Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 13 OCTOBER 1885

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LEGISLATIVE COUNCIL.

Tuesday, 13 *October*, 1885.

Elections Bill—third reading.—Probate Act of 1867 Amendment Bill—committee.—Justices Bill—committee.—Victoria Bridge Closure Bill.—Licensing Bill.

The PRESIDENT took the chair at 4 o clock.

ELECTIONS BILL—THIRD READING.

On the motion of the POSTMASTER-GENERAL (Hon. T. Macdonald-Paterson), this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly by message in the usual form.

PROBATE ACT OF 1867 AMENDMENT 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.

The clauses and the preamble were agreed to without discussion.

The House resumed, and the CHAIRMAN reported the Bill without amendment. The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

JUSTICES 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.

Clauses 1 to 3, inclusive, passed as printed.

On clause 4—"Interpretation"—

The POSTMASTER-GENERAL moved the insertion of the following new paragraph, to come between lines 19 and 20 :—

"Oath" includes solemn affirmation or declaration when such affirmation or declaration may by law be made instead of taking an oath, and also includes any promise or other undertaking to tell the truth that may be made under the provisions of the Oaths Act Amendment Act of 1884.

The HON. F. T. GREGORY said he did not object to the amendment, which would probably make the Bill more complete ; but he would ask whether the Oaths Act did not provide for the matter ?

The POSTMASTER-GENERAL said it was provided for in that Act, but there was an amendment to be made further on which would explain why the proposed amendment was desirable.

Amendment agreed to ; and clause, as amended, put and passed.

Clause 5 to 12, inclusive, passed as printed.

On clause 13, as follows :—

"The chairman for the time being of every municipal district shall, by virtue of his office and without any further commission or authority than this Act, be a justice of and for such municipal district."

The HON. SIR A. H. PALMER said it was pointed out on the second reading of the Bill that it would be a false move to provide that the chairman for the time being in any municipal district should be a magistrate by virtue of his office without any further commission, and it would be better to omit the clause. The 13th clause read thus :—

"The chairman for the time being of every municipal district shall, by virtue of his office and without any further commission or authority than this Act, be a justice of and for such municipal district."

And the next clause was as follows :—

"The Governor in Council may prohibit any person who, by virtue of any such office of chairman of a municipal district, is a justice of the peace, from acting as such justice, and from the time of the notification in the *Gazette* of the order prohibiting such person from so acting he shall be and remain incapable of acting as a justice of the peace until he has been again elected to any such office of chairman or has been appointed by the Governor in Council to be a justice of the peace."

It would be far better to leave out both those clauses, and let the chairman be appointed in the usual way by the Government. It was a most invidious task for any Government to remove a man from his position of justice of the peace, though it might be notorious that he was not fit for the position. Though he might be appointed chairman of a municipal district by local influence he might not be fit to be a justice of the peace, and it was better that the

Government should retain in their hands the power of appointing justices of the peace than that the invidious task should be thrown upon them of removing a man whom they considered to be unfit for the position. If the Postmaster-General considered the matter, he would be inclined to agree with what he (Sir A. H. Palmer) had pointed out. As he had said before, it would be far better to leave the appointment in the hands of the Government, the same as the appointment of all other justices.

The HON. P. MACPHERSON said it was stated on the second reading of the Bill that it was proposed to provide for a new sort of magistrate; but, ever since the passing of the New South Wales Municipalities Act of 1858, the chairman of every municipal council had been *ex officio* a justice of the peace. He agreed, however, with the Hon. Sir A. H. Palmer in his view of section 14, which cast upon the Government the invidious task of removing from his office of justice of the peace a man whom the ratepayers had placed there and considered to be qualified for the position. With reference to clause 13, it had been the rule in every Act of Parliament affecting municipalities to have that provision inserted.

The POSTMASTER-GENERAL said that clause 13 embodied the law as it was at the present time. He thought it was desirable, though practically repeating what existed in other statutes, to have it inserted in a Bill relating to justices of the peace. He was, however, prepared to take the sense of the Committee on the subject.

The HON. F. T. GREGORY said there appeared to be considerable force in the observations made by the Hon. Sir A. H. Palmer, because it was a particularly invidious position for the Executive to be placed in to have to remove a person selected by a municipality. He had in his mind's eye the case of a chairman who was unfit to perform the functions of justice of the peace. He certainly was limited in his actions as justice of the peace from the force of circumstances, but other cases might occur; and he would strongly urge upon the Postmaster-General the fact that they ought to make provision against such cases. From necessity they would eventually have to adopt to a certain extent the English law, and appoint justices of the peace for the territory, who would be men of intelligence and culture suitable to perform the functions pertaining to the requirements of benches, while a large number would only require to have the power for the purpose of transacting local business—taking declarations and subscribing their names, or for other judicial purposes. It would be well, instead of repeating what he considered to be an objectionable feature in the Local Government Act, to remove it in the present Bill, which was a measure intended for the regulation of all matters connected with justices of the peace.

The POSTMASTER-GENERAL said there was a good deal of force in what had fallen from the Hon. Sir A. H. Palmer in relation to clauses 13 and 14, but he would point out that it was because such a thing might happen—an undesirable person becoming the chairman of a municipal district—that clause 14 was inserted. If they expunged clause 13 they did not remove the chance of any undesirable person becoming the chairman of a municipal district, and, by virtue of his office, becoming a justice of the peace.

The HON. SIR A. H. PALMER: You prevent it unless the Government appoint him.

The POSTMASTER-GENERAL said he would be a justice of the peace by virtue of the subsisting law. The clause under consideration simply re-enacted the present law, and he thought the Committee should look upon clause 14, under the circumstances, as a desirable clause. Whichever way the case was put, an evil was possible to some extent, but he felt that it would be better for the Government of the day to have power to exclude any undesirable person from acting as a justice of the peace.

