Queensland

Parliamentary Debates
[Hansard]

Legislative Council

FRIDAY, 12 NOVEMBER 1880

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LEGISLATIVE COUNCIL.

Friday, 12 *November*, 1880.

Correction. — Gulland Railway Bill. — Pacific Island Labourers Bill—committee.—Supreme Court Order. —Railway Companies Preliminary Bill—committee.

The PRESIDING CHAIRMAN took the chair at 4 o'clock.

CORRECTION.

The HON. C. S. D. MELBOURNE said he rose for the purpose of moving the adjournment of the House. In *Hansard* of that day he was reported to have said,—"Mr. Dowling, of Tilpall Station, boasted of having manufactured scalps and sent them to the Yaamba office." What he said was that Mr. Dowling had a man in his employ on his station who boasted of having manufactured scalps and sent them to the Yaamba office. The only reason he wished to make the explanation was because Mr. Dowling was well known, and because such a statement, reported as coming from him (Mr. Melbourne), required correction.

Motion, by leave, withdrawn.

GULLAND RAILWAY BILL.

The PRESIDING CHAIRMAN read a message from the Legislative Assembly forwarding this Bill for the concurrence of the Council.

On the motion of the POSTMASTER-GENERAL, the Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

PACIFIC ISLAND LABOURERS BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the House went into Committee

to consider a message from the Legislative Assembly, disagreeing to the Council's proposed amendments in clauses 2, 21, and 24, and agreeing to the other amendments.

The POSTMASTER-GENERAL said that the majority of the amendments made by the Council in this Bill had been accepted by the Assembly. He was not prepared to say that the Assembly would not have done wisely if they had accepted the whole. He believed most of the amendments made by the Council were improvements, but in all matters of legislation it was necessary for a spirit of concession and compromise to prevail. The Bill, as it was now before the Committee, was an excellent one, even if they did not insist upon the amendments which the other House had disagreed to. The first of these amendments was the insertion of the words "arrowroot, imphee, millet, maize, indigo," in the definition of the terms tropical or semi-tropical agriculture, in clause 2. He never thought this amendment a matter of such importance as it was considered by some hon. members of the Committee. He believed that every one of those articles was probably a tropical or semi-tropical product. As the words "or other tropical or semi-tropical productions or fruits" followed the words "arrowroot, imphee, millet, maize, and indigo," he presumed that if those articles were tropical or semi-tropical productions they would come within the scope of the Bill; if they were not they would be excluded. The clause, with their amendment left out, would be quite as elastic as was necessary for the proper working of the measure; and he hoped, therefore, the Committee would not insist upon the amendment. When the Assembly declined to have these additional articles inserted they probably considered that the clause, as originally passed, was ample for the purpose of the Bill, and that the Council's amendment was mere surplusage. If that was the view that was held, he was not at all surprised that the Assembly declined to accept the amendment. He therefore should move that the Council do not insist upon the first amendment in clause 2.

The HON. F. J. IVORY said he admitted with the Postmaster-General that it was superfluous to insert the words, believing, as he did, that all the articles mentioned were most certainly included within the words "or other tropical or semi-tropical productions or fruits." Had such a reason been assigned by the Assembly for dissenting from the Council's amendment, he should have concurred with the view taken by the other Chamber; but seeing that their reason for non-concurrence was that they did not consider those productions within the scope of the Bill, he disagreed with the hon. member entirely. If it was possible to concur with the amendment and disagree with the reasons furnished by the Assembly, he should be inclined to do so. Hon. gentlemen had only to go into the library and refer to any botanical book—to any of the literature on the subject—and they would find it incontestably proved that the articles in question were tropical or semi-tropical products. Maize, more particularly, was so, its native habitat being tropical America.

The HON. W. H. WALSH said that the hon. Mr. Ivory's remarks were unanswerable, as far as he could judge; but whether it would be prudent to contest this question any further with the Legislative Assembly, seeing that the Assembly had admitted amendments made by the Council of far more importance, was another matter. The question was, whether the Committee should jeopardise the Bill by insisting upon the amendments. Personally, he did not care a button about the Bill. Any Bill on the subject would be a disgrace to the statute-book. But if they were to have a Bill, let them accept one which would do the least harm to the welfare of the colony and compromise in the least degree the characters of the legislators of the colony.

The HON. W. GRAHAM said he should like to point out that after all it was only an expression of opinion of the Assembly that these articles did not come within the scope of the Bill. The fact still remained that they were tropical or semi-tropical products, and he imagined that question would be decided by the Minister. The Hon. Mr. Ivory said that he would not have objected if it had not been for the remarks of the Assembly; but those remarks were only the Assembly's opinion, and did not form part of the Bill.

The HON. F. J. IVORY said he had not the slightest desire to jeopardise the Bill, although he confessed he was not a believer in it; at the same time, he thought if the Council allowed the Assembly to eliminate these words, assigning as a reason that they did not come within the scope of the Bill, it would be stultifying itself. So long as a decided expression of opinion was given that the reason assigned by the Assembly was an erroneous one, he should be satisfied.

The HON. F. T. GREGORY said that the particular reason which influenced the Council in passing the amendment was, that sugar-cane, cotton, tea, coffee, rice, and spices, having been enumerated in the definition of the term tropical or semi-tropical agriculture, it was apprehended that arrowroot, maize, imphee, millet, and indigo, would not be included unless they were specified. This apprehension was founded upon the well-known rule of law that when certain articles were enumerated as coming within, or as being excluded from, the operation of a particular statute, a limit was thereby fixed. If the words "tropical or semi-tropical productions or fruits" had been left without a single article being named, there was not the slightest doubt that all the articles enumerated by the Council would have been included. He saw no objection to allowing the objection raised by the Assembly to pass, but he agreed with the Hon. Mr. Ivory that the reasons assigned were obviously inaccurate.

Question put and passed.

The POSTMASTER-GENERAL said the other amendment to which the Assembly disagreed was in clause 21, which was inserted upon the motion of the Hon. Mr. Melbourne. The reason assigned for the disagreement was "because a great number of the labourers are fully aware of the value of money, and would feel very much discontented if their earnings were not paid to themselves; others had the option of having their wages paid into the Government Savings Bank if they chose." There was no doubt that a large proportion of the Polynesians employed as islanders under this Bill would be returned islanders, who would be well aware of what they were doing, would know the value of money, and would advise their comrades. He would move that the Council do not insist upon their amendment in clause 21.

Question put and passed.

The POSTMASTER-GENERAL said the only other amendment to which the Assembly disagreed was the new clause 24, limiting the hours of labour for field-work. At the time the clause was moved he was strongly in favour of it, on the reports of the medical men and the Inspector of Polynesians, but he did not then give consideration to the effect of it. There would be working on the plantations, at the same time as Polynesians, Europeans who would probably

work more than eight hours a-day, and if the Legislature insisted upon limiting the hours of labour for islanders to eight, the other labourers would, of course, demand that their hours should be reduced. However desirable that might be, it went beyond the intention of the Council, which was to restrict the hours of labour in the field for islanders. It would give rise to complications if the clause were passed, and on the whole, therefore, they might safely agree not to insist upon it. The reason assigned by the Assembly for disagreeing to the clause was "because it would seriously impair the utility of the Bill, and because a similar proposition had been previously negatived in this House." He begged to move that the Committee do not insist upon the new clause 24.

