Queensland

Parliamentary Debates
[Hansard]

Legislative Council

THURSDAY, 15 OCTOBER 1885

LEGISLATIVE COUNCIL.

Thursday, 15 *October*, 1885.

Justices Bill—third reading.—Undue Subdivision of Land Prevention Bill.—Friendly Societies Act of 1876 Amendment Bill.—Settled Land Bill—committee.

The PRESIDENT took the chair at 4 o'clock.

JUSTICES 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 transmitted to the Legislative Assembly for their concurrence, with message in the usual form.

UNDUE SUBDIVISION OF LAND PREVENTION BILL.

The PRESIDENT read a message from the Legislative Assembly, forwarding, for the concurrence of the Council, a Bill to make provision for regulating the width of streets and lanes, and to prevent the subdivision of land in such a manner as to be injurious to the public health.

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

FRIENDLY SOCIETIES ACT OF 1876 AMENDMENT BILL.

The PRESIDENT read a message from the Legislative Assembly, forwarding, for the concurrence of the Council, a Bill to amend the Friendly Societies Act of 1876.

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

SETTLED LAND 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 7, inclusive, passed as printed.

On clause 8—"Regulations respecting leases generally"—

The HON. A. J. THYNNE said that under the Real Property Act leases were not what were technically termed "deeds," and some provision should be inserted in the clause whereby instruments under the Real Property Act should be as effectual as if they were deeds under lease.

Clause put and passed.

Clauses 9 to 17, inclusive, passed as printed.

On clause 18, as follows :—

"Where money is required for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee-simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act."

The HON. A. C. GREGORY said it struck him that the clause did not apply to mortgages under the Real Property Act, which merely encumbered the property mortgaged, but to mortgages in the old country, where the conveyance was in fee-simple. The question was a technical one, and some legal members of the Committee would most likely be able to correct him if his surmise were not accurate.

The HON. A. J. THYNNE said the provision contained in the words "or otherwise" would meet the difficulty referred to by the Hon. Mr. Gregory.

The POSTMASTER-GENERAL said the Hon. Mr. Gregory was under a misapprehension in saying that a mortgage could not be given under the Real Property Act except by conveyance of the fee-simple.

The HON. A. C. GREGORY said he was aware that a mortgage under the Real Property Act was merely an encumbrance. He only drew attention to the matter, because he thought that wherever he saw anything he did not understand it would be better to ask those who were able to explain it, than to run the risk of an indefinite expression passing without notice.

The HON. F. T. GREGORY said the expression appeared to him to imply a mortgage under equity of redemption, and not the usual form of mortgage with security under the Real Property Act.

Clause put and passed.

Clauses 19 and 20 passed as printed.

On clause 21, as follows :—

"Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes, namely :—

(*a*) In investment on Government securities of the United Kingdom or any one of the Australasian Colonies, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities;

(*b*) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement;

(*c*) In payment for any improvement authorised by this Act;

(*d*) In payment for equality of exchange or partition of settled land;

(*e*) In purchase of the revision or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life;

(*f*) In purchase of land in fee-simple, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;

(*g*) In purchase, either in fee-simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes;

(*h*) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;

(*i*) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Act;

(*j*) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder."

The HON. W. H. WILSON said he thought there was an omission. The clause followed the English Act, but it would be desirable to give power for investments on mortgage of real property in Queensland, as well as those subjects mentioned in the clause. He therefore proposed that the words "or on mortgage of unencumbered freehold property in Queensland," be inserted after the word "colonies" in the 41st line.

The HON. P. MACPHERSON said that provision was pretty well covered by the clause already. In ninety-nine cases out of a hundred, power was given in settlements to invest money on mortgage of freehold estates.

The HON. A. J. THYNNE said that if the amendment were inserted it would be well to go further, and put a limit on the amount advanced. It should not be more than two-thirds of the value of the land, at any rate. The amendment opened up a nice question as to whether the State, which had abolished the principle of sales of land, and gone in for leasing, ought not to go to the extent of saying that money should be invested on leasehold, and not on freehold, property. Were they going to cry "stinking fish," and say that those securities were not safe investments for trust money? He would ask the Postmaster-General whether he would not extend the provisions of the Bill to leasehold securities?

The HON. W. H. WILSON said it was quite a usual thing to invest trust money on mortgage, and he did not think it was necessary to insert any provision as to the amount to be lent.

The POSTMASTER-GENERAL said the clause was amply sufficient to cover all that the Hon. Mr. Wilson desired to attain. It was a most common occurrence in settlements to empower trustees to lend upon mortgage; but, if the hon. gentleman thought the matter doubtful, he was quite prepared to accept the amendment. With respect to a remark made by the Hon. Mr. Thynne, he might state that in no degree whatever could the measure be regarded as involving any Government policy, and he should like the hon. gentleman to point out a scintilla of evidence that such was the case.

The HON. W. FORREST said he could not agree with the Postmaster-General that the clause as it now stood gave sufficient power to invest money on mortgage of Queensland freehold land, unless the trustees of the settlement had received that power under the settlement or under a will. The clause only authorised the investment of trust money in Government securities in the United Kingdom or any one of the Australian colonies, or as the trust might define; but if the trust did not define freehold land in Queensland they would not have the power to lend money on mortgage of Queensland freehold property, unless the amendment proposed by the Hon. Mr. Wilson were inserted.

The POSTMASTER-GENERAL: What do you advocate?

The HON. W. FORREST said he would advocate the insertion of the words proposed by the Hon. Mr. Wilson.

The HON. W. H. WILSON said the words he proposed to insert were "or on security of unencumbered freehold property in Queensland."

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

The HON. A. J. THYNNE said he was afraid to approve of the insertion of the words, for the reason that in many instances land which would come under the provisions of the Bill was not held by trustees at all. There were many instances where property was held for life, such as cases where transmission had been entered up for a life estate and there was a registration of the title of the next owner. In instances of that kind it would not be possible to make an investment on mortgage on freehold land, because it might not be a security upon which the trustees of the settlement were authorised by the settlement or by law to invest in.

The HON. W. H. WILSON said the matter was very simple; the amendment referred simply to capital money arising under the Bill. That was all it was proposed to invest; and it was proposed to insert those additional words to give power to the persons who had capital money in their hands for investment to invest on mortgage of freehold property in Queensland, as well as the other modes of investment pointed out by the clause. It would be observed that there was power given by the Bill to purchase property held in fee-simple—a much larger power than he proposed to give. He thought his amendment was a very reasonable one, and he should press it.

Amendment agreed to.

The HON. W. FORREST said he wished to point out to the Committee, and no doubt those who had read the Bill had already seen, that it was nothing if not specific. It enumerated everything that anyone had ever heard of, and a good many things they had never heard of, but at the same time it was almost an exact copy of an English statute, and he could not help thinking that some important points had been left out. The Bill was the most difficult to understand that he had ever read. For a layman, he had a reasonable amount of knowledge of legal documents, but he must confess that he had never met such a puzzling Bill. The more he read it the less he understood it. It was obviously a lawyers' Bill intended to raise no end of trouble in days to come.

The HON. P. MACPHERSON: Hear, hear!

The HON. A. J. THYNNE said with regard to subsection (*f*) he saw that the Government had carefully preserved the English term of lease for sixty years, and that no investment could be made in land held under the Crown Lands Act of 1884. Was that an intentional provision, or what was the object of preventing investment in lands held under the provision of the Lands Act?

