Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 30 JULY 1884

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LEGISLATIVE COUNCIL.

Wednesday, 30 *July*, 1884.

New Guinea and Pacific Jurisdiction Contribution Bill.—Deeds of Grant and Leases to Deceased Persons Bill.—Railway Plans.—United Municipalities Act of 1881 Amendment Bill—third reading.—Marsupials Destruction Continuation Bill—third reading.—Divisional Boards Endowment Bill—committee.—Registrar of Titles Bill—committee.—Public Officers Fees Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

NEW GUINEA AND PACIFIC JURISDICTION CONTRIBUTION BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding a Bill to make provision for the payment by the colony of Queensland of a proportionate share of the expense to be incurred by Her Majesty's Government, in giving effect to certain resolutions adopted by the Convention of Representatives of the Governments of the several Australasian colonies, held in Sydney in November and December, 1883.

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

DEEDS OF GRANT AND LEASES TO DECEASED PERSONS BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding a Bill to authorise the issue of deeds of grant and leases in the names of deceased persons in certain cases.

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.

RAILWAY PLANS.

The POSTMASTER-GENERAL said he found that the reports relative to the notices of motion standing in his name had not been distributed among hon. members; he therefore postponed the consideration of those motions until Tuesday next, in order that hon. members might have an opportunity of ascertaining what evidence was given on the subject, and satisfying themselves as to the desirableness of constructing the different lines to which they referred.

UNITED MUNICIPALITIES ACT OF 1881 AMENDMENT BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL, the Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly with message in the usual form.

MARSUPIALS ACT DESTRUCTION CONTINUATION BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL, the Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly with message in the usual form.

DIVISIONAL BOARDS ENDOWMENT BILL—COMMITTEE.

On the Order of the Day being read, the President left the chair, and the House went into Committee to further consider the Bill.

On clause 2, as follows :—

"Whenever the whole or any part of a division under the said Act has been, or shall hereafter be, constituted a municipality under the provisions of the Local Government Act of 1878, the amount of endowment payable to such municipality shall be computed as if such municipality had still continued to be a division under the provisions of the said first-mentioned Act."

The HON. W. FORREST said he would ask the Postmaster-General to postpone the consideration of the clause till next week, in order that hon. members might have before them the information in reference to which he had already given notice of motion. That information would materially assist hon. members in coming to a conclusion on the question at issue; and he hoped that, under the circumstances, the Postmaster-General would consent to the postponement.

The POSTMASTER-GENERAL said he was always anxious to oblige hon. members as far as possible. There was no doubt that the statistics required by the hon. gentleman bore on the matter before the Committee, and no harm would ensue from adjourning its consideration. At the same time he would remind hon. members that if they threw out clause 2 they would be throwing out the Bill. It was a money Bill, and according to the practice of Parliament it was not competent for them to alter it. Theoretically they could do so, but practically they could not. Invariably, when the Chamber interfered with a money Bill, the Legislative Assembly either insisted on restoring it to its original shape or on laying it aside. He moved that the Chairman leave the chair, report no further progress, and ask leave to sit again.

The HON. W. H. WALSH said there was something worthy of the consideration of hon. members in regard to the Bill and the Acts it was intended to alter or affect. When the principal Act was introduced by the late Government, it was supposed that it would relieve the general revenue by entrusting the management of local affairs to those who were directly interested in the expenditure of the money. As laid down in that Chamber by the promoter of the measure, the principle was, that henceforth the general revenue was not to be called on at all to assist in local expenditure on roads in the various municipalities and districts throughout the colony. He was compelled, however, to come to the conclusion that the Bill before the Committee was neither more nor less than a blind—a political piece of machinery which the Government of the day could adapt to the exigencies or demands of their supporters. The Bill was intended to perpetuate for another five years a charge from which the general revenue was to have been relieved. If they could at that moment obtain a return showing the political expenditure on the various roads through divisional boards, shire councils, and municipalities, since the passing of the Acts relating to local government, they would find that more money had been spent in a patronising way than had ever been spent before; and, instead of the taxpayers being relieved, greater political power was placed in the hands of the Government. He did not blame the present Government more than the past. Both were to blame, for both worked with the object of ingratiating themselves with those who wanted subsidies. Not long ago, he was sorry to say, the Minister for Works made a most imprudent promise in connection with the matter; and he supposed, the Bill was introduced in consequence of the policy the present Government thought it necessary to carry out. But was not the measure an entire contradiction of the principles laid down when the first Bill relating to divisional boards was introduced? Was not that Bill passed to relieve the general revenue of the demands made upon it by the representatives of the people in the various electorates? But even now a Minister could not go into any electorate without being pounced upon by the representatives of divisional boards, of shire councils, or of municipalities, and called upon to surrender, as it were, and promise that he would agree to construct or repair some bridge, or to include some road in the category of main thoroughfares. Was he not now looking at an hon. gentleman who resided in a hungry district that was always getting something out of the Government?

