any other honorable gentleman desired to address the House.

The Hon. G. HARRIS: He wished to make a few remarks upon the amendment, which he should support. In dealing with such a question as the amendment of the Real Property Act the House should seek the advice of the officers of the department that had the administration of the Act. Honorable members would admit, and the general public felt, that there was a great deal of cumbrous matter connected with the working of that department; and he feared that further legislation would rather increase that objection. Months elapsed before a title could be got from the office. He did not see why land should not pass from one person to another in the same way as other commodities, upon receipt and account.

HONORABLE MEMBERS: No, no.

The Hon. G. HARRIS: His opinion was that, if the House tampered with the Real Property Act any further, they would make the existing state of things worse; therefore, honorable members were bound to seek the best advice they could get, by referring the Bill to a select committee such as that moved for by the Honorable Mr. Gregory; and he felt disposed to support the amendment. He could not quite understand what the Postmaster-General meant by saying that if the Bill was referred to a select committee it would be shelved. Surely, the honorable gentleman was not under the impression that the session

was coming to an end so quickly as all that! The best thing the Council could do was to agree to the amendment, in order that proper evidence might be obtained and the best information possible collected, to enable the House to arrive at a sound conclusion as to the best course to be adopted with regard to the Bill.

The Hon. H. G. SIMPSON said he should not have risen to speak to the question but for a remark of the Postmaster-General, to the effect that he and his honorable colleague the Attorney-General had gone very carefully through the Bill—he could not quote the exact words, but he gave the impression which they conveyed to his mind—but that there might be in the Council others more competent than they to revise it———

The POSTMASTER-GENERAL: I said nothing of the sort.

The Hon. H. G. SIMPSON: He gave his impression of the honorable gentleman's remarks, which he took in connection with another remark made at the opening of his speech, by which the honorable gentleman seemed to imply that the defects which occurred in the law were in consequence of the Act having originated with a layman, and not a lawyer. It appeared to him (Captain Simpson) that there was no Act on the statute books of the Australian colonies—indeed, Mr. Torrens' Real Property Law reform had gone so far that it had become a subject of discussion in the mother country whether a modification of it could not be adopted there—that had been passed in the face of the opposition solely of the legal profession, that had stood so long without need of alteration or amendment, and that seemed to require it so little; so that he thought it was not necessary to assume that because the Act was not drafted by a lawyer it was, therefore, easy to account for its imperfections. He quite agreed with the views of the Honorable Mr. Gregory, and with his motion for a committee, because the subject under consideration was one which required looking into very carefully indeed; and honorable members upon whom would devolve the passing of such a measure, should have the best evidence and the fullest instruction from those who could give both from their experience of the administration of the Act—the Master of Titles and the Registrar-General. It was very well to say that a committee of the whole House would deal with the Bill; but they could not do so as well as a select committee. They could not have the opinions of those gentlemen except at the bar of the House. Honorable membersknew what that sort of examination was;—and, therefore, he thought that the course proposed by the honorable Mr. Gregory was an admirable one, and likely to bear very good fruit. Notwithstanding what the Postmaster-General said about the committal of the Bill ensuring its being lost for the session, he was certain that there would be ample time to get the Bill through committee before there was a chance for it to pass through another place. He had not the slightest doubt that if the Council sent the Bill down to another place to-morrow, it would lie on the table of the Assembly for the next two months.

The Hon. E. I. C. BROWNE said he regretted extremely to see any unnecessary delay in dealing with the Bill—not that he did not wish to see the measure receive that proper consideration which was necessary. Before going any further, he might say that he thought the honorable gentleman who spoke last had adopted rather a sneering tone towards the Postmaster-General, in putting words into his mouth that the honorable gentleman never uttered. As far as he (Mr. Browne) could gather from the Postmaster-General's language, the honorable gentleman had thrown no slight whatever on the originator of the Real Property law, but he certainly had been very laudatory to him as a layman. The Honorable Captain Simpson seemed to wish the House to understand that no lawyer could have drafted the Act. Well, he (Mr. Browne) thought that now, at any rate, the House could, with the experience they had of the present Postmaster-General, acknowledge in him a gentleman perfectly capable of explaining the measures that he brought before them.

HONORABLE MEMBERS: Hear, hear.

The Hon. E. I. C. BROWNE: After the lucid exposition the honorable gentleman had given of the Bill before the Council, as also on a former occasion when he brought another measure forward, honorable members were in a position to make such an acknowledgment. The explanation regarding the present Bill had been so satisfactory that the House could not doubt as to the necessity of the Bill. It had not been stated that this would render any further legislation unnecessary; but it had been pointed out that what were the more immediate crying defects of the law—defects which were discovered during fifteen years' practice under the law—and which were generally admitted, would be remedied by the passing of the Bill. The sooner the better. The Postmaster-General had not said that the Bill would prevent any further amendment of the Act. The House had been told exactly what were the defects in the law, and how they were to be met by the clauses of the Bill; and he (Mr. Browne) could not see any cause for delaying the Bill. For himself, he felt that he should derive no further information from the labors of a select committee. Certainly, he had the advantage of knowing what the defects in the law were, and how the Bill would remedy them, an advantage which perhaps many other honorable members had not. He admitted that he did not know whether any good was to be gained by examining the officers of the department administering the Real Property Act. The Honorable Mr. Harris had been very emphatic about the department being

slow in its operations, and he would examine the officers on that account.

The Hon. G. HARRIS: Those officers and others.

The Hon. E. I. C. BROWNE: There was something vague about the examination of the officers of the Real Property Office. It might be all very well to have a committee for that particular purpose; but the object of the Bill did not go in that direction. The Bill did not propose to correct any of the details of the office, but merely to put the law into a better condition than it was in at present. Nothing would be gained by the delay of sending the Bill to a committee; but there was a great probability that by the delay the object sought to be secured by the Bill would be lost altogether.

The Hon. A. H. BROWN: No, no.

The Hon. E. I. C. BROWNE: For that reason, he should vote for the second reading of the Bill.

The question was put on the amendment, and the House divided:—

Contents, 5.—The Honorables A. H. Brown, F. T. Gregory, H. G. Simpson, W. H. Long, G. Harris.

Not-Contents, 5.—The Honorables E. I. C. Browne, W. Thornton, F. H. Hart, W. Yaldwyn, C. S. Mein.

The numbers being equal,

The CHAIRMAN observed that, as the question was important, he should give his casting vote for reference to a select committee.

ADJOURNMENT.

The POSTMASTER-GENERAL said, that having consulted the feelings of honorable members, he now proposed that the Council adjourn until the 30th instant. He hoped that by that time, the President would be restored to his usual health.

HONORABLE MEMBERS: Hear, hear.

The question was put and affirmed.