The HON. W. FORREST said he should like to hear the Postmaster-General's opinion with regard to the point raised by the Hon. Mr. Thynne. He thought the point was a very vital one. It was perfectly obvious that the Bill was almost a copy from an English Act, and that many clauses had been omitted that ought to have been inserted, when the difference of the two countries were taken into consideration.

The HON. W. H. WILSON said sixty years was the term of a mineral lease, as mentioned in clause 7, which had already been passed.

The HON. A. J. THYNNE said he was sorry to see the Postmaster-General was willing to go to the extent of acknowledging that the leases issued by the Government under their own Act were not good and sufficient security for investment. That was what the hon. gentleman's silence amounted to.

The POSTMASTER-GENERAL said it amounted to nothing of the kind. The hon. gentleman would have his little joke at the expense of the time of the Committee. If a client entered the office of the hon. gentleman—a client who was a trustee under a will or settlement—and asked him if it were proper security to lend money upon a pastoral tenancy which was terminable at a certain period and subject to resumption with compensation, with other qualifications, the hon. gentleman knew very well that he would at once say to his client, "No; that is not proper security." Surely the hon. gentleman did not want a Bill of that kind to be the means by which opportunity would be given to trustees in Queensland to engage in such transactions! There was ample financial accommodation to be had from

the banks and the other prosperous financial and monetary institutions of the colony without the hon. gentleman trying to accomplish any such thing.

The HON. W. FORREST said he failed to see the point of the joke, if there had been one. Under the Land Act of 1869 they had got land selected in this manner. It was taken up by ten annual payments, and at the end of three years, having performed certain conditions of residence and improvement, a certificate of fulfilment of conditions was given, which, to his mind, was as good as the deeds of the land themselves, simply because the deeds could be obtained by paying up the balance due. That being the case, why should a selector of land, under the 1869 Act, or any other Act, be deprived of getting trust money advanced upon his property?

The POSTMASTER-GENERAL said the Bill did not deprive the selector from getting trust money advanced upon his land, but it deprived trustees of the function of lending to the selector.

The HON. W. FORREST: Why?

The POSTMASTER-GENERAL said for a very good reason indeed. If that reason did not enter the mind of the hon. gentleman he was not going to take up the time of the Committee by explaining. If the hon. member intended to obstruct a measure of that kind, he would save a good deal of time by saying so at once.

The HON. W. FORREST said he could imagine why a trustee would not be allowed to lend money on the security of a selection—he could imagine that the reason was a political one, because the Postmaster-General knew that he was a member of a Government who would, if possible, deprive every man in the colony of his title to property, and would obstruct people in every way in endeavouring to get a title; hence it became known that that kind of security was no good. But if the Land Act was administered faithfully, and if every man knew for certain that he would get his certificate after certain conditions had been performed, then the security would be advanced in value, and would become the best that could be got.

The POSTMASTER-GENERAL said he was extremely sorry to see that the hon. gentleman had wandered altogether outside the scope of the Bill. He was sorry that the hon. gentleman should refer to political matters in the way he had done. He should blush for shame at raising such a question and speaking of any Government in the terms he had used. He (the Postmaster-General) felt himself humiliated by having a matter of that kind brought up by the hon. member, who was the only member of that House who, from time to time, endeavoured to introduce political animosity and political feeling into their debates—a feeling which he (the Postmaster-General) had said on a former occasion ought to be foreign to that Chamber, and, beyond everything, ought not to be brought into a discussion upon a Bill of the nature before them.

The HON. W. FORREST said he was surprised at the Postmaster-General's surprise, considering that it was not such a very long time ago that selectors, who were entitled to their deeds, had to carry their cases to the Privy Council before they could get them. Going back again to where they started from, he should like to know why land that might be selected under the present Act, and for which a certificate had been granted, should not be allowed to be accepted as security for trust money.

The HON. SIR A. H. PALMER said he saw one very good reason why no bank, or trustee, or individual in his senses would lend money on such security.

Clause, as amended, put and passed.

On clause 22, as follows:—

"1. Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly.

"2. The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

"3. The investment or other application under the direction of the court shall be made on the application of the tenant for life, or of the trustees.

"4. Any investment or other application shall not during the life of the tenant for life be altered without his consent.

"5. Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

"6. The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

"7. Those securities may be converted into money, which shall be capital money arising under this Act."

The HON. A. C. GREGORY said he intended to move an amendment in the clause which would be very important, because to a great extent it would alter the character of the whole Bill. He said that at once, because he had no desire to take anyone by surprise. His amendment would be in subsection 2, line 26, to strike out the words, "According to the direction of the tenant for life and in default thereof." Then again, in line 27, after the word "but," he proposed to strike out the words, "in the last-mentioned case." As the Bill stood at present the tenant for life had absolutely the power of selling a property without requiring the consent or concurrence of anyone, except in some exceptional cases which were mentioned, where he must obtain an order of the court. Those exceptions were few in number; and if he succeeded in selling the land he might apply the means derived from such sale in any way he saw fit, the trustees not being required to concur; in fact, they might dissent—very strongly dissent—but they had no power to stop the tenant for life from investing in any kind of security he saw fit, and though afterwards he might be called to account before the court, still the mischief would be done, and injury done to those who might have a reversionary interest in the property. The object of the amendment, which he had just spoken of, was to remove from the tenant for life the power to invest the capital sum in any security, unless he was authorised by a majority of the trustees, or under an order of the court. He thought such a restriction was not one which would be in any way unreasonable. He had apprehended that the great object of that Bill as a whole was to do away with the necessity for parties going before Parliament to obtain Bills to enable them to deal with property, which, either through some mistake or some misapprehension on the part of the testator, had become completely locked up so as to be actually unavailable to those who had an immediate life interest in it. The amendment could not in any

way interfere with the powers of the Bill, so far as enabling the trustees and the tenant for life to concur in disposing of the property and realising the trust. The amendment which he would propose in clause 22 would not be quite sufficient in itself, and he might justly refer to what must necessarily follow in clause 44. That clause must be modified to make it consistent with clause 22 as proposed to be amended. What he proposed to do in clause 44 would be to omit the whole of the clause, with the exception of subsection 6 at the end, and replace it by the following words: "A tenant for life shall not make any sale, exchange, partition, mortgage, or charge without the consent of a majority of the trustees of the settlement, himself excluded if he is one of the trustees, or in pursuance of an order of the court." He thought he had sufficiently explained the object of his amendment, and would leave it in the hands of hon. members to consider. He would move, *pro formâ*, as the first amendment, that the following words, "according to the direction of the tenant for life and in default thereof," be omitted.

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

The POSTMASTER-GENERAL said the amendment proposed by the hon. gentleman was a very vital one indeed, and he was quite right in adverting also to the consequential amendments that would have to be made if the first was carried; but he thought it would be more convenient, in view of the important matter involved, that the Committee should have time to consider the effect of the amendment itself, and the consequential amendment. Therefore, he should suggest that it should be an understanding that the Bill be recommitted for the consideration of such clauses as hon. members of the Committee might specify as the Bill was going through committee. If that suggestion would suit the hon. the mover of the amendment, he should take care that he would have every opportunity of having the matter discussed on recommittal of the clause; in the meantime hon. gentlemen would have the advantage of considering the proposed amendment in print, apart altogether from the advantage of having more time to weigh its effect on the Bill. He believed that would be the most satisfactory course to take under the circumstances.

