Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 14 OCTOBER 1885

LEGISLATIVE COUNCIL.

Wednesday, 14 *October*, 1885.

Elections Bill.—Probate Act Amendment Bill—third reading.—Settled Land Bill—second reading.—Justices Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

ELECTIONS BILL.

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

PROBATE ACT OF 1867 AMENDMENT 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.

SETTLED LAND BILL—SECOND READING.

The POSTMASTER-GENERAL said: Hon. gentlemen,—In moving the second reading of "A Bill for facilitating sales, leases, and other dispositions of settled land, and for promoting the execution of improvements thereon," I may mention that the measure is substantially the same as that proposed and introduced in the House of Lords by its author, Lord Cairns, on several occasions, and ultimately carried with the unanimous approval of both Houses of Parliament in Great Britain. The object of the Bill, as most hon. members will observe, is to give tenants for life, and other limited owners of land, almost, if not in fact, the same privileges and powers in respect to land as are enjoyed by owners in fee, with this paramount exception, that the limited owner is very properly excluded from prejudicially interfering or dealing with the subject-matter of the trust. It would never do for the provisions of a trust to be interfered with by him, for very patent reasons, into which I shall not enter now. In this measure, amongst the many modes of dealing with settled land are these—namely, the selling, improving, exchanging, leasing, and partition of land. In the matter of an exchange the life-tenant might seek an exchange, and effect it, but the subject-matter of the estate would simply be altered by the exchange; but, in the more ordinary transaction, that of sale, the proceeds of the sale of land owned by a life-tenant would not and could not be interfered with by the life-tenant, or, as

it is technically termed, he would have no control over the *corpus*, and the capital would still be held and form the subject-matter of the trust. Therefore, to sum up, I may say, in short, that this Bill is to give what might be termed suitable and satisfactory provisions to enable and empower life-tenants to deal with lands in a manner, not only beneficial to the land, but to the life-tenant himself. This measure, if it become law, will give considerable relief to landowners of that class, and will remove many prominent objections that subsist at the present day in relation to settled lands, and which are constantly recurring to legal men as well as laymen. From time to time objections have arisen that very properly form the subject of comment on all sides, and which have involved life-tenants in great loss. I am aware, as every hon. gentleman must be aware, of cases in this country where relief is wanted, and such relief would be readily obtainable if the measure before us were the law of the land. Perhaps it will be as well to give an example, which will assist hon. gentlemen in understanding how the Bill would operate in such cases. I know the case of a lady who is a life-tenant of most valuable property in this country, and, at the present time, she barely receives sufficient to keep body and soul together. That property is worth many thousands of pounds, but in consequence of absurd restrictions in the trust deed under which it is held by the life-tenant, no relief can be obtained without very great expense indeed by applying to the court, and it is questionable if that expense were incurred whether the relief—which it is most desirable in this case should be given—could be obtained. In this particular case the life-tenant would not only be benefited, but the property itself would be enormously benefited and augmented in value if such a course as is provided in the measure could be taken. And thus not only is the life-tenant's interest damaged but the remainderman's interests are also greatly diminished, being, I might say, sacrificed, because of these restrictive provisions in the trust under which this property is held and controlled. Honourable gentlemen are aware that all this Bill is intended to give, notwithstanding that it is a great alteration in the law, is usually provided for in settlements; but, as a rule, trustees do not care to go outside of the specific lines of their trust in dealing with property; usually they run well within the lines of the trust, and, as a consequence, cases occur where trustees perform their duties in a mere perfunctory manner, and do not take that deep interest in working the estate for the benefit of the life-tenant which they would if they had the facilities, provided by the Bill, to apply to the court in cases of doubt or ambiguity as to the interpretation of the language which defines their duties under the trust. I have said that this Bill embraces an alteration in the law—it is, undoubtedly, a great alteration in the law as it has subsisted for generations—but it is an alteration which is to be desired by all right-thinking men. Reading the Bill carefully, hon. gentlemen will be surprised to find that these provisions were not embodied in our Statute-book long ago, and that, strange to say, Great Britain is herself ahead of Australia in a reform of the law such as is shadowed forth in the Bill. But while the Bill undoubtedly proposes a revolution in the law, I feel it my duty to tell you that it is from beginning to end brimful of sound common sense, and that is its highest commendation. I notice that, in the debates which took place on the several occasions when this measure was before the House of Lords and the House of Commons, that on the second reading the principle alone was dealt with; and I think, on the whole, it is a useful lesson to learn that in measures of this kind, where the details should be carefully watched and looked into, we should, as has been the practice in this colony, leave those details to be dealt with in committee. I do not intend to say anything more on the subject beyond quoting what has been said by some of the greatest legislators in the old country, to show in what respect this measure was held by them. In February, 1882, Earl Cairns said, referring to the powers which were usually given in modern settlements to trustees:—