The HON. J. C. FOOTE: No.

The HON. W. H. WALSH said it was an undeniable fact. The measure before the Committee only showed that hon. members deceived themselves at the outset in regard to local government, and that they were asked to perpetuate what ought never to have existed. If the roads were to become a tax on the localities in which they existed let it be so; but they should not weaken the position of the different boards by saying that they need not rely on local assistance, but could depend on the Government. That would have a most pernicious effect, and it was not right that people should be taught to rely on the Government rather than on themselves. He had no objection to the postponement, but he did object to the continuation of a double endowment for a further period of five years. There was a regular custom in the matter of putting questions, and the word "further" was an innovation and might mean something which they did not understand. When it was inserted for the first time he thought some explanation ought to be given concerning it. The Chairman himself knew that the word had never been used before, and it was used now probably with some object.

The CHAIRMAN said the way in which the question had been put was the correct way. He had no intention of doing anything but his duty.

The HON. W. H. WALSH moved that the word "further" be left out, it being quite a new practice, and unnecessary.

The CHAIRMAN said he would remind hon. members that progress had been made, and the report he would have to make would be "no further progress."

The HON. W. H. WALSH said he had moved an amendment. He looked upon that word "further" as a slur upon their proceedings.

Question — That the word proposed to be omitted stand part of the question—put.

The POSTMASTER-GENERAL said he could not help thinking that the Hon. Mr. Walsh marred his usefulness by raising such frivolous objections. The motion he had proposed was perhaps new, but in this case the form of motion was appropriate, because progress had already been made. They had gone no further than saying that in the report which he maintained should be entirely in accordance with facts. After all the objection was only a quibble, but if they made a statement at all it was just as well to make a correct statement. He could not see what was to be gained by the objection taken by the Hon. Mr. Walsh. The hon. gentleman was making the proceedings of the House such as they would expect to see in a playground, and not the proceedings of a deliberative body.

The HON. W. H. WALSH said the Postmaster-General again presumed to offer advice to

the House, and he knew of nobody who was less able to do so than the hon. gentleman. The hon. gentleman had said this was merely a quibble. He (Mr. Walsh) granted that; but he said also that the introduction of that word was an innovation. It was a new word, and when they had a lawyer as Postmaster-General—which, by the way, was a most incongruous combination—it was necessary that they should check innovations, and prevent anything which would be likely to lead them into difficulties. This was the first occasion on which the word "further" had been introduced in a matter of this kind; and why, he should much like to know, had it been dragged in? Was it because the Postmaster-General was a lawyer, or for what reason could it possibly be? He advised the Postmaster-General, at any rate, to deal with these matters in a parliamentary form, and not in a personal or out-of-the-way manner. He did not wish to take small objections, but when he took exception to a word that had never been used before in parliamentary practice—when it had been introduced for the first time, and designed probably by his hon. friend, Mr. Gregory, who was beaming at him at the present moment, and who had assumed the *rôle*, apparently, of adviser to the Postmaster-General—he expected that some attention should be paid to his objection, and some explanation given. He hoped hon. gentlemen would give him credit for good intentions, in a matter of this kind. His desire was to work for the common good, and he still maintained that the introduction of the word was an innovation, with probably something behind it which they did not understand.

Question—That the word proposed to be omitted stand part of the question—put and passed.

Question—That the Chairman leave the chair, report no further progress, and ask leave to sit again—put and passed.

The POSTMASTER-GENERAL, in moving that the Committee have leave to sit again on Tuesday next, said he would endeavour to have the statistics which the Hon. Mr. Forrest had moved for supplied to hon. members on Tuesday, but, failing that, he would ask the House to adjourn the consideration of the Bill until the next day.

