Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

THURSDAY, 29 JULY 1886

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LEGISLATIVE ASSEMBLY.

Thursday, 29 *July*, 1886.

Question.—Formal Motions.—Elections Act of 1885 Amendment Bill.—Pearl-shell and Bêche-de-mer Fishery Act Amendment Bill—third reading.—Pacific Island Labourers Bill—third reading.—Communication on Separation Question.—Employers Liability Bill.—Mineral Lands Act of 1882 Amendment Bill.—Gold Fields Act of 1874 Amendment Bill.—Sale of Opium Bill.—Adjournment.—Justices Bill—committee.—Message from Legislative Council.—Adjournment.

The SPEAKER took the chair at half-past 3 o'clock.

QUESTION.

Mr. SHERIDAN asked the Minister for Works—

1. What progress, if any, is being made towards constructing the Urangan Railway?
2. Has the land promised to the parties who were to construct that railway been granted to them?
3. When will the time agreed upon for the construction of the Urangan Railway have expired?

The MINISTER FOR WORKS (Hon. W. Miles) replied—

1. None, that I am aware of.
2. No.
3. The 81st section of the Maryborough and Urangan Railway Act provides for completion in three years after the passing of the Act, say, 23rd December, 1887.

FORMAL MOTIONS.

The following formal motions were agreed to :—

By Mr. LUMLEY HILL—

That there be laid upon the table of this House—

1. The statement of the claim of McSharry and O'Rourke against the Queensland Government in respect of the Brisbane Valley Railway, together with the engineer's report, award, and all correspondence connected with it.
2. The same as regards the second section of the Bundaberg Railway, McSharry and O'Rourke, contractors.

By Mr. LUMLEY HILL—

That there be laid upon the table of this House, a return, in detail, showing the expenditure of each department of the Government service in connection with advertising, both in the local and the country papers, specifying the same, during the past twelve months.

By the PREMIER (Hon. Sir S. W. Griffith)—

That this House will on Tuesday next resolve itself into a Committee of the Whole to consider the desirableness of introducing a Bill to consolidate and amend the laws relating to local government outside the boundaries of municipalities.

ELECTIONS ACT OF 1885 AMENDMENT BILL.

On the motion of the PREMIER, leave was given to introduce a Bill to amend the Elections Act of 1885.

The Bill was presented, read a first time, and the second reading made an Order of the Day for Tuesday next.

PEARL-SHELL AND BECHE-DE-MER FISHERY ACT AMENDMENT BILL—THIRD READING.

On the motion of the COLONIAL TREASURER (Hon. J. R. Dickson), this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Council for their concurrence, by message in the usual form.

PACIFIC ISLAND LABOURERS BILL—THIRD READING.

On the motion of the PREMIER, this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Council for their concurrence, by message in the usual form.

COMMUNICATION ON SEPARATION QUESTION.

Mr. BLACK, in reference to the following motion standing in his name :—

That there be laid on the table of the House, communication addressed to the Premier by J. B. L. Isambert, M.L.A., "on the all-absorbing question of separation," referred to in J. B. L. Isambert's letter to the Premier, dated Townsville, 6th May, 1886—

said : Mr. Speaker,—As I have ascertained that this letter refers to and contains matter of a private nature, I beg to withdraw the motion with the permission of the House.

Motion, by leave, withdrawn.

EMPLOYERS LIABILITY BILL.

On the motion of the PREMIER, it was affirmed in Committee of the Whole that it was desirable to introduce a Bill to extend and regulate the liability of employers to make compensation for personal injuries suffered by workmen in their service.

The Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

MINERAL LANDS ACT OF 1882 AMENDMENT BILL.

On the motion of the MINISTER FOR WORKS, it was affirmed in Committee of the Whole that it was desirable to introduce a Bill to amend the Mineral Lands Act of 1882, so far as regards mining for coal.

The Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

GOLD FIELDS ACT OF 1874 AMENDMENT BILL.

On the motion of the MINISTER FOR WORKS, it was affirmed in Committee of the Whole that it was desirable to introduce a Bill to amend the Gold Fields Act of 1874, so far as regards mining under reserves and lands excepted from occupation for mining purposes.

The Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

SALE OF OPIUM BILL.

On the motion of the COLONIAL SECRETARY (Hon. B. B. Moreton), it was affirmed in Committee of the Whole that it was desirable to introduce a Bill to impose restrictions on the sale of opium, and to prohibit its sale to aboriginal natives of Australia.

The Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

ADJOURNMENT.

The PREMIER : Mr. Speaker,—As there is no private business on the paper, I beg to move that this House at its rising adjourn until Tuesday next.

Question put and passed.

JUSTICES BILL—COMMITTEE.

On the Order of the Day being read, the House went into Committee to further consider this Bill in detail.

Clauses 57 to 63, inclusive, passed as printed.

On clause 64, as follows :—

"When a complaint is made on oath before a justice that any goods are suspected to have been stolen, and that the complainant suspects that such goods are in any house or other place within the jurisdiction of the justice, and the complainant sets forth reasonable grounds for his suspicions, the justice may issue his warrant to search for the goods in the suspected place or places, and to attach the goods if found, and also, if he thinks fit, to apprehend the person in whose custody they are found, and to bring him before justices to give an account of how he came by them, and to be further dealt with according to law ; or the justice may refrain from including in the warrant a direction to apprehend such person, and may proceed by summons and issue a summons against him accordingly"—

The ATTORNEY-GENERAL (Hon. A. Rutledge) said that the Larceny Act provided for the issue of search-warrants in the case of offences which justices were empowered to punish under that Act. It was the practice of justices to issue search-warrants in all cases, even those which did not come within the provisions of the Larceny Act. Probably they had a right to do it, but there had hitherto been no statutory provision to that effect. Of course, there were innumerable cases where justices had authority to punish for acts of larceny which were not made punishable by the Larceny Act itself.

Mr. CHUBB said he saw the last part of the clause was new. The present practice, of course, was that if property suspected to be stolen were found in any person's possession he was apprehended and brought before the justices with the property. The clause seemed to provide, as an alternative, that the property might be seized and a summons issued against the person. That was a milder way of dealing with the case.

Clause put and passed.

Clauses 65 to 68 passed as printed.