The HON. C. S. MEIN said the clause was agreed to upon his motion after considerable discussion, and upon good grounds. However, he was not inclined to insist upon its retention, although he thought it had been unwisely struck out. It was inserted purely to protect the islanders, and the credit of their employers, in consequence of the reports of Drs. Wray and Thompson, and Mr. Horrocks, the Polynesian inspector, that the islanders had to work too long hours, which resulted in serious illness to them, and in a large number of deaths. He was sure that the scope of the clause had been misunderstood by the employers in the Maryborough district, who had lately sent a deputation to Brisbane. It was not intended, neither would the clause have restricted the employers to the eight hours' system. The clause simply stated that islanders should not be employed for more than eight hours a day in field work, leaving their masters at liberty to employ them in any other kind of work for the remainder of the day. The reasons given by the Assembly for disagreeing to the clause were not good to his mind—in fact, the reasons sent up to the Council by the Assembly were not always rational, and sometimes they were not courteous; but that they could overlook. Rather than interfere with the progress of the Bill, he should be glad to withdraw his opposition to the action of the Assembly. He dissented altogether, however, from the opinion of the Postmaster-General, that the Bill was improved by the amendments of the Council to which the Assembly had not taken exception. The Council did wrong to omit clause 24, relating to the re-engagement of time-expired islanders, and particularly in making the amendment in clause 33. They had allowed employers to do what they liked when time-expired islanders in their service were ill. Employers were under no obligation to look after such men when they were ill, although the most stringent conditions had been attached to the three years' men. He believed that a large proportion of the labourers in the Maryborough and Mackay districts were time-expired islanders. If the Bill was passed as amended, these men were not bound to come under the provisions of the statute in the slightest degree. They could be employed on any class of labour; and the probabilities were that there would be a great rush to have these men employed on plantations, and that on some plantations there would be a repetition of the bad treatment reported by Drs. Wray and Thompson.

The HON. W. H. WALSH said he did not think the celebrated report from Drs. Wray and Thompson, who had been so much condemned as new chums by a member of the Ministry, referred to islanders who had served their three years. It bore entirely upon the employment and treatment of men who were serving their first three years' engagement, and therefore the objection taken by his hon. friend was not apposite at all. He must confess that he regretted to some extent that the Legislative Assembly had objected to this humanity clause. It was not worth while contesting the point, however, because nine-tenths of the employers would not overwork the islanders. If they erred at all they were likely to err on the side of kindness.

The HON. F. J. IVORY said the Hon. Mr. Mein had said that the 32nd clause would not apply to returned islanders, but he would point out that they came under the category of labourers.

Question put and passed.

On the motion of the POSTMASTER-GENERAL, the House resumed, the report was adopted, and the Bill was ordered to be returned to the Legislative Assembly with a message to the effect that the Council did not insist upon its amendments.

SUPREME COURT ORDER.

Debate resumed, on the motion of the HON. C. S. D. MELBOURNE—

"That under the 22nd section of the Judicature Act, an address be presented to His Excellency the Administrator of the Government, by the Legislative Council of Queensland, praying that the Rule or Order of the 7th day of September, 1880, laid on the table of this House on the 13th October, 1881, viz.:—Order 11, writs of summons and procedure, &c. 3. No writ shall hereafter be issued under the summary procedure under the Bills of Exchange Act, 1867,—may be annulled."

The POSTMASTER-GENERAL said that in accordance with the undertaking he gave on the previous day, he had consulted the Attorney-General as to the propriety of the House adopting the motion submitted by the Hon. Mr. Melbourne. The first question which appeared to arise on the motion was, whether their Honors had exceeded or strained their powers in virtually repealing a section of an Act of Parliament. There was no doubt that the new rule they had made amounted virtually to the repealing of several sections of the Bills of Exchange Act. Under that Act the procedure in actions on bills of exchange was regulated, and summary procedure was provided to facilitate the recovery of moneys which were overdue on these instruments. Under the Judicature Act of 1876 procedure in all actions was regulated, and thus the procedure under the Bills of Exchange Act was impliedly annulled. In the schedule to the Judicature Act, however, it was provided that the procedure under the Bills of Exchange Act should be continued. The effect of the procedure clauses was continued by a rule in the schedule; and it was that rule which their Honors had now deemed it wise to annul. No doubt that amounted to the repeal of a section of an Act of Parliament which no tribunal, save that which enacted it, ought to repeal. There could be no doubt, either, that the power was conveyed to the judges of the Supreme Court by the Judicature Act; and if they had exercised the power—as he was informed after long consideration—it must be presumed that they had exercised it wisely and with a full knowledge of the consequences which would ensue—until the contrary were shown. Under the Bills of Exchange Act the plaintiff would issue his writ to recover the amount of a bill or promissory note. The defendant would then have, say, fourteen days within which to make affidavit that he had a good defence, and to obtain leave to appear. If he did not obtain leave the plaintiff would get judgment under sections 2, 3, and 4 of the Act. Under the Judicature Act the defendant had the same time within which to appear, but he might do so without first obtaining leave. If the defendant did not appear the plaintiff would obtain judgment

for the amount of his bill with interest and costs, under the Judicature Act of 1876, schedule, order III, rule 6, and order XIII, rule 3. If the defendant did appear plaintiff would serve a summons on the defendant requiring him to show cause within two days why the plaintiff should not get immediate judgment. The plaintiff must also file an affidavit stating that the defendant had no defence. If the defendant did not appear within the two days to show cause and file an affidavit showing that he had a good defence the plaintiff would get judgment. If the defendant did appear and file an affidavit showing a good defence he would be allowed to defend the plaintiff's action as under the Bills of Exchange Act. That would be seen from the Judicature Act, schedule 2, order XIV. He understood that the judges held that the rule to be substituted for that proposed to be annulled was copied from the English Judicature Rules, and was passed after much consideration, to assimilate the Colonial with the Home practice. The judges would not have approved of the rule if they had not considered it a desirable improvement. It must be borne in mind, too, that if the rule were found not to work well the judges had the power to rescind it. He believed the Hon. Mr. Melbourne had stated that Parliament only could rescind the rule.

The HON. C. S. D. MELBOURNE: I did not intend to.