Question put and passed.

REGISTRAR OF TITLES BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the President left the chair, and the House went into Committee of the Whole to consider this Bill.

Preamble postponed.

Clauses 1, 2, and 3 passed as printed.

On clause 4—

"From and after the appointment of a Registrar of Titles, the said recited Acts and all other Acts relating to the registration of deeds or other instruments in the office of the Registrar-General shall, so far as relates to anything to be thereafter done by, under, or with regard to the said Acts, or any of them, be read and construed as if the words 'Registrar of Titles' were used therein, instead of the words 'Registrar-General' whenever the said last-mentioned words are used therein, and as if the words 'Office of the Registrar of Titles' were used instead of the words 'Office of the Registrar-General,' 'General Registry Office,' 'Office of the Registry of Deeds,' or other like words, whenever those words or any of them are used therein with respect to any purpose connected with the registration of deeds or other instruments."

The HON. W. H. WALSH said he would ask the Postmaster-General to tell the Committee what had become of the Registrar-General—was he omitted altogether in the Bill, or where did he exist?

The POSTMASTER-GENERAL: His duties are not under this Bill.

The HON. W. H. WALSH said, with reference to the clause under consideration, he would ask the Postmaster-General whether, in the 27th line, it would not be well to leave out the word "thereafter." He fancied that word would be found to be an impediment in working the Act, and he would suggest the advisableness of leaving it out. He was sure it would hamper the construction of the Act when it was dealt with.

The POSTMASTER-GENERAL said the operation of this clause was only to extend to the period which elapsed after the Registrar of Titles was appointed. He did not think the clause would be unintelligible if the word were left out, but it was certainly a correct expression. Under the existing statutes the Registrar-General had certain duties to perform with regard to the Real Property Office, and the Bill provided that, as soon as a Registrar of Titles was appointed, the Registrar-General's duties, so far as certain things were concerned, ceased, and the word "thereafter," on that account, was appropriate. The objection of the hon. gentleman was a very trifling one.

Clause put and passed.

Clause 5 passed as printed.

On clause 6, as follows:—

"And whereas at or before the establishment of the colony of Queensland certain transcripts of deeds or instruments, and transcripts of memorials of deeds or instruments, affecting land within the territory comprised in the said colony, which had theretofore been deposited for registration in the office of the Registrar-General at Sydney, were transmitted to, and are now recorded in, the office of the Registrar-General of Queensland, and it is expedient that office copies of such transcripts of deeds and memorials should be received in evidence: Be it enacted as follows:—

"In all proceedings before any court of justice an office copy of any such transcript shall be received and taken as evidence of the contents of the deed or instrument of which it purports to be a transcript, or of the contents of the deed or instrument of the memorial whereof it purports to be a transcript, as the case may be: Provided always that the party producing the same shall before producing it give reasonable notice in writing to the other party."

The HON. W. H. WALSH said the clause coutained a great deal more than hon. gentlemen could understand; and no doubt the Postmaster-General would explain what it meant. Probably the Chairman could do so if he were on the floor of the House instead of in the chair. He was justified in calling attention to the question because he happened to know something about the very point—that was, in respect to deeds issued by the New South Wales Government and taken possession of by the Queensland Government, after Separation. He could relate an extraordinary anecdote about deeds sent from Sydney to what was then called Moreton Bay, and not obtainable by those who had a right to them; and he hoped the Postmaster-General would show that there was some justification for assuming that the clause would remove the difficulty to which he had alluded.

The POSTMASTER-GENERAL said the clause did not affect deeds of grant issued in New South Wales in the early days. Transcripts or memorials of all matters affecting real property were obliged to be registered to get priority over deeds not registered. In 1843, an Act was passed abolishing the registration of memorials, and insisting on the registration of full copies of the deeds themselves. Those extracts and full copies were bound up in books, and when Queensland was separated from New South Wales it was impossible to disintegrate the books and take out the original memorials and full copies originally registered; and it was then arranged to provide certified copies of the transcripts and full

copies to be sent here and filed in the office of the Registrar-General in the newly created colony of Queensland. There were no means available by which transcripts, or memorials, or copies, could be produced in evidence in the Supreme Court as valid testimony of the contents of the books themselves, though under the Real Property Act it was provided that the office copy of a document in the Real Property Office should be producible in evidence to the same extent as if the real instrument were produced. To facilitate legal proceedings, and to avoid unnecessary expense, it was considered desirable to make the copies he had referred to admissible in evidence, and that was the object of the clause. With regard to deeds of grant, he hardly apprehended what the Hon. Mr. Walsh was driving at, but would be glad to give any information required.