On clause 69, as follows :—

"A person taken into custody for an offence without a warrant shall be brought before a justice as soon as practicable after he is taken into custody ; and if it is not practicable to bring him before a justice within twenty-four hours after he is so taken into custody, an inspector or sub-inspector of police, or other police officer who is of equal or superior rank or who is in charge of a police station, may and shall inquire into the case, and, except where the offence appears to such inspector, sub-inspector, or other police officer, to be of a serious nature, shall discharge the defendant upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before justices at the day, time, and place named in the recognizance"—

The ATTORNEY-GENERAL said that was a new provision so far as Queensland was concerned. It was taken from the Imperial Summary Jurisdiction Act of 1879. It was a useful provision in a colony like this, allowing an inspector or sub-inspector, or other officer of police to grant bail under certain circumstances, when no justice was available. Of course, the cases that would be dealt with were not serious cases — not such cases as would require full inquiry by a justice before it could be seen whether bail should be granted or not. Take the case of a man arrested by a constable on suspicion that he was going to commit a felony. It was no doubt right that such a man should be arrested—there being presumably good grounds for the suspicion—but if he could not be brought before a justice within twenty-four hours it was right that an opportunity should be given him of being released at the discretion and on the authority of the police inspector or other officer in charge of a police station.

Mr. NORTON said he could quite understand the usefulness of the clause. It gave an innocent man who might have been apprehended an opportunity of getting evidence to prove his innocence.

Clause put and passed.

On clause 70, as follows :—

"The room or place in which justices sit to hear and determine any complaint upon which a conviction or order may be made, shall be deemed an open and public court, to which all persons may have access so far as the same can conveniently contain them.

"Provided nevertheless that in any case in which, in the opinion of the justices, the interests of public morality require that all or any persons should be excluded from the court, the justices may exclude such persons therefrom accordingly.

"But such power shall not be exercised for the purpose of excluding the counsel or solicitor for the defendant."

The ATTORNEY-GENERAL said that, as he had pointed out in moving the second reading, a portion of that clause was also new. By the law as it was at present, justices had power to exclude strangers from the hearing of certain cases, but not from cases coming within their summary jurisdiction. The proviso extended that power to all cases that came before them.

Clause put and passed

Clause 71 passed as printed.

On clause 72, as follows :—

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

Mr. MELLOR said he did not think it was made quite plain enough that a defendant was at liberty to examine his own witnesses. It stated that a defendant was at liberty to have his witnesses examined by his counsel or solicitor—not by himself. It would be more satisfactory if the meaning was made a little plainer.

The ATTORNEY-GENERAL said there could be no doubt as to the meaning of the clause. Every defendant had an inherent right to make his own defence, whether he chose to appear by counsel or solicitor or not. If he conducted his own defence he would, as a matter of course, be allowed to examine and cross-examine witnesses.

Clause put and passed.

Clauses 73 and 74 passed as printed.

On clause 75, as follows:—

"Upon any complaint of a simple offence or breach of duty the defendant, and the wife or husband of the defendant, shall be competent witnesses on his or her behalf"—

The ATTORNEY-GENERAL said that was quite a new provision. With regard to simple offences or breaches of duty, there were in one or two statutes provisions made by which persons charged with breaches of those statutes might themselves become witnesses in their own behalf. But the general law, as it at present stood, excluded in all other cases persons charged with offences from giving evidence on their own behalf, and the wife or the husband of the defendant, as the case might be, was also excluded. Differences of opinion had existed for a long time as to whether that rule should apply in all cases, and many reasons might be advanced as to why it was desirable that persons accused should not be competent to give evidence on their own behalf. As far as giving evidence in the higher courts was concerned, he was of opinion that it would be very undesirable to alter the existing law; but in cases of simple offences or breaches of duty which might be dealt with by the magistrates themselves, the Government had come to the conclusion that the time had arrived when a provision of that sort might be introduced into our law. Many cases of hardship had arisen in consequence of persons so charged not being able to be examined and cross-examined on oath as to the facts. Every accused person was at liberty to make a statement as to what the facts were, but the disadvantage under which an accused person, especially an innocent person, laboured was that he was not able to give that evidence subject to all the rules of cross-examination by which the truth could be elicited. If a defendant was admitted to give evidence on his own behalf he would of course be subjected to cross-examination, and the more innocent he was the more clearly would that innocence be brought out by the cross-examination. He thought that to the extent described in the section the alteration of the existing law would prove very advantageous.

Mr. CHUBB said the clause either went too far or did not go far enough. If it were confined to breaches of duty no difficulty would arise, but there were many cases in which the justices had power to inquire into offences, and when certain facts were disclosed they might abstain from adjudicating and commit the accused for trial. Two cases of that kind occurred to his mind at that moment. One was under the Branding Act. If the justices, on hearing a case of illegally branding, were of opinion that the party should be committed upon a charge of stealing the animal, they might do so. Again, in a case of common assault, the justices might abstain from adjudicating on that charge, and have the party charged with an aggravated assault and send him to trial in the higher court. In either of those cases, if the wife or husband, as the case might be, had been examined at the commencement of the hearing when her evidence was admissible, and the justices did not deal summarily with the case but committed to the higher court, then her evidence would not be admissible on the trial in that court. Therefore he thought the clause should receive a little more consideration. Perhaps the difficulty had not occurred to the hon. the Attorney-General, but it had to him when the hon. gentleman was explaining the clause to the Committee. He thought it would be better to confine the clause to breaches of duty, leaving out the question of offences.

The ATTORNEY-GENERAL said he did not think any serious disadvantage would arise to accused persons in such cases as those mentioned, which were very few. If the accused or his wife gave evidence in the inferior court, it would be competent for the counsel who was defending the accused to cross-examine the witnesses in such a way as to get out the fact that at the police court the accused or his wife said so-and-so, and in that way the evidence could be got indirectly. True, it could not be put in as evidence formally, but still it could be got in indirectly in the manner he had pointed out. He thought it would scarcely be advisable to alter the clause and limit it, as it would greatly, to cases of breach of duty. That would limit greatly the advantage it was proposed to confer upon persons accused of simple offences.

Mr. SCOTT said he would like to ascertain whether the giving of evidence was optional or not—that was to say, whether a wife could be called upon to give evidence against her husband without her consent.

HONOURABLE MEMBERS: No; it is optional.

Mr. NORTON said he was glad to hear that point explained, because the clause did not explain it at all.

The PREMIER: Yes; it says "competent."

Mr. NORTON said he had known people who were competent to give evidence in cases slip into a shop so that they might not see what was going on, because they might be called upon as witnesses.

The PREMIER: The clause does not apply to witnesses for the prosecution; only for the defendant.

