Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 21 JULY 1886

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LEGISLATIVE COUNCIL.

Wednesday, 21 *July*, 1886.

Presiding Chairman. — New Member. — Absence of Members.—Settled Land Bill.—Joint Committees.

The House met at 4 o'clock.

PRESIDING CHAIRMAN.

The POSTMASTER-GENERAL (Hon. T. Macdonald-Paterson) said: Hon. gentlemen,—I have been requested to inform the House that our Presiding Chairman will be unable to attend either to-day or to-morrow on account of severe domestic bereavement. It is with great regret that I make the announcement.

The HON. D. F. ROBERTS (Chairman of Committees) thereupon took the chair.

NEW MEMBER.

The HON. J. D. MACANSH was introduced, and having subscribed the roll took his seat.

ABSENCE OF MEMBERS.

The POSTMASTER-GENERAL moved—

That an Address be presented to His Excellency the Administrator of the Government, bringing under his notice the fact that the Honourable Charles Sydney Dick Melbourne and the Honourable Gordon Sandeman, two (2) hon. members of this House, are believed to have been absent from this Council for two successive sessions without the permission of Her Majesty or of the Governor of the colony, contrary to the provisions of the 23rd section of the Constitution Act of 1867, and praying His Excellency to submit to this House for hearing and determination the question whether the seats of the said members have become vacant.

The HON. F. T. GREGORY said: I would like to ask the hon. gentleman whether there is any reason why the name of the Hon. Mr. Gibbon should be omitted from the motion.

The POSTMASTER-GENERAL: The question of the seat of the Hon. James Gibbon is at the present moment *sub judice*, and is therefore very properly omitted from this motion.

Question put and passed.

SETTLED LAND BILL.

The POSTMASTER-GENERAL said: Hon. gentlemen,—In moving the second reading of this Bill, to facilitate sales, leases, and other dispositions of settled land, and to provide for the execution of improvements thereon, I would just for a moment call the attention of the House, and especially of new members, to the fact that a similar measure was introduced last session, which received full consideration from members here, and was forwarded to the Legislative Assembly in due course, but, in consequence of the length to which the session was prolonged by excessive legislatorial work and other reasons, it only reached the stage of the first reading in the other Chamber. The present Bill is practically the same measure to which you gave attention so fully last year, but in saying that I do not wish to convey for one moment any idea that it is presented to you in the same form. Much attention—very patient, crucial attention—has been given to this measure since the occasion when the Bill was last before you, with the fortunate result that it is now put before you in a shape which must commend itself more to your approbation and attention, I think, than the measure of last session. Its principles, however, remain unaltered. While it has been re-arranged entirely, there have also been modifications in different clauses and otherwise throughout the whole of the measure, which brings it more into harmony with the land laws of this country. Before proceeding to say anything more with respect to the measure, I must say that it is presented to us in a form which is highly complimentary to the intelligent mind that welded it into its present shape. It has a symmetry now which it did not possess before, and it is very creditable that we may look upon it, as it is now, as a much better Bill than that passed unanimously through the House of Lords and almost unanimously through the House of Commons in Great Britain. Now, I did not intend but for the presence of new members to say very much, because hon. gentlemen who are strangers to the debate which took place in this House last year can read the reports in *Hansard*. They have only to refer to *Hansard*, vol. xlv., page 125, for the various views expressed then in regard to the subject. In a word, the scope of the Bill is for the purpose of giving to tenants for life, or other limited owners of land, a measure of relief, and also to enable tenants for life to deal with