The POSTMASTER-GENERAL said there could be no doubt but that the judges could rescind any rule they made. There was no doubt, also, but that very strong reason should be shown before Parliament annulled a rule instituted by the judges of the Supreme Court—the highest legal authorities they had. As laymen—which they nearly all were—he thought they would be presuming too much if they exercised the power given them by the 22nd section of the Judicature Act. The Government would not take the responsibility, and he hardly thought they should accept such a motion on the responsibility of a private member, who, although thoroughly acquainted with the procedure of the Supreme Court, and thoroughly satisfied in his own mind that the rule would not work well, had not the responsibility before the country which the judges of the Supreme Court had in providing for the procedure in their own court. There was another matter to be considered. It was admitted that the alteration of this rule merely assimilated the practice in Queensland with the existing practice in England. If the rule were carried out the Supreme Court of Queensland would have the advantage of the decisions of the highest legal authorities at home. He must confess that, so far as he could understand the question, the rule would not be an improvement. That was his own opinion, and he put it forward with diffidence, because not being a lawyer he was to some extent entering upon the domain of the unknown. He had had a small experience of the Bills of Exchange Act in mercantile matters, and he could not help thinking that the Act had worked well in the particulars in which it was proposed to amend it. Although the Attorney-General was of opinion that the new rule would not involve more than two days' delay, he thought it would involve a great many more if the plaintiff were required after the appearance of the defendant to make an affidavit to the effect that he believed the defendant had no good defence. The object of the judges, however, in making the alteration must meet with approval. They thought that a man should not be condemned unheard, and that he should not be compelled to make an affidavit before he could enter an appearance. No doubt, in the abstract, there was much to be said on that ground in favour of the course which had been taken; but in legislation and law they had to deal with facts and practical matters, and he had reason to believe that the present summary procedure had not involved hardship in one case out of a hundred. On the whole, however, the Government would not incur the responsibility of interfering; and he would have to oppose the motion if the Hon. Mr. Melbourne pushed it to a division. He hoped, however, that the hon. member, having called attention to the subject, would see his way to withdraw the motion. They had no precedent for either House of Parliament dissenting from rules made by the judges of the Supreme Court. He was afraid it would be doing more harm than most of them would like to do to form such a precedent on the motion of a private member. He did not deny the hon. member's responsibility as a member of that House, but that was a different matter to the responsibility involved in attempting so serious a step as a dissent from a rule legally made by the judges of the Supreme Court.

The HON. W. H. WALSH said he considered that they were under a great obligation to the Hon. Mr. Melbourne for bringing forward that motion. If ever a lame reason were given by the Government for an opposition to a motion, they had heard that reason given that afternoon by the Postmaster-General. It was acknowledged by the Postmaster-General, and by the Hon. Mr. Melbourne in his statements, that they had an Act which was so imperfect in its nature that it authorised the judges to repeal a portion of an Act of Parliament—to repeal, in fact, all the virtue which was contained in that Act. That being admitted by the Postmaster-General, and asserted by the hon. gentleman who had introduced the motion, they were told by the Postmaster-General that it would be an imprudent thing, although Parliament had reserved to itself the right of doing so, to go contrary to the will of the judges. If they had made a mistake in passing an Act of Parliament which gave such extraordinary power to the judges, then the more closely they watched the way in which the judges exercised that power, and checked them when they transgressed or exceeded it, the more perfectly would they be doing their duty. That was not the first Act in which the country had given such inordinate power to the judges. He remembered that when he was the chairman of a committee for the examination of some affairs in connection with the Supreme Court, several incidents transpired showing the great and undue power which was given to the judges to make rules. Several Acts of Parliament were brought under the notice of the committee which were inoperative in consequence of the refusal of the judges to make the necessary regulations. He cited these instances so that hon. members might understand the danger of giving such inordinate power to the judges. Who were the judges? Some of them had sat alongside them in Parliament, and when they sat there it was not recognised that they possessed any very superior power of constructing an Act of Parliament. In many instances their advice was disregarded, and, simply because they were now placed in an almost unapproachable position, they were told that, although they had made an Act of Parliament useless, it would be unwise to excercise the power which they had reserved to themselves of negativing such rules made by the judges as might seem undesirable. All honour was due to the Hon. Mr. Melbourne for having the courage as a lawyer to notice that matter. Being convinced, as he was, that the judges had set

the law aside, he felt that he for one would be acting the part of a recreant if he did not support the hon. gentleman's motion. He hoped other hon. members would also see their way clear to do so, and to show the judges, at anyrate, that when they improperly exercised the power which had been conferred upon them they would be checked. No class of men in the country required closer watching than the judges of their Supreme Court. The judges came and went just as they chose. They chose the hours in which business should be done and when it should not be done. They fixed the date at which vacations should begin and the date at which they should end. They were the veriest potentates in the world—these judges of the Supreme Court of Queensland. When these judges virtually abrogated an Act of Parliament, were they, as members of Parliament, to abrogate their duties because the judges willed to do such a thing? Were they to hesitate in protecting the public against this arbitrary enactment? The Postmaster-General used a very bad argument indeed when he said they had no precedent before them for exercising their right to dissent from a rule or regulation made by the judges. Probably there had hitherto been no great reasons for the exercise of that power; probably they had not previously had to contend with so fearless a member of the profession. He remembered an instance in which he wished a solicitor to take up a case which would have brought him into contact with the judges. It was a case which he had a perfect right to demand should be heard; but the solicitor said, "I cannot do it—I dare not do it; I should be a marked man in that court. You had better get someone else." It so happened, however, that he could not get anyone else. That was only one instance of the well-known tyranny exercised by the judges over the officers—for lawyers were officers—of their court. Were they also to be subject to this tyranny because they happened to "go between the wind and their nobility?" He hoped hon. members would not so far betray the trust reposed in them by the country. He could easily understand the Postmaster-General barely knowing what he was speaking about. He did not say that reflectively. The necessity for any of these regulations was very much beyond his own comprehension. The Postmaster-General admitted, however, that he was giving the opinion of the Attorney-General: but they knew very well the position in which the Attorney-General stood towards these judges—he trembled in their presence. But they would not do so; they would show the judges, at anyrate, that they, standing there as members of Parliament, were not only beyond their control, but did not fear their frown. He should support the motion of the Hon. Mr. Melbourne, and, if he wanted any reason at all for so doing, it would be abundantly supplied by the style of argument and the speech of the Postmaster-General.