Mr. NORTON said as long as that was the case he thought the clause rather a good one. He believed, as the Attorney-General had pointed out, that there might be cases in which evidence had been adduced in the lower court which would not be admissible in the higher court, but which could be got in in cross-examination in the way the hon. gentleman had stated.

Mr. JORDAN said the hon. member for Bowen had said that the clause either went too far or did not go far enough, and the hon. the Attorney-General said there were good reasons why its provisions should not be made to apply to the higher courts, but he did not give those reasons. He would like to know the reason why the clause should not apply to the higher courts and to more serious offences.

The ATTORNEY-GENERAL said the Bill was one dealing with cases heard before justices, not the taking of evidence in the higher courts; so that even if the Government desired to extend the right of giving evidence to persons charged before the higher courts, this would not be the proper place to introduce a provision of that sort. It was not therefore necessary to state the reasons—there were a great many *pro* and *con.*—why it would not be desirable to extend that right to persons tried before the higher courts.

Mr. CHUBB asked if the schedule repealed the clause of the Evidence and Discovery Act, which provided that a husband or wife could not be a competent witness? They were certainly inconsistent as they stood, because the clause said they should, and the Evidence and Discovery Act said they should not. The 8th clause provided:—

"Nothing hereinbefore contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding."

The PREMIER: That is all right. Nothing in that Act does. This Bill does allow it.

Mr. CHUBB said the hon. the leader of the Opposition had drawn attention to the fact that the section did not make it clear that witnesses were not compellable. He thought they might obviate any doubt on that point by adding, after the word "competent," "or compellable," as it appeared in the Evidence and Discovery Act.

The PREMIER said the clause was one of considerable importance, and he was glad some attention had been called to it. It was, in fact, a radical change in the law to allow evidence to be given by a defendant. But the tendency of modern legislation was undoubtedly in that direction. In England they had gone farther, and in certain cases they allowed persons who were being tried before a jury to give evidence. That was not done in all cases, only in some. In a great many countries persons on trial were allowed to give evidence, and in some they were compelled to give evidence—to answer questions. He was disposed to think, on the whole, that it would tend to the advancement of justice to allow accused persons to give evidence in all summary cases. It was, of course, an experiment, and hon. members should understand the nature of it.

Clause put and passed.

Clauses 76, 77, and 78 passed as printed.

On clause 79—

"If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no just excuse is offered for such neglect or refusal, then (after proof upon oath that the summons was duly served upon such person, and, except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance) the justices before whom such person should have appeared may then and there impose upon him in his absence a penalty not exceeding twenty pounds, which may be recovered in the same manner as penalties imposed upon a summary conviction as hereinafter provided.

"The justices may also issue their warrant to bring and have such person at a time and place to be therein mentioned before such justices as shall then be there to testify as aforesaid.

"No payment or tender of expenses shall be necessary in the case of indictable offences."

Mr. NORTON said it was a great pity that it was not better expressed what a "reasonable sum" would be. It was one of the greatest difficulties that people in the country laboured under, that they were compelled to attend a court and be allowed no expenses whatever. He knew of a case where a man had ridden ninety miles to a court, and the same distance back, and who had only received one guinea. He thought it was rather unfortunate that some better form of expression could not be used. Cases in which witnesses were entitled to attendance expenses should be expressed in the section.

The ATTORNEY-GENERAL said numerous difficulties would arise, if an attempt were made to scale the expenses to be allowed to witnesses who might be required to attend a court.

Mr. NORTON: I know that.

The ATTORNEY-GENERAL said that what might be a reasonable sum in some cases might not be so in others. The form of expression used in the clause was a very good one, and one which was familiar. As a matter of practice no real difficulties could arise. What was reasonable was always a question of fact to be decided under the particular circumstances of every case. He did not think that any man who had had a ridiculously insufficient tender for expenses would be likely to find himself hardly dealt with if he refused to obey. If it were unreasonable, in the opinion of an ordinary man, it would be held to be unreasonable by a bench of magistrates. Fixing an arbitrary limit would do more harm than good.

Mr. CHUBB said there was a much more important matter than that under discussion contained in the clause. The clause provided that a man who was summoned for punching another man's head could have his witnesses brought to court to give evidence, and they could insist upon being paid. But if a man had his horse stolen he could bring witnesses hundreds of miles to give evidence—persons who had no interest whatever in the transaction—and who would not get one penny. The clause said that no payment should be necessary in cases of that sort; the witnesses were paid afterwards for giving their evidence a second time. He was aware that he was opening up a question involving the expenditure of a considerable sum of money; but the time had arrived when a person should be no longer subjected to the hardships peculiar to giving evidence in cases of indictable offences only, and not to any other portion of the administration of justice, without being allowed their expenses. A man might be summoned from Normanton to Brisbane to give evidence upon a criminal offence, and not get sixpence for his expenses; and if he did not choose to come he might be brought on warrant. When he came, if the justices refused to commit for trial he had to get back to Normanton as best he could. He knew that expenses were allowed in cases of extreme hardship; but they were dealt with by the Crown, whereas there should be a general law for everybody. Any person who was put to trouble and inconvenience, and loss of time and business, should have his expenses allowed. They might be allowed only upon a small scale, but the principle of remuneration ought to be recognised. The Committee ought to consider whether expenses should be allowed in summary cases and not in indictable offences.

The ATTORNEY-GENERAL said the hon. gentleman had not shown that the system was peculiar to Queensland.

Mr. CHUBB: That does not matter.

The ATTORNEY-GENERAL said if the proposal were adopted a very considerable financial prospect would be opened up to hon. gentlemen. It would require an enormous increase of revenue to make adequate provision for the payment of all persons under all circumstances, who were required to give evidence on the hearing of a charge for an indictable offence. Although the hon. gentleman was right in theory with regard to taking witnesses from Normanton to Brisbane to give evidence and paying them nothing, as a matter of practice such cases did not occur. Those cases of small hardship were one of the contributions which a man made towards the State to which he belonged for the preservation of law and order. At a certain inconvenience and loss he gave his evidence to have the effect of punishing wrongdoing and suppressing crime. If the principle proposed were adopted, they would next have this: Professional men, such as doctors, called away from a place in which they were enjoying a lucrative practice, for perhaps two or three weeks to attend a trial to give evidence, would be putting in a claim for large sums, from £100 to £300, lost through enforced absence at a trial. If the principle the hon. gentleman contended for were adopted they would have the other principle urged that witnesses should be paid for loss sustained in that way. They knew that in nearly all cases persons charged with indictable offences were charged before the nearest court of petty sessions where most, if not all, of the witnesses were. There were only a few cases where, for instance, clerks in banks were brought a long distance to the town where the hearing took place to give formal evidence, that any real hardship took place.