The HON. A. J. THYNNE said that was one of the few occasions on which a copy of a copy was made admissible in evidence; but it would be very difficult to object to the proposal. In addition to what fell from the Postmaster-General, he would remark that the transcripts sent from New South Wales to Queensland were mainly prepared by gentlemen in the department in Sydney, who were sworn to make true and correct copies. The documents were nearly all sworn copies of memorials, which were sworn to be true memorials of the original documents. It was desirable that the difficulty to which the Postmaster-General alluded to should be removed.

The HON. A. C. GREGORY said he thought he could explain to the Hon. Mr. Walsh the reason for the delay in the issue of deeds of grant. Just before Separation a large number of deeds were being prepared in connection with what was then called Moreton Bay, but were not finally signed by the Governor of New South Wales. The small staff of officers who came to Queensland had an immense amount of work to do, which necessitated considerable delay. They brought with them a tremendous pile of deeds, which might have been signed by the Governor, but which were not signed before they left New South Wales. The consequence was much delay and great dissatisfaction to the people, who could not get their deeds of grant. The delay was caused by the insufficiency of the department to wipe off the arrears which were created by the change from one Government to the other.

Clause put and passed.

Clause 7—"Short title"—put and passed; and preamble put and passed.

The House resumed, and the CHAIRMAN reported the Bill without amendment.

The report was adopted, and the third reading made an Order of the Day for Tuesday next.

PUBLIC OFFICERS FEES BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the President left the chair, and the House went into Committee to consider this Bill in detail.

Preamble postponed.

On clause 1—

"All fees which shall hereafter be received by any officer in the Public Service under the authority of any Act of Parliament, rule of court, or regulation made in pursuance of any Act of Parliament for the performance of any duty as such officer shall hereafter be accounted for by such officer and paid into the Consolidated Revenue, and every such officer shall be deemed to be a public accountant in respect thereof."

The HON. A. J. THYNNE said he would move, as an amendment, that the words, "rule of court, or regulation made in pursuance of any Act of Parliament" be omitted. In moving this amendment, he would ask hon. members to consider that fees which were chargeable under rules of court and fees prescribed by the judges of the Supreme Court for work performed by their subordinates, were reasonable remunerations for the trouble put upon those officers, and they should not unduly interfere in the direction in which those fees should be applied. Besides that, he thought the action proposed to be taken under the Bill was not very respectful to the judges of the Supreme Court who had made the rules, and it would also be a great injustice to many officers who could scarcely hope that the Government would take into consideration the loss they might sustain. With regard to the part of the Bill dealing with regulations made in pursuance of any Act of Parliament, he did not see why that should be mentioned at all. If there were any fees which should be abolished or go into the Consolidated Revenue, which were chargeable under regulation under any Act of Parliament, the Government who made the regulations, instead of introducing a Bill to do away with them, might amend the regulations. It was an unnecessary piece of legislation to introduce a Bill to abolish regulations which the Government had the power of abolishing. Those were shortly the reasons why he thought that his amendment would be an improvement to the Bill. The rest of the Bill would then stand as it was originally framed, and it would establish what would probably be a very useful measure. If the addition that had been made to the Bill was retained, a considerable amount of inconvenience would accrue to those who had dealings with the officers of the court.

Question—That the words proposed to be omitted stand part of the question—put.