The HON. F. T. GREGORY said he could not claim any proficiency in legal knowledge, and could only speak on the motion from the standpoint of a practical man of business. From that point, he first of all should look to see what would be the advantages of the rule of court—if he understood it rightly. The only advantage he had been able to discover from inquiry from professional and non-professional men, and from listening to the arguments of the Postmaster-General, was, that it would be assimilating the practice of the courts in Queensland to the practice of the courts at home. To a certain extent that was an advantage derivable from it, as they should have the benefit of the opinions of the judges at home as furnished in the law reports; and he could well understand legal gentlemen feeling that it would be a great advantage to be placed in such a position in conducting their cases. Thus far he went with the order, but when he came to see what had been done elsewhere he found that the same course was proposed to be adopted in New South Wales, where there were many able professional men, and, after very considerable consideration and deliberation, they had not thought it desirable to adopt it in that colony. Having failed to find any reasons in its favour beyond those he had stated, he would now come to those which appeared to be against it. With regard to the value of promissory notes or bills of exchange, it appeared to him, from a practical standpoint, that they were given as vouchers for certain liabilities from one man to another, the maker holding himself to be indebted to the recipient in a certain amount; from which he should say the simplest course would be to let the law take it as *prima facie* evidence of the indebtedness; and if any question arose from any discovery or after-view—that the maker of the bill was relieved from his liabilities, or that he had been unjustly or unfairly called upon to pay the amount, he would then be certainly in a position to resist it. He thought the onus of proving should fall upon the maker of the bill, and not on the recipient. Another objection was with respect to delay. They had been told that the delay would not be material, but at the same time there would be delay. That delay, so far as it might tend to protect the debtor, would be very fair and desirable; but he thought, on the other hand, in very many cases it would act unfairly to the creditor compared with the debtor, who might have a remedy afterwards. He should give his weight as a practical man of business in favour of the creditor, and if there was any set-off or ground for rebate in the matter it would be reasonable for the debtor to put in his claim afterwards. He believed the feeling of commercial men was decidedly averse to this order of the court being carried out, upon the ground that it would tend to hamper business. It therefore appeared to him that the preferable course would be in the present instance for the House to dissent from the new rule of the Court, and leave it to be an amendment of the law next session. If it were proved satisfactorily that such an amendment were desirable, it could be easily made by passing a short Bill to amend the Judicature Act. As to the action of the judges, he looked upon it that while they had every right to make rules for the guidance and government of their courts, he denied that it was their function to legislate for the country. That rested with the two branches of Parliament alone, and the judges had simply to carry out the laws in accordance with Acts of Parliament, and to see that in their administration there was no deviation from the absolute intention of the law-makers. The judges had no right to arrogate to themselves to be law-makers, and they could not find fault if the House in dissenting from their action appeared to tread upon their toes, or to interfere with the rights and privileges of the judges of the court—a course which he should be the very last to advocate. He must therefore join in the views entertained by the Hon. Mr. Melbourne.

The HON. C. S. MEIN said there could be no doubt of two things. First, that the judges had a perfect right to frame the rule of court now under discussion; and, secondly, that that House had equal power to express its dissent from that rule in the manner proposed by the Hon. Mr. Melbourne. The only question for the consideration of the House was, whether the circumstances of the case were sufficiently grave to warrant them in interfering with the discretion Parliament had conferred upon the judges of determining the mode of procedure in which

matters in their courts should be conducted. To arrive at a satisfactory conclusion upon the subject, it would be perhaps not undesirable to consider the circumstance which led to the passing of the Bills of Exchange Act of 1867, and the passing of the Judicature Act, and the effect of these two measures. In all large commercial communities such as Great Britain, bills of exchange, promissory notes, and cheques were documents in daily use—especially bills of exchange, which merchants found very convenient in the course of mercantile transactions. The law was that when a man signed his name to a promissory note as maker, or to a bill of exchange as acceptor, that signature *primâ facie* was taken as an admission that there had been consideration given by the person to whom the note or Bill was given, entitling that person to recover the amount named therein; and, under ordinary circumstances, the onus was thrown upon the maker of the note or the acceptor of the bill to prove, in the event of an action being instituted, that no consideration was given, or that the consideration had failed from some reason or other. Under these circumstances, in the interest of the commercial community it was felt, upwards of twenty years ago in Great Britain, that greater facilities should be given to the holders of bills of exchange to obtain judgment in the ordinary courts of law than was afforded in ordinary actions; and the Act upon which our Bills of Exchange Act was founded was introduced. It entitled the holder of a promissory note or a bill of exchange to issue a writ, and obtain judgment as a matter of course in a specified number of days after the service of the writ on the person sued, unless that person in the interim had appeared before a judge of the court and satisfied him that he had legal or equitable defence, or disclosed such facts as would make it incumbent upon the holder to prove the consideration—or such other facts as the judge might deem sufficient to support the application. In other words, the onus was thrown upon the person sued to satisfy the judge that the holder of the bill had no right to sue upon it, or that there were circumstances surrounding the transaction of such a character as to induce the court to believe that the defendant was not responsible to the plaintiff in the matter. If the defendant was not able to satisfy the court to that extent judgment was given against him, and the plaintiff would be at liberty to reap all the advantages of that judgment at once. These were the only instances in which the forms of procedure of the higher court allowed the plaintiff to get judgment without the defendant having the right to appear and cause delay to the plaintiff in obtaining judgment. Certain privileges were conferred upon those persons who issued writs in respect of liquidated accounts—that was, an ascertained account, the particulars of which were specified on the back of the writ. If a defendant did not appear within the time specified in the writ for his appearance, the plaintiff was at liberty to sign final judgment and issue execution without going through any other forms of procedure. Matters remained in that position until the Judicature Act was passed, in which a further novelty was introduced, chiefly in the interests of the commercial community. By order 14, to which the Postmaster-General had referred, any person who issued a writ in respect to a liquidated amount, particulars of which were endorsed thereon, after appearance had been entered, applied to the court, upon affidavit setting out the amount sued upon, and stating that the defendant had no defence to the action upon its merits, and calling upon him to show cause why judgment should not be entered up at once. The onus was then thrown upon the defendant of proving exactly what he had to prove in the case of a writ issued in respect of a promissory note or a bill of exchange, in order to have the right to defend;—that was, that there were circumstances surrounding the transaction showing that he had a good defence to the action on its merits, or disclosing facts to the court or judge sufficient to entitle him to be permitted to defend; so that, practically, the alteration in the law with respect to specially endorsed writs was in the direction the Legislature had gone when passing the Bills of Exchange Act, but not to the same extent. Under that Act the onus was thrown upon the defendant of showing that he had given defence to the action. Under the Judicature Act, the onus was thrown in the first instance upon the plaintiff of deposing upon oath to the fact that he had just cause for action, and that the defendant had no grounds of defence; and in that Act special provision was made that the form of procedure with respect to bills of exchange should not be altered thereby—that in respect to proceedings instituted after six months the course of procedure was precisely the same as previously. The judges at home had since considered that the concession given with regard to specially indorsed writs was a sufficient concession for all cases, and that it would be more convenient to have one rule to govern the whole mode of procedure. They therefore introduced a rule to the effect that the procedure under the Bills of Exchange Act should no longer be followed, but all forms of procedure with regard to liquidated amounts should be the same with respect to promissory notes or any ascertained sums of money; and the judges of this colony, following in the steps of the Imperial Parliament, and believing it would be convenient to have the same course of procedure in both cases, and be a benefit to have the decisions of the courts at home, thought it would be advisable to adopt the same rule. After all, he did not think there was much difference between the two cases, although the delays would be greater here than they were in the old country, where persons who held promissory notes were within reach of the superior courts very readily. He supposed twenty-four hours would enable any man in any part of the United Kingdom to have an affidavit prepared setting out the facts which entitled him to call upon the defendant to show cause why judgment should not be issued. After all, the question simply resolved itself into whether it was desirable to dissent from the rule issued by the judges of the Supreme Court, simply on the grounds of extra delay. He need only refer to one other fact, and that was, that under the Bills of Exchange Act there were facilities given to unscrupulous men who wished to gain time, and who were prepared to gain it at all hazards, to make false affidavits to induce the judge to believe they had a defence, when in reality they had none, so that time might be afforded them to put their house in order and defeat the legitimate claim of the holder of a promissory note or bill of exchange. All that man had to do under the Bills of Exchange Act was to go before a judge *ex parte* with an affidavit that he had a good defence to the action, and, unless there were suspicious circumstances, that would be quite sufficient to enable him to obtain liberty to defend. He could then enter an appearance, delay the plaintiff in getting judgment possibly two or three months—because as a rule our courts did not sit at less intervals than three months; so that cases might arise, and did arise, where injustice was done by these facilities afforded by the Bills of Exchange Act. Whereas under the