The HON. SIR A. H. PALMER said that if the Postmaster-General had had as much experience as he had in appointing justices of the peace he would come to the same conclusion. He did not wish the onus of appointing justices of the peace to be taken off the Government, but he thought the clause was the first step towards making magistrates elective. Next they would come to having judges elected, and very few members of that Committee would approve of the American system of electing judges by the popular vote. The Government ought to be responsible for the appointment of every magistrate. He spoke as one having had a good deal of experience on the subject, and he could assure the Committee that it was an easy matter to keep a man, whom the Government of the day did not consider fit for the position of justice of the peace, off the Commission of the Peace, but once he was appointed it was a most invidious task and would require very strong evidence—though a man was utterly unfit for the position—to remove him. Therefore, he thought it would be better for the appointment of all justices of the peace to be left in the hands of the Government of the day.

Question—That clause 13, as read, stand part of the Bill—put, and the Committee divided:—

CONTENTS, 7.

The Postmaster-General, the Hons. W. H. Wilson, J. Swan, W. Pettigrew, F. H. Holberton, P. Macpherson, and J. Cowlishaw.

NON-CONTENTS, 6.

The Hons. Sir A. H. Palmer, F. T. Gregory, F. H. Hart, W. G. Power, J. C. Smyth, and A. J. Thynne.

Question resolved in the affirmative.

On clause 14, as follows:—

"The Governor in Council may prohibit any person who, by virtue of any such office of chairman of a municipal district, is a justice of the peace, from acting as such justice, and from the time of the notification in the *Gazette* of the order prohibiting such person from so acting he shall be and remain incapable of acting as a justice of the peace until he has been again elected to any such office of chairman or has been appointed by the Governor in Council to be a justice of the peace."

The HON. P. MACPHERSON said he most decidedly objected to the clause, because he considered it put upon the Governor in Council a most invidious duty. If a man was good enough to be chairman of a divisional board for twelve months, surely he was good enough to be a justice of the peace for that period. He should certainly vote against the clause.

The HON. SIR A. H. PALMER said he differed altogether from the hon. member. The Committee having carried clause 13 were bound to carry clause 14, and thereby reserve the power of the Governor in Council to keep improper persons off the Commission of the Peace.

The POSTMASTER-GENERAL said he hoped the clause would pass, because otherwise he would be under the necessity of recommitting the Bill to effect what was suggested by the hon. the President.

The HON. A. J. THYNNE said he was not present at the commencement of the discussion on the preceding clause; but it appeared to him that the wording of clauses 13 and 14 was not quite so accurate as it might be. The words, "chairman of a municipal district" were used in

the clause, and he thought there was a deficiency there, because there were three kinds of chairmen under the different forms of local government which existed at present. There was a mayor, a president, and a chairman. If he had been present at the commencement of the discussion he would have suggested an amendment of the interpretation clause to cover those three officers. He called attention to that defect because, the word "chairman" only being alluded to, the Governor in Council would have no power to remove from the office of justice of the peace a person holding the office of mayor, or president of a shire.

The POSTMASTER-GENERAL said if the hon. gentleman referred to the interpretation clause he would find that "municipal district" meant any municipality or division established under the provisions of the Local Government Act, or Divisional Boards Act, or other Acts amending or in substitution for those Acts respectively. That, he would respectfully submit, covered the whole of the Local Government Acts at present in operation.

The HON. A. J. THYNNE said the mayor was not known as a chairman in any Act of Parliament that he knew of; the alteration was a mere verbal one.

Clause put and passed.

On clause 15, as follows :—

"Every member of the Executive Council shall, by virtue of his office and without any further commission or authority than this Act, be a justice of the peace for the colony of Queensland."

The POSTMASTER-GENERAL moved that after the word "Council" the words "and every judge of the Supreme Court" be inserted. The effect of that would be that clause 16 would be unnecessary, and should be negatived.

Amendment agreed to; and clause, as amended, put and passed.

Clause 16 put and negatived.

Clauses 17, 18, and 19 passed as printed.

On clause 20, as follows :—

"A justice shall not exercise any of the functions of his office until he has taken or made the oath of affirmation of allegiance and the oath of affirmation of office prescribed by the Oaths Act of 1867, or any other Act in force for the time being amending or in substitution for that Act."

The POSTMASTER-GENERAL said hon. gentlemen would recollect that when the Bill passed its second reading the Hon. Mr. Murray-Prior referred to the desirableness of introducing a clause that would enable justices of the peace, who objected to take the oath of allegiance, to make an affirmation. The matter had been under consideration, and he proposed the following additional paragraph to follow at the end of the clause :—

Notwithstanding anything in that Act contained a justice may make an affirmation of allegiance instead of taking an oath of allegiance as therein provided.

Amendment agreed to; and clause, as amended, put and passed.

Clause 21 passed as printed.

On clause 22, as follows :—

"All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands and seals of the justices issuing or making the same."

The HON. SIR A. H. PALMER said he noticed the Postmaster-General promised to omit the clause and insert it again before clause 24. As he had pointed out recently, the clause having been once omitted could not be inserted in any other part of the Bill in the same form. The proper course would be to move that clause 22 be inserted before clause 24 as printed.

The POSTMASTER-GENERAL moved that clause 22 be inserted immediately before clause 24 as printed, under the heading of "General provisions."

Question put and passed.

On the motion of the POSTMASTER-GENERAL, clause 23 was postponed until after the consideration of clause 70.

Clauses 24 and 25 passed as printed.

On clause 26, as follows :—

"After a case has been heard and determined, one justice of the jurisdiction may issue any warrant of execution or commitment thereon, and the justice who so acts need not be the justice or one of the justices by whom the case was heard and determined."

The POSTMASTER-GENERAL moved that the words "of the jurisdiction" be omitted on the 2nd line of the clause.

Amendment agreed to; and clause, as amended, put and passed.

Clauses 27 and 28 passed as printed.

On clause 29, as follows :—

"When two or more justices are present and acting at the hearing of the matter and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion the case shall be reheard."