Of course he knew there were one or two instances in which hardship occurred, and in some such cases special exceptions were made by the Government. If such a principle as was contended for by the hon. member for Bowen were adopted, it would require an addition to the revenue of from £10,000 to £20,000 a year to make provision for all the cases that would arise under it.

Mr. NORTON said there was a saying that justice was blind, and he dared say many witnesses were blind because they knew their expenses would not be paid if they offered to give evidence. It was well known that prisoners were often allowed to go scot-free because of the difficulty of getting witnesses on that account, and the present system, as everyone knew, instead of promoting justice had the contrary effect. The hon. gentleman mentioned the case of a medical man having a lucrative practice, and having to lose large sums of money in attending a trial. That might be so, but such men could afford to lose it, and at all events could afford to pay their way back to where they came from. The contrary was the case where a poor man was brought a long distance away from his work to give evidence at a place where he might not even have the means to get back to his work. He had heard of cases of that kind himself. It was a great hardship to a man like that, and more especially at a time like the present when there was great difficulty in getting any work at all. There were numbers of persons living in country districts who might be brought to town to give evidence, and who were unfit to do any work to be had about towns. They were far away from the place at which they worked, and had not the means to get back, and, in some cases, had to appeal to station-owners on their way home for assistance to get back at all. That was a most undesirable thing. In all cases where a matter of principle was brought up it was always contended that the State should suffer rather than a wrong should be knowingly done to an individual. There were cases of the kind in which wrong was often done to individuals. It was all very well for the Attorney-General to say that a man should contribute something to have the course of justice carried out, but it was exceptionally hard in many cases that a man should be compelled to attend and give evidence and get no compensation whatever.

The HON. J. M. MACROSSAN said that under the present system, where witnesses were unpaid, the police officers did not take the trouble they ought in binding over people to appear at a trial, simply because they knew there was little chance of them appearing. If the Government were obliged to pay the expenses of witnesses fairly, they could enforce much stricter responsibility upon those whose business it was to bind men to appear in court to give evidence. The Attorney-General spoke of a man having to sacrifice a certain amount to the State, but it was rather hard for a working man with a family to do it. Only yesterday morning when coming to the House a man stuck him up in the street with a complaint upon that very matter. He had been taken from Brisbane to Normanton to give evidence.

The ATTORNEY-GENERAL: That was not in a case of a preliminary hearing.

The PREMIER: He made a good thing out of it too.

The HON. J. M. MACROSSAN: The Premier said, "He made a good thing out of it." If the hon. gentleman had heard what that man told him he would not have thought he made a very good thing out of it. Since the time he had got back from Normanton he said he had only had three weeks' constant employment, and he had a wife and family to keep. The strangest part of it was that after he got to Normanton his evidence was not required at all. Had the police known that that man's expenses would have to be paid they would have been more careful. He did not know the whole circumstances of the case, but he told the man he could do nothing for him, and referred him to the Attorney-General. He said he had been to the Attorney-General, and that that gentleman told him he could do nothing for him. It was easy for a doctor making £1,500 or £2,000 a year to sacrifice even £200 or £300; but it was very different in the case of a man who could only earn £2 or £3 a week to be compelled to travel from Brisbane to Normanton to give evidence. The loss of his £2 or £3 a week was far worse to him than the loss of £200 or £300 to the doctor. A case of the kind he mentioned, even if the law did not permit it, should be dealt with specially out of some fund set apart for the purpose, even if they did not decide to pay witnesses in all cases.

The ATTORNEY-GENERAL said the case to which the hon. gentleman referred did not fall within the class of cases to which the hon. member for Bowen referred. That was a case in which the man who, at the time of his examination before the police court in Normanton, was a resident in Normanton, and was bound over by the bench to appear and give evidence at the next sitting of the district court at Normanton. After the committal of the accused person, and before the next sittings of the district court, that man left Normanton, and came down to Brisbane. The very afternoon the steamer was to leave by which he would have to go if he were to appear at Normanton, and half-an-hour before the steamer started, the man for the first time put in an appearance at the Crown Law Offices, and said he had no money to carry him to Normanton. He saw at once that, in strictness, that man, being a resident of Normanton, and being bound over to attend the sittings of the district court there was consequently not entitled to any expenses from anywhere else. He might have gone to Adelaide or to Western Australia just as well as to Brisbane, and then demanded travelling expenses at 10d. a mile all the way to Normanton! Still, under the circumstances he agreed to guarantee the cost of the man's passage to and from Normanton to the manager of the A.S.N. Company. He did not acquit the man of design in coming to the Crown Law Office at the very last moment in the way he did. At all events, his passage to and from Normanton was guaranteed, and, as it turned out, he was not required when he got there. The latter part of the affair had been investigated, and the result of that investigation would be that no such case would occur in the future. The man came back again from Normanton, having had his expenses paid there and back, and then employed a solicitor—he did not appear to be too poor to be able to pay for that—to make application for a round sum of £80 for his expenses at Normanton. He (the Attorney-General) would not recognise such a claim; he could not allow a man like that to make half-a-year's wages out of the happy accident of being a witness for the Crown. At the time the man employed a solicitor he was in employment, but subsequently he believed he lost that employment; but there was no reason to suppose that he lost it because he went to Normanton. That case, however, was not such a one as the hon. member for Bowen referred to; and no man would be asked to go all the way from Brisbane to Normanton without getting his expenses paid.

The HON. J. M. MACROSSAN said he believed the statement of the Attorney-General was quite correct, as the man himself had told him that he was at Normanton when he was bound over to appear at the trial. That, however, did not prove that he was a resident of Normanton. He came to Brisbane to get employment, and how many working men were compelled at times to travel in search of work? The fact that the man was able to employ a solicitor did not show that he was not poor, as it did not cost much sometimes to employ a solicitor ; but even if he were in good circumstances that was no reason why he should not be paid his expenses.

The ATTORNEY-GENERAL: He received over £10 above his expenses to and from Normanton.

The HON. J. M. MACROSSAN said there were many cases in which it was desirable that the Attorney-General should have a fund on which he could operate at his discretion, and pay the expenses of witnesses under the Act. It might perhaps cost too much to make a law that all witnesses should be paid their expenses both going to and coming from the court, but, nevertheless, there were special cases of great hardship which ought to receive special consideration.