forms of the Judicature Act the plaintiff proceeded on his own affidavit, and the defendant was called upon to show cause why judgment should not be signed against him; the defendant then stepped in and the whole matter was determined in the ordinary course between both parties, by examination and cross-exmination before the court. In a large number of instances proceedings for liquidated amounts were satisfactorily settled in that way, and the possibility of unjust defences being set up was reduced to a minimum. Hon. gentlemen should simply weigh in their own minds whether the extra delay which would arise would be a greater hardship than the possibility, which the law under the Bills of Exchange Act admitted, of persons unjustly getting leave to defend and creating much greater delay. Of course they had a perfect right, independently altogether of the action of the judges, to take the matter up, but when the judges had very carefully considered the question which, after all, was only a small one of procedure in their own courts, he thought they should hesitate before they interfered. It was a matter entirely for the House to deal with, and he thought it as well that they should have it presented to them in all its views before coming to a decision.

The HON. C. S. D. MELBOURNE said, in reply to the different speakers, he would only say that he felt assured hon. members would admit that in moving the resolution he did so in as temperate a manner as he possibly could; and from his knowledge of the judges he wished to pay every respect to their well-known ability as the ablest lawyers in the country. But he did not think that because they occupied that position that he—although a member of what was called the lower branch of the profession—as a member of that House should not, if it appeared to him that a rule passed by the judges was likely to do injustice, bring it before that House in the way he had done. The Hon. Mr. Mein, in referring to the difference between the Bills of Exchange Act and the new order, stated that practically it came to the same thing; but he could show that it would come to nothing of the kind. Under the present system the defendant must either pay money into court if sued upon a promissory note, bill of exchange, or cheque, and then he was entitled as a matter of right to the order, or if he did not pay it he went to a judge—that was under the Bills of Exchange Act—and obtained an order on his own affidavit, and at the risk of a prosecution for perjury if on the trial it appeared to the judge of the court that perjury had been committed. The effect of this was not to give them any assistance from Imperial decisions on the statute, because it was only a question whether the defendant should be allowed to defend or not. Immediately he defended he came under the Judicature Act. The only question was, whether he should be allowed to come in and defend or not, and it was that question hon. gentlemen should bear in mind in coming to a decision on the matter. The Postmaster-General stated that he felt bound to oppose the clause, but he admitted that he had at times experienced the advantages of this very Bills of Exchange Act. If Brisbane was the whole of Queensland there would not be the slightest objection to this order, but it was not. In England there was what were called "district registrars" in every large town, to whom application might be made for permission to come in and defend, and in any portion of England and Wales—for that provision did not apply to Scotland and Ireland, unless by special statute—a defendant could apply to defend, he would not say within twenty-four hours, but within five hours. Owing to the great extent of this colony and the difficulties of communication, this order would cause a great deal of inconvenience, and what was a valuable provision in England would be a great evil here.

Question put and passed.

RAILWAY COMPANIES PRELIMINARY BILL—COMMITTEE.

The House went into Committee to further consider the Bill.

Clause 21 passed as printed.

On clause 22—"Trains to be run regularly"—

The HON. W. H. WALSH asked the Postmaster-General what would be the result to the contractors if they did not run these trains? What control had the Government over them?

The POSTMASTER-GENERAL said this was only a Preliminary Bill. When the agreement, or a Bill embodying it, was submitted to the House no doubt a penalty would be provided.

Clause put and passed.

Clauses 23 and 24 passed as printed.

On clause 25—"Penalty for refusing to give up possession of a railway"—

The HON. W. H. WALSH said this was the most Algerine and arbitrary clause he had ever seen. The syndicate or proprietors might say they had a vested interest in the line, and dispute the right of the Government to take possession of it, and for so doing they would be liable to twelve months' imprisonment. That was a new way of settling a question of ownership. The clause was un-English and arbitrary.

The POSTMASTER-GENERAL said that the only thing he saw that was wanting in the clause was, that in line 37, after the word "person," the words "having charge thereof for the time being" should be inserted, and he would move that these words be inserted. The clause provided that the refusal must be after lawful demand. The whole point of the clause hung upon that word "lawful." It was necessary to have some kind of penalty, or else the contractors could refuse to run the railway, set the Government at defiance, and put the public to all sorts of inconvenience. It was impossible to conceive the amount of annoyance and inconvenience that might be caused by the contractors refusing to give up the railway after it had been abandoned and had become the property of the Government.

The HON. C. S. MEIN said that everything hinged upon the word "lawful," and in instituting proceedings the onus would be thrown upon the Government of proving that the persons being prosecuted had no right whatever to the possession of the property. Practically, the action would be against the defendant for detaining what did not belong to him, or, rather, for detaining property belonging to the Crown. The colony gave such a large concession for the construction of this line that they should afford a little protection to themselves.

The HON. W. H. WALSH said that the hon. gentleman admitted that the Government could advance their claim in the Civil court, and then if they did not succeed or progress there they could proceed criminally against the owner of the railway and imprison him. Supposing a man sustained a Civil action for wrongful intrusion, an arrogant or intolerant Government might commit him to prison. This was a dual way of punishing a man. He should be sorry to defend a Civil action against the Government if they could imprison him for doing so, which seemed to be about the power that was given by this clause.

The HON. C. S. MEIN said that they were giving unusual facilities—large areas, and a grant of the land over which the railway ran—and they were surrounding it with comparatively trifling conditions—one of which was, that the contractors should run trains to a certain extent. If they failed in the conditions the Government were to have the right to take possession of the line, in order to perform the object for which it was intended, and for the purpose of which certain considerations were given by the Government. If under these circumstances persons refused to allow the Goverment to get their own, they ought to be placed in the same position as any man who kept the property of another. The refusal must be after a "lawful demand" had been made—that was to say, a demand made within all the terms of the law, and based upon the fact that the property had ceased to exist in the person complained of, and had become vested in the Crown from whom it originally emanated. If they did not have such a stipulation—if the Crown were driven, under every circumstance where it was proved satisfactorily that a man had forfeited the right of ownership to maintain an action of ejectment, interminable delays might take place. The man might continue the delay for one or two years by appealing to the Privy Council. They were not to suppose that any Government would be actuated by such malicious motives as to prosecute a man for what he had a right to do. No Government in a British colony would do that.