The HON. A. J. THYNNE said that clause was a change in procedure, because at the present time a minority of justices had the power to commit any person for trial even though the majority were opposed to such a course being taken. There had been a doubt as to the propriety of allowing that, but the proposed change was a matter for grave consideration. It was a serious alteration in the law, and he did not know whether it was wise to change it in that respect, because in some instances an opportunity might be given to pack benches to set a man free from prosecution. In other instances the very opposite might happen, and one cranky magistrate might put an accused person unjustly to a great deal of annoyance and trouble. He thought the clause deserved some consideration at the hands of the Committee.

The HON. P. MACPHERSON said he should support the clause, because it placed the law beyond doubt.

The HON. SIR A. H. PALMER said there was a great deal in the point raised by the Hon. Mr. Thynne. He had known cases where there would have been a very grave miscarriage of justice if the majority had been allowed to decide whether a man should be committed or not, and he thought it a safe thing to leave the committal to any justice on the bench, bearing in view the fact that no justice would by himself commit a man to trial in opposition to the majority unless he was very sure that a strong case had been made out. He had known a large majority of justices in a neighbouring colony refuse to commit a man for trial, and the police magistrate, in opposition to them, had committed him, and the prisoner was severely punished. They all knew that there were such things as packed benches. They knew that benches would be packed in a great many cases if the law was altered. As he had said, he did not think any single man would go against the decision of the majority unless he was very sure that a strong case had been made out. However, the question had not been considered sufficiently well, and it would be very desirable for the Postmaster-General to consent to the postponement of the clause. A great deal might be said on both sides, but they should have time for further consideration.

The POSTMASTER-GENERAL said he thought the clause was a very great improvement on the existing state of the law. Moreover,

there was this to be said: that if the Government found that benches were packed they would have very good ground indeed for omitting the names of those justices from the annual list who took any part in interfering with the true course of justice. He thought the clause, in its working out, would put justices upon their mettle; and, under the Bill generally, if they paid any attention to it, they would be able to fulfil their duties in a much more satisfactory manner than some of them had done hitherto. He trusted that the clause would be passed, believing, as he did, that it would be a great improvement on the present law.

The HON. SIR A. H. PALMER said he would like to hear from the Postmaster-General whether a decision would be final. Take the case of a man brought up for cattle stealing. The majority of the bench, considering that there was no case against him, might discharge him; could he be brought up again? As far as he understood the present law, a man could be brought up time after time until he had been tried by one of the higher courts and the decision of a jury given. He would like the opinion of the Postmaster-General on the subject, as he did not pretend to be a lawyer himself. He thought the alteration proposed by the clause was a dangerous one, and they had far better leave it in the power of any one magistrate to commit a man for trial for any offence.

The HON. F. T. GREGORY said there was another question that the Committee should not lose sight of, and that was the power of police magistrates, who, he presumed, were generally selected for their high qualifications. It did not appear, according to the clause, that a police magistrate would be in any better position than any other magistrate of the territory when he was sitting along with others. In certain cases, according to the present law, additional powers were given a police magistrate when he was trying cases upon which two justices had to adjudicate; but in the clause under consideration there seemed to be no provision whatever for giving additional power to a police magistrate.

The HON. A. J. THYNNE said it would be impossible for any Government, except in the most glaring cases, to interfere in such a matter. How would it be possible for them to identify the magistrates who went on the bench with a view of doing an injustice? He would presently move an amendment limiting the effect of the clause to the hearing of complaints for simple offences and breaches of duty, and leaving the present state of the law to apply to grave offences.

The HON. P. MACPHERSON said, in answer to the Hon. Sir A. H. Palmer, that under the clause a prisoner could be brought up again even though the charge might have been considered to be dismissed.

The HON. A. J. THYNNE moved the omission of the word "matter" in line 19, with a view of inserting the words "complaint for simple offence or breach of duty." The clause would then read thus:—

"When two or more justices are present and acting at the hearing of any complaint for simple offence or breach of duty and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion the case shall be reheard."

In answer to the Hon. Mr. Macpherson, he might state that the delay between the discharge of an accused person and the initiation of fresh proceedings to secure the attendance of witnesses in cases of that kind would almost always result in the defeat of justice, especially in the country districts, where it was so easy for a witness to get out of the way. With regard to the amendment he had just moved, he thought it would be better, in deference to the opinions expressed on the matter, to leave the clause over for further consideration.

The HON. SIR A. H. PALMER said he thought the clause wanted a good deal more consideration. The amendment of the Hon. Mr. Thynne would meet his views to a certain extent, but the clause would require another amendment saying that in the case of an indictable offence any magistrate sitting on the case should have the power to commit.

On the motion of the POSTMASTER-GENERAL, the further consideration of clause 29 was postponed.

Clauses 30 to 34, inclusive, passed as printed.

The POSTMASTER-GENERAL moved the following new clause to follow clause 34:—

A warrant of commitment or of remand shall be valid throughout the colony, notwithstanding that the gaol or other place to which the defendant is committed or remanded, or any place into or through which he is taken by virtue of the warrant, is outside the limits of the jurisdiction of the judge by whom the warrant is granted.

New clause put and passed.

On clause 35—"Duty of police officers"—

The HON. SIR A. H. PALMER said the wording of the clause was very loose. Some of the orders given by justices were most absurd, and it was possible that in some cases they might make servants of police officers. He had known cases in which magistrates insisted on policemen acting as grooms. The word "orders" was too wide a term, and the clause should be amended in that respect. Some time ago every magistrate in the colony thought he had a right to order a policeman to do what he liked, and many of them acted on that belief.

The POSTMASTER-GENERAL said the word "orders" in the clause was the same as was defined in the interpretation clause. It certainly did not mean the performance of any duty other than in connection with the operation of the law. The word was defined thus:—

"'Order' means an order made upon a complaint of a breach of duty."

Clause put and passed.

Clauses 36 to 40, inclusive, passed as printed.