"In the first place—and to this he attached great importance—the powers were given with very rare exceptions to the trustees, and not to the tenants for life. They knew that trustees wished to act with great safety, and, as far as they could, with freedom from responsibility; and there had been a reluctance on the part of trustees to engage in any exercise of those powers. The natural arrangement would therefore be to have the powers safely guarded, and to entrust the exercise of them to the tenant for life. The next failure was that the powers had not gone far enough. They did not provide for leases and the execution of improvements to that extent and in that way which circumstances required. There was another matter in regard to which there was a failure. So far as he knew there was no power of settlement to authorise the trustees of a limited owner, if the limited owner should be of opinion that it did not suit his taste and capacity to manage landed estate, to sell the estate and convert it into money under conditions. All these shortcomings this Bill proposed to remedy, and he thought he stated what was correct when he said that if this Bill became law it would, for every good purpose, put the limited owner of property in the position in which the owner of fee-simple stood; and it would lead to the more easy and free circulation of land, and the execution of improvements of land as if the land were owned by an owner in fee-simple. He owned himself—having observed the reception this measure met in the country—that, so far as he knew, it had been approved by all persons interested in the development of land, and had not been disapproved of by any persons who wished to go further than that Bill proposed to go—looking at the circumstances he regretted very much that the Bill had not become law a couple of years ago. He believed if it had become law a great amount of the suffering which had been endured would have been avoided. It was a remarkable thing, in the two large volumes, which had been laid upon the table, of the evidence taken before the Royal Commission on Agriculture, that of the great number of witnesses who had spoken on this measure he did not find one who did not approve of this Bill. In the two volumes—more evidence, no doubt, had yet to come—the witnesses who gave evidence took different views on many things; but they all agreed in approving of this Bill. He thought this was very strong testimony for those who were practically acquainted with the subject. There was one qualification in the Bill as to the power of sale—namely, that before the tenant for life could sell an estate it would be necessary to obtain an order of the court."

And these are the remarks he made after the Bill came back from the House of Commons:—

"He had to ask their lordships to consider the amendments which had been made in this Bill by the House of Commons. The Bill had been referred by the House of Commons to a select committee, presided over by Sir R. Assheton Cross, and composed of some of the strongest members of the other House, both as regarded legal attainments and knowledge on the subject of land. The committee considered the Bill with great care, and introduced certain amendments into it. It spoke very eloquently of the solidity of the labours of that committee, that when the Bill was reported to the House of Commons, and recommitted, there was not a single further change made. * * * *

"He had the pleasing task of asking their lordships to accept the Bill as it stood. He returned his warm thanks to members of the Legislature on both sides, in both Houses, for their valuable assistance on the Bill. He felt convinced that when it became law it would have a most beneficial effect on the land law of this country. That was not only his own opinion, but it was also the opinion of the Royal Commission on Agriculture."

The debate in the House of Commons in committee was almost unanimously favourable to the

acceptance of the measure, and the Attorney-General—Sir Henry James—said, amongst other hings, in respect to the Bill :—

"He thought the steps proposed to be taken to give tenants for life and limited owners power to sell an estate, and so free it from encumbrances or from being held by persons who could not do justice to the land, was a substantial reform."

On the same occasion Mr. H. H. Fowler, amongst other things, said :—

"The Bill was a very wise and a very safe step in the direction of land law reform."

Sir Assheton Cross, referring to the Bill, said :—

"He was quite sure that it was a substantial reform, and that it was actually wanted."

I shall not trouble hon. gentlemen with any further observations. I think I have said sufficient to indicate what is the nature of the measure, and I trust, altogether apart from the feelings hon. gentlemen may have as forming part of the legislatorial body of the colony, that as citizens and colonists they will give this measure their careful attention. I have much pleasure in moving that the Bill be read a second time.

The HON. P. MACPHERSON said : Hon. gentlemen,—The time at our disposal for the consideration of this Bill has been so short, and its provisions, as a whole, are of so revolutionary—or I should rather say advanced—a character, that, speaking for myself, I can scarcely say that I can at the present time give an absolutely unqualified support to the measure. I shall, however, vote for the second reading. The Bill is a consolidation, with some additions, of two English statutes—the Settled Land Act of 1882, and the Settled Land Act of 1884—which embody the latest ideas current in England with reference to the sale, leasing, and disposal of settled estates or settled land. "Settled land," by the provisions of this Bill, is defined to be "land and any estate or interest therein which is the subject of a settlement"; and a settlement is defined to be "any deed, will, agreement for a settlement, or other agreement, covenant to surrender, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act." The Bill empowers a tenant for life to sell or exchange settled land, or concur in making a partition of it, and also to lease it in the case of a building lease for ninety-nine years, in the case of a mining lease for sixty years, and in the case of any other lease for twenty-one years. By clauses 57, 58, 59, and 60 of the Bill, infants, married women, and lunatics are tenants for life, exercising their power representatively. A tenant for life, by section 44, cannot exercise any of the powers conferred upon him by the Bill without giving the trustees of the settlement notice, and section 43 says :—

"If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the court thinks fit."