lands in very much the same way that the owner of the fee-simple might do. At the same time sufficient precautions are embodied in the measure to hedge round the trusts under which tenants for life hold their respective beneficial interests. And there is also, as hon. members will perceive, no possibility of tenants for life or trustees evading the intentions of settlors of lands, whether those settlements be under wills, or under settlements themselves, or otherwise. In fact, this measure is very suitable, I think, especially in this country where we have almost freetrade in land. It will give a relief that has been wanted for many years even in this young country. Already in the old land expressions of regret have been uttered that such a law did not subsist years earlier than the measure to which I referred to became law—the measure of Earl Cairns, who was the originator of the Bill. I do not think it is my duty, nor do I think it would be wise, to take up the time of the House in attempting to explain the technicalities of procedure under the Act should the Bill become law. Suffice it to say that every facility is given for limited owners to lease land, sell, exchange, partition; and other facilities also are given for the improvement of lands and for constructing improvements thereon. There are many wise provisions in the Bill, and they are very simply put before you. The powers of tenants for life are well defined. Referring to the rearrangement of the Bill, if hon. members attempt to peruse this on the same lines as the measure brought before the House last session, they will have some little difficulty; but it is well worth the while to take the old Bill, compare it with the new, and check it off clause by clause. A true insight will then be had into the advantages of the rearrangement presented in the document now before you. Apart altogether from the effect of modifications to which I have referred as existing in the Bill, the language is very much simplified in numbers of instances, and the definitions are very much clearer. Now, take clause 6 as an example of what I refer to. Subsection (*a*) consists of only four words; that subsection was previously in clause 56 of the Bill of last session, and it contained seventy-eight words. Then again, the different parts of the Bill — taking Part I., Preliminary—this is divided in the present Bill under nine heads. In the previous Bill it was presented to you under sixteen parts or heads. The former Bill contained sixty-five clauses; this Bill has seventy-one, but the total of the matter in the Bill is not so great as it was in the former. Some of the clauses are shortened very much, and redisposed throughout the Bill under the new order of matter. I would draw the attention of hon. members to subsection (*k*) in clause 55, which is a great improvement upon subsection (*k*) of the former Bill; the effect of it is to greatly improve and enlarge the character of improvements that may properly be constructed and erected under this subsection; and in a country such as ours it is very desirable—where the conditions of our lives and industries are so different from what they are in England, Scotland, and Ireland—it is very desirable, I say, that we should give the greatest elasticity consistent with safety to the subject-matter of the trusts. The last subsection of clause 35 is also very much improved and enlarged. Clause 41, which is a provision dealing with cases where several tenants for life do not agree, is also very much clearer and better in its effect than it was in the previous measure. I will now call attention to an important addition in clause 52. This section is precisely the same as it appeared in the other Bill, with the exception that after the word "property" in the 3rd line these words are added—"or in case of a sale by the trustees out of the proceeds of the trust property." I understand that some hon. gentlemen will have something to say about this question, and I shall be very glad to hear them. But matters of detail in regard to a point such as this more properly come within the scope of the Committee when the Bill reaches that stage. It is unnecessary to take up the time of the House in enumerating all the facilities given for the conversion of property which will be effected by the Bill, and the great benefits that will ensue to individuals, even with our limited population, if the Bill should become law. I think, however, that I shall be supported by other hon. members in the assertion that there are people in the colony who have suffered for many years because of their inability, through want of means principally, to obtain from valuable properties even sufficient to procure the necessaries of life. Moreover, a measure such as this will have the great advantage of relieving people in many instances from the great expense, trouble, and delay of seeking to have private Bills passed in order to vary wills and settlements and similar documents. That will be a great advantage to many whom we have never heard of; but instances have come before us—especially those connected with the legal profession—where great suffering and distress have subsisted, and do subsist at the present time, in consequence of the lack of facilities such as this Bill will present. Before I sit down I would like to call the attention of the new members to a few words of part of a speech of Earl Cairns, which I quoted last year when moving the second reading of the Bill, and I respectfully ask hon. members to again refer to *Hansard*, and read the whole of the quotation. Lord Cairns said:—

> "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 so on. We must view with the highest favour and confidence evidence of this character, taken as it was throughout a very lengthened period from those deeply interested in this question. I think that, though the subject is one of a technical character, I may respectfully solicit the attention of hon. members to this measure, believing, as I do, that it is one of the most valuable that can possibly find its way into the Statute-book of the colony. I beg to move the second reading of the Bill.