The HON. A. C. GREGORY said he thought the course suggested by the Postmaster-General was an excellent one; and indeed they had not had sufficient time between the introduction of the Bill and its committal to go properly through it. He would gladly accept the suggestion of the Postmaster-General on the clear understanding that the Bill was to be recommitted for the consideration of that matter, and that no difficulty would be raised of a technical character in carrying out his amendment if the House generally approved of it. The question at issue was of such vital importance that he did not think it would be prudent to simply take up an amendment, read it through, and either confirm or reject it, because it was difficult to say in a Bill of that kind what the precise effect of even a slight alteration of the verbiage might be. He should like, before finally withdrawing the amendment, to hear the opinion of hon. members on the subject, inasmuch as it would be of great advantage, when they came to consider the clause again, to have any suggestions as to the improvement of the amendment laid before them.

The HON. A. J. THYNNE said before the amendment was withdrawn he should like to give his opinion upon it. It stood this way: If a tenant for life had a right to use property during his lifetime as he thought proper and best—or as long as he protected the interests of those who would come after him, which was only a reasonable thing—he should also have, when the property was sold, the direction or choice of the class of security in which the money should be invested, leaving to the trustees who had to make the investment the selection of good and proper security of the kind that the life-tenant chose. Before the disposal of the property, the life-tenant had a certain amount of control over it, and it was only right that when it was disposed of, and the money realised, he should be allowed to continue to exercise that control to a certain extent. Then, as to a difficulty of any kind between the trustees and tenant for life, as to the mode of disposing of the investment, that was provided for fully by the 43rd clause, which said—

> "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."

Any contingency that might arise was fully provided for.

The HON. SIR A. H. PALMER said he would suggest that, instead of recommitting the Bill, any clauses of that description to which objection might be taken should be postponed, and that in the meantime the printed amendments should be circulated among hon. members. It would be found that if the clause was postponed the attention of members would be more particularly directed to the printed amendment, and members would have more time to think over the subject than if the Bill was simply recommitted for the consideration of certain clauses. It would be better to pass the Bill with the clauses agreed upon and postpone the clauses on which there was a difference of opinion. On the amendment proposed by the Hon. Mr. Gregory there was a good deal to be said on both sides. He did not think hon. members came there prepared to hear an amendment of that sort, and he did not think they were in a position to give a clear opinion on the subject. By postponing the clause the attention of the whole Committee would be drawn to it, and the different amendments could be considered on a future occasion, when they would be able to come to a definite conclusion. There was no necessity for hurrying the Bill through. If his information was correct—and he was told on pretty good authority—the Government had no intention of passing it during the present session.

The POSTMASTER-GENERAL: They intend to do so.

The HON. SIR A. H. PALMER said there was no intention, at any rate, on the part of the Government, to force it through during the present session. It was a matter of serious importance, and required serious consideration. He had been told by one of the best authorities on the subject that although it was a good measure it was revolutionary, and it was the duty of hon. members to give it their particular attention. It was a Bill altering the whole of the law of the colony on the subject, and the more the attention of hon. members was directed to any debatable point the better able they would be to understand the Bill. As he said before, it would be better to postpone the clauses in which any amendments were required, after which the Bill could be printed with amendments already made, and hon. members would have plenty of time for their consideration.

Amendment, by leave, withdrawn; and clause 22 postponed.

Clause 23—"Investment on land in Queensland"—passed as printed.

On clause 24—"Settlement of land purchased in exchange, etc."—

The HON. W. FORREST said it would be necessary to recommit those clauses bearing on the clauses which were postponed. There was a connection between clauses 22 and 23, and it might be necessary to recommit clause 23.

Clause put and passed.

On clause 25, as follows :—

"Improvements authorised by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes, namely :—

(*a*) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses;
(*b*) Irrigation, warping;
(*c*) Drains, pipes, and machinery for supply and distribution of sewage as manure;
(*d*) Embanking or weiring from a river or lake, or from the sea, or a tidal water;
(*e*) Groynes, sea-walls, defences against water;
(*f*) Inclosing, straightening of fences, re-division of fields;
(*g*) Reclamation, dry warping;
(*h*) Farmroads, private roads, roads or streets in villages or towns;
(*i*) Clearing, trenching, planting;
(*j*) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not;
(*k*) Farmhouses, offices, and outbuildings, and other buildings for farm purposes;
(*l*) Saw-mills, scutch-mills, and other mills, waterwheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes, or as wood-land, or otherwise;
(*m*) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption;
(*n*) Tramways, railways, canals, docks;
(*o*) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes;
(*p*) Markets and market-places;
(*q*) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land;
(*r*) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid;
(*s*) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines;
(*t*) Reconstruction, enlargement, or improvement of any of those works."

The HON. P. MACPHERSON moved that the word "farmhouses" in paragraph (*k*) be omitted, with a view of inserting the word "houses."

The HON. SIR A. H. PALMER said he thought that the hon. member should have begun sooner, for in a previous part of the clause "farmroads" were mentioned. He did not think the retention of the word "farmhouses" would do any harm. Any house on a farm was a farmhouse.

The HON. A. J. THYNNE said he thought the amendment was a very good one, because it would extend the operation of the section to town properties.

The HON. F. T. GREGORY said he thought it would be desirable to let the clause remain as it stood. He thought the object of the clause being so elaborate was to restrict it so that the things mentioned should be the only ones admissible. It was an old saying amongst lawyers in giving advice that everything should be specified, or else only general terms should be used. The object of the clause was to specify everything which might be done, and if they once touched it he should prefer to see them all taken out and a general term inserted which would cover everything.

The HON. A. J. THYNNE said that the class of property contemplated by the Bill did not include what was called city property at all, but only country estates. It was a matter for consideration whether they should change the scope of the Bill and make it applicable to town properties.

The HON. A. C. GREGORY said he thought they should adopt the amendment and extend the operation of the clause to city property. There were many cases in which unimproved allotments were held in trust, and unless capital could be expended on them they had to lie idle, to the detriment of the tenant for life as well as those who lived near.

The HON. W. FORREST said that when he first read the Bill the clause under consideration above all others struck him as the least suitable for the existing state of things in the colony. It was evident that it was not contemplated to allow improvements on the class of property which would give the best return—namely, city property. He was a trustee of some properties in Brisbane, and if the clause passed in its present shape nothing could be done to improve those properties. He thought the word "farmhouses" might be left in, and an amendment inserted providing for the improvement of city property. He hoped the clause would not be hurried through, because it was a very serious question.

Amendment put and passed.

The HON. P. MACPHERSON moved the omission of the words "and other buildings for farm purposes."

The HON. SIR A. H. PALMER said he thought the Committee should have some reason why those words should be omitted. It struck him that it was intended to allow the expenditure of money on other buildings.

The HON. P. MACPHERSON said he recognised the justness of the hon. gentleman's remarks and would withdraw the amendment.

The HON. W. FORREST said he hoped the amendment would not be withdrawn, because, if it were, the whole of the improvements referred to in paragraph (*k*) would be limited to farm purposes.

Amendment, by leave, withdrawn.

The HON. P. MACPHERSON moved the omission of the word "and" after the word "officers," in line 4.

Amendment put and passed,

The HON. P. MACPHERSON moved the omission of the word "other" in the same line.

The HON. A. J. THYNNE said it would be better to substitute for the paragraph the following words :—

Houses, offices, outbuildings, and other buildings for farm or other purposes.

Amendment put and passed.

The HON. P. MACPHERSON said he proposed to amend paragraph (*t*) so as to read thus :—

Repairs, reconstruction, enlargement, or improvement of any such works, whether executed under the provisions of this Act, or already existing.