Mr. HAMILTON said that the man who had been referred to was not a resident of Normanton, but was travelling in search of work, and in the course of his peregrinations he went to Normanton. He did not, however, get work until he came to Brisbane. When he left here to attend the court he was employed in connection with a billiard-table, which was a profitable occupation to him, so much so that had he received the usual scale rates for expenses he would have suffered a loss, but he was not paid the amount to which he was entitled by the practice and regulations of the courts. He did not even receive as much per mile as was paid a policeman, who, in addition to the sum allowed for expenses, received his regular wages; and on his return he lost his situation, and had to accept much less lucrative employment.

Mr. JORDAN said it appeared to him that in the case which had been cited the witness received substantial justice, having been paid £10 over his expenses to and from Normanton. But he thought that provision should be made by which, in all cases, witnesses would be entitled to a reasonable sum for their expenses, and not be dependent on the favour of, or have to make application to, the Crown law officers. There should, in his opinion, be no exception as was now proposed, but all persons summoned as witnesses should be entitled to a reasonable sum. The only argument advanced against that by the Attorney-General was, that if such a principle were established persons would be claiming for loss of time, and the hon. gentleman instanced the case of a medical man in a large practice claiming £200 or £300, in support of his contention. But that was a *non sequitur*, because in such a case, as had been pointed out by the leader of the Opposition, the witness could afford the loss. But it was very different with a working man who came a long distance, and perhaps lost his employment ; and it was for such cases as those for which, as he understood the matter, the hon. member for Bowen wished to make provision in that Bill.

The ATTORNEY-GENERAL said that in a case where it was necessary, in order to secure the committal of an accused person, that a witness should be taken from, say, Normanton to Brisbane, special provision for the payment of his expenses would of course be made. He knew that cases of extreme hardship did sometimes occur, and he had on more than one occasion caused special provision to be made to meet them. But if they were to adopt the suggestion of the hon. member for Townsville, and establish a fund on which the Attorney-General could act at his discretion, they would have everybody saying that his case was a hard one, and demanding some remuneration or recompense out of that fund. Hon. members might, however, rest assured that in no case would a man be allowed to be victimised to such an extent as to be required to pay for his passage from Brisbane to Normanton.

Mr. FOXTON said he was one of those who thought that it was a hardship for witnesses in ministerial cases to have to pay their own expenses, and he would give two instances of great hardship, one as far back as twenty-two years ago. A man was taken from the Warrego—then the very outside limit of civilisation—to Rockhampton, to give evidence in a case. He had not the means of going himself, and was arrested, and was taken all the way in handcuffs.

The ATTORNEY-GENERAL: Was the policeman not discharged?

Mr. FOXTON said he forgot what the result was, but the man was very harshly treated. However, he did not lay much stress on that circumstance. There was another case a few years ago in which a man, living in or near Warwick, was subpœnaed to give evidence at Maryborough. He had not the means of going, and was conveyed from Warwick to Maryborough in custody to give evidence. Neither of those men was guilty of any offence except that of being unable to pay their own expenses to fulfil the mandate of the court. Yet they were made to suffer in that way. Ever since those two cases came under his notice he had thought it was a crying shame that men should be subjected to such treatment.

Mr. JESSOP said he thought the clause should be amended so as to give witnesses their expenses. He could quote several cases of hardship that had occurred within the last five or six months. A short time ago he discovered that one of his servants had embezzled a great number of small sums of money which he had received on his (Mr. Jessop's) account from people living a long way off. In corresponding with those people he was begged not to do anything, because some of them would have to come 200 miles to attend the police court, and then come in again to the trial. However, he had to take three or four cases against the man ; and he chose those where the witnesses were nearest. The nearest witnesses he could find were living fifty miles from the town where he lived. Most of them were working men on the railway, and it was a great hardship to them to lose their pay. Then the man was committed, and they had to travel the same distance again, and got nothing beyond the usual travelling expenses and 1s. a day. He also had to take business people from Dalby to Toowoomba, and they were obliged to spend three or four days, including the time occupied in going and coming, for which they got 5s. a day. Now, that was not sufficient to recompense a business man for spending that time in a strange town. Then there was another case where an officer of the Railway Department was accused of embezzlement. Four or five witnesses had to come to Brisbane to give evidence and were paid no expenses. Certainly the department granted them railway passes ; but they had to stay there two or three days, and it took a day to come and go. During that time they were away from their business to carry out

the ends of justice, and he held that something more than a bare railway fare should be allowed them. The man pleaded guilty when the case came on, and they were not required to give evidence, yet they had again to spend three or four days away from home at large expense, while they only received 4s. a day. As to the expenses paid to constables over and above their pay—3s. or 2s. a day—he would ask if a man who lived in Toowoomba, Dalby, Warwick, or Roma, and had to come to Brisbane, could live on that small allowance? There certainly should be some amendment.

The ATTORNEY-GENERAL said the case mentioned by the hon. member for Dalby was fresh in his recollection, and he would show that the witnesses did not suffer a substantial loss further than that occasioned by not being able to follow their occupations. It was thought desirable that that case should be tried in Brisbane, and the witnesses were provided with railway passes, so that they were not under any expense for travelling to Brisbane or back on the occasion of the preliminary hearing. Now, when they came the second time they did not get railway passes, but 10d. a mile all the way from Dalby, and 4s. a day while attending the trial. Some of them got not far short of £7, so that, after all, they would not lose very much. What they got in excess for attending the trial would compensate them for the expense they incurred over and above the railway passes. Those things often balanced themselves in that way.

Mr. JESSOP said he was quite willing to admit all that the Attorney-General had said, but the clause bore harshly on witnesses attending the police court, not on what took place afterwards. He would ask how those witnesses would have been remunerated for their expense and loss of time had the committal not taken place? There would then have been no more said about it. They would not have got the 10d. a mile, and he held that even that was not sufficient. What respectable hotel was there here where it would cost a man less than half-a-guinea a day?