The Hon. F. T. GREGORY said: Hon. gentlemen,—The measure now before the House is, as has already been pointed out by the Postmaster-General, not new to most of us; and I think the House generally will welcome its introduction again for more reasons than one. As the Postmaster-General truly said, the Bill comes before the House in a different shape, and I confess that I very much prefer, so far as I have been able to study it, the form in which it now appears before us. Very much of what many of us deem surplusage, and perhaps legal technicality—more or less necessary in a Bill of this sort—has been done away with, and it is now in a form much more intelligible to the ordinary reader and thinker who is not learned

in the subtleties of legal definition. This is a step in the right direction; not only in making the Bill such as we can all understand, but as regards the legislation generally in all matters connected with real property transactions under estates, and the duties of executors and trustees, these matters are to a considerable extent re-arranged and simplified by the provisions of the measure. As such, I may say again, it will certainly be welcomed generally by those who take any interest in the subject with which it deals. I see very little indeed to take exception to, but still there are a few points that perhaps it would be best for me in this stage to draw the attention of the House, so that, if there is any weight to be attached to my remarks, the matters referred to will not be overlooked. I trust when the measure is in committee to be able to formulate my ideas, and it will be well for hon. members to have an opportunity of thinking over them. In clause 13, which refers to leases, it strikes one very forcibly that subsections (*a*), (*b*), and (*c*) are based very much on the practice of English law. In an old country like England the condition of things is very different to that which prevails here; and, indeed, I believe that in twenty or thirty years these provisions will no longer exist as part of British statute law. In this colony, where we are so much in advance of the old country—not in advance radically, but in advance in real sound legislation—it is well not to follow too closely the laws of the older country. In subsection (*a*), reference is made to a building lease of ninety-nine years. Now, ninety-nine years, no doubt, has not been found too long heretofore—certainly not in the old country—but I doubt whether even in the old country such a long lease is now given, and the term seems to be much too long in a rapidly advancing country like our own. The question seems a trivial one, but still the Bill may possibly be improved if hon. gentlemen take the same view as I do. In the same way the succeeding subsection refers to mining leases for sixty years. I should feel inclined to recommend that that be reduced to thirty years. There, again, I would be guided to a great extent by the opinions given by those interested in mining concerns to a much greater extent than I am. Directly I have no interest in mining matters but indirectly I have, when we are considering that which we think will be for the welfare of the community at large. Turning to clause 17, we find the latter part of it reads as follows:—

"The court may, if it thinks fit, authorise generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the court expressed; or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case."

This part of the clause, certainly, is so far restrictive as to require the sanction of the court; but it seems to me to be, as in the previous clause I referred to, one of those rather tending to be restrictive in one sense, and yet again, in another sense, giving rather undue latitude to the tenant for life. Of course, if I am wrong, I am open to correction; but when the Bill was first before the House last year, the powers of the tenant for life seemed to be more than sufficient, unless active resistance was made by trustees to override the trust. Now, it can hardly be fair where trustees are doing their duty, and it may be necessary for the preservation of the rights of remaindermen to give the tenant for life no more liberty than to secure his own interest. We have seen this so clearly in cases where private individuals have been obliged to have recourse to introducing private Bills into Parliament to enable them to deal with estates which have been designedly, or accidentally through ignorance, locked up in a way which prevents them being utilised for the benefit of the life-tenant, and to the great detriment and prejudice of those who ultimately succeed to the estates. So far, I should be very careful to see that the measure is not too revolutionary, or placed too much power in the hands of the tenant for life. Following on to clause 32, we find that it is a similar case to the one to which I have referred. Subsection 2 says:—

"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."

Now, from that it would appear that although the settlement and investment should be placed under the control of the trustees, it should still be under the direction of the tenant for life. No doubt the court can here step in, but it is doubtful whether it would be desirable in every case to leave it to the trustees to be compelled to have recourse to the court perpetually to restrain a tenant for life. Without any desire to place any undue restrictions upon the tenant for life, I think the estate should be fairly guarded, so that trustees should not run the risk in any case of being too much ignored, or that their interference should not be sufficient in any ordinary way without perpetually having recourse to the forms of law. In clause 52, already referred to by the Postmaster-General, there strikes me to be an ambiguity. After reading it two or three times, it appears to me that this clause is only applicable to the requirements of trustees with regard to settlements that have been acted upon through the provisions of this Bill, but in no way would it tend to relieve trustees having estates under their care who have for years been working them with a considerable amount of trouble, and expenditure of their time. I may state, for the information of the uninitiated, that no commissions are ever granted to trustees by the court, and where a case is put in trust the trustees cease to have any claim whatever for remuneration of any sort, no matter what trouble they may take to preserve the estate in the best possible condition and get the largest amount of profit out of it which it is possible to effect. A conscientious trustee, who desires to carry out the behests of a testator, may give a great deal of his time in the hope of benefiting those on whose behalf the trust is incurred; but at the same time it is more than can be reasonably expected that trustees would devote much valuable time and indirectly suffer considerable pecuniary loss when managing estates if they are not to receive any emolument. The simple payment of expenses and charges provided by clause 51 is nothing; that is reimbursed as a matter of course. Any trustee can recover what he actually spends out of an estate, but that does not represent one-twentieth part of the work he really does. I am very much in doubt whether this clause will do more than cover estates brought directly under the provisions of the Bill, and it is therefore to be hoped that the legal men whom we have in this House—and we have a very fair number of them—will study the question, and see whether this clause is applicable or not to the ordinary run of trust estates when originally there were settled lands concerned in the matter. We are not circumstanced like the old country, where there is a very great desire to preserve large estates in their integrity, and where no more disposition of lands is made