He was perfectly well aware that, under certain circumstances, the tenant for life might be

called upon to repair; but there were other circumstances under which it would be a gross hardship that he should be called upon to do so, and, where buildings were dilapidated, the amendment would enable the tenant for life to realise upon part of the property with a view to the substantial reparation of the residue so as to bring him in an income. He could understand a tenant for life being in such a position that the premises were tumbling about his ears, and it was to remedy cases of that sort that he proposed to amend the paragraph. He therefore moved the insertion of the word "repair" before the word "reconstruction," in line 34.

The HON. W. FORREST said he rose to a point of order. The amendment suggested by the Hon. Mr. Thynne had not been put. He would have proposed an amendment but had not the opportunity to do so.

The HON. W. GRAHAM said that what the Hon. W. Forrest stated was perfectly correct. The hon. member got up before the Chairman finished putting the last question, but he was not allowed to speak.

The HON. SIR A. H. PALMER said that when an hon. member proposed an amendment it was his duty to bring it to the Chairman, in writing. It was impossible for the Chairman to take suggestions as amendments.

The HON. W. FORREST said he did not dissent from the statement of the Hon. Sir A. H. Palmer; but they had been making verbal amendments before, and he did not see why in the present case he should have been compelled to comply with the rule. The Hon. Mr. Thynne distinctly made a suggestion, which he (Hon. Mr. Forrest) thought he was going to propose, and he stood up to remind the hon. member before the last amendment was passed.

The CHAIRMAN said he could take no notice of suggestions. If the hon. member had an amendment, the rule was to give it to him (the Chairman), in writing.

The HON. W. GRAHAM said that was perfectly correct; but, as a point of order, he would remark that the debate on the amendment was stopped when other members might have wanted to say something. The question was not put in a distinct way; in fact, it was not put at all, and the Hon. Mr. Forrest thought he was right in speaking on the amendment. The thing was rushed through, but he was certain it was not in order.

The HON. A. J. THYNNE said he had made a suggestion to the Hon. Mr. Macpherson, to put in two words, which would have fully carried out his views. The hon. gentleman did not accept that suggestion, but he could not say whether he was going to move the amendment he (Hon. Mr. Thynne) had suggested or not, until he heard the hon. gentleman move an amendment later on. Before the amendment in the latter part of the clause was put the Hon. Mr. Forrest stood up to speak on subsection (*k*), with a view of getting the amendment he had suggested moved; but the Hon. Mr. Macpherson not having accepted his suggestion, and having moved an amendment in a later part of the clause, it might not be competent for the Committee to go back now.

The HON. W. FORREST said, with regard to the point of privilege he raised before, he might say that before the Hon. Mr. Macpherson rose he stood up to point out that he thought the Hon. Mr. Thynne would propose what he had suggested, but before he could do anything the Hon. Mr. Macpherson jumped up and went to another part of the clause prior to the Chairman putting the question, "That the clause, as amended, stand part of the Bill."

The HON. P. MACPHERSON said that of course he jumped up when the matter had been disposed of. It was a pretty "storm in a teakettle." He did not accept the amendment suggested by the Hon. Mr. Thynne, simply because he was perfectly well satisfied with his own.

The HON. W. FORREST said he would have proposed the amendment suggested by the Hon. Mr. Thynne himself, if an opportunity had been given, because he thought the clause as it stood limited the improvements referred to in subsection (*k*) to farm purposes. As the Postmaster-General had intimated that he was willing to allow any clause to be recommitted, on that understanding he would allow the matter to pass in the meantime.

The POSTMASTER-GENERAL said he assured the Hon. Messrs. Thynne and Forrest that clause 25 would be duly recommitted to give both hon. gentlemen an opportunity of suggesting and drafting amendments.

The HON. P. MACPHERSON said the Hon. Mr. Forrest was under a misapprehension. Everything had been put in the clause that was required.

The HON. A. J. THYNNE said he was sorry that he could not agree with his hon. friend in thinking that the amendment would be a good one. It seemed to him to go practically contrary to what was right in the administration of justice. The amendment would make repairs on property in a great many instances payable out of the proceeds of the property sold. Repairs were undoubtedly a proper charge against income, but they could not be regarded as a proper charge against capital. If they were chargeable against capital, by degrees the estate would become gradually mortgaged for repairs while the tenant for life would be receiving the full amount of income. He thought that the introduction of the word "repairs" would be contradictory to the provision contained in section 28, which said :—

"1. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the court by order in any case prescribed."

Why should they put upon the tenant for life the duty of maintaining and repairing at his own expense and make the repairs a charge on capital? He submitted that the amendment was one that ought to be very carefully considered before it was adopted.

The Hon. P. MACPHERSON said he had already stated that there were certain cases in which no doubt a tenant for life ought to repair, but there were certain other cases where it would be most unconscionable to call upon him to repair. It was a question of degree in every case, and no hard-and-fast rule could be laid down. If there was any dispute about repairs there was no doubt that the trustee could ask the opinion of the court, and the court would have to decide whether the repairs effected upon the trust property could be paid by the life-tenant or not. He thought the addition proposed was one that ought to be inserted in the Bill. The court could protect the property if any dispute arose between the trustees and the life-tenant As he had said before the question was one of degree as to the liability of the tenant for life, but if a man happened to become a tenant for life of a house that was tumbling about his ears,

if he could sell any part of the property that was unproductive for the purpose of deriving a rental from that house he thought it was only reasonable that that should be done. The trustees themselves would take very good care that when the question of repairs came under consideration the opinion of the court should be obtained. Section 43 provided amply for that. That was all he could say with reference to the matter. The amendment was one that he believed would be accepted by the Committee.

The POSTMASTER-GENERAL said it might fairly be considered that the operation of the word "repairs," if the measure became law, might really be effected under the words "reconstruction or improvement." There could be no possible harm in putting in the word "repairs" in view of the protection that was afforded by other parts of the Bill.

The HON. A. J. THYNNE said he was rather surprised that the Postmaster-General had assented to the alteration in those cases where repairs were of so great importance that they amounted to reconstruction. They perhaps might be done at the expense of capital, but if it was really a case of simple repair that was a matter for the ife-tenant. It was impossible to draw the line between repairs and reconstruction, and if they attempted to draw that line they would lead up to a great many disputes. He would point out to the Committee that the wording of subsection (*d*) had been framed with the greatest possible care, to avoid introducing within it duties that ought to be put on the tenant for life to perform. He was quite sure that the care with which the Bill had been framed in the old country was such that they ought to be very careful indeed in altering its language or effect. If they went in for any alterations they might be altering the measure to an extent that they did not realise, and it would be impossible to tell the result that might follow.

The HON. P. MACPHERSON said he would repeat that clause 43 furnished abundant safeguards. As hon. gentlemen said, numbers of disputes might arise. No doubt they would arise in many cases as between trustee and the tenant for life, but the court would be there to decide it. He understood his hon. friend to say that in every case the tenant for life finding a dilapidated building was on his hands was bound to reinstate it, but that was simply to tell him (Hon. Mr. Macpherson) what was not law.

The HON. A. J. THYNNE said the hon. gentleman misunderstood him. He said that it was the duty of the tenant for life to keep the premises in as good repair as when he got them; but it was not right that they should give the trustees full power to improve property out of capital moneys, and thus relieve the tenant for life of his duties.

The HON. P. MACPHERSON: Is re-shingling a roof reconstructing it?

The HON. A. J. THYNNE: It is repairing the property.

The HON. P. MACPHERSON: Is a tenant for life called upon to re-shingle premises?

The HON. A. J. THYNNE: Yes.