The HON. W. H. WILSON said he stated on the second reading that he thought magistrates should have some power to commit for contempt, and he now proposed to insert the following new clause, in which the Postmaster-General concurred, giving justices that power:—

Interruption of Proceedings.

Any person who wilfully insults any justices sitting in the exercise of their jurisdiction under this or any other Act, or wilfully interrupts the proceedings of justices so sitting, may be summarily convicted by the justices on view, and on conviction shall be liable to a penalty not exceeding five pounds, and in default of immediate payment to be imprisoned for a period not exceeding seven days.

No summons need be issued against any such offender, nor need any evidence be taken on oath, but he may be taken into custody then and there by a police officer by order of the justices, and called upon to show why he should not be convicted.

The Supreme Court had inherent power to commit for contempt, but in the inferior courts it was limited entirely to that given by statute. The District Courts Act, clause 34, stated that if any person should wilfully insult the judge during the sitting of the court, or otherwise misbehave, such person by order of the judge might be taken into custody and dealt with in accordance with that section. The Small Debts Act contained a clause of a similar nature. The justices there had the power to punish for contempt in a summary way, by fine, or imprisonment for fourteen

days. The clause he proposed was based on the same principle, and he thought it would commend itself to the favourable consideration of the Committee.

The HON. P. MACPHERSON said he should support the amendment. He considered that justices needed a great deal of protection in that respect. To his sorrow he had listened to justices being grossly insulted by members of his profession, and he thought seven days would have done those gentlemen no harm whatever.

The HON. A. J. THYNNE said he objected to giving anybody the power, without trial or inquiry, to act as plaintiff and judge at the same time. He objected to the power being given in the District Court Act, and he did not approve of it in the case of judges of the Supreme Court. He had known cases where magistrates acted in such an extraordinary way on the bench that it required firm action on the part of the members of the legal profession to protect their clients from the grossest injustice. Magistrates had been seen on the bench under the influence of drink, and other influences, which would prevent them from discharging their duties properly; and to vest such powers as were proposed in such men seemed altogether unjustifiable.

The HON. P. MACPHERSON said he regretted that the Hon. Mr. Thynne should have said that magistrates sat on the bench under the influence of drink. He had seen members of the legal profession, under the influence of drink, insulting magistrates.

The HON. W. H. WILSON said that the power possessed by the Supreme Court of commitment for contempt resulted from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal. That showed that the powers possessed by the Supreme Court were those that they ought to possess. The power had been found necessary in the district court and the petty debts court; and what he proposed to do was to add it to the Bill, seeing that they were now dealing with justices' courts.

The POSTMASTER-GENERAL said he hoped it would be observed that the proposed new clause had not regard to the members of the legal profession alone, but to any person who wilfully insulted any justice. He thought that the protection of justices against the general public was a matter of much importance. He had heard the foulest language hurled at justices by men who were not members of the legal profession.

The HON. SIR A. H. PALMER said he thought the members of the court ought to have the power to protect themselves, but he was a little astonished at the new clause being brought forward by a solicitor. According to his experience solicitors insulted the bench more than any other men. However, if the hon. member was willing that they should be punished he had no objection.

The HON. F. T. GREGORY said that on more than one occasion in the course of his judicial career he had felt the necessity for some such clause. If possible, magistrates should do their duty without allowing themselves to be led away by temper, but they were sometimes aggravated to that extent, both by prisoners and witnesses, that it was quite enough to upset the equanimity of anyone, and, unless there was some power given as proposed, he thought accused persons would in many instances run the risk of being punished more severely than would otherwise be the case. The clause was evidently proposed more particularly to meet cases in which solicitors insulted magistrates on the bench. He should support the clause.

The HON. A. J. THYNNE said the Hon. Mr. Gregory had offered the strongest argument against the clause. If many people acted in such a way as to try the tempers of magistrates it was time to take means to prevent such a thing. He thought that when a magistrate's equanimity was upset it was the worst time for him to have the power of inflicting what would probably be a vindictive punishment. With regard to the legal profession, when a solicitor acted improperly the bench could refuse to hear the matter, and that was sufficient. With regard to other people who happened to trespass beyond what a magistrate considered to be proper bounds, he might say that if the clause were passed people who were naturally nervous would be put into such a state of terror that they would not be able to give their evidence. In New South Wales there had been a protracted agitation carried on because of the exercise by the Supreme Court—in one or two instances, probably, injudiciously—of their power of commitment; and why should they extend that power to magistrates, many of whom were admittedly not of sufficient capacity to decide on the nice questions that came before them?

The HON. W. H. WILSON said the clause was only meant to include persons who wilfully insulted justices. Before a police court in Sydney, recently, the defendant's counsel made use of an expression disrespectful to the bench. The police magistrate asked him to apologise; he declined; and the police magistrate ordered a constable to eject him. When the policeman was about to execute the order the attorney apologised. That showed how much better it was for the law to be defined.

New clause put and passed.

Clause 41—"Open court"—passed as printed.

On clause 42, as follows:—

"The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission, but they shall not make such order unless it appears to them that the ends of justice require them so to do"—

The HON. A. J. THYNNE said he would call attention to the fact that the presence of counsel was allowed by the justices as a matter of grace. An accused person charged with an indictable offence could not be represented by counsel or a solicitor by right; but he thought that, no matter what offence a man was charged with, he ought to have the opportunity of having his counsel o solicitor there, not as a matter of grace, but as a matter of right. Very frequently counsel or solicitor did not cross-examine witnesses on indictable offences; but it might often happen that it was desirable that they should do so, because it might show a weakness in the case for the prosecution, which would not be proceeded with any further. But supposing an accused person had not an opportunity of cross-examining a witness, and he was committed for trial, if the witnesses happened to die or go out of the colony before the trial came on their evidence given at the police court was taken against him unquestioned. The depositions were put in as complete evidence against him, and the ground upon which that was done was this: that he had an opportunity of cross-examining before committal. He submitted the matter to the Committee, and asked them to consider whether it would not be well to have a similar paragraph inserted in the clause to that just inserted in clause 41.