The HON. W. H. WALSH said it resolved itself into this—that a man who dared to defend his rights by appealing to the Privy Council, when those rights were disputed by the Government, was liable to be prosecuted criminally and imprisoned—that was the Hon. Mr. Mein's argument.

The HON. C. S. MEIN: The man must be found guilty by a jury of his country.

Question—That the words proposed to be inserted be so inserted—put and passed.

Clause, as amended, passed.

Clause 26 passed with verbal amendment.

On clause 27—"If value not agreed upon arbitrator to be appointed"—

The POSTMASTER-GENERAL said this and the next two provisions were the arbitration clauses, and he thought it would be found that they had been carefully prepared.

The HON. W. H. WALSH said the Postmaster-General had stated that this was the arbitration clause—did he not mean arbitrary clause? What was the real meaning of the term "incapacitated" in the fifty-fourth line? Did it mean when the arbitrator ceased to be a Government supporter?

The POSTMASTER-GENERAL thought the word carried its own meaning. It meant when the arbitrator became incapacitated to do the work for which he was appointed either through illness, intoxication, or any other sufficient cause.

Question put and passed.

Clause 28 passed as printed.

On clause 29—"If either arbitrator neglects to act, award to be made by arbitrator and umpire"—

The HON. C. S. D. MELBOURNE said that if the draftsman of this clause had taken the Act which they had in force, and which was known as the Interdict Act, he might have saved the whole of the 27th, 28th, and 29th clauses by simply stating that the arbitration should be under that statute. That would have carried out all that was here provided for, and given further powers. He would throw out the suggestion so that it might be availed of in the agreement.

The POSTMASTER-GENERAL said he must explain that the operation of the Interdict Act was perfectly understood by the Government, but the Hon. Mr. Melbourne must remember that this was only a preliminary measure, and it would not have been understood by people in England if there were a clause in it referring them to the Interdict Act. It was thought well to make the Bill so plain that people at home would be able to see for themselves what conditions were intended. Nevertheless, he was obliged to the hon. member for the suggestion.

Question put and passed.

The POSTMASTER-GENERAL, in moving clause 30, said he thought it was a very valuable provision, although it was not in the Bill as originally introduced. It required both the Government and the contractors to allow each other the use of their lines.

The HON. W. F. LAMBERT asked how the clause would work with clause 20?

The POSTMASTER-GENERAL said that the clause before the Committee was to give the Government and the contractors running powers over each other's lines. Clause 20 was for the conveyance on the Government railways of material required by the contractors in the construction of the railway.

Question put and passed.

On clause 31—"Terms to be settled by agreement or referees appointed by a judge of the Supreme Court"—

The HON. C. S. D. MELBOURNE said he wished to draw attention to the expression "such facilities," which appeared to him to have no intelligible reference to any preceding portion of the Bill.

The POSTMASTER-GENERAL said the words in question referred to the term "all reasonable facilities," used in the preceding clause.

The HON. W. H. WALSH said the clause was puerile, both in its inception and in its construction; and the best thing they could do was to strike it out altogether. What had the judges to do with the working of the Railway Acts or the appointment of referees? Why should the judges be invested in a matter of this kind with such arbitrary power? The probability was that in the appointment of referees they would be obliged to appoint their tipstaffs and men of that ilk. They might even have to go to the gaols to get a man. The clause was of no value, and the Postmaster-General had better consent to its being struck out. If the judges were to determine this immaterial question, why should not every other dispute which might arise under the Act also be left to them? He was sure, however, that the Commissioner for Railways or the Minister for Works would be able to hold their own against any exorbitant contractors. One would almost fancy that the clause had been drawn up by one of the judges, in order that he might invest himself and his colleagues with more power than they already possessed in the management of the affairs of the colony.

The POSTMASTER-GENERAL said this was one of the clauses which had been inserted in the Assembly on the motion of the leader of the Opposition. He could not see any objection to it, and thought that if other hon. members shared that view they would be foolish to strike the clause out.

Clause put and passed.

On clause 32—"Penalty for not giving due facilities"—

The HON. C. S. D. MELBOURNE said that under that clause the Minister for Works, who was purely a departmental officer, would be liable to a penalty of £100 for every day during which he failed to afford certain facilities.

The POSTMASTER-GENERAL said the Commissioner for Railways had statutory powers under the Railway Act, and could sue and be sued as representing the Government.

Clause put and passed.

Clause 33—"Contractors not to show partiality to any person or kind of traffic"—put and passed.

On clause 34—"Agreement may be modified to provide for line becoming property of the Government after twenty-one years"—

The POSTMASTER-GENERAL said he would point out that that was an alternative clause, so to speak, to clause 21, and had been inserted on the motion of the leader of the Opposition in the Assembly. The clause was framed with a view to give capitalists an opportunity of offering to construct a railway line on the understanding that it should be the property of the Government at the expiration of twenty-one years. No doubt, if they could induce capitalists to construct their railways on reasonable terms on the understanding that they should become the property of the State at the end of twenty-one years, that would be a very judicious course to pursue, but he was afraid they would not get any offer of that sort. Still, there was no harm in making provision for it in that Bill.

The HON. F. T. GREGORY said he was doubtful whether the provisions of subsections 1 and 2, as to the selection of alternative blocks, were clearly defined. It was implied that the Minister would make the first selection—in other words, he would select a block at the starting point, and from that would take every alternate block along the line. But to what extent would he proceed? Would the Minister have the right to begin again at the end of the first fifty miles? Then, as the blocks were arranged on both sides of the line, in what way would the alternation take place relatively to the selection of the blocks on the opposite side of the line? He could see that it would be very possible in certain classes of country to make the selections fall in favour of the Government or the contractors. In some parts of Australia there were hundreds of miles of similar country, but in other places there were valuable blocks scattered about indiscriminately.

The HON. C. S. D. MELBOURNE said he must draw attention to clause B of subsection 3, which said that in the leases of lands to the contractors the blocks would be granted to them subject to the condition that they should complete the railway; whereas, in a previous part of the clause it was provided that the Minister must be satisfied that the whole of the line or any prescribed section must be completed before he gave the contractors blocks in fee-simple, or leases of blocks.

The HON. C. S. MEIN said the clause as drafted was perfectly correct. There was a wide distinction between a railway and a section of a railway. The Hon. Mr. Melbourne had mistaken the completion of a section of the railway for the completion of the whole line. The stipulation in this clause was that when a man embarked in an undertaking to construct a line fifty miles in length, he should as soon as he had completed that fifty miles get a grant of half the land to which he was entitled for that fifty miles. He obtained a lease of the balance, and he would not be entitled to the fee-simple of that balance until he had constructed the whole of the railway and had kept it in working order for twenty-one years.