The PREMIER said the subject was a larger one than some hon. members seemed to think. No doubt there was very often considerable hardship in cases where witnesses had to attend to give evidence at a police court; and there was also great hardship frequently in compelling people to attend as jurors, as the remuneration given by no means compensated them. But up to the present they had always gone on the principle that it was the duty of every man, if need be, to sacrifice himself to a certain extent to the ends of justice and the good of the community. If no one was to give his services to the country without being paid for it, they would have to increase the taxation very largely. On the whole, the burden was shared more fairly by each man taking his chance as it came, than it would be if direct remuneration were given. At the present time it might seem that the amount allowed in the superior courts on the trial of a prisoner was inadequate for the witnesses, and he was free to admit that it was very small. It was inadequate to remunerate them for their expenses, but the sum paid during the year ended on the 30th June, 1885, was over £7,000. If the expenses of witnesses in the police courts were paid—bearing in mind that a great many accused persons were not committed—an additional sum of £10,000 would probably be considerably under the mark. That was a very serious burden to ask to add at one stroke to the cost of the administration of justice. Complaints were even now made sometimes that the administration of justice in the colony was costly; and here was a proposal which would increase that cost by £10,000 or £12,000 a year at the very least. There had doubtless been some few cases of hardship, but not many, and the complaints against the existing arrangements were not numerous enough to justify them at the present time in asking the country to incur that additional expenditure.

Mr. MURPHY said the matter was one that came home to those who like himself were dwellers in the West, where, at police-court inquiries, witnesses had to go very long distances indeed, and in doing so were put, not only to great expense but to a great deal of hardship. In many cases witnesses had to give up their employment. Most of them were labouring men, and their places were filled up immediately; while they themselves had to travel to parts of the country where they were not known, and where it was often difficult for them to get work. The consequence of that was that many cases of villainy were never inquired into. The police found it impossible to get men to give the evidence which they could give. Many cases of horse and cattle stealing were never prosecuted because, when the police went to the men who they knew could give the requisite evidence, they simply denied all knowledge of the affair, knowing that it would cost them from £10 to £15 to get to the police court, and that they would lose their billets into the bargain. If magistrates at the preliminary inquiry could allow fair and reasonable travelling expenses, and for loss of time, to witnesses, it would have the effect of bringing to light a great many cases of crime which were now never brought to light by the police at all; and a great deal of the hardship which witnesses at preliminary inquiries had now to undergo would be removed.

Mr. DONALDSON said he could fully bear out what had been said by the hon. member for Barcoo. He himself knew of several cases out west where men were not prosecuted because it would have been attended with such loss to the prosecutors and the witnesses that they preferred letting the prisoners go. At a court of general sessions in the district with which he was connected that was stated as one of the chief reasons why a large number of persons were allowed to escape—the prosecutors and witnesses would in some cases have had to travel 400 miles to attend the preliminary inquiry. Only last summer a number of horses were stolen by two persons, and taken down Cooper's Creek. The persons from whom they were stolen got on the thieves' track, followed them up, retook the horses, and never brought the thieves to justice. The reason they gave was that they would have lost so much time and money in prosecuting that they were quite content to get their property back without proceeding any further. That was by no means an isolated case. Several of a similar nature had occurred in his district during the last three or four years. Places there were often 150 or 200 miles apart, and witnesses could not be expected to travel to the police courts willingly unless they had reasonable expenses allowed them. He agreed with the Premier that it was every man's duty to do something towards putting down crime, but where the cost to the individual was so great he was convinced that many cases of crime would be allowed to go unpunished.

Mr. FOXTON said it seemed to be generally admitted that cases of great hardship had occurred under the existing system—the line taken by the Premier being that they were hardships to which all were liable, and which ought to be borne in the interests of the public. The reference the hon. gentleman made to the compulsory service of jurors at the higher courts was scarcely to the point, because jurors were paid—very inadequately no doubt, still they were paid

their travelling expenses and for attendance. That was all that was desired for witnesses at police court inquiries—that they should be put on the same footing in that respect as jurors. The hon. gentleman contended that the burden of expenses of witnesses and jurors should be divided as equally as possible. That was what he also contended for. An extra £10,000 would be a very slight burden divided amongst all the taxpayers of the colony; but when it had to be borne by a very few individuals, as was now the case, it became a very serious matter. If it were the law that witnesses should be paid from the Treasury, very much greater discrimination would be shown in the selection of witnesses. At present there was an enormous mass of chaff mixed up with the wheat in depositions, as every gentleman who had occupied the position of Attorney-General knew too well. The bulk of it was often utterly worthless, with the consequence that at the trial the deponents were frequently not called. The result of that would be that a much smaller sum than £10,000 would be enough to meet all extra expenditure in that direction.

Mr. HIGSON said a case was brought before the Attorney-General last year which showed very clearly that some provision should be made for the payment of expenses of the kind referred to. A man was prosecuted at Bogantungan, and two men—one employed by him (Mr. Higson) as traveller—who were residents of Rockhampton, and fathers of large families, had on two or three occasions to go from there to the preliminary trial at the place where the court was held—Bogantungan, he thought—at their own expense. The trial took place in Rockhampton and resulted in a dismissal, and because those witnesses lived at Rockhampton they were not allowed any expenses. He thought in cases of that kind the Attorney-General would be quite justified in allowing expenses. He should certainly support any amendment that would provide for cases of that kind.

Mr. JORDAN said he was hoping in the course of the discussion that the hon. the Attorney-General would see his way to accept some amendment such as had been suggested by the hon. member for Bowen. The hon. member for Carnarvon had said very nearly what he (Mr. Jordan) had intended to say. The hon. the Premier had stated that at present the cost of witnesses' expenses was about £7,000 a year, and that if the Government paid the expenses of all witnesses the cost would be £10,000 or £12,000 more. But, even if it were £10,000 or £12,000 more, what was that when divided among 300,000 people? What would be the increased taxation to the extent of £12,000 spread over 300,000 people, compared to the evil of compelling persons to travel great distances to give evidence in courts of law? In this colony the circumstances were very different from what they were at home. There the facilities for travelling were numerous, and the expense small; but here it took days or even weeks to travel great distances, and people had to lose their time, their wages, and even their situations, to give evidence before courts. He was especially concerned for the working man, and certainly thought the feeling of the Committee was that in all cases persons who were called upon to give evidence in a court of law should be paid some reasonable amount of their expenses. Law, of course, they knew, was a very arbitrary thing. It was necessarily so, and although the public should be prepared to make some sacrifices in order to assist the administration of justice, he thought that idea might be carried too far. He did not see why they should call upon working men to be so patriotic as to lose their time and their employment, and to be out of pocket perhaps some pounds, in order to keep up that feeling of patriotism. He certainly thought they should endeavour to do justice in the matter of expenses, and that the cost should be spread over the whole colony.