than is absolutely required to meet the wants of life-tenants. Here, in this country, we really treat land as a chattel. Of course it would not be correct to say so in law, but it is so until the land comes to be inherited, and then we meet with the disadvantages of being unable to deal with it. The consequence is that very often executors will, to the immediate benefit of the estate, realise upon freehold property, and place the proceeds out at a better rate of interest, to avoid the cost of management or the probability of the property lying idle. Having realised, they probably place a large amount of the proceeds on substantial mortgages, if so provided for by the testator's will; but there their responsibilities do not cease, and it frequently occurs that the mortgages expire, especially where the money has been invested for minors, and the trustees are perpetually called upon to re-invest the money. Now, I do not go so far as to state that the trustees should again take commission upon the capital sum, but there should certainly be some means to protect them against the undue loss of their time and give them commission upon the income derived from the capital sum realised. I believe it would meet the case if they were allowed to have such reasonable commissions as might be decided upon by the court, not exceeding 5 per cent. upon the income, but certainly not upon the capital sum, so as to get two or three commissions upon the larger sum. That is a point upon which I shall be glad to hear the opinions of the legal gentlemen in this House, and see if the principle could not be made applicable to all parallel cases of trust estates; otherwise it would clearly be desirable, at no distant date, to have the law amended so as to make it applicable alike to trustees engaged with settled land. It may be an omission on my part, but I am unable to find if this Bill is retrospective. Possibly it may not be desirable that it should be, but it strikes me that in some cases it would be advantageous to make it retrospective. However, I would prefer to leave that point until we reach the committee stage, when I will endeavour, as far as lies in my power, by studying the question and listening to the arguments of hon. gentlemen, to make the Bill as perfect as possible.