The POSTMASTER-GENERAL said the hon. gentleman's object would be effected if he

moved the omission of the words "subject to the provisions of the last preceding section" in clause 43.

The HON. SIR A. H. PALMER said he thought the clause a very good one as it stood. It read—

"The room or place in which justices take the examinations and statements of persons charged with indictable offences, for the purpose of committal for trial, and the depositions of the witnesses in that behalf, shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission, but they shall not make such order unless it appears to them that the ends of justice require them so to do."

The clause was guarded in every respect, and there were numbers of cases in which it was absolutely necessary that solicitor or counsel should not appear at the preliminary stage of the examination. If a solicitor was allowed to be present at the preliminary examination he could not be compelled to hold his tongue, and he might do a great deal of harm by going outside and allowing it to be known what the justices were doing. It was absolutely necessary that preliminary examinations should be strictly private in many cases.

Clause put and passed.

On clause 43, as follows :—

"Every complainant shall be at liberty to conduct his case, and to have the witnesses examined and cross-examined by his counsel or solicitor, and, subject to the provisions of the last preceding section, every defendant shall be admitted to make his full answer and defence to the charge, and to have the witnesses examined and cross-examined by his counsel or solicitor."

The HON. A. J. THYNNE moved that the words "subject to the preceding section" be omitted. He would simply repeat what he had said on the last clause, that he thought it right that an accused person should have a full opportunity of cross-examining witnesses brought against him.

The HON. P. MACPHERSON said the law as it stood at present was as follows :—

"And be it declared and enacted that the room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose, and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing."

He was not aware that that clause ever caused any hardship; and, speaking for himself, he could not consent to any alteration in the law.

The POSTMASTER-GENERAL said there was a very great deal to be said in favour of the contention of the Hon. Mr. Thynne, but there was quite as much to be said on the other side of the question, and he would prefer to see the law stand as it was at present. He had in his mind two cases of murder which occurred in the northern districts, in one of which, at least, justice would have been thwarted had it not been for the power which the justices possessed of excluding witnesses. In the interest of justice it was sometimes extremely desirable that no living soul should be present at the preliminary investigation, except the chief officer of police in that locality, the magistrate, and such other persons as the magistrate thought proper. It was better that the law should remain as it was.

The HON. P. MACPHERSON said as the Postmaster-General had referred to particular cases he might refer to a case which occurred some years ago, in which he appeared as prosecutor for the Government. The case was one against a man named Prendergast who committed murder at Bowen terrace. If that inquiry had not been conducted with closed doors, and without interference of any kind whatever, either of solicitor or counsel, no conviction would have been obtained. The man ultimately confessed, which was the most satisfactory solution of the difficulty.

The HON. A. J. THYNNE said he thought he heard his hon. friend say the man Prendergast confessed his crime. Whether justice had been done or not, to drive a man into confession of a crime when he probably would never have confessed if he was properly defended was not the way to reach justice by law. That course might ultimately bring a man to punishment, but it did not reflect credit upon the way in which men were prosecuted when they were driven into confessions which they were not absolutely obliged to make. He was not one to condone the offences of criminals if proper means were taken to convict them, but if the law, fairly administered, was unable to protect itself, then people would have to escape. It was better that a great many accused men should escape than that one innocent man should be convicted by making use of language which he did not understand the use of. If a man was driven into making use of expressions which he did not understand the true use of, he would say things which would perhaps bear double meanings, and would evidently end by being convicted, although he might not be guilty of the offence with which he was charged. As he had said, the law was quite strong enough to protect itself without exposing even one individual to the danger of unjust conviction.

Question—That the words proposed to be omitted stand part of the clause—put and passed; and clause put and passed.

Clauses 44 and 45 passed as printed.

The HON. A. J. THYNNE said he proposed to add a new clause, to follow clause 45, to the following effect :—

In any case of a simple offence or breach of duty, the defendant and the wife or husband of the defendant shall be competent witnesses on his or her behalf.

In moving the new clause he would like to say that they had already a large number of summary cases in which defendants were competent, and their wives or husbands were competent, to give evidence, and year after year the number of cases in which that rule was made applicable was becoming extended. Some years ago a man who was the plaintiff in a case could not give evidence; but by degrees the law had been made more liberal in that respect, and the evidence of a man was taken in certain cases where a few years ago it would not have been received at all. He did not see why, because a man happened to be a defendant in perhaps a case of breaking down a corner of a footpath, or an assault, he should not be able to give evidence in his own behalf, or why he should be regarded with such suspicion. He thought the magistrates should be allowed to hear what that man had got to say for himself on oath. They all knew that, in assault cases especially, a great deal of perjury was committed through the fact of people having recourse to the dodge of taking out cross-summonses. If a man was accused of assault he at once flew away and got a cross-summons, so that he could give testimony on his own behalf. He had spoken upon that subject on previous occasions in the House, and he trusted that hon. gentlemen would see the difficulty that at present existed, and consent to some alteration. It was well to assimilate the law in all cases on summary proceedings. Why there should be a different rule for cases of surety of the peace or good behaviour, cases between masters and servants, husbands and wives, or illegitimacy cases, he did

not understand. He could not see any substantial ground of distinction between any of those cases.

The HON. P. MACPHERSON said he had been of the same opinion as the Hon. Mr. Thynne for many years, and had he thought the amendment would have been accepted he should have proposed it himself. He anticipated that there would be considerable opposition to the clause in another place, but he thought the present was a most unreasonable law, and the suggestion of the Hon. Mr. Thynne if carried would save a great deal of perjury.

Clause put and passed.

Clauses 46 to 58, inclusive, passed as printed.