The HON. W. G. POWER said if they accepted that amendment the result would be that in small estates nothing at all would be left. What with reconstruction and application to the court there would be nothing remaining for the unfortunate survivors. The Hon. A. J. Thynne seemed to be less of a lawyer than some other hon. gentlemen present in so far as making work for lawyers was concerned. He thought the hon. gentleman's view of the question was the correct one.

The HON. P. MACPHERSON said that was an exceedingly Hibernian way of putting it. The hon. gentleman said there would be nothing left if repairs were effected. The premises remained, he assumed.

The POSTMASTER-GENERAL said perhaps the question would be best understood by an illustration, and several hon. gentlemen would be aware of the instance he was about to give. A tenant for life in this town owned a very valuable property which was mortgaged, and the income from which was £100 a year. A most respectable inn was situated on the property, and the licensing bench intimated that unless that property was improved they would refuse to issue a license for it. The tenant for life endeavoured by every means in his power to raise the money for the improvement of the property, and failed. He could not get it; he had only £100 a year out of it, and the architect's estimate for repairs amounted to £950. What was to be done? The land was worth £10,000, and if the license was lost the premises would not bring in any more than 25s. a week, and that would not be enough to pay the mortgagee his interest. There was a case in point in which the *corpus* ought to bear the brunt of the repairs.

The HON. W. FORREST said he was free to admit that it was a most difficult problem to solve, whether capital or income should be charged with repairs. Take the case which had been stated by the Postmaster-General. There was a house requiring £950 to put it in repair. The hon. gentleman told them that that sum could be charged to capital account, but he also told them that at present that property was only bringing in £100 a year. If £950 was expended upon it a much more respectable income than £100 a year would be obtained from it. They must not lose sight of that point. He was not prepared to say that those repairs should not be charged to capital under certain conditions, but he thought that the tenant for life deriving so much benefit from the repairs ought to pay for them. Clause 43, he was inclined to think, would meet the case.

The POSTMASTER-GENERAL said he thought the last speaker misunderstood him. He did not say the gross income was £100 a year, but he said the life-tenant received that amount. The income was a great deal more, but a great deal of it was taken up in paying interest to the mortgagee and in paying rates and taxes. All the benefit the tenant for life derived from the property was £100 a year. The Hon. Mr. Forrest said the tenant for life should bear the expense of repairs, because he would get an increased income; but where was the tenant for life to get the £950?—that was the problem. They could not get blood out of a stone. He agreed with the Hon. Mr. Forrest that the question was a very debatable one, and the hon. gentleman would admit that a subject of that kind should receive attention from those who were, perhaps, intimately acquainted with the practical working of life in regard to such matters; their testimony being taken as to what would benefit the largest number. He thought that the weight of intelligent opinion upon the subject was on the side of allowing the word "repairs," as suggested by the Hon. Mr. Macpherson, to be inserted in the clause, especially in view of the efficacy of clause 43, in regard to differences that might arise between tenants for life and trustees.

The HON. A. J. THYNNE said the Postmaster-General had given one of the best examples they could have as to the necessity of a Bill of that kind. The person he referred to was now unable to deal with the property except by way of leasing, but if he had not the necessary capital,

under the Bill he would have power to sell the property. But suppose he did not want to do so, he had power to grant a lease for ninety-nine years, so that he was fully protected. Supposing they were to adopt the rule that repairs should be charged against capital, what would be the consequence? They would have every tenant for life managing his estate in such a way as to shove repairs on to capital. They would have every owner of an hotel, who had a life interest in it, neglecting it in order to get repairs effected at the expense of the capital sum; that was the tendency which a weakness in dealing with a tenant for life would really have. Individual instances of hardship such as the Postmaster-General alluded to, might tempt one possibly to overlook the necessity of making a strict law which could not be broken, and that was the reason why he was opposed to giving the power of expending capital on repairs, because they would then have no end of attempts made by life-tenants to get themselves relieved of their proper responsibility.

The HON. W. FORREST said there was no doubt that the Hon. Mr. Thynne had stated very clearly some of the great difficulties that might arise and the dangers that might arise if the amendment were adopted, and he did not see the necessity of repeating the hon. gentleman's arguments. The Committee ought seriously to consider the question before they recognised the power of tenants for life to put upon the capital amount of the estate the cost of repairs. In the case mentioned by the Postmaster-General, what would be gained by expending the £950? Supposing the owner could not raise that amount, what would he do then?

The HON. P. MACPHERSON said he would again repeat that there were certain cases where, as the law stood, the tenant for life was not bound to repair.

The HON. W. FORREST said he hoped the Committee would give the matter very serious consideration. He thought it would be a most dangerous thing to give any tenant for life the power to call upon the trustees to make repairs at the expense of the capital.

The HON. P. MACPHERSON said the Hon. Mr. Forrest had pointed out very clearly that no great hardship could arise, as the power of the court was recognised to regulate the matter.

The HON. W. FORREST said what he meant to convey by that was that he thought clause 43 gave the court ample power to decide upon a matter of that kind without amending the clause before the Committee at all.

The HON. P. MACPHERSON said he did not understand the hon. gentleman to say anything of the sort. What he did say was that the question of repairs was a very debatable matter, and he thought section 43 furnished a sufficient safeguard.

Question—That the word proposed to be inserted be so inserted—put, and the Committee divided:—

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The Postmaster-General, the Hons. W. H. Wilson, F. T. Gregory, P. Macpherson, A. C. Gregory, F. H. Hart, A. Raff, and W. Graham.

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The Hons. Sir A. H. Palmer, J. Swan, W. Pettigrew, J. C. Smyth, W. Forrest, W. G. Power, and A. J. Thynne.

Question resolved in the affirmative.

Question—That clause 25, as amended, stand part of the Bill.

The HON. P. MACPHERSON said he would move the omission, on the last line of the clause, of the word "those," with the view of inserting the word "such."

Amendment agreed to.

The HON. W. FORREST said he would give notice to the Postmaster-General that he intended to ask him to recommit the clause on another occasion.

The POSTMASTER-GENERAL said it had been arranged to recommit clause 25.

The HON. P. MACPHERSON moved that at the end of the clause the words "or in case of a sale by trustees out of the proceeds of the property" be inserted.

The HON. A. J. THYNNE said that according to the hon. member's previous amendment it was possible now to put repairs on repairs.

The HON. W. FORREST said he would ask the Hon. Mr. Macpherson to explain what his last amendment meant. He must admit that he did not know.

The HON. P. MACPHERSON said the amendment referred to enlargements of property to be executed under the powers contained in the Bill. It was simply to enable existing buildings to be put in proper repair.

The HON. SIR A. H. PALMER asked how could repairs be already existing under the Bill? He considered the amendment was a very dangerous one indeed. The operation of the clause would now be to impoverish those who had an interest in the estate of a life-tenant by allowing the life-tenant to squander capital on repairs.

The HON. P. MACPHERSON said the word "repairs" referred to the word "works."

The HON. W. G. POWER said he would like to know, if the tenant for life expended money out of his own income for repairs, would he be allowed to charge that to the capital value?

The POSTMASTER-GENERAL: Certainly not.

The HON. SIR A. H. PALMER said he did not think the Postmaster-General's "certainly not" settled the question. It was an open question for the court to decide.

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

Clauses 26 to 35, inclusive, passed as printed.

Clause 36 passed with a verbal amendment.

Clauses 37 to 40, inclusive, passed as printed.

On clause 41, as follows:—

"The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them."