The POSTMASTER-GENERAL said he hardly knew what the hon. gentleman was driving at. Personally, he was not at all afraid of exciting the ill-feeling of the judges of the Supreme Court, by maintaining the provision in the Bill which put officers of the Supreme Court on the same footing as every other officer in the Public Service; and the intention of the Bill was to provide that, when an officer in the Public Service performed a duty for which a fee was exactable, that fee should be paid into the public Treasury. How would that act injuriously upon officers of the Supreme Court? Judges of the Supreme Court prescribed rules which exacted certain fees for certain things to be done. Those fees were fees for work that was done by a public officer, and, because he acted for the public, ought he to receive the whole of the money paid by the public for the services he rendered? He should be on the same footing as a clerk of petty sessions. Now, the Hon. Mr. Thynne evidently overlooked the intention of the Bill when speaking of it yesterday. He stated that a large number of persons who were public officers received fees for swearing affidavits. Swearing of affidavits was no part of the duty thrust upon a public officer. He could swear affidavits if he wished to do so, or he could decline, and this Bill did not touch the case of men who swore affidavits. The words of the clause were—

"All fees which shall hereafter be received by any officer in the Public Service under the authority of any Act of Parliament, rule of court, or regulation made in pursuance of any Act of Parliament for the performance of any duty as such officer shall hereafter be accounted for by such officer and paid into the Consolidated Revenue, and every such officer shall be deemed to be a public accountant in respect thereof."

Now, it was no part of the duty of the Registrar of the Supreme Court, or any of his clerks who held the authority of the Chief Justice to administer oaths, to administer them. There was a regulation laid down that no person in

the Supreme Court should employ any of the time which he ought to devote to the Public Service in swearing affidavits, unless he paid the fees for so doing into the public Treasury. That was a regulation of the Service, but if those officers swore affidavits out of office-hours they retained the fee. Now, that rule, he believed, did not apply to the associates of the judges, because, although they were officers of the Public Service, they were really gentlemen who were selected to wait upon and perform certain duties for the judges. It was not part of their duty to swear affidavits. They held their position by the caprice of the judges, or because the judges thought they were suitable persons, and the appointments were not under the Service. Then with regard to regulations. If regulations were imposed for the performance of a duty for which a fee was exactable, why should that fee not go into the public Treasury? The hon. gentleman, by his amendment, wished to perpetuate an objectionable practice—a practice which they had all admitted to be objectionable. He did not know that there was any peculiar charm attached to a rule of court, or why a regulation should have a greater privilege than an Act of Parliament. He said that the present system of paying officers by fees was an objectionable one, and it was desirable to remove it.

The HON. A. J. THYNNE said he had no intention of objecting to the principle of having Government officers paid by salary, but he would like the hon. gentleman to supplement his remarks by explaining what particular cases the words he had moved the omission of were meant to meet. He could not see at the present moment how far the object of the Bill had been extended or improved by the words which had been added.

After a pause

The HON. A. J. THYNNE said he had asked the Postmaster-General a question, and he hoped he should have the benefit of a reply. He asked the hon. gentleman if he would be kind enough to enlighten the Committee on the question as to what cases the words he had referred to were meant to apply, or what cases those words had been introduced to meet, or why the object of the Bill would be affected by their omission?

The HON. W. H. WALSH said it was very evident that they had two hon. gentlemen in the Council who were each and equally endeavouring to improve the law in connection with the subject of the Bill, but the Committee did not appear to be assisted very much by either of them. The Postmaster-General had given an explanation which, to his mind, was not satisfactory, and the Hon. Mr. Thynne asked questions which were not answered. It appeared to him a most unprofitable and unsatisfactory position they were drifting into in dealing with one of the final stages of a Bill, that they should receive no explanation from the Postmaster-General when questions were asked. He would call the attention of the Postmaster-General to the 1st clause, which he believed was under discussion. It was true the Government were abolishing all fees to public officers, but there was nothing that he could see to prevent those fees being handed back again after they had been paid into the Treasury. The Bill in effect said that moneys received by way of fees should go directly into a credit account, and when those fees were used afterwards that the account should be debited with them. There was a determination on the part of the Government that they should receive all fees, but nothing was contained in the Bill to prevent the fees being divided subsequently. He was much inclined to think that this was one of those wily clauses by which the Legislature was imposed upon, and he had no doubt the Government had delegated the duty of drawing up the Bill to some public officer. They did not withdraw from the public officers the reception of fees, but simply ordered that they should be paid into the General Revenue. Would hon. members read the 1st clause, and then tell him if that was not the construction to be put upon it. The officers, he would point out, were directed to use the money in a certain way, but it did not follow that it would not get back again into their pockets. In other words, the Bill was simply a Colonial Treasurer's Bill, to enable him to keep his accounts more correctly, and the Government posed before the country as having introduced a Bill to prevent public officers levying a tax upon the people. He was quite sure the Postmaster-General had not looked at it in that way, and yet he should do so. The hon. gentleman said all the fees were to be paid into the Treasury. No one denied that—the Bill prescribed it; but it did not say that fees should be absolutely withheld from those public servants who, under statute or from custom, had been entitled to them. The proper title of the measure would be, "A Bill to enable the Government to deal rigorously with public officers they do not like, and leniently with those they do like." He did not think that was the intention of the Government, but that construction could and would be put on the Bill. The present Government would not always be in office, and the Act might be in future be worked by a very inferior Government, who would probably discover that the 1st clause would not preclude public officers from the enjoyment of fees. They could pay them into the Treasury, as a matter of form, and afterwards receive the benefit of them to the full extent.