On clause 59—"Summons to state matter of complaint, 11 and 12 Vic., c. 42, s. 9, p. 1581"—

The HON. P. MACPHERSON said he would ask if the marginal notes were part of the Bill—because there were several mistakes? Page 1581 should be 1521. He presumed the notes would be amended, although he had always understood that they were excised when the Bill went through committee.

The POSTMASTER-GENERAL said there were several clerical errors, but it was not necessary that the House should take notice of them. If the hon. gentleman would draw the attention of the Clerk to them they would be set right.

Clause put and passed.

Clauses 60 to 70, inclusive, passed as printed.

The POSTMASTER-GENERAL moved that clause 23, as printed, be inserted to follow clause 70.

Clause put and passed.

Clauses 71 to 74, inclusive, passed as printed.

Clause 75 passed with verbal amendments.

Clauses 76 to 100, inclusive, passed as printed.

On clause 101—"Statement of defendant"—

The POSTMASTER-GENERAL moved the insertion of the words "by the defendant if he so desires, and shall be," after the word "and" in the 24th line.

Amendment put and passed.

The POSTMASTER-GENERAL moved the insertion of the following proviso at the end of the clause :—

Provided that, if the depositions of the witnesses have been previously read to the defendant either at one time or at several times, it shall not be necessary to read them again to the defendant, unless upon being asked he desires that they should be again so read to him.

Amendment agreed to; and clause, as amended, put and passed.

Clause 102—"Statement may be put in evidence at trial"—passed as printed.

On clause 103, as follows :—

"When all the evidence offered upon the part of the prosecution against a person charged with an indictable offence as such has been heard, if the justices then present are of opinion that it is not sufficient to put the defendant upon his trial for any indictable offence, the justices shall forthwith order the defendant, if he is in custody, to be discharged as to the complaint then under inquiry."

The HON. SIR A. H. PALMER asked whether it was not necessary to postpone the clause in consequence of having postponed clause 29? The clause providing that the decision of the majority should be the decision of the justices had been postponed, and the present clause seemed to bear on that matter too.

The POSTMASTER-GENERAL said it was not necessary to postpone the clause, because no matter how the other clause was modified it would not bear on clause 103.

The HON. A. J. THYNNE said the wording of the clause was taken verbatim from the present Act upon the subject, so that if a minority at the present time had power to commit they would have the same power if the clause were passed.

Clause put and passed.

Clauses 104 to 121 passed as printed.

On clause 122, as follows :—

"If in any case through inadvertence a defendant is committed to take his trial before a court which has not jurisdiction to try the case, or to a court before which he ought not to be committed to take his trial, the committing justices or any other justices may at any time before the time appointed for holding such court direct the defendant to be brought before them, and may, upon production of the depositions and without further evidence, cancel the warrant of commitment, and may commit the defendant afresh to take his trial before another and the proper court.

"When a fresh commitment has been so made, the same or any other justices may bind the witnesses by fresh recognisance to appear at such court and give evidence, and for that purpose may summon and compel the attendance of the witnesses before them in the manner hereinbefore provided for compelling the attendance of witnesses to give evidence."

The HON. A. J. THYNNE said there were two words in the 1st line of the clause that might with advantage be left out—namely, the words "through inadvertence." There might be very good reason for a court, to which the defendant was committed, not trying the case. He did not think the words added any force to the clause.

The POSTMASTER-GENERAL said the hon. gentleman had called attention to the point on the second reading of the Bill, and he might inform him that his suggestion had received every attention and consideration, and it was considered very much better that the clause should remain as it was.

The HON. A. J. THYNNE said there ought to be some better reasons given why the clause should remain as it was. He pointed out on the second reading a case in which great inconvenience arose through what was no fault of the magistrates. A man was committed for trial to the wrong court, and when that was discovered the whole of the proceedings had to be gone through again. A fresh writ had to be issued and a fresh committal made.

The HON. SIR A. H. PALMER said the clause would be better with the words left out, and the reason given by the Postmaster-General for maintaining the words was not a sufficient one. The hon. gentleman said that the clause had been submitted to someone or other, but he did not say to whom. Members of the Committee were at present the judges of what ought to be in the Bill and what ought not.

The POSTMASTER-GENERAL said he had said the matter had been considered by the Government, and after consideration it was thought better that the clause should remain as it stood. He was quite satisfied to take the decision of the Commiteee on the subject. It was believed that the words had better remain in the clause, because there was no law that could be devised on earth under which some individual in course of time would not suffer some hardship; but it appeared on common-sense principles that the words should remain in the clause, setting aside the legal aspect of the question. It was better in the interests of justice, in the interest of justices, and in the interests of any person coming before justices of the peace.

The HON. SIR A. H. PALMER said he could not agree with the Postmaster-General. Who was to decide that it was through inadvertence that the defendant was committed to take his trial before the wrong court?

The HON. A. J. THYNNE said he might state that he intended to propose a new clause later on, which would provide for a case such as was alluded to the other day, where a court was unable to hear a case. He proposed to insert a provision giving the court power to send a prisoner to the proper court for trial, without the absurd necessity of going through the process of arrest, imprisonment in the lockup, and preliminary investigation. What he proposed to add was, that the court should have power to send a prisoner to any other court for trial, and if the clause was added, the words "through inadvertence" in clause 122 would be entirely out of place. He would point out that the words he had drawn attention to did not add one iota to the value of the clause, even without the subsequent amendment.

The POSTMASTER-GENERAL said at most the hon. gentleman only regarded the words as surplusage, and, practically, he said there was no harm in them. He hoped he would not press the amendment. It was usual when amendments were foreshadowed on the second reading of a Bill that the hon. gentlemen who suggested them should have them printed, and put in the hands of hon. members at least one day before their consideration. He certainly did not think it was consonant with the efficient working of business in that Chamber for an hon. gentleman to indicate his views upon the measure on the second reading, and not put the amendments he intended to propose in proper form so that hon. gentlemen might consider them. To suit the hon. gentleman's views, however, he was willing to recommit the Bill, so that the hon. gentleman might have time to put his amendments in proper form. In a Bill of that kind, it was desirable that the simplest amendments should be in print, because frequently small amendments contained within themselves meanings which not even the movers of them intended them to contain. He promised the hon. gentleman that he would recommit the Bill in order to give him an opportunity to bring forward his amendment.