The HON. F. T. GREGORY said they were now approaching a question of considerable importance. Executors under an estate received no reimbursement for their trouble unless it was provided by the testator, though they could, by application to the Supreme Court, in some instances, obtain commission on a realised estate; but when the estate was realised to such an extent that it was capable of being placed in various classes of investments during the term of the trust, which might vary, according to circumstances, from one to twenty years or more, those trustees, or their successors, were bound to continue their work without any emoluments. It was very well to say that the law provided that they might employ persons necessary to carry on a large business, if they were justified by circumstances, but no provision was made for more than recouping money directly out of pocket, and it became a question whether they could even hire a cab to take them to their solicitors, or on any other business connected with the estate, unless they paid for it out of their own pockets. Clause 41 only went to the length of saying—

"The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them."

He was aware that the next clause provided that the judge might, by order, authorise the trustees under a settlement to retain for their own use out of the income of the trust a reasonable sum, by way of commission, for their pains, but that appeared to him to be only applicable to settled estates—that was, in the realisation of settled estates. He very much doubted whether it would enable the trustees carrying on the business of an estate, after its first realisation, to derive any benefit whatever after having devoted their whole time and energies to promoting the welfare of the estate; and there was no time when it became of greater importance, in view of the future accumulation of the property, that they should devote their best energies and time to its management. There was an estate now in the hands of trustees in Queensland in which, if managed judiciously and in accordance with the terms of the will of the testator, it would make a difference to the heir, who was an infant and would be of age in eight or nine years—a difference of at least £40,000—whether the estate was carefully looked after by the trustees, or, feeling that they would receive no emoluments for looking after it during that time, they were to say, "We have nothing else to do but put the money into Government debentures at 4 per cent.; we are within the four corners of the law and have acted within the testator's wishes with regard to the estate, and why should we involve ourselves in trouble for the next eight or nine years, merely for the sake of insuring to the estate the sum of £40,000?" He was anxious to see whether, as the clause now stood—and he referred to the next clause as well—the trustees so circumstanced would be in any better position after the passing of the Bill. He was loth to amend any Bill outside of its title, but he took the opportunity of specially bringing under the notice of the Committee the case to which he had referred, in order that they might, if it were possible to do so, by any reasonable amendment, make the Bill applicable to such cases.

The POSTMASTER-GENERAL said he was not entirely satisfied with clauses 41 and 42 as they were in the Bill, and he wished to state now that he intended to have those clauses recommitted in order that hon. members might take such steps as they pleased to modify them, especially clause 42. The Hon. Mr. Macpherson had an amendment to propose in clause 42, but notwithstanding that amendment, in which he (the Postmaster-General) concurred, he thought the Committee should have further time to consider the effect of the clause when so amended. He thought the Committee would save time by postponing the further consideration of the clause till the Bill was recommitted.

The HON. A. J. THYNNE said it might be as well if some hon. members gave their views on the subject before passing on to the next clause. No doubt the clause under consideration made another serious change in the law. In passing the Probate Act of 1867, a new phase was introduced, authorising the Court to allow commission on the personal estate of a testator. It used to be regarded as a matter of sacred trust, due to friendship or relationship, that a man should discharge the wishes of a deceased person without remuneration, and that was acted on to a certain extent now; but there was no doubt that, especially in the colonies, it was almost impossible to expect men who were more or less engaged in their own concerns, to administer estates without some remuneration. The provisions in the Probate Act had worked well, in so far as it enabled trustees, executors, and administrators to be recouped for the time and trouble they spent in administering estates, and, if that applied to personal property, there was far greater reason why it should be applied to real estate. His idea was, that they should make some slight alterations, not in clause 41 but in clause 42. It would be better to accept the amendment of the Hon. Mr. Macpherson, and also make a further amendment by omitting the word "net" in the 52nd line. With those amendments the clause could not well be improved upon. He would suggest, however, that the words "as remuneration" might be inserted after the word "commission" on the 49th line. The commission should not be limited to net income, because that might be such a small amount as not to allow any remuneration worth speaking of to the trustees for their services.

On clause 42, as follows :—

"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."

The HON. P. MACPHERSON said he had some amendments to propose in that clause, which would have the effect of making it read thus :—

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, or in case of a sale, by the trustees out of the proceeds of the trust property, a reasonable sum by way of commission for their pains and trouble in the management or sale of the property; but no such commission shall be allowed at a higher rate than five pounds per centum of the income or proceeds.

As his friend, the Hon. Mr. Thynne, properly remarked, the principle of allowing executors commission upon personal estate, had always been recognised in this colony, but for the first time the justice of the claim of trustees to commission was now admitted. The principle of allowing executors commmission was admitted first in New South Wales, and in that colony the practice had been copied from the West Indies, where executors who managed plantations were, on account of the peculiar difficulty surrounding the position, allowed commission. That was the first time that the law of England was encroached upon. It had never been the law of England to allow trustees to receive commission; why, he could not say. The court said that a trustee might employ his solicitor, his collector, and his auctioneer. He might employ an agent for dealing with the property in any way, and he might charge for their remuneration, but he was not entitled to charge for his own responsibility and trouble. The principle generally acted upon in other affairs was that no man should be called upon to work without being paid. As the clause said, it simply allowed commission to executors and not to trustees to realise landed estate, as they knew a great deal of responsibility and good judgment was attached to the realisation of land, and executors were sometimes able to realise very large sums of money by the exercise of discretion tempered by the judgment of the trustees. There could be no possible hardship in allowing commission to trustees. In England, commission was not allowed to either executors or trustees, but they must remember that in that country there existed what was called a legacy duty, and the estate of a deceased person was mulcted in something like 10 per cent. That was a tax which they escaped in this colony, because the only duty chargeable here was a very insignificant probate duty. In

these colonies property was of such a fluctuating value that in realising it for the benefit of the trust the very highest business qualities were found necessary, and he thought it was only proper the trustees should receive a fair and reasonable commission. He thought that in nine cases out of ten testators were of opinion that trustees were allowed commission, because they could not discriminate between trustees and executors. He had made that explanation with the view of moving the amendments which he intended to propose and which he held would commend themselves to the good sense of the Committee. Of course, in cases such as that mentioned by the Hon. Mr. Gregory, where the executor was actually already receiving commission upon money which in his capacity as trustee he invested, he would have to be satisfied with the provision of the clause relative to income; but if he had, by judicious management, enhanced the amount of income, he would be entitled to, under the clause as proposed to be amended, the commission upon that enhanced amount. He thought that under the circumstances that was all a trustee could reasonably expect. If a trustee, who was also executor, realised, say, £20,000, he would receive, in his capacity as executor, commission on that sum; or, if he had yet to realise that amount, he would have commission under the clause as proposed to be amended. If, however, he had already received his commission, he would have to be satisfied with the interest on the net income. He therefore proposed that, on line 49, after the word "property," the following words be inserted: "or in case of a sale by the trustees out of the proceeds of the trust property."

The POSTMASTER-GENERAL said he was sure the Committee would not be surprised when he stated that he cordially agreed with the amendment proposed by the Hon. Mr. Macpherson in relation to that clause. On the first occasion when he read the Bill, and when he came to those words "net income," an instance that actually existed in Queensland immediately occurred to him. The case was one in which the trustees of an estate were at the present moment, in consequence of the severe drought which had existed for the last two or three years, carrying on the estate at an absolute loss. They had to bear all responsibility; their discretion had to be exercised to the utmost extent; and they had to give a vast amount of time to the management of the estate. Their responsibilities, in fact, weighed upon them in a much heavier manner than if they had been favoured with more propitious seasons. It at once occurred to him—what would be a fair remuneration to those trustees, when it was considered that the operations of the last twelve months had resulted in a deficit? In those years of trouble and trial they would be working for nothing at all. He saw at once that the clause as drafted would not suit the circumstances of this colony, or even of Australia generally. The Hon. Mr. Macpherson and himself accidentally happened to refer to the subject, and after they found they were in accord upon the matter he at once gave the hon. gentleman his hearty support in the amendments he had at that time in view. He hoped the amendments would pass, but, notwithstanding that, he thought the clause should still be recommitted for further consideration.