No doubt, therefore, there is the stringent power of the court exercised over the tenant for life. Part VI. of the Bill relates to the investment or other application of capital trust money, and Part VII. deals with improvements that may be effected with the capital trust money. I notice, however, that the section does not include repairs. I may be wrong, but I do not think it does ; and if not the Bill will require to be amended in that particular. So far as I can gather, the object of the Bill seems to be to secure the disposition of land in the fairest manner, and presumably to the best advantage of all parties interested at the instance of a person having a limited present interest. That is how I have read the Bill without having had an opportunity of reading the debate to which the Postmaster-General has referred. In order to carry out this idea to the uttermost, clause 49 has been inserted in the Bill, and I may say that I have not yet been able to make up my mind upon that clause. It provides :—

"If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.'

That is certainly my stumbling-block in this Bill ; but I have no doubt that to carry out the principle of the Bill in its integrity it is necessary to insert this section. It seems to me, however, that that clause prohibits a man from exercising his ordinary power over his own property. It is possible that I may make up my mind upon this question as we come to consider the Bill in detail, but at present I confess that I do not quite approve of it. I have said that there are certain additions to the Bill, and one of these is contained in clause 42, which provides—

"The court or a judge may, by order, authorise the trustees of a settlement to retain for their own use out of the income of the trust property a reasonable sum by way of commission for their pains and trouble in the management of the property ; but no such commission shall be allowed at a higher rate than five pounds per centum of the net income.

"An order under this section may be made upon summons or petition, or, if the settlement is a will and the executors are also the trustees of the settlement, upon an application to pass the accounts of the executors."

This is entirely original, and I think it is a great improvement in the law. As we all know, it has always been the practice in this colony to grant executors commission on realising personal estate ; but trustees who realise real estate, who incur a great deal of responsibility, and have to go through an immense amount of labour, have never been allowed anything for their pains—why, I could never conceive. Clause 47 is new, and I think it is an improvement on the English law. Then the 6th part of the Bill is also new, and has been moulded subject to the operation of the Real Property Act of 1861. I shall not detain the House further at present than to state I shall vote for the second reading of the Bill, but shall reserve to myself the right of suggesting such amendments as I deem necessary for the improvement of the Bill when it gets into committee.

The HON. F. T. GREGORY said : This Bill is so almost purely of a legal nature that it behoves non-professional members to be very careful. At least, I feel that to be the position I stand in endeavouring to address myself to the question before the House. At the same time there is no doubt that, with the very valuable aid which we derive from the presence of so many legal gentlemen in the House, the lay members will, no doubt, be able to clearly grasp and comprehend the principles of the measure. When the various points are brought under their notice by the legal acumen of the House they will be able, no doubt, to give a safe and just verdict as to the desirable-

ness or otherwise of retaining any particular clause which may be questioned. Without intending to take the clauses of the Bill seriatim, I would briefly state that the measure may be divided into two parts—the first one pointing out what may be done by the life-tenant, which if read by itself is certainly a somewhat startling innovation. As has already been pointed out, that is apparently a very revolutionary measure, or at any rate it is a very great departure from the old beaten track laid down for the guidance of trustees and executors in conducting the business of the trusts imposed upon them. But as we go on with the measure, and look towards the latter part of it, we find that there are safeguards and restrictions placed upon what at first appeared to be so highly revolutionary provisions, that the apprehension that might arise from them is gradually removed, and by the time we reach the end of the Bill, we—or I, at all events—come to the conclusion that the safeguards are ample to prevent any mischievous results accruing from the powers which in the first instance are vested in the life-tenant. There has been much said about the difficulty under which trustees labour in dealing with settled estates. The extent to which the term "settled estates" extends I am not perfectly clear about, but as the measure goes on before the House I have no doubt we will have such an exposition of the limits which should be placed upon that term as to remove the doubts at present in my mind as to whether this Bill goes far enough or not. Judging by the title of the Bill one would assume that it only referred to settled lands—lands under settlement owing to life interest, trust, and other provisions made by testators as to the appropriation of their estates; but it hardly appears to me to go far enough in regard to dealings with estates already in process of realisation, or still more so, in regard to estates which have been so far realised that possibly lands had been sold under the powers of the Bill, and the money realised, as is very often the case, left as security upon the real estate. Although the absolute sale has taken place, still at any time this land might be thrown back on the hands of the life-tenants. Whether those lands can still be dealt with as settled lands under the original provisions for the sale I am unable to say; but I hope to have some further explanation when the Bill reaches committee. The Hon. Mr. Macpherson has drawn attention to what appears to be a rather singular provision to make in a Bill of this sort, in clause 49, whereby a testator is prohibited practically from making any provision that will lock up his land; and at the first blush I candidly confess that I thought it was undesirable to restrict the powers of a testator in regard to what he may choose to do in the case of settled land; but if we had not these restrictions in the Bill it would almost nullify the whole of the preceding part of it; because, practically, we must assume that a testator, when he makes a will, will be aware of the provisions of this measure prohibiting him from locking up his land. Under these circumstances, I fancy such a testator would endeavour to evade the law by some other process; but even allowing that to be the case, I see no reason why this 47th clause should not remain in the Bill, as transactions which may take place under the Bill can only be with the approval and sanction of the Supreme Court. I think we are all perfectly well aware of the extreme caution with which the courts ever sanction any dealings with estates, real or personal, by trustees or executors, unless they keep carefully within the four corners of the law. Subject, of course, to careful consideration and revision in committee, I may say that the measure as a whole is a very valuable contribution of a reform in matters connected with real and personal estates; and I shall support the second reading.