Mr. CHUBB said he would point out, in addition to the arguments of hon. gentlemen to the effect that people in the outside districts would not prosecute in consequence of the distance they had to travel and the expenses they would be put to, that criminals in those back tracks knew that perfectly well, and very often committed crimes with the knowledge—the certainty almost—that they would not be prosecuted, on account of the expense witnesses would be put to. He was satisfied that the payment of witnesses' expenses would to a large extent be a keeper down of crime, and what they might spend on the one hand they might save on the other. Again, if they adopted a scheme for the payment of witnesses' expenses, justices would be extremely careful to bind over only those whose evidence was material. As it was now they bound over every individual who came before them, whether he could give evidence of any value or not. Again, when persons themselves laid informations, the officer of the court would ask, "Who are your witnesses?" The man—perhaps an ignorant man—would say "Smith, Brown, Jones, and Robinson," and get summonses issued for all of them, and when they came before the court perhaps only one of them could give evidence that was material. So with police officers; they did not exercise as much care as they might in ascertaining whether witnesses could give material evidence or not. The very fact of the Crown making provision for dealing with specially hard cases showed that the principle ought to be recognised. As the matter had been fully discussed he moved, as an amendment, that the words "except in the case of indictable offences," in the 5th line of the clause, be omitted.

Mr. FOOTE said he thought it was quite possible to carry the proposed amendment too far. It had been argued by hon. members that people in the outside districts would not prosecute in consequence of men losing their time, having to pay their own expenses, and in some cases their situations. He could not say how that would apply out west, but he was inclined to think that no reasonable employer would discharge a man because he was called upon to give evidence in a court of justice. Rather than discharge him, he (Mr. Foote) thought he should be very careful to keep his situation open for him if he were a worthy man. As to persons outside refusing to prosecute, the very same arguments applied to the inside districts; possibly not to the same extent, but still people engaged in business did not care to waste time in going to court, because the course of law was trammelled in such a way that it took up an immense amount of time, and in many cases they would rather suffer than attend the court to prosecute. He understood the hon. member for Bowen to argue that if reasonable expenses were allowed magistrates would be very careful in committing parties in consequence of the expense that would be attendant upon committal. Well, his experience of places outside Brisbane—of which he could not speak, as he had had no experience of it—was that wherever there was a responsible case tried before the bench, the police magistrate would not undertake the duty of giving a decision. Rather than take the responsibility of it he would send it to a jury. He had two cases in his remembrance. One was where the magistrate committed a person and he (Mr. Foote) was bound over as a witness to appear at a certain date. He told the magis-

trate at the time that the Attorney-General would not file a bill, and he did not; but he (Mr. Foote) was deprived of going south that season as he had intended. However, that was one of those things which fell in one's way, and could not possibly be avoided. He remembered another case where a police magistrate—a good man, too—refused to take the responsibility of adjudicating upon a case. He (Mr. Foote) was a witness, and almost got into "chokie" for remonstrating with him. He told him that the Attorney-General would not file a bill, nor did he do so. Where a legal quibble was likely to arise, he had invariably found that the police magistrates would not decide. He did not believe that the question of expense would make one iota of difference in any respect. With reference to the case quoted by the hon. member for Townsville, the Attorney-General showed that the man had been liberally dealt with. He had his return passage paid, and a considerable amount by way of expenses. It was quite clear that that person wanted to make a "haul" out of the department. He thought the clause was sufficient as it stood. Some cases of hardship did arise; but they were always reasonably dealt with.

The PREMIER said there was another serious matter to be considered. It was proposed to introduce a most important change in a summary way. The clause was proposed to be amended so that a policeman who summoned a man as a witness would have to tender him his expenses. In the case of summary convictions there was a private prosecutor, and the costs were recovered from the defendant, the proceedings partaking of the nature both of criminal and civil proceedings. There was somebody to find the money. But let hon. members consider what this proposal would lead to! In the first place, they would allow benches of magistrates to dip their fingers into the Treasury to any extent they pleased. That was a very serious thing. A justice might say a man's evidence was worth £5 or £10, and to that extent they would allow the different benches to dip their fingers into the Treasury! What principle was that? They were there to keep control over the expenditure of public money, and not to allow benches all over the colony to spend just what they pleased. How could the Government accounts be kept at all? And, again, how were the policemen to be found in pocket money to pay witnesses; how was that to be done? A policeman was sent out to find a witness and bring him in. He did not know where to find him; he might do so 10 miles or perhaps 100 miles off. According to the amendment, he must have sufficient funds about him to induce the man to come. Supposing he found three witnesses or four witnesses, he would have to carry a considerable sum of money with him more than there would be lying to the credit of the Government certainly in a country town, and it would not do to empower policemen to draw cheques upon the Government bank. Had the hon. member thought of all that? It was a more difficult subject than he seemed to think. He wished the hon. Treasurer were present as he could speak more plainly than he (the Premier) on such a subject. It would never do to say that a man need not come as a witness unless the policeman who served him with the summons gave him sufficient money to tempt him. He did not know of any machinery to provide policemen with money.

The HON. J. M. MACROSSAN: We can fix the amount.

The PREMIER: How can we fix it?

The HON. J. M. MACROSSAN: The hon. member for Carnarvon proposed to pay witnesses the same as jurors—so much per mile.

The PREMIER said he would rather withdraw the Bill than impose any such burden as that. If the Bill was to be an intolerable burden upon the country they had better withdraw it and suffer the ills they had. Complaint was made that at the present time witnesses did not get sufficient. They certainly did receive a very small amount, and it had been under the consideration of the Government for a long time to increase it as much as they could. Now, however, there was a proposal made to allow justices to dip their fingers into the Treasury to any extent, or at any rate to a very large extent, and which would necessitate entirely new arrangements for auditing Government accounts, and keeping funds in all the country towns where there were courts of petty sessions, many of them without banks. Nothing could be done unless the policemen were provided with money. It sounded at first as a very fair and reasonable thing to do to pay witnesses' expenses, but they must consider the circumstances under which they were required to come. If by any chance the policeman had not money with him—and he probably would not have, as he could not go about with a cash-box—the witness need not come, and by the time the policeman had obtained the money the witness might be gone a hundred miles away; so that he (the Premier) was very much inclined to think that the proposal made by the hon. gentleman, instead of facilitating the administration of justice, might hinder it, besides involving a larger expenditure than necessary.