The POSTMASTER-GENERAL said he quite agreed with the Hon. Mr. Mein's construction of the clause. Supposing the contractors were about to proceed with the construction of a railway from Roma to the Gulf of Carpentaria, the object of that clause was to withhold half the land until the whole of the line was completed as security that they should not, after constructing a section of fifty miles, discontinue the work. He desired to make one or two verbal alterations in the clause, but otherwise he thought no fault could be found with it.

Clause verbally amended and passed.

The HON. C. S. MEIN said before the next clause was put he wished to raise a rather important question. This clause, as the Postmaster-General had pointed out, was an alternative clause which provided that the railway should be the property of the Crown at the expiration of twenty-one years from completion. He doubted very much the policy of encouraging the construction of railways and allowing them to remain in private hands after the country had given practically what would be more in land than the value of the cost of constructing them. He therefore thought they should insert the stipulation that all agreements should contain the terms upon which the contractors would be prepared to carry out the work, and it would then be for Parliament to accept or alter the conditions. It was highly desirable in the interests of the public that every agreement should be subject to the stipulation that Parliament should have the option of determining that the railway should become the property of the country within a given period—say twenty-one years. Twenty-one years would give the contractors the power of retaining the management of the concern for a long period during which they would be enabled to take such steps as would make the land that had been given to them for constructing the line as valuable and reproductive as possible to them; and he thought when they gave land to an almost unlimited extent, which, according to rates that had been ruling for many years past, would be considerably in excess of the contemplated value of the construction of the line, they should be acting unwisely if they allowed it to remain in the hands of the contractors and be their absolute property as well. He thought it would be better at the outset even to sacrifice an additional portion of territory to have the advantage of owning the railway hereafter. It might be urged that in the preceding portion of the statute provision was made for the Crown purchasing the railway after it had been constructed; but that was a very doubtful policy to adopt, inasmuch as they would be practically paying for the railway twice over. If the clause he proposed to be inserted were accepted it would work no harm, and in the majority of instances he believed it would be productive of a great amount of good. He begged to move the following new clause:—

> Every agreement made under the provisions of this Act shall specify the terms on which the contractors are willing to construct the railway under the conditions in the last preceding section contained, and such agreement may be ratified subject to such conditions, or otherwise, as Parliament shall see fit.

The POSTMASTER-GENERAL could hardly see how the hon. gentleman could expect him to accept this amendment, because it would deprive the alternate clauses of their value, and

really require that under both systems the twenty-one years' condition should be applicable. He did not think that was the intention of the Legislature at all. He thought it was as well to have the two systems—the one being to give the land as a sort of bonus to encourage the construction of the line, and the line remaining the property of the contractors, giving the power to the Government to purchase it if thought desirable; in the other case, in the alternative which they had just had under consideration, they made the agreement with the understanding that the line became the property of the Crown twenty-one years after its completion. He thought it would be rather arbitrary to insert a clause such as that proposed.

The HON. C. S. MEIN said the Postmaster-General did not understand the intention of his proposed amendment. He was throwing the onus upon Parliament of determining whether the construction of the line should be subject to one condition or the other; and he held in order that Parliament should have the opportunity of fairly determining the question, and that the contractors should not be taken by surprise, there should be inserted in every provisional agreement the terms upon which they would be willing to undertake the construction of the line on the twenty-one-years' system. Every offer from the contractor must contain both alternatives—the terms upon the bonus principle, and upon the principle of the railway becoming the property of the Government twenty-one years after its completion. He thought that as railways in this colony were national undertakings, it was highly desirable that they should remain in the hands of the Government.

The POSTMASTER-GENERAL said he did not see what more was required than the alternative clause provided in the Bill. The Hon. Mr. Mein said they might find themselves in the position of having to pay for the railway over again in cash, but he would ask whether they had not to a great extent paid for all their railways over again. In the case of every railway, the traffic receipts of which did not pay the interest on the cost of construction as well as the cost of management, they had really to pay for over again. After all, he did not think it would be such a remarkably good thing for the contractors, as they would have to make the railway and maintain it, and carry it on for years at a loss; and he thought that if the country got the railway with all the collateral advantages arising from it, they would have ample compensation for the land they gave away. He hoped the hon. gentleman would not press the clause, which he believed would be really inoperative, as he could not see how it could not be enforced.

The HON. F. T. GREGORY said he felt inclined to agree with the clause proposed by the Hon. Mr. Mein, who had advanced very fair and reasonable arguments in support of it. At the same time, they must not overlook the fact that the contractors were perfectly alive to the conditions under which they were going to construct the railway; and if they were to construct it under the very much more favourable conditions suggested by the Hon. Mr. Mein, they should be able to contract to do the work on much more favourable terms. It was true, it might be overlooked by the ordinary public, but he did not think any contractor, or any party of men joined together to construct these works, would for one moment overlook it, and there was no fear of the Government of the day overlooking it. If it were not for that he would go with the new clause as proposed; but he thought the interests of the public were sufficiently protected by the other clauses of the Bill.

Proposed new clause put and negatived.

On clause 35—"Agreement laid before the Legislative Assembly"—

The HON. F. T. GREGORY said this clause was quite at varianee with the clause usually inserted in Acts of Parliament, and he strongly objected to the wording of it. There was no reference to Parliament generally, and, furthermore, if the agreement were laid upon the table there was no provision that it should be dissented to, or that any action was to be taken upon it. He should therefore move, as an amendment, that the clause should read as follows:—

Every agreement made subject to the provisions of this Act shall be laid before both Houses of Parliament, if sitting, and, if not then, within fourteen days of the opening of the next session.

The POSTMASTER-GENERAL suggested that the object of the hon. gentleman might be attained by omitting the words "laid upon the table of the Legislative Assembly," and inserting "before both Houses of Parliament." He quite agreed with the hon. gentleman that this House ought not to be ignored, and that they should insist upon the agreement being laid before both Houses.

The HON. F. T. GREGORY said he had no objection to adopt the suggestion of the Postmaster-General, and moved an amendment accordingly.

The HON. W. H. WALSH said he quite agreed with the amendment moved by the Postmaster-General, not only because it was in conformity with the dignity and rights of that Chamber, but because it was a reflection upon the action of the Government in another Chamber in daring to ignore the rights of that House. He looked upon the clause as a gross insult to that Chamber, and he was glad to see the leader of the House had vindicated his high position by forgetting his connection with the Government, as it were, and determining to do his duty as leader of that House. He maintained that their first duty was to maintain the dignity and rights of that Chamber. He thought that an amendment should be made in the previous line of the clause by striking out "as soon as practicable," and making it compulsory that the agreement should be laid upon the table of the House.

The POSTMASTER-GENERAL said such an amendment as that suggested by the Hon. Mr. Walsh would not meet the case, because the Government of the day might be very corrupt, and unless they were required to lay the agreement before both Houses of Parliament as soon as practicable they might not do so until there was no further use for it.