The HON. W. H. WILSON said: I am very glad that the hon. Postmaster-General has introduced this Bill at an early period of the session, because it is a most important measure—one deserving of a great deal of consideration. As the hon. gentleman has already explained, the form of this Bill somewhat differs from the Bill that was before the House last session; but I quite agree with him that the re-arrangement that has been made of various clauses, especially in Part II., the "definitions," and other parts of the Bill are admirably done, and I consider that it is now in as perfect a state as could be wished. I would draw attention to the fact that in the re-arrangement of the divisions of the Bill the parts are reduced from sixteen to nine; and it might be as well to explain the reason why that has been done. For instance, hon. members will see that in the old Bill Parts III., IV., and V. relate to sales, exchanges, partitions, and other dispositions—three separate divisions; whereas in the Bill now before us these are all included under the comprehensive heading of "Powers of tenants for life." The other parts are also arranged in the same way. The principal object of this Bill is to give to tenants for life greater powers than those formerly held, and I think it would be useful for the House to know the powers that a tenant for life had at common law, and before any statute was passed. They were of a very meagre description. The only powers he had were to cut wood for fuel, make and repair implements of husbandry, repair houses, trim hedges, repair fences, and cut underwood. Those are absolutely the only powers the tenant for life had before the Settled Estates Act of 1856. He could not cut timber, plough meadows, or dig for gravel, earth, or stone, unless, of course, where the ground had been formerly opened up for those purposes. The first innovation in the existing common law was the Settled Estates Act of 1856, which increased the power of the tenant for life, but subjected the exercise of those powers to the sanction of the Court of Chancery. This was a step in the right direction, but the procedure still was found to be very inconvenient and expensive, and the necessity for public legislation was constantly urged. From 1856 to 1877 several amending Acts were passed giving the tenant for life greater powers, every Act that was passed still further slightly increasing his powers, until at last the Settled Land Act of 1882, amended by the Settled Land Act of 1884, was passed, and it is those measures that we seek now to have engrafted upon the statute law of Queensland. To explain the mischief that ensued under the old state of the law, I may mention that it is a common thing in wills and settlements to confer a power of sale upon the tenant for life, with the consent of the trustees, or upon the trustees with the consent of the tenant for life. Thus the concurrence of the tenant for life would be required before any sale could be effected. Under these circumstances, where tenants for life and the trustees did not pull together, sales could not be effected, and the chance of improving the estate was lost. It was found that the trustees very frequently quarrelled with the tenants for life, and the consequence was that nothing could be done. That was one of the mischiefs that was discovered. In one case a person was known to have been a tenant for life for a period of seventy years, during the whole of which time he was unable to deal with the property. Then there are other cases in which large sums are required to be spent upon the property, and there are no funds. That is another hardship. I can mention a case that has come within my own experience in this colony, to show that a change in the law is necessary. A widow was left certain property by her husband by will, and during the last fifteen years she has been compelled to occupy the family dwelling-house. She had no money whatever to spend in repairs, there were no other assets, and she was compelled to occupy a house which was unsuitable and expensive. If she could, under the powers of a Bill of this kind, have sold, or leased, or mortgaged the property she would have been able to have got an income of some kind out of it. I have gone carefully through the powers that are given to tenants for life under this Bill, and perhaps it would not be detaining the House too long, and might be for the benefit of those gentlemen who have not had the time or opportunity to go through the Bill carefully, if I were to state the powers that are proposed to be given to a tenant for life under this Bill. They may be briefly analysed thus: Firstly, powers which may be exercised *mero motu;* secondly, powers where the consent of the trustees or order of the court is necessary; and, thirdly, powers only when the order of the court is obtained. Now, under the first heading you will find by sections 10 and 12 the tenant for life has full power to sell, exchange, or partition the whole or any part of his property, except, of course, the mansion-house, which is referred to in section 21. He can lease for 21, 60, or 99 years (section 13); he may surrender leases under section 20, and he can contract concerning any of these dispositions under section 27. Under the second heading he may sell or lease the mansion-

house under section 21; he may cut timber where impeachable for waste under section 63; and he may make improvements under section 25. Under the third heading he may lease for longer terms than defined by section 13. These are the principal sections that refer to the powers that are given to a tenant for life. I would like to draw the attention of hon. gentlemen to section 21, as it struck me on considering it that either of two courses ought to be pursued—either it must be omitted altogether or else it must undergo a slight alteration; and I think it is not at all out of place on a second reading to refer to anything in the Bill that may strike one in going through it, in order that the Postmaster-General, who has charge of the measure, may give any such suggestions consideration, and come to some conclusion as to what is best to be done when the Bill reaches committee. I think that is a much better course than waiting until the Bill is in committee, and then to have amendments suddenly spring upon us. Section 21 refers to a restriction against selling the mansion-house and park. The section states :—

"Notwithstanding anything in this Act, the principal mansion-house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the court."