The HON. A. J. THYNNE said: The Postmaster-General has stated in his speech that the discussion on this matter in the English House of Commons was a very slight and sparse one; and it is a great wonder that an Act which has struck so deeply at the root of the British land law should pass the English Parliament with such slight discussion. In the present day one of the things which must be recognised as our first duty must be the making of laws which will facilitate land being rapidly and easily disposed of; and this Bill I look upon as one of the steps which will lead ultimately to making land as easily saleable as any description of personal estate. This Bill does not go that length; but it is such a radical change in the old ideas of land ownership that it brings one irresistibly to the conclusion that the law will have to go very much further than this measure proposes before many years. I think myself that it is a good thing for the community, as well as a good thing for the people who own estates of this kind, that property should not be tied up with restrictions as to the mode of dealing with it beyond the lifetime of the owner who has attempted to tie it up. I think it should be released from all the shackles and obstructions that can be removed without doing injustice to the parties interested. Public policy has first to be considered, and in the interests of public policy it is injurious that land should be tied up and held of little use, obstructing progress, and being of small value to the people who ought to be receiving a better income from it. This is the ground, I think, upon which this 49th section has been introduced into the English Act and adopted here. If that section is omitted, it would be competent for any person making a sale or settlement to declare that the provisions of this Bill shall not apply to the property included in the sale or settlement, and it would be in the power of every testator or settlor to balk the object of this Bill and to deprive the public, as a whole, of the benefit which making the best use of the land would confer upon them. It is, in fact, the duty of everyone possessed of land to make the best use of it. That is one of the implied conditions upon which men are allowed to hold land, and if restrictions are made which prevent the holders from turning it to the best use public policy should step in and say, "We shall not allow this to continue; we have a right to expect that the land should be put to the most economical use, and you will have to do that." If this clause is omitted we would then have the law in a very peculiar position. Settlors or testators who have made their settlements or sales before this Bill is introduced or becomes law should be in the position that their estates should be subject to the operation of this law, and those who dealt with their land after this Bill becomes law would be able to defeat the objects of the Act. That would leave the law in a rather anomalous position—leaving one set of men having their estates subject to the law, while those who came afterwards would be able to evade it. I think, therefore, that it is absolutely necessary in the interests of public policy that this provision should be left in, and that no one should have the power of preventing the application of the law to the estates they may leave behind them. In the last section of the Bill there are some provisions referring to the Real Property Act which I think will require to have some attention paid to them. I quite agree with the Hon. Mr. Macpherson as to the provision in clause 42, because I think that the provision that a trustee shall be paid only on the

net income would work hardly in many instances. In some instances the income would be very large and there would be very little trouble in connection with it, but in other instances the net income would probably be a minus quantity, while the amount of trouble would be very great indeed. I think the court should be left full discretion as to the rate of commission on the gross income. I have known as low a commission as ¼ per cent. being allowed, and I have known as much as 5 per cent. being granted. The court could safely be left to fix upon the rate, and be guided by the circumstances of each individual case. I have not touched upon legal formalities in connection with the Bill, and I do not think it is necessary for me to do so, because the Bill has been adopted from the English law after very grave consideration by the ablest men of the time. That in itself is a greater recommendation than the approval of any member of this Chamber.

Question put and passed, and the committal of the Bill made an Order of the Day for to-morrow.

JUSTICES BILL—COMMITTEE.