The POSTMASTER-GENERAL said that if a public officer did not account for the fees he received, he would be liable to a prosecution for embezzlement. Persons must be made use of to collect fees, for it would be highly inconvenient if every person had to pay fees direct into the Treasury. In reply to the Hon. Mr. Thynne's indignant remonstrance, he could only say he did not know that any particular fee was aimed at in the Bill. He had turned up the rules of court, and he found that there was an immense number of fees payable to the Registrar of the Supreme Court. There was nothing at present to prevent judges—he was putting an extreme case, but he was justified in doing so—to prevent them passing a rule providing that the Registrar should get a fee of 5s. for every order he signed. It was not probable that such a thing would occur, but it was possible that it might happen where the judges saw a deserving officer underpaid. If the Legislature refused to entertain applications to increase his salary, the judges might do so by a rule of court which would enable him to receive fees in defiance of the Government. They might make regulations with regard to pounds, saying that the pound-keeper might license or exact a fee from persons impounding stock. Unless the Bill passed with the phraseology now used, men acting as public officers would be enabled to pocket fees payable to them in that capacity; but the Government desired that the person who received fees for the performance of any duty owing by them to the Government should pay those fees into the Treasury.

The HON. W. GRAHAM said he did not know who were the particular persons or cases to whom the words proposed to be omitted

applied; but he would ask whether it was the intention of the Government to reimburse public officers for the loss of fees by increasing their salaries on the Estimates. When the fees were once paid into the Consolidated Revenue, they could only be got out again by a vote of Parliament.

The POSTMASTER-GENERAL said the Government had no desire to diminish the income of any officer. They would endeavour, as far as practicable, to make the salary on the Estimates commensurate with the amount already received. The Estimates for the present year would be prepared in a new shape, with schedules showing the number of offices held by each person, and the amount of money derived from each. If he received any remuneration in the shape of residence or fees, the character of that remuneration would be indicated. The intention of the Government was not to make a profit out of the Bill, but to do away with what they believed to be an anomalous and an objectionable state of things.

The HON. A. J. THYNNE said he took it, from the official declaration of the Postmaster-General, that the Bill was not intended to affect the position of judges' associates, who, during office-hours, had to swear affidavits.

The POSTMASTER-GENERAL said it was his opinion that the Bill did not apply to them.

The HON. A. J. THYNNE said he was satisfied with the hon. gentleman's explanation, so far as the rules of court were concerned, but the difficulty was to draw the line between the officers to whom the Bill would, and those to whom it would not apply. If an officer felt in doubt as to whether a shilling or eighteenpence belonged to him or to the Government, and pocketed the money, he would be liable for his mistake to a prosecution for embezzlement.

The POSTMASTER-GENERAL: No man is liable to a criminal prosecution for making a mistake.

The HON. A. J. THYNNE said that was a question. An officer might be put into a very difficult position, in having to decide whether keeping the money was right, or whether it was embezzlement. If hon. gentlemen were satisfied that the measure expressed what the Postmaster-General said it meant, he was content; but he thought it was not clear enough to protect officers who might be in doubt as to what would be their proper fees.

The POSTMASTER-GENERAL said that no honest man was capable of making a mistake under the Bill; he would know at once whether it was his duty to do a thing or not. If it was his duty, he complied by paying the money into the Treasury; if he might please himself—if it was not part of the obligation imposed on him that the money should be paid into the Treasury, then it went into his own pocket. The hon. gentleman knew perfectly well that a man must have a guilty intention to bring him within the penal provisions of any statute.