Now, I consider that the words "mansion-house" and "demesnes" have a distinctive English meaning, and it is a question what is meant here by those words in applying them to the circumstances of this colony. The word "mansion" means the "lord's house in a manor," and the word "demesne" means that part of the lands of a manor which the lord has not granted out in tenancy, but which is reserved for his own use and occupation. Now, is it worth while retaining this clause in the Bill at all? I think it would be much better to leave it out, because it has nothing to do with the circumstances of our colony. We have neither manors nor lordships. Supposing, however, that it is thought by the House that it is better to retain the section, then I would refer to the words "sold or leased." There is nothing in that section to meet the case of an exchange, so that a tenant for life, although he could not sell or lease the manor-house, or mansion, can exchange it; so that that would have to be seen to. I have stated somewhat at length the powers of the tenant for life, and I should like to draw the attention of hon. members to the safeguards which the Bill has thrown around the transactions which can be undertaken by the tenant for life. Section 32 provides that capital money arising under the Act shall be paid either to the trustees of the settlement or into court, and shall be invested or applied by the trustees, or under the direction of the court. Section 36 provides that the tenant for life has to submit for the approval of the trustees a scheme for the execution of improvements, showing the proposed expenditure. This may be referred to the court for approval. Another safeguard is found in section 40, which enacts that when the tenant for life is the sole trustee of the settlement the powers conferred under the Act shall not be exercised without the sanction of the court. Section 42 provides that the tenant for life, when intending to make a sale, etc., shall give notice of his intention to the trustees, who can then take steps to protect the interests of the beneficiaries. Section 46 says that if there should happen to be no trustees of the settlement the court is called upon to appoint a fit person or persons to be trustees. It is quite impossible for the tenant for life to do anything unless there are trustees. If there are no trustees the court will insist upon appointing them, and any person interested can obtain an injunction against the tenant for life for doing anything detrimental to the interests of the estate. Trustees are appointed for the express purpose of checking the action of the tenant for life. The 47th section provides that capital money arising under the Act shall not be paid to fewer than two persons as trustees. Section 56 says that the tenant for life, in exercising any power under the Act, shall have regard to the interests of all parties entitled, and be liable as a trustee. Section 63 provides that where a tenant for life is impeachable for waste in respect of timber, and if he does cut timber, three-fourth parts of the net proceeds of the sale of this timber shall be set aside, and be capital money arising under the Act. These safeguards are all that can be desired. The next clause to which I shall direct attention is the 31st, dealing with investments. I notice that a suggestion made by me last session, when the matter was before us, has been carried out in this Bill—that is, that capital money may be invested on mortgage of unencumbered freehold property in Queensland. I think it is very questionable whether we should permit trustees or tenants for life to invest capital money arising under the Act in Government securities of the United Kingdom. I do not see why moneys realised from sale of lands in Queensland should not be invested in the colony. I do not see why we should not, at any rate, restrict them to investments in the Australasian colonies and those other methods of investment appointed by the Act. In section 33 it is distinctly stated that capital money arising under this Act from settled land in Queensland shall not be applied in the purchase of land out of Queensland. That is very proper, and if so it logically follows that the capital money received by tenants for life should be invested in Queensland—certainly not, in my opinion, in securities in the United Kingdom. Settlors and, I think, the Legislature of the United Kingdom are very careful to provide that investments shall not be made in these colonies; and I do not see why we should not reciprocate. Another investment not named here would be desirable. There is no power to invest moneys on deposit in the savings bank or any other banks doing business in Queensland. I suggest these as a desirable addition to the number of investments mentioned in the 31st section, because in practice it is found to be a very favourable mode of investment. Trustees sometimes have large sums of money which they cannot immediately invest on real property, and the consequence is that they place it on fixed deposit in one of the banks at the ruling rate of interest, and when they get a desirable security of real property they can take the money from the bank on certain terms. To prove that this is a favourite mode of investment the Government of Queensland has, I think, at the present moment, about a million and a-half in the different banks on deposit, and that is a sufficiently strong reason to induce this House to adopt the suggestion as an amendment of clause 31 when in committee. In clause 32, subsection 5, it is provided that capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land. That, I think, is entirely unnecessary, and it would be better to omit the subsection. You will see by clause 31 that capital money shall, when received, be immediately invested; and as the capital money when received must be immediately invested, what is the necessity, under these circumstances, of allowing it to be considered as land? We all know that the law of primogeniture does not obtain in this colony, though it does in England, and this section, which is appropriate in the English

Settled Land Act of 1882, is out of place here, considering the provisions in our Intestacy Act, which abolishes the law of primogeniture. With regard to the 52nd clause, which has been referred to already, I think it is a good one. Trustees have often suffered great hardship from having undertaken work without being paid. I know that if work is to be done well it ought to be paid for, and it is about time that trustees were allowed to make a profit of their trust. It is a very old rule that trustees should not make a profit out of their trust, and it is a very good rule to a certain extent; but they have to undertake very great responsibility, and I do not see why, under the circumstances, they should not be paid in the same manner as executors, a fair percentage on the amount of the proceeds that come into their hands. It will be observed that this Act will not in any way prevent a testator or settlor from giving a tenant for life larger powers than are contained in the Act, and such larger powers will operate as if they were conferred by the Act itself. It will not in any way interfere with disposition by will or by settlement. The Bill has been very carefully drawn, and though I have carefully compared it with the English Act and with the old Bill, I cannot find anything else to which it is necessary that I should call attention. I have very great pleasure in supporting the second reading of the Bill.