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

On clause 27, as follows :—

"When two or more justices are present and acting at the hearing of any 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 POSTMASTER-GENERAL said that clause 29, which was the same as clause 27 of the Bill as amended, was postponed last night to give hon. members a little time to consider the change in the law as pointed out by the Hon. Mr. Thynne. It had been stated that danger would arise from benches being packed if the Bill provided that magistrates could decide any matter by a majority; but it appeared to him that there was less danger of a majority agreeing to pack a bench than there would be of one man going on the bench to hold out against a number of magistrates. He could not conceive of a better rule than that the majority should decide. He hoped hon. gentlemen would agree to the clause as it stood; and he had no doubt there were hon. members present who believed it would be a great improvement on the present law. It was possible at present for one man to stand out against any number, in order to secure a committal; but there was far less possibility of a number of magistrates associating themselves together to acquit an accused person.

The HON. P. MACPHERSON said he agreed with the clause as it stood. It simply stated what was the law in the highest tribunals; and the principle of decision by the majority regulated all the ordinary and common affairs of life.

The HON. A. J. THYNNE said the clause was a proposed alteration in the law, about which there were many opinions. He was of opinion that it was better to let the law remain as it was, so as to prevent a possible miscarriage of justice in cases where a man might escape through the kindly feelings or the prejudices of some of the magistrates on the bench. Cases were referred to yesterday in which men had been committed for trial by a minority—men who would otherwise have escaped punishment, but who had been convicted of serious crimes and subjected to severe punishment. The principal argument against leaving the law as it stood was that it might have a good effect in one way but would have a bad effect in another way; but it was not likely that a magistrate, unless he believed he had very good reasons, would commit a man for trial against the opinions of the other magistrates; and in ninety-nine cases out of a hundred a magistrate would take such an extreme course only when he believed the men sitting beside him on the bench were more or less prejudiced. He moved that the word "matter" be omitted with a view of inserting the words "any complaint for simple offence or breach of duty." If those who argued in favour of the clause as it stood were in a position to quote an instance where a man had suffered from the perversity of one magistrate going against the majority, there might be some good reason for an alteration in the law; but he did not think such a case could be quoted, and in the absence of such an instance of injury he thought it would be premature to seek for a change, especially when it had been shown that the present state of the law had in some instances had a beneficial effect.

The POSTMASTER-GENERAL said he trusted the clause, which was a valuable one, would not be mutilated by the proposed amendment.

The HON. SIR A. H. PALMER said there was another way of looking at the matter besides the view taken by the Postmaster-General. If the clause became law in its present state it would be possible for any two justices of the peace—and he was sorry to say that a great many of them were ignorant men—to go on the bench and swamp the decision of the police magistrate, who ought to know more about the law and be better able to judge of the weight of evidence than magistrates who only acted occasionally. Without imputing the slightest corruption, he might say that any two magistrates, who had no idea of the law, and had no practice in studying what was good evidence and what was not, would be able to swamp the decision of the police magistrate, who, if he was not a judge of the weight of evidence, ought to be, before he was appointed—and certainly, from the practice he had, should be better able to judge whether there was sufficient evidence to convict or not. He thought the amendment was a very good one; but if it were carried—as he hoped it would be—it would be necessary to add another amendment to the effect that in the case of an indictable offence any one justice might commit. The Postmaster-General talked of the hardship that might be caused by one magistrate being able to commit where the majority were not inclined to do so, but he forgot to mention that for the security of the prisoner there were the Attorney-General and the Crown Prosecutor. Where a prisoner had been committed by one magistrate against the decision of the majority, the Attorney-General and the Crown Prosecutor would feel it their duty to look very carefully into the case before they found a true bill. A great deal of hardship might be done by attempting to alter the law, but no hardship could occur by amending the clause and leaving the law pretty well the same as it was at present. Not very long ago a bench acquitted some persons charged with cattle-stealing. One of those parties was brought up again and convicted on precisely the same evidence, and for precisely the same offence. That ought to be within the knowledge of the Postmaster-General, because it did not occur many months ago. It was very dangerous to alter the law as was proposed, and they should bear in mind that the Bill was supposed to be a codification of the law and not an alteration.

The POSTMASTER-GENERAL said the Bill was a Bill to consolidate and amend the law, and the clause under consideration was an amendment, as well as a great improvement. The

hon. gentleman spoke of police magistrates as gentlemen who ought to know the law before they were appointed. He agreed with him in that, but unfortunately some of them did not know the law as well as some justices of the peace. He was not going beyond the mark in saying that during the last few years there had been more decisions given by police magistrates which had to be quashed than those given by benches of justices. Unfortunately, they could not always get the right stamp of men for magistrates—that was, the stamp characterised by the hon. gentleman. There were some excellent exceptions—gentlemen who understood their duties thoroughly—but they were in the minority, as was well known. He hoped the matter would be treated entirely on its merits, and whatever the decision of the Committee might be he should be perfectly satisfied.