The HON. W. H. WALSH said the Postmaster-General went too far in saying that no honest man could make a mistake under the Bill. If he (Hon. Mr. Walsh) were a public officer, and the recipient of fees, he would still be an honest man, but would certainly not think the Bill dispossessed him of fees to which he had a right. It might divert them from going directly into his pocket, but he would receive the money ultimately. He did not agree with the dictum of the hon. gentleman, that no honest man could fail to put the construction he put on the Bill. How much better it would have been if the clause said, "From the passing of the Bill, no public officer shall be the recipient of fees." Then they could have approached the subject in a proper way, and could have urged the Government to increase the salaries of public officers, so as to make up for the loss such a Bill would entail on them. He did not hesitate to say that the Bill was in such an ambiguous state that the present Government would tell public officers that they were entitled to fees, while the next Government, in all probability, from political reasons, would say there was nothing in the Bill to prevent them from receiving the value of the fees, which must, however, in the first instance, be paid into the Treasury. He saw at the present moment that his friend, the Hon. Mr. Heussler, who seemed to have command of the Press of Brisbane, was burning to rise. No doubt the hon. gentleman had already written an article on the subject, which would appear to-morrow morning, and on which he now wished to dilate. As he said before, the Bill simply ordered that, instead of fees going direct to public officers, they should be first paid into the Treasury.

The HON. J. C. HEUSSLER said he was delighted to hear that the hon. gentleman thought he had command of the Press, which was an honour he did not expect; but he must remind the Hon. Mr. Walsh of the inconsistency of his remarks. Yesterday, the hon. gentleman accused him of not being able to pronounce; to-day he said that he had command of the Press, and that to-morrow morning, he (Mr. Heussler) would have an article in the paper. It was most amusing to hear remarks of that kind coming from the Hon. Mr. Walsh. He rose for the purpose of telling the hon. gentleman that the Postmaster-General, yesterday and to-day, pointed out that these officers must be recipients of fees, because there must be somebody to receive the fees.

The HON. A. C. GREGORY said he had been listening to the debate very attentively that evening, and he must say that when it commenced he thought that matters were very clear; but there were some things which fell from the Postmaster-General that compelled him to rise and ask a question. He had understood when he read the Bill that if a public officer—say a commissioner for affidavits—was to take an affidavit he would be entitled to charge a fee, but had to pay it into the Treasury; but what fell from the Postmaster-General raised a doubt in his mind whether he did not intend to infer that if the officer waited until after 4 o'clock, when his office was closed, he could keep the fee in his own pocket. It would be better to have no misapprehension on that point. He had always held that a public officer, who performed a function in virtue of his office, could not receive a fee because he did the work in office-hours, and that even out of office-hours, if he performed work appertaining to his office at any time within the twenty-four hours, he was no more entitled to that fee.

The POSTMASTER-GENERAL said a public officer who received a fee, no matter when, was not entitled to it; but a commissioner for affidavits was not a public officer. He was a person who was appointed by the Chief Justice of the Supreme Court, with authority to administer oaths, and the judges of the Supreme Court said that he should be entitled to a fee. It was true that most of the persons so appointed were public officers, but, when they administered an oath, they did not do it as public officers, but only by virtue of the commission which the judges had issued.

He therefore did not perform a duty as a public officer in administering an oath. It might just as well be said that a public officer, who happened to receive moneys as a director of a company, or receiver of moneys under any other circumstances, was bound to pay those moneys into the public Treasury. It was only in the performance of a duty as a public officer that he was not entitled to keep the fees, and whether he received the fee in office-hours or afterwards mattered not.

The HON. A. C. GREGORY asked whether a commissioner for affidavits received his fee in virtue of his office and under some rule of court?

The POSTMASTER-GENERAL said the commissioner for affidavits received a fee in virtue of the commission the Chief Justice issued to him, but that was not a fee payable to a public officer. It was a fee payable to a person selected by the Chief Justice as one who was competent to administer an oath in a proper way. There were several solicitors and merchants throughout the colony and outside the colony who were clothed with that authority from the Supreme Court. Where an oath had to be made, to be used for some judicial proceedings connected with the Supreme Court, it was provided that those persons who administered it should receive so much. It might as well be said that any solicitor, as soon as he held a commission to administer oaths, became a public officer, but that was absurd on the face of it. The judges had laid down a rule which was quite in accordance with the principles of this Bill—that, if an officer of the Supreme Court who was allowed to administer oaths did so in office-hours, the fee he received should be paid into the Treasury; and it was on that principle that the Bill was framed.