The HON. Mr. GREGORY'S amendment having been agreed to, the clause, as amended, was put and passed.

Clause 36 and 37 passed as printed.

On clause 38—"Minister to prepare Bill"—

The HON. W. H. WALSH moved the omission of the words "as soon as convenient" in the first line of the clause.

Question put and passed.

After some further verbal amendments, the clause, as amended, was passed.

On clause 39—"Contractors who are a joint-stock company to be registered in Queensland with sufficient paid-up capital"—

The POSTMASTER-GENERAL moved the insertion of the word "shall" for "must" in the twelfth line.

The HON. W. H. WALSH said he thought the clause a wonderful one. He did not know who the extraordinary character was who had drafted it, but it required a new lock, stock, and barrel.

Amendment agreed to.

The HON. F. T. GREGORY thought that the words "a company," in the twelfth line, were surplusage, and moved that they be omitted.

The HON. C. S. MEIN said it might appear to be tautology to say that "such company shall be a company incorporated," &c., but it was the legal way of expressing these matters. The Committee should not over-refine when dealing with a Bill which was sent up by the other House.

The HON. W. H. WALSH said that if one of our grammar school boys were to construct such sentences as were in the clause he knew what would be the end of that boy. He should not move any amendment. It was impossible to do so, for the clause was past redemption.

The HON. C. S. MEIN said he agreed with the hon. member that it was impossible to move any amendments, for he never read a more intelligible clause. It was as clear as the sun in a cloudless sky in mid-day; but when it happened that, owing to a defect of their own, they could not understand a thing, they were apt to put the blame upon the man who prepared it.

After some further discussion, the amendment was negatived.

On the motion of the POSTMASTER-GENERAL, another verbal amendment was made, and the clause, as amended, passed.

Clauses 40 and 41, and the preamble, passed as printed.

On the motion of the POSTMASTER-GENERAL, the Acting-Chairman reported the Bill with amendments.

The POSTMASTER-GENERAL moved that the Bill be recommitted with a view to reconsidering clause 15, and making some verbal amendments in clauses 22 and 34.

The HON. W. H. WALSH said the Standing Orders allowed a Bill to be recommitted for the purpose of supplying some omission, but not for the purpose of reconsidering a decision arrived at during the session. There would be no finality to their proceedings if that were permitted.

The POSTMASTER-GENERAL said that, as he understood the hon. member's objection, it was that, the Committee having decided that clause 15 should be omitted, he (Mr. Buzacott) was out of order in asking that the Bill should be recommitted for the purpose of considering the propriety of the restoration of the provision. He did not think there was anything in the Standing Orders to prevent that being done, but if the feeling of the Committee was against it he would not press it. The reason why he wished the clause reconsidered was because he did not see its importance when it was before the Committee, and he did not urge some arguments which he had to urge now in favour of its retention. He might as well give the House his arguments. Hon. members would observe that the clause prohibited the employment of Asiatics or Africans anywhere beyond a distance of 200 miles from the Gulf of Carpentaria. The clause was struck out because a majority of the Committee thought there ought not to be any restriction—that they ought to allow the contractors to employ any labour they chose. It was quite certain, however, from the policy of Parliament which had been deliberately adopted year after year, that Parliament would never sanction any agreement under which Asiatic labour was to be employed without restriction in the construction of railways.

The HON. W. H. WALSH rose to a point of order. He thought that the Postmaster-General was not right in expatiating upon the merits of the clause he proposed to restore to the Bill. The hon. gentleman was speaking to a motion which he contended could not be put. If the hon. gentleman persisted in his motion, there was nothing to prevent him moving that the whole of the Bill be recommitted. It was easy to perceive that if that course were persisted in there would be no finality in legislation. He almost objected to refer to their Standing Orders in this matter; he believed he knew the practice of Parliament, which undoubtedly pointed to the fact that one Chamber could not during the same session reconsider and reconstruct even a clause. If a clause came down as an amendment from another Chamber they might agree or disagree with it, but that was all they could do in the matter. Besides, the Postmaster-General would be acting unfairly if he took advantage of the absence of those members who were opposed to the clause to get it inserted.

The POSTMASTER-GENERAL: I have already said I will not press the motion.

The HON. W. H. WALSH said that in that case he would not detain the Committee any longer—in fact, he would apologise for detaining them so long. It might be a weakness on his part to defend their privileges and practice, but he would persist in that course as long as he had a seat in that Chamber.

The HON. C. S. MEIN said no apology was necessary on the part of the Hon. Mr. Walsh. This question was one of very grave importance, and the Hon. Mr. Walsh was qualified to speak with considerable authority on the subject. As the matter had been ventilated it was well that it should be determined. At the outset he was inclined to agree with the Hon. Mr. Walsh, that it would be contrary to their practice to recommit a Bill to restore a clause which they had deliberately omitted; but after listening to the arguments which had been adduced, reading their Standing Orders, and referring to the English authorities, he could not see a rule laid down to that effect. He was inclined to think that reason was against such a rule. What was the object of recommitting a Bill? Was it not for the purpose of reconsidering what they had already had under consideration?

The HON. W. H. WALSH: No; it is to supply some omission.

The HON. C. S. MEIN said that in passing a Bill through Committee they deliberately approved of every clause in the Bill, and the result of any reconsideration on the recommittal of the Bill amounted to the reconsideration of what they had already affirmed in discussions in committee. If they could alter their determination on one point surely they could alter it on another?

The HON. W. H. WALSH: You cannot.

The HON. C. S. MEIN said he could see some force in the contention of the Hon. Mr. Walsh. If the rule were as he had pointed out, he could easily see that an unfair advantage could be taken of it. For instance, in this case, seeing that a majority of hon. members of that House might be in favour of the omission of the clause, it would be possible for the Postmaster-General to take advantage of their absence to restore it to the Bill. Assuming, however, that a rule existed, it would be more honoured in the breach than in the observance, and the Postmaster-General would do well not to ask the Committee to restore the 15th clause to the Bill.

He contended that in the main Bills should be recommitted for the purpose of rectifying ambiguities and technicalities.

The POSTMASTER-GENERAL moved that the Bill be recommitted for the purpose of making verbal alterations in clauses 22 and 34.

Question put and passed, and the House went into Committee accordingly.

The POSTMASTER-GENERAL said he would take advantage of that opportunity to say a few words in explanation of his motion to recommit the Bill for the reconsideration of clause 15. On referring to *Hansard*, he found that he allowed the clause to be negatived without calling for a division. That was the chief reason why he wished to have the clause reconsidered. He desired to take the sense of the House by a division; but, as hon. members seemed disinclined to take that course, he would not press the matter further.

Clauses 22 and 34 were verbally amended; and, the House having resumed, the Bill was reported with further amendments, and the third reading was made an Order of the Day for Tuesday next.

The House adjourned at half-past 9 o'clock until Tuesday next.