The HON. W. FORREST said he had no intention of addressing himself to the amendment that was before the House, but he rose to make some remarks with regard to what had been said by the Postmaster-General as to all amendments being printed and circulated beforehand. It was quite impossible to do that sort of thing, because an amendment usually struck an hon. member while a particular clause was before the Committee. It had not been the practice, unless the amendments were material ones, to have them printed.

The HON. A. J. THYNNE said he would withdraw his amendment, with a view of having the clause considered on its recommittal.

The POSTMASTER-GENERAL moved that after the word "or," on the 28th line, the word "to" be omitted, with the view of inserting the word "before."

The HON. SIR A. H. PALMER said if the Postmaster-General carried that amendment the clause would read, "If in any case through inadvertence the defendant is committed to take his trial before a court which has not jurisdiction to try the case or before a court before which," etc. That was certainly not good English.

Amendment withdrawn, and clause put and passed.

On clause 123, as follows:—

"At any time after all the examinations have been completed and before the first day of the sittings or sessions or other first sitting of the court at which any person so committed to gaol or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to receive from the officer or person having the custody of the depositions on which he has been committed or bailed, copies thereof."

The HON. P. MACPHERSON said he hoped the Postmaster-General would bear in mind his remarks with reference to that clause. He saw there was no full-stop at the end of the clause, which was strongly suggestive of something being added to the clause in the shape of fees for copies of depositions. He did hope that the hon. gentleman would urge upon the Government the desirability of allowing prisoners to obtain copies of depositions without having to pay for them.

The POSTMASTER-GENERAL said he had made a note of the suggestion of the hon. gentleman, which would be duly attended to, he hoped with the result which he desired.

On the motion of the POSTMASTER-GENERAL, the clause was amended by, after "completed," omitting "and before the first day of the sittings or sessions or other first sitting of the court at which any person so committed to gaol or admitted to bail as aforesaid is to be tried such person," and inserting "the defendant whether he has been committed to gaol, or admitted to bail, or has been discharged." By omitting the word "receive" on the 46th line, and inserting "copies of depositions," and by inserting the words "of the depositions on which he has been committed or bailed, copies," on the 47th line.

Clause, as amended, put and passed.

On clause 124, as follows:—

"Where a party would be entitled to copies of the depositions if committed or admitted to bail by any justices, he shall be entitled to the like copies when committed by any coroner or other officer."

The HON. SIR A. H. PALMER asked the Postmaster-General why the word "coroner" was used? There was no such officer in the colony.

The POSTMASTER-GENERAL said the clause as it stood was taken from the present Act in force, and he was unable to say anything as to the desirability of retaining the word "coroner." It had escaped his notice on reading through the Bill.

The HON. SIR A. H. PALMER said when the Act to which the hon. gentleman had referred passed there was a coroner, but he had been done away with for many years, and it seemed a farce referring to an officer who had no existence.

The POSTMASTER-GENERAL said the word was well qualified, because the clause said "coroner or other officer." It was quite probable that there might be a coroner appointed in the future, and in any case the word would not affect the operation of the Bill in any way.

Clause put and passed.

Clause 125—"Examination of defendant for offence committed at some other place"—passed with a verbal amendment.

Clause 126 passed as printed.

On clause 127—"Effect of depositions"—

The HON. P. MACPHERSON said, referring to clause 124, he did not think the office of coroner was abolished within the colony. The duties of coroners' juries were abolished, but the office of coroner still existed according to 30 Victoria No. 3.

The HON. SIR A. H. PALMER said he was no lawyer, but he could assert that there was no such officer as a coroner in the colony. Could the hon. gentleman name anyone who held the position? He was convinced that the office was done away with, and all examinations in connection with deaths were taken before justices of the peace.

The HON. W. H. WILSON said justices of the peace now held the position that coroners used to hold.

Clause put and passed.

Clauses 128 to 142, inclusive, passed as printed.

On clause 143, as follows:—

"When a conviction or order is made by justices all parties interested therein shall be entitled to demand and have copies of the complaint and depositions and of the conviction or order, in like manner and on the same terms as are hereinbefore provided respectively with regard to depositions against a person committed or held to bail for trial."

The POSTMASTER-GENERAL moved the insertion of the words "or a complaint is dismissed" after the word "made" on line 50.

The HON. SIR A. H. PALMER asked where the "same terms" were hereinbefore provided in the Bill? He had been attending carefully to the Bill, but he had not seen the terms mentioned.

The HON. W. H. WILSON said it had been left for the Assembly to make the necessary insertions.

The HON. SIR A. H. PALMER said the words were "as are hereinbefore provided respectively." He did not know where they were provided hereinbefore.

The POSTMASTER-GENERAL said it was not intended that they should be provided for, because it was customary, as the hon. gentleman knew, to leave blanks in respect to money matters.

Amendment put and passed.

The HON. W. H. WILSON moved that the words "and on the same terms" in line 53 be omitted.

The POSTMASTER-GENERAL said it did not matter much whether the words were left in or not, because if the Bill were to pass the other branch of the Legislature in the form referred to in clause 123 there would be no terms in the Bill. They knew very well that language in a Bill, consequent on a monetary provision omitted by the Upper Chamber according to constitutional usage, was always retained in the Bill, otherwise in some Bills there would be numerous blanks, and they would hardly be understood. The ordinary rule was only to omit that part which related to money provisions.

Amendment put and negatived.

The POSTMASTER-GENERAL moved that the words "charged with an indictable offence" be substituted for the words "committed or held to bail for trial."

Amended agreed to; and clause, as amended, put and passed.

Clauses 144 to 157, inclusive, passed as printed.

Clause 158—"Payment of penalty to police officer or gaoler"—put and negatived.