The HON. W. H. WALSH said his hon. friend had stated that it was the practice of the Chief Justice to confer this duty upon solicitors and merchants, but he wanted to correct him. He (Mr. Walsh) had had a correspondence with the Chief Justice on the subject quite lately, and was told that in no instance did he confer the duty upon any person outside an official officer or a solicitor. He remembered the circumstance, because he wished to get the duty conferred upon a well-known merchant in Melbourne, and was refused by the Chief Justice on the grounds he had stated. He thought that was a capital rule, but he merely wished to correct the Postmaster-General.

The POSTMASTER-GENERAL said the hon. gentleman had correctly stated the case. The practice was unique, as far as this colony was concerned. In other colonies and in Great Britain, the duty was conferred upon merchants. He was not aware of the rule before, if there was such a rule. However, he thought it a very good rule, because it was very desirable that the persons who did administer affidavits should know something of the complications attached to the duty.

The HON. A. J. THYNNE said a good many of the commissioners for affidavits were under the impression that the Bill was intended to meet their case, and there was some reason for their having that impression. If the Postmaster-General would call to mind, he would remember that nearly all the commissions which were issued to Government officers were issued to continue in force only while the officers held the offices to which they were appointed by the Government. If the clerk of petty sessions at Stanthorpe, for instance, was appointed a commissioner for taking affidavits, his commission would only hold good while he was in occupation of that office. Hon. gentlemen knew that it would be very difficult for them to distinguish whether they held their commissionerships for affidavits by virtue of their office or not. He took it that the commissioners for affidavits were in no way affected by the offices which they filled, so long as they did not trespass on the office-hours of the Government. If that was held to be the interpretation of the clause he would withdraw his amendment.

The HON. SIR A. H. PALMER said he found on looking over the list of commissioners for taking affidavits that the first name mentioned was that of Francis Kates, J.P., Allora; he was neither a solicitor nor was he in the Government Service, that he knew of. And if they looked further down the list they would find the names of G. M. Challinor, Esk, and John Connolly, Gayndah. The Postmaster-General was therefore perfectly correct in his statement, and he had felt quite sure, at the time the hon. gentleman spoke, that he was right.

The HON. W. H. WALSH said that was a most extraordinary thing, because he could produce correspondence to show that the Chief Justice on no account appointed anybody who was not either an official or a member of the legal profession.

Amendment, by leave, withdrawn.

On clause 2, as follows:—

"This Act does not apply to fees receivable by bailiffs of district courts or bailiffs of courts of petty sessions for the performance of their duties as such bailiffs."

The HON. A. J. THYNNE said that high bailiffs in the country were paid only by fees, and the fees received were so meagre as to be an altogether insufficient remuneration for the work done. He thought the Postmaster-General would bear him out in saying that, in sending out writs and other legal processes, parties were obliged to supplement the fees chargeable to the Government under the rule of court by an additional payment more commensurate with the trouble taken by the officer employed. He hoped the Government would make some provision for giving high bailiffs more adequate remuneration, and thus save suitors the necessity of making good the deficiency.

The POSTMASTER-GENERAL said that high bailiffs were, as it were, conduit pipes through whom sheriffs acted. The persons who served writs were paid for their actual services, and the high bailiff did nothing more than correspond with those who placed processes in his hands for execution. If high bailiffs were better paid, perhaps they would do better work. From his experience as a solicitor he could say that the service of processes in country districts was most unsatisfactory. Probably the bailiffs, feeling that they did not receive sufficient remuneration, performed their duties in a perfunctory manner for that reason; but whether that was the case or not, great complaints had been made in reference to them. He must admit, however, that since the introduction of the high bailiff system those complaints had diminished. No doubt the matter would be considered, and the Government would endeavour to see that justice was done in any case where injustice existed at the present time.

Clause put and passed.

Clause 3—"Short title"—passed as printed, and preamble put and passed.

The House resumed, and the CHAIRMAN reported the Bill without amendment; the report was adopted, and the third reading made an Order of the Day for Tuesday next.

The House adjourned at ten minutes to 6 o'clock.