The HON. A. J. THYNNE said: Hon. gentlemen,—I do not intend to discuss the clauses in detail in the exhaustive manner in which they have been dealt with by the hon. gentleman who has just sat down. I quite agree with him that the clause to prevent the sale of mansion-houses is utterly unsuited to the requirements of people in Australia, and may be omitted from the Bill, not being applicable. The Bill itself is really one of the most serious revolutions that has taken place in Great Britain in the law of real property for many years. It strikes at the root of the old system of preserving estates in families from generation to generation, which, according to some people, has done a great deal of good in preserving the nobility and aristocracy in Great Britain; but, according to others, has tended to maintain a privileged class of people who have not contributed as much as they ought to the progress of the country, and which had better not be preserved in the same manner as hitherto. However, I think that in this colony, considering our system of life, the way in which we have held property, the facility with which we have been able to deal with it—our whole ideas receive in this measure a new enactment which will thoroughly agree with their spirit. It would have had to come sooner or later with us, even if it had not come in Great Britain, because for many years the difficulties of dealing with settled estates have been the cause of grave complaint amongst people in Australia, particularly in Queensland. It is not necessary to allude to instances, because there are not many hon. members who have not had some experience, more or less direct, of instances where hardship and loss have been sustained, while the only benefit that can be set on the opposite side is the possible preservation of estates for future generations. As the Hon. Mr. Gregory put it, land in these colonies had become a matter of ordinary commerce, and we should be acting against the spirit of the time in preserving it from being dealt with commercially. I believe that the passing of this measure will prove one of the good, sound foundations laid for the future growth of the colony in what I consider to be the right direction. I will point out a few alterations, not in the principle of the measure as passed in England, but alterations which might be made to make the measure more suitable to our present immediate requirements.

The Hon. Mr. Wilson spoke on the subject of investments dealt with by clause 31, and advocated the omission of Government securities of Great Britain. On that point I shall say nothing; but on the second kind of investment—namely, securities of any one of the Australian colonies—I say this: that we are on the brink, I believe, of a material change in the position of the Australian colonies, and we should not be far out in making an alteration so as to extend the operation of the clause to more than one colony—that is, to colonies joined together. It is anticipating, perhaps, by a few years, federation; but I think it is wise to suggest the amendment and see whether we cannot make provision for a change which will probably take place in a few years. I cannot agree with the Hon. Mr. Gregory in his desire to restrict the privilege of the tenant for life in the particular class of investments in which capital funds can be invested. The matter was fully discussed last year, but was not received with favour, and the amendment moved by the Hon. Mr. Gregory was negatived without division. I refer new members to the discussion that took place then on that part of the measure, and if they read it they will be convinced that it will be better not to alter the measure in the direction the Hon. Mr. Gregory has indicated. It seems to me that the measure is one which will act upon estates settled before the Act is past. That is a question on which the Hon. F. T. Gregory desired to get some information. It is immaterial whether land becomes subject to settlement before or after. It appears to me that its application is similar in all classes of settlement, whether old or new, and the particular classes in respect to which the Hon. Mr. Gregory expresses a doubt—section 52, with regard to commission—will apply to settlement or dispositions of property made before the Act, just as well as those made after the Act is passed.

The POSTMASTER-GENERAL: Hear, hear!

The HON. A. J. THYNNE: I am given to understand that there is practically no alteration in the principles of the measure, but there is a rearrangement, and every principle adopted in the old measure is included in this. I have not therefore compared the Bill, clause by clause, with the old measure; I am content to take the assurance of the Postmaster-General and those who have worked out the Bill for the purpose of comparison, but I say it is a pity that the arrangement of the Bill has been altered. I think it a pity that it has not been left exactly in the same way as when it was passed by the British Parliament. It is an ambitious undertaking to rearrange or re-edit a measure prepared with such great care, and revised so carefully by several Parliamentary Committees in Great Britain, that Earl Cairns asked the House of Lords to accept it in the form presented without amendment. I say it seems somewhat ambitious to attempt to improve or remodel a measure framed with such very great care, and there may be some danger or risk even with the most skilful hand in making such an attempt. If there should be such a slip, as we frequently see in our statutes, leading to difficulty and trouble in administration afterwards, I do not think the responsibility will rest on individual members of this House. It is an undertaking which I would not attempt, and we can only lay the responsibility, as we can with a considerable amount of confidence, upon those who have undertaken the attempt. It seems to me a very extraordinary thing that this measure, which is one of so revolutionary a nature, should have been passed by the British Parliament with so very little discussion. How it is