Clauses 159 to 162, inclusive, passed as printed.

On clause 163—"Procedure on execution"—

The HON. W. H. WILSON moved the insertion of the words "except in the case of perishable goods, which may be sold at the expiration of twenty-four hours from seizure," after the word "given" in the 2nd subsection. It would then read thus:—

"Except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and five clear days, at the least, shall intervene between the making of the levy and the sale, of which due and public notice shall be given except in the case of perishable goods, which may be sold at the expiration of twenty-four hours from seizure; but where written consent is so given, the sale may be made in accordance with such consent."

Amendment agreed to; and clause, as amended, put and passed.

Clauses 164 to 171, inclusive, passed as printed.

Clause 172 passed with a verbal amendment.

Clauses 173 to 183, inclusive, passed as printed.

On clause 184—"Summary trial of children for indictable offences"—

The HON. W. H. WILSON moved that the word "fourteen" be substituted for the word "twelve" on the 37th line. With that amendment justices would have the power to send juveniles to the Reformatory up to the age of fourteen years.

The HON. A. J. THYNNE said it seemed to him that that section did not in any way affect the powers of magistrates to send a child to the Reformatory. The 4th subsection reserved the powers of the magistrate in that respect, therefore the reason given by the Hon. W. H. Wilson was not a sufficient one for altering the age from twelve to fourteen.

Amendment, by leave, withdrawn, and clause put and passed.

Clauses 185 to 193 passed as printed.

On clause 194, as follows:—

"The defendant may thereupon produce evidence to show that the complaint is made from malice or for vexation only, or in contradiction of the facts stated in the complaint.

"The defendant, and the wife or husband of the defendant, shall be competent witnesses on his or her behalf."

The HON. A. J. THYNNE said it appeared to him that the last two lines of the clause were unnecessary in view of an amendment which had been carried in the previous part of the Bill, which provided that the defendant and the wife or husband of the defendant should be competent witnesses on his or her behalf.

The POSTMASTER-GENERAL said that the clause had better be left as it stood, as the words could do no harm.

The HON. A. J. THYNNE said they would be sending down a Bill to the other Chamber with a repetition of the same clause if the words he had pointed out were not omitted. He took the amendment to be a consequential one, and for the credit of the House he should not like to see the Bill sent away with unnecessary clauses in it.

The POSTMASTER-GENERAL said he wished to see the Bill with the amendments that had already been made in print, but he did not propose that the Bill should be sent away to the other House in its present form. The hon. gentleman could suggest his amendment when the Bill was recommitted.

The HON. A. J. THYNNE said he should be quite content if that clause was recommitted with the others which the Postmaster-General had promised to deal with.

Clause put and passed.

On clause 195—"Case to be dismissed or surety of the peace, etc., required"—

The POSTMASTER-GENERAL said he hoped that hon. gentlemen would make a memorandum of the different clauses they desired to be recommitted. He had only so far marked three.

Clause put and passed.

Clauses 196 to 229, inclusive, passed as printed.

Clause 230—"Court of appeal may decide matter"—passed with verbal amendment.

Clauses 231 to 252 passed as printed.

Schedule 1—

On the motion of the POSTMASTER-GENERAL, the schedule was amended by the transposition of lines 8, 9, 10, 11, and 12 to the end of the clause, and by the substitution of the figures "42" for "24" on the 8th line.

The HON. P. MACPHERSON moved that the schedule be further amended by omitting the word "and" between "65" and "66," and inserting "and 69" after "66."

Amendment agreed to; and schedule, as amended, put and passed.

The remaining schedules were passed as printed.

The House resumed; the CHAIRMAN reported progress, and obtained leave to sit again to-morrow.

VICTORIA BRIDGE CLOSURE BILL.

The PRESIDENT read a message from the Legislative Assembly intimating that the Assembly had agreed to the amendments of the Council in this Bill.

LICENSING BILL.

The PRESIDENT read a message from the Legislative Assembly, forwarding for the concurrence of the Council a Bill to consolidate and amend the laws relating to the sale of intoxicating liquors by retail, and for other purposes connected therewith.

On the motion of the POSTMASTER-GENERAL, the Bill was read a first time and ordered to be printed.

The POSTMASTER-GENERAL moved that the second reading of the Bill stand an Order of the Day for to-morrow.

The HON. A. J. THYNNE: That is rather short notice. We shall not have the Bill in our hands before to-morrow morning, and it will be impossible for us to read it through before the afternoon. No doubt there are many points which will require careful consideration, and more time should be allowed before the second reading.

The POSTMASTER-GENERAL: If hon. gentlemen take the view I do, the Bill will receive special attention in committee, and not a great deal will be said in regard to the principle on the second reading, though doubtless there will be a difference of opinion. I do not wish to force the second reading on against the wishes of hon. members; but, with the concurrence of the House, I desire that the second reading of the Bill may be made an Order of the Day for to-morrow.

The HON. P. MACPHERSON: I think we should have at least a week to consider the Bill before we are called upon to pass the second reading. I look upon it as a measure of great importance, and if we have the opportunity of perusing it calmly and quietly we shall be all the better able to deal with it in committee. We are prepared to do our work if we get a fair opportunity, but I for one object to having these important measures rushed upon our notice.

The POSTMASTER-GENERAL: I quite concur in the opinion of the hon. gentleman. We should have a week, or almost a week, to consider a measure between the second reading and the committal of the Bill.

The HON. P. MACPHERSON: I propose that the second reading of the Bill stand an Order of the Day for this day week. I hope the Postmaster-General will accept the amendment.

The POSTMASTER-GENERAL: I hope the hon. gentleman will not press his amendment. I have promised that the second reading shall not take place to-morrow against the wish of hon. members. I have given that pledge, and I hope nothing more is required.

The HON. P. MACPHERSON: Under the circumstances I accept that pledge.

Question put and passed.

The House adjourned at ten minutes past 9 o'clock.