The HON. SIR A. H. PALMER said the Postmaster-General just stated that more decisions of police magistrates had been quashed than those of unpaid justices during the last few years. He should like to know what proportion the quashed decisions bore to the convictions. A great many more cases were tried before police magistrates than before other magistrates, and he did not think it was fair for the Postmaster-General to give that as a reason why the clause should become law. It was most likely that the reasons given by police magistrates were not satisfactory, though their decisions might have been correct. An eminent Chief Justice of New South Wales, many years ago, said that he found the decisions of magistrates generally correct, but their reasons invariably wrong.

The HON. W. D. BOX said the Postmaster-General had told the Committee what was the law at present. Would he tell them whether the law he now proposed was in force in England or in any of the colonies and where the idea of the change in the law came from?

The POSTMASTER-GENERAL said it was contended by many that the provision contained in the clause was the law in Queensland at the present time, while others contended that it was not. The law was doubtful, and the clause was intended to define the law and leave it in doubt no longer.

The HON. A. J. THYNNE said he was not aware of the proposed amendment in the law being in force in any other part of the world. His impression was that it was not in force in the old country, and the experience of some hon. members would enable them to say whether it was in force in New South Wales. Speaking candidly, he believed the clause was introduced without its author considering whether it was limited to one set of offences or another.

The POSTMASTER-GENERAL: No.

The HON. A. J. THYNNE said he was of opinion that the gentleman who made the first draft of the Bill did not consider carefully what was the present state of the law on the subject.

Question—That the word proposed to be omitted stand part of the clause—put, and the Committee divided:—

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Question resolved in the negative.

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

Clause, as amended, put and passed.

Preamble put and passed.

The House resumed, and the CHAIRMAN reported the Bill with amendments.

The POSTMASTER-GENERAL moved that the Bill be recommitted for the consideration of clauses 15, 19, 124, and 195, of the Bill as amended.

The PRESIDENT: I hope the Postmaster-General will also recommit clauses 13 and 14. The division on clause 13 was taken when there was barely a quorum present, and as it is a matter of some importance, and there is a full House now, I trust the hon. gentleman will recommit clauses 13 and 14 as well as those he has mentioned.

The HON. W. FORREST: I hope the Postmaster-General will also recommit clauses 160 and 164, not for the purpose of making any alteration in the language, but to alter their position in the Bill. It would have been better if clause 160 had been left in, and subsection 8 of clause 164 struck out. All I want is that subsection 8 of clause 164 should follow clause 160, or that clause 160 should become subsection 9 of clause 164.

The POSTMASTER-GENERAL said: In reply to the hon. gentleman, I may state that the matter has been very carefully considered, and there was no way of meeting his views, but I have told him privately that the matter will doubtless be attended to. I hope the hon. gentleman will take my assurance for that. Of course hon. gentlemen are at liberty to take what course they please in this Chamber, but I speak with the desire to put the Bill in the best form possible, and at the present moment I cannot exactly see where the recast can come in, because it will involve other considerations. As the Bill stands at present it is perfectly right and intelligible.

The HON. W. FORREST said: I do not know whether I am in order in speaking again, but, with the permission of the House, I will explain——

The PRESIDENT: If it is a question of privilege you can explain.

The HON. W. FORREST said: We have the assurance of the Postmaster-General that this matter is going to receive attention in another place, but why should we send away a faulty Bill with our eyes open? I ask hon. gentlemen to look at clause 160, which refers to the satisfaction of an execution by payment, but going on to clause 164 we find exactly the same thing—the one clause referring to satisfaction by payment after imprisonment and the other to the satisfaction of a claim by payment only. To prevent confusion these clauses should follow each other. My proposition is, that we reinstate the clause we struck out last night and strike out subsection 8 of clause 164; and that the Bill be recommitted for that purpose.

The PRESIDENT: What is the question?

The POSTMASTER-GENERAL: That the Bill be recommitted for the consideration of clauses 15, 19, 124, and 195.

The PRESIDENT: I asked that clauses 13 and 14 might be recommitted.

The POSTMASTER-GENERAL: I think that that matter having been decided it is just as well to leave it as it is.

The PRESIDENT: I cannot move an amendment myself, but I hope someone else will.

The POSTMASTER-GENERAL: The matter was well discussed last night, although the House was thin, and I am quite satisfied with the result.

The HON. F. T. GREGORY said: I think when a doubtful clause has been, on division in a thin House, kept in the Bill, hon. gentlemen should have an opportunity of reconsidering it, and the Bill should be recommitted for that purpose. It will be very easy for the House to decide the question at once without further discussion, and I therefore move that clauses 13 and 14 be included amongst those to be recommitted.