that the House of Lords passed the measure without any serious alteration is a matter that at first sight would seem almost incomprehensible, because it really strikes at the root of the system by which they have been sustaining their positions—the entailing of estates from generation to generation, which is one method by which they have been maintained in their position. It can only be explained in one way—namely, that the House of Lords preferred their own personal, immediate, selfish requirements to the requirements of the system. We have no desire to build up in this colony such a system as that to which I have alluded, and I am glad to see that this measure is likely very soon to become one of our statutes.

The HON. A. C. GREGORY said: Hon. gentlemen, — As I took a somewhat active part in the discussion which took place on this Bill last session, I wish to say a few words now. As regards the Bill now before us, no doubt the language has been improved; at the same time the striking out of certain provisions from one part, and simply putting them on another page, is no proof of any improvement in the Bill. While I concur in the opinion that the Bill should pass, I cannot quite agree with all the revision that has taken place. It seems that one of the leading features of the measure is to utterly set aside the powers of trustees; and though I think that hitherto the tenant for life has not been duly considered, still we should remember that whoever settles land should have his views and wishes regarded to some extent. Under this Bill, the intention of the person leaving property in trust is completely ignored, and the tenant for life is given power to deal with the property in many instances without reference to the trustees. It is very desirable that the tenant for life should have a voice in the disposal of the property, and it is also important that our present law should be materially amended, but I do not think we should completely throw overboard the wishes or intentions of the trustees, or of the person leaving the property. Suppose a person leaves his property to his children, and during their minority to his wife, or any other relative, who is to possess and use the property until such time as the children may come into possession. Under such a settlement, of course he vests the property in trustees, and these trustees see that the property is held and managed in accordance with the terms of the settlement; but, under this Bill, trustees have absolutely no power whatever. I know it will be contended that they have, but we have only to refer to clause 21 to see that the Bill does not intend that trustees should have any power whatever in some cases. In this clause it says that, notwithstanding anything in this Act, the principal mansion-house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life without the consent of the trustees of the settlement, or an order of the court. Now, the provisions of the clause with these words in it, restricting the tenant for life in some cases, gives him the absolute power to do what he is restricted from doing in this case in any other case of settled land where there is nothing specified to the contrary. I think in committee we may modify the Bill, so that trustees may have a voice in the matter. It may be said that the trustees and tenants for life would in many cases disagree, and the property could not be used in such a way as to be of most benefit to those concerned. They may disagree and refuse to act, and the tenant for life may find himself in the awkward position of not really receiving what should be the proper annual revenue from the trust property. I think under this Bill it may be provided so that the tenant for life can never, without the consent of the trustee, do anything except by application to the court. We should therefore provide against unreasonable disputes between the trustee and the tenant for life, either party being able to go to the court, in order to force the other to some reasonable agreement. The court would then see that due justice was done. It is the want of such a provision in this Bill, and the clear and distinct intention that the trustee should not have the power that I have referred to, that makes me object to adopting the Bill as it stands; but even as it stands I should prefer to see it pass than that it should not become law this session. I trust hon. members will carefully look over this matter, and I refer to the matter now in order that we may form more mature opinions upon this certainly awkward point.

Question put and passed, and the committal of the Bill made an Order of the Day for Wednesday next.

JOINT COMMITTEES.

The PRESIDING CHAIRMAN read a message from the Legislative Assembly, in reply to the message of the Council of the 14th instant, notifying the appointment of the Speaker, Mr. W. Brookes, and Mr. Norton, as members of the Joint Library Committee; of the Speaker, Mr. Aland, and Mr. Black, as members of the Joint Committee for the management of the Refreshment Rooms; and of the Speaker, Mr. Mellor, and Mr. Stevens, as members of the Parliamentary Buildings Committee.

The House adjourned at twenty-five minutes to 6 o'clock, until Wednesday next.