The HON. W. FORREST said, while he was quite in accord with the the amendment proposed by the Hon. Mr. Macpherson, he thought it scarcely went far enough. In looking into the clause he scarcely saw how the amendment he had in view would work in. He could go further than the Postmaster-General in illustrating what might happen. Take the case of an estate, where there was a very rich personal estate bringing in a handsome income, and at the same time there was real estate that had never been improved. The improvement of real estate, in many instances, required a greater amount of business knowledge than the handling of personal property; but according to the law as it at present stood a trustee, while getting something out of personal estate which gave him little or no trouble, got nothing at all out of real estate which required a large amount of business capacity to manage. What he would like to see carried out was this: Where a whole estate found its way into one banking account, and where a large income came out of the personal property, why should a trustee of the real estate manage it for nothing? He really thought that the law as it stood was very inequitable and unjust, and an estate in the hands of a very selfish man might be manipulated just in the way in which the Hon. Mr. Gregory had pointed out. It was very easy to imagine a man saying, "Why should I take all this trouble and care in managing this estate and investing the money belonging to it when I get nothing for my trouble?" On the other hand, if a fair and reasonable commission was allowed, a trustee would take care that he found out the very best investments for the money in his hands. If a man chose to administer an estate voluntarily let him do so, but the law ought to stand so that a man who gave all his time and attention to the management of an estate should receive remuneration for his trouble. Again, he would like to come back to the point he started from, and say that, where the personal property of an estate brought in a large income, and there was no income whatever from the real estate, the income from the personal estate should be charged with giving the trustee some remuneration for his time and skill in management.

Amendment agreed to.

On motion of the HON. P. MACPHERSON, the clause was further amended by inserting on the 4th line, after the word "management," the words "or sale," by omitting the word "net" on the last line, and by adding at the end of the clause the words "or proceeeds."

The HON. W. FORREST said that before the clause was passed he would again like to add a few observations to what he had said before. In personal estates where the life-tenant in the real estate derived the whole of his income from the personal property, or where a number of persons might be benefited by the real estate, and where the whole property, both real and personal, was under the management of the same executors and trustees, he thought the estate as a whole should be made chargeable with the reasonable cost of management. For instance, he knew an estate that brought in £8,000 or £10,000 a year out of the personal property, the real estate, requiring a large amount of attention and good management, bringing in nothing. He really thought that in a case of that sort, where a handsome income was being derived from the personal property, it was asking too much of trustees that they should manage what might be called a "dead estate," and devote their time and attention to it for nothing. He would be very glad if the Postmaster-General could see his way to work that idea out in the clause—treating the whole estate as one, whether real or personal.

The POSTMASTER-GENERAL said he did not think the hon. gentleman's suggestion was at all practicable. In the ordinary affairs of life it would not be possible to mix up executors with trustees. Their duties were confined within certain limits, as prescribed by law — a very good law indeed—and it would be very unwise

if their duties were extended beyond the limits already laid down. They were supposed to pay the deceased's debts and generally arrange his affairs, but the operation of trusteeship did not begin in some cases until the functions of executorship ceased, and he did not see how it was possible for the proposal of the Hon. Mr. Forrest to be brought about with satisfaction to the general public. Blending a commission or remuneration for the trouble of executors with the commission proposed to be allowed to trustees would, he believed, be impossible. The functions of the two were distinctly and widely different; and the circumstances that executors might be, and often were, trustees when their executorship ceased, did not import into the contention of the Hon. Mr. Forrest any degree of practicability whatever. He said that with great deference to those who might think otherwise, but he believed there were gentlemen in that Chamber who would agree with him that the suggestion made was practically impossible, and it would not be wise to adopt it, or attempt to find means by which it might be adopted.

The HON. W. FORREST said the same argument, with regard to the practicability or plausibility of the suggestion, might have been brought forward when it was proposed to allow commission to executors. Somebody might have said, "This has been the law for hundreds of years, and it is impossible to alter it." There was another point upon which he could not agree with the Postmaster-General. He said the office of trustee did not commence until the duties of the executor ceased, but the office of a trustee began, as far as the real property was concerned, at once.

The HON. P. MACPHERSON said, as a member of that House, he was very much indebted to the Hon. Mr. Forrest for the lucid, careful, and exhaustive way in which he had dealt with the question. He must say he was not particularly wedded to the amendment he had proposed and any amendment which met with the approval of the majority of the Committee he would gladly accede to. It struck him that the most comprehensive way of dealing with that particular section would be to adopt something like the language that was made use of in the Probate Act, with reference to executors. The clause might be so worded as to award trustees such commission as might seem just for their pains and trouble, and the commission could be regulated according to the discretion by the court.

The HON. F. T. GREGORY said he was obliged to say a few words more before the clause was passed, but not with a view of interfering with its being passed as amended. He was under the impression that all those who had to deal with estates and perform the functions of executors and trustees were pretty well posted up in the nature of their functions, but, at the same time, it might not be so obvious why they should continue those functions and not be reimbursed for doing so as long as the trust lasted. He would put it in this way: An individual became executor and trustee in an estate, and he commenced the realisation of that portion of the estate which was necessary in order to carry out the object of the trust. By degrees he invested the money realised in a particular class of security. He might be three, four, five, or six years in realising; he might be even ten years in realising the estate; but the Postmaster-General seemed to be under the impression that estates were usually realised in twelve months. He had been executor himself in an estate for over eleven years, and had not completed his work yet. After the first realisation of the principal sums the real work began, and the hardest part of the functions of the office was the work which followed the first realisation. He was not now intending to argue that any claim should be made for commission when the money was reinvested, but from the income derivable from an estate after its reinvestment the trustee might reasonably make a claim, and he might, he thought, reasonably make that claim during the currency of his executorship. With regard to what he had said before, that trustees might employ certain persons to carry on their duties and that they themselves need only look on, he might say that they still had the responsibility, and therefore a trustee who had been conducting the business of an estate for ten years ought to be better able to conduct it, and in a more careful and economical manner, than a paid agent. He candidly confessed that he was personally interested; but he was anxious to see, for the benefit of all those who had charge of estates, and those who had to come after, that some provision, if possible, should be made within the four corners of the measure before them for the payment of those who did the work and incurred the responsibility.

Clause, as amended, put and passed.

Clause 43—"Reference of differences to court"—passed as printed.

On clause 44, as follows:—

"1. A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement (other than himself if he is one of the trustees), by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in Queensland, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in Queensland, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

"2. Provided that at the date of notice given the number of trustees shall not be less than two, unless one trustee only is appointed by the settlement, or a contrary intention is expressed in the settlement.

"3. The notice may be notice of a general intention in that behalf.

"4. The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

"5. Any trustee, by writing under his hand, may waive notice, either in any particular case or generally, and may accept less than one month's notice.

"6. A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section."

The HON. A. C. GREGORY said that though it was probable the clause would be postponed, still it was desirable that any substantial amendment moved should be in the hands of hon. members as soon as possible. He had already given notice of the amendment he was about to propose, and he would state what that amendment was. He proposed to omit all the words to the end of the 5th subsection, with the view of inserting the following:—

A tenant for life shall not make any sale, exchange, partition, lease, mortgage, or charge, without the consent of a majority of the trustees of the settlement (other than himself if he is one of the trustees) or in pursuance of an order of the court.