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

Question—That the Bill be recommitted to consider clauses 13, 14, 15, 19, 124, and 195—put and passed.

On the motion of the POSTMASTER-GENERAL, the President left the chair, and the House went into Committee to consider the above clauses.

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 hardly necessary to go over the same ground as he did last night, but the gist of his statement went to show that it was not desirable that the office of justice of the peace should be put up for public vote, which would almost be the result of the clause. He mentioned last night that no man ought to be appointed to the Commission of the Peace except by the action of the Government of the day, who were entirely responsible for the persons they so appointed. No doubt the next clause gave the Governor in Council power to prohibit any man who should have been appointed chairman of a municipal district from acting as a justice of the peace; but he stated last night, and he reiterated it now, that that was a very invidious thing for any Government to do, unless they had very strong reasons indeed for taking such action. Let them leave the appointment of justices of the peace in the hands of the Government of the day who were the proper persons to appoint justices, and they would relieve the Government from a very objectionable proceeding and one that was not likely to add much to their credit. He thought it would be preferable to omit both clause 13 and clause 14, and he hoped the majority of the Committee would negative those clauses. The question was decided last night certainly, but in a very thin House, with a majority of only one, and he thought it was only a fair thing that the sense of the Committee should again be taken upon the question.

The POSTMASTER-GENERAL said the hon. the President had reiterated the arguments used in favour of the omission of clauses 13 and 14, and there was no question whatever that there was a great deal in what the hon. gentleman said; but he would ask that notice be taken that clause 13 was practically the law at the present time, and its omission from that Bill would not affect the law as it stood. Chairmen of municipalities or divisional boards became justices of the peace by virtue of their office according to the Divisional Boards Act and the Local Government Act; but in order to give the Government of the day power to remedy a possible evil, clause 14 was essential. It was desirable that clause 14 should not stand alone, and that clause 13, reciting the law as it was laid down in other Acts, should precede it. He should be very sorry indeed if clause 14 was left out, because the Government of the day should have the power intended to be given by the clause. He was not sorry that clauses 13 and 14 had been recommitted at the instance of the Hon. Mr. Gregory. When it was decided to retain that clause the House was undoubtedly a thin one, but had he dreamt that those two clauses would have been recommitted he should have liked to have secured an even fuller House than that assembled that afternoon. There were several hon. gentlemen who were not present, who, had they known that those two clauses were to be again dealt with, would have attended in their places.

The HON. W. FORREST said he understood the Postmaster-General to say that the law at present was according to other Acts, that chairmen of municipal districts and divisional boards became justices of the peace by virtue of their office. If that was the case he thought that clause 14 might do some good, and could not do any harm.

The HON. W. GRAHAM: We are discussing clause 13.

The HON. W. FORREST said they were certainly discussing clause 13, but the two clauses ran side by side.

The HON. SIR A. H. PALMER said if clause 13 was kept in the Bill it was absolutely necessary to keep clause 14 in also. There was no doubt that the Government should have power to prevent an objectionable man from acting as a justice of the peace, if, as the Postmaster-General said, certain men became justices of the peace by virtue of their office, according to other Acts of Parliament; but he understood that none of those Acts were repealed.

The POSTMASTER-GENERAL said the Local Government Act and the Divisional Boards Act provided that the chairman of the board or municipal council should be a justice by virtue of his office. Clause 13 of the Bill embodied the law as found in those two Acts.

The HON. SIR A. H. PALMER said he noticed the Bill repealed part of the District Courts Act of 1867, but if the Postmaster-General assured him that other Acts made chairmen of municipal districts justices of the peace by virtue of their office he should withdraw all opposition to the clause, because it was absolutely necessary that if those men were appointed as justices under other Acts the Government should have the power of preventing them acting as provided in clause 14 if they proved objectionable.

The POSTMASTER-GENERAL said the provisions he referred to were to be found in the Local Government Act and in the Divisional Boards Act. He was not at all wedded to either or both of the clauses, because if the Committee threw out clause 13 the law would stand in exactly the same position. Clause 14, however, gave the Governor in Council power to cure a possible evil. Every hon. gentleman would admit that evils such as were described last night had arisen and would arise in future. They had had several very flagrant cases of the appointment of men to the justices' roll—cases that were both accidental and not creditable to the bench. It was to deal with cases of that sort that the power given in clause 14 was, unfortunately or fortunately, as the case might be, desired to be taken.