That amendment would have the effect of materially altering the operation of the Bill should it become law. At present a tenant for life had the power to sell the property, and the only restriction was that contained in the 44th clause,

which required him to send registered letters to the trustees one month before he sold. Such short notice would, in many instances, prevent the trustees from taking any effectual steps to prevent the sale. They had no direct voice in saying that the property should not be sold; they could only do it by application to the court to restrain the life-tenant from selling; and in such a case the court would hardly entertain the question if it were merely on a matter of opinion as to whether the sale and re-investment were judicious, though they would at once stop any proceedings of an improper nature. In the majority of cases, however, the action of the tenant for life would be more of an injudicious nature. It was not necessary that he should go further into the matter now; therefore, he would move that the further consideration of the clause be postponed. In the meantime he would have his amendment printed and circulated.

The HON. W. FORREST said he was entirely in accord with the amendment proposed by the Hon. Mr. Gregory. He might point out that if a tenant for life did post a letter to the trustee or trustees, stating his intention to sell, the letter might never reach them, and at the end of a month he might sell. Suppose there was an allotment of land in Brisbane worth £15,000, and increasing in value, but not bringing in anything, the tenant for life might say, "There is nothing coming out of this, and it would be much better to sell it for £10,000 than stick out for the £15,000." He might thus sacrifice the property, though no doubt the proceeds would have to be invested. It might not be advantageous to sell at the time; and therefore he thought it would be dangerous to allow the tenant for life to sell without the consent of the trustees, or—if they declined to give their consent—without getting power from the court to sell.

Clause 44 postponed.

Clauses 45 to 55, inclusive, passed as printed.

On clause 56—"Enumeration of other limited owners to have power of tenant for life"—

The HON. W. H. WILSON moved the omission of all the words after the word "tail," in subsection (*a*). It would then read "a tenant in tail." The other words were entirely unnecessary in Queensland. They were taken from the English Act, but it was quite impossible that such cases could arise in the colony. The subsection was very likely drawn up to meet the case of the Duke of Marlborough, but it had better be omitted from the Bill.

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

The HON. P. MACPHERSON moved the following new clause to follow clause 56:—

> For the purpose of this Act the estate of a tenant by curtesy is to be deemed to be an estate arising under a settlement made by his wife, comprising the land of which he is tenant by the curtesy.

The clause was an adaptation of the clause in the English Settled Land Act of 1884, which had been omitted from the Bill. As hon. gentlemen were aware, "tenancy by curtesy" had been abolished in the colony since the 1st July, 1878, but there were still persons living who were "tenants by curtesy," and it was to provide for them that mention was made of such tenancy in the 56th section.

The HON. W. FORREST asked for an explanation of the term "tenancy by curtesy?"

The HON. P. MACPHERSON said "curtesy" was the life estate which a husband had in the lands of his deceased wife; which by the common law took effect where he had had issue by her, born alive, and capable of inheriting the lands. It did not arise under any settlement, but by operation of the law, and it was necessary to insert those words.

Clause put and passed.

Clause 57—"Infant absolutely entitled to be a tenant for life"—passed as printed.

On clause 58, as follows:—

> "Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders."

The HON. W. FORREST asked how the clause would harmonise with the new clause just passed?

The POSTMASTER-GENERAL said one clause entirely harmonised with the other.

The HON. W. FORREST said he understoed the new clause provided that the husband should become a tenant for life in virtue of his wife's having an estate, but he would ask whether, according to that clause, he became a tenant for life by the operation of a will, or whether the clause now passed would give him that right? He would again ask whether clause 58 harmonised in every particular with the new clause just passed?

The POSTMASTER-GENERAL said one clause was in accord with the other in all respects.

The HON. P. MACPHERSON said that clause 58 referred to infants.

The HON. W. FORREST said he supposed an infant was born of a woman, but he supposed that would strike a lawyer with surprise. A man who inherited an estate under clause 56 became a tenant for life, and obtained his tenancy by virtue of something he received from his wife. He thought, however, notwithstanding the opinion given by the Postmaster-General, that the clauses might clash. They had passed a clause without explanation, and they knew how lawyers tried to get to the windward of laymen. The Committee had passed a clause giving a tenancy for life to the husband of a woman after death, though she might wish to leave the tenancy to her issue.

The HON. P. MACPHERSON said that, being a married woman, if she made a will with the proper solemnities, she could bar the husband from the life tenancy. As he explained before, tenancy by curtesy was abolished in 1878. The cases of such tenancy were very rare, and as years went by would cease altogether.

The HON. W. FORREST said he was glad he had drawn attention to the matter; and when they had the Bill before them with amendments he hoped the new clause would be reconsidered. If tenancy by curtesy had been abolished in 1878 he hardly saw any necessity for establishing it again in 1885.

The HON. P. MACPHERSON said there were some tenants by curtesy still alive, and it was to do them justice that they were mentioned in the Bill. It was not proposed to create that tenancy again; but the Bill referred to tenants by curtesy now in existence.

The HON. W. FORREST said it was very inadvisable in a Bill of such importance, and of so revolutionary a character, to bring such clauses on the Committee without having them printed and circulated so that hon. members

might study them. He defied anyone unacquainted with the law to say whether the new clause would affect any vital principle of the Bill.

Clause put and passed.

Clauses 59 to 63, inclusive, passed as printed.

On the motion of the POSTMASTER-GENERAL, clause 64 was amended to read as follows :—

In the application of this Act to settled land held under the provisions of the Real Property Act of 1861 the following provisions shall have effect :—

(1) The registered proprietor, or the registered proprietors, if more than one, shall be deemed to be the trustee or trustees of the settlement.

(2) Where under this Act any power or authority is conferred upon a tenant for life, then upon the written request of the tenant for life and upon the performance by the tenant for life of the conditions (if any) imposed by this Act upon the exercise of such a power or authority by a tenant for life, the registered proprietor shall have and shall and may exercise that power or authority.

(3) Where under this Act any instrument is to be executed by a tenant for life in order to the exercise of any such power or authority, that instrument shall be executed by the registered proprietor, and concurred in by the tenant for life, if he is not the registered proprietor or one of the registered proprietors, such concurrence being testified by his signing a memorandum thereto upon the instrument, and such execution shall have the same operation as the execution of such an instrument by a tenant for life is declared to have under this Act.

(4) A registered proprietor executing a power or authority in accordance with the provisions of this Act at the request of a tenant for life, or with the sanction of the court if he is himself the sole tenant for life, shall not by reason thereof incur any personal liability to his beneficiaries or to any other person, and no such registered proprietor shall, for the purpose of executing any such power or authority or complying with any such request, be bound to enter into any personal covenant or contract.

(5) Where under this Act it is provided that land shall be conveyed to any uses or trusts, that expression shall be taken to mean that the land shall be transferred to trustees, and shall be held by them as trustees upon such uses or trusts.

(6) Where under this Act it is provided that a contract made by a tenant for life shall be binding on the settled land, that expression shall be taken also to mean that the contract shall be binding on the registered proprietor, and that he shall be bound to give effect thereto in the same manner as if he had made it himself, subject, however, to the provisions of this Act.

(7) In this section the term "registered proprietor" includes any person possessed of or entitled to any charge upon land.

Clause 65 passed as printed.

On the motion of the POSTMASTER-GENERAL, the CHAIRMAN left the chair, reported progress, and obtained leave to sit again on Tuesday next.

The House adjourned at twenty minutes to 9 o'clock.