The HON. F. T. GREGORY said the question was this: If the Committee considered it was undesirable that chairmen or presidents, or mayors of municipalities, or divisional boards, or shire councils should be, by virtue of their office, justices of the peace, was it wise to pave the way to expunge that provision from other statutes by omitting clause 13, which re-enacted that provision? That, he thought, was the whole question for the Committee to consider. He believed

himself that those men should not be justices of the peace by virtue of their office, and he hoped the clause in the Bill providing that they should be justices would be expunged.

The HON. W. GRAHAM said he could not agree with what the Hon. Mr. Gregory had said. Clause 13 was drawn up in accordance with two other Acts of Parliament. He did not think an alteration in the law should be effected in the way suggested by the hon. gentleman, and that they should pave the way, as the hon. gentleman said, to an alteration in the law as laid down in other Acts, by omitting clause 13. If it was wrong that chairmen of local authorities should be justices of the peace by virtue of their office an alteration in the law ought to be effected in a different manner. He must say that he believed it would be advisable to omit the provision contained in clause 13; but as it was in accordance with two existing Acts—as clause 14 would remain as a safeguard—perhaps the clause had better stand as it was.

Clause put and passed.

Clause 14 passed as printed.

On clause 15, as follows :—

"Every member of the Executive Council and every judge of the Supreme Court 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 the following words be inserted after the word "Act" in the 3rd line of the clause: "and without taking any further oath." That was a verbal amendment making it clear that members ot the Executive Council and judges of the Supreme Court should not be under the necessity of taking any further oath. The Bill as it stood before made that rather doubtful.

The HON. SIR A. H. PALMER said he should like the Postmaster-General to give some reason why members of the Executive Council should not take an oath. As far as he knew, the oath they did take did not bind them to do justice between man and man. He could understand judges of the Supreme Court not taking any further oath, because they were sworn as judges; but he did not approve of the exemption even in their case, because they were not sworn as magistrates. There was, however, no reason whatever for exempting members of the Executive Council from taking the oath as justices of the peace, and in fact he thought it absolutely necessary that they should take it. The clause would be much better without the proposed amendment.

The POSTMASTER-GENERAL said he thought the oath administered to members of the Executive Council embodied what was contained in the oath administered to justices of the peace. Hon. gentlemen would recollect that under one of the old Constitution Acts, which had never been repealed, members of that Chamber were justices of the peace by virtue of their office, and they were not required to take any additional oath.

The HON. SIR A. H. PALMER: What Act is that?

The POSTMASTER-GENERAL: One of the old Constitution Acts which has, I believe, never been repealed.

The HON. A. J. THYNNE said he would suggest the desirability of making the amendment in clause 19 instead of in clause 15. Clause 15 said every member of the Executive Council and every judge of the Supreme Court should be justices of the peace by virtue of his office; and clause 19 said that a justice of the peace could not exercise his functions until he had taken an oath or affirmation of allegiance and the oath or affirmation of office prescribed by the Oaths Act of 1867. The exception in favour of members of the Executive Council ought to be in clause 19. With reference to what the Postmaster-General had just now said about members in that council being *ex officio* justices, he might mention the Constitution Act first given to New South Wales and Van Diemen's Land made that provision.

On the motion of the POSTMASTER-GENERAL, and by permission, the amendment was withdrawn.

Question put and passed.

On clause 19, as follows :—

"A justice shall not exercise any of the functions of his office until he has taken or made the oath or affirmation of allegiance and the oath or 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. Notwithstanding anything in that Act contained a justice may make an affirmation of allegiance instead of taking the oath of allegiance as therein provided."

The HON. A. J. THYNNE moved that after the word "justice" on the 1st line of the clause the words "other than members of the Executive Council or judge of the Supreme Court" be inserted.

The HON. W. FORREST said, if it was as the Hon. Sir A. H. Palmer had said, that members of the Executive Council did not take an oath to do justice between man and man, then he did not see why they should exercise the functions of justice without taking an oath.

The HON. A. J. THYNNE said he would withdraw his amendment with a view of inserting the following words in the place of those he had moved: "other than a judge of the Supreme Court."

Amendment agreed to.

On the motion of the POSTMASTER-GENERAL, the word "an" was substituted for the word "the" in line 6; and the words "in the form" were inserted after the word "office" in line 7.

Clause, as amended, put and passed.

Clause 124 was amended so as to read thus :—

If in any case 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, or the judge whereof is by reason of interest or otherwise incapacitated from trying the case, 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; or if the defendant is brought before the court at the time appointed for holding the same the court may remand him to take his trial before another and proper court.

When a fresh commitment has been so made the same or any other justices or such court may bind the witnesses by fresh recognisance to appear and give evidence at the court to which the defendant is so committed or remanded, 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.

Clause 195 was amended by the omission of the last paragraph.

The House resumed, and the CHAIRMAN reported the Bill with further amendments. The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

The House adjourned at fifteen minutes past 6 o'clock.