Mr. BROWN said he did not intend to state to what extent witnesses should be reimbursed, but he would make a suggestion. The Premier asked how was a policeman to be provided with money to pay witnesses' expenses. He did not think there would be any occasion to do so. If each subpœna had a warrant attached to it intimating that the person would be paid his expenses on arrival at head-quarters that would be sufficient. He apprehended that the difficulty was that many working men were compelled to go who had not money enough to pay their expenses. That might be overcome by attaching a warrant to the subpœna, which would be negotiable, and which would provide them with an advance sufficient to take them to the place where the trial was to be held.

Mr. DONALDSON said that witnesses might be provided with certificates for reasonable expenses, the same as in the case of trials before district courts. He was quite prepared to admit that the proposal if carried out would be adding to the expense; and he would be sorry to support any amendment which would jeopardise the Bill, because he believed it was really a good one. Still, he believed that was a serious defect, and one which the Premier could remedy if he pleased. His idea was that magistrates should have the power of allowing reasonable expenses, the same as in regard to district courts. The witness would be provided with a certificate from the bench, and he would be allowed expenses in proportion to the distance he had to travel. He certainly would not be in favour of giving any payment previous to attendance. The man might abscond with the money; but after his attendance at the court a reasonable amount might be paid at the discretion of the bench. He knew that many cases had not been punished that ought to have been, because no expenses had been allowed to

witnesses, as people were aware that they would be large losers, and preferred to be so rather than prosecute. Sometimes they recovered the property and allowed the criminal to go unpunished.

Mr. CHUBB said he could see that the amendment he proposed would not do, and he had moved it more for the purpose of obtaining an expression of opinion from the Premier. The hon. member's arguments had a good deal of the *ad captandum* in them, because he suggested a good many difficulties which resolved themselves into molehills when they came to be considered. He was about to suggest that a magistrate might give a witness a certificate for the payment of reasonable expenses, which might be paid on presentation of the certificate at the Treasury or to a clerk of petty sessions. That he thought a suitable scheme, and there was no reason why it should not be worked out if the Committee accepted it. With that view he would withdraw his amendment, and if the hon. gentleman in charge of the Bill did not propose such amendment as he suggested he would propose one himself.

Amendment, by leave, withdrawn.

The PREMIER said the plan suggested by the hon. member had occurred to him, and he had listened to the whole of the debate to see if there was any way of meeting hon. members' desire to do what was no doubt justice to witnesses. The plan first proposed would not do, and the plan now suggested to give justices the power of allowing witnesses' expenses in a preliminary investigation would be simply allowing justices to dip their fingers into the Treasury on a somewhat haphazard principle. They might give one man a bonus of £1 and another £5, and might say to a third, "We will not give you anything." The fact was the subject required more consideration than they could give it that evening.

Mr. NORTON: Allow mileage.

The PREMIER said he had roughly drafted something in this way — "The Governor in Council may prescribe a scale of allowances to be made to witnesses in cases of indictable offences"; but the question arose—Who was to determine whether they should get them or not?

An HONOURABLE MEMBER: The magistrates.

The PREMIER: It was all very well to say "the magistrates," but it should be remembered they were speaking of the payment of public money to come out of the Treasury. He did not know of any instance where the principle was set aside, that only a responsible officer should be allowed to draw money out of the Treasury. It should be done only by a Government officer. There was a sum on the Estimates last year for allowances to witnesses attending police courts. That sum was placed on the Estimates, on his own recommendation, for the purpose of meeting cases of special hardship, and would no doubt continue on the Estimates in future. It was found absolutely necessary in some cases to pay the expenses of witnesses in order to secure their attendance, and the amount would probably have to be increased. The sum last year was £500, and it would probably be more this year; but if it was proposed that all witnesses should be paid they would have to put on about £15,000 to commence with. The subject might well be dealt with in another Bill.

An HONOURABLE MEMBER: Postpone the clause.

The PREMIER said they could not deal with it now, that was certain. It should be dealt with in a separate clause from the one under discussion.

Mr. NORTON: Delay is dangerous.

The PREMIER said it really had nothing to do with the clause. He would like to know also what proposal was to be made, because if it was to provide any scheme for dipping into the Treasury it would have to be preceded by a recommendation before they could deal with it. The matter required a great deal more consideration than they could give it at the present time. It really had nothing to do with the Bill before them, and was of sufficient importance to be dealt with in a Bill by itself. He hoped, therefore, hon. members would allow the clause to go. A definite scheme of the kind requiring public expenditure would require to be introduced by a recommendation from the Crown. They should first know what definite proposal was to be made, but at present it was impracticable to go on with it.

The ATTORNEY-GENERAL said there were many reasons why a matter of that kind should form the subject of a special Bill. Everyone knew that the present regulations for the payment of witnesses attending the superior courts was not at all satisfactory, He had gone through the whole matter last year, had given it very careful consideration, and had drawn up a scheme which he thought would be found more satisfactory. That scheme would involve additional expenditure, and he had not yet submitted it to the Cabinet for consideration. The present question might at the same time be dealt with in a special Bill. It would be far better to have one special enactment to cover the whole ground than to deal with the matter before them in a separate enactment and without sufficient consideration.

Mr. CHUBB said they had before them a Bill consolidating all the laws relating to justices, and they should try if they could not in that measure put in a provision dealing with the subject they were now discussing. They entrusted justices, under the Bill, with the power of granting expenses in cases of summary jurisdiction.

The PREMIER: That is not paid by the Crown.

Mr. CHUBB said it was paid by the losing party, but he could see no difference in the principle. The Premier said, "Can we entrust an irresponsible person with the duty of saying how much of the public funds should be paid to witnesses?"

The PREMIER: I say we cannot; such a principle would not be sanctioned in any country in the world.

Mr. CHUBB said, if they could not do that they might still fix a basis upon which allowances should be made, say on the basis of mileage. A man going from here to Roma to give evidence on a preliminary investigation received nothing in the way of expenses, and yet on going back in a month's time to give evidence at the trial he received remuneration. That was the anomaly in the present system.

The ATTORNEY-GENERAL: That is fixed, not by an Act of Parliament, but by regulation.

Mr. CHUBB: It could be fixed by an Act of Parliament.

The PREMIER: Not in this Bill.

Mr. CHUBB said it could not be fixed by the Bill except on a special recommendation. He would be quite satisfied if the Government would bring forward a measure dealing with the matter, or if they would agree to fix a scale; but no such promise had been made. The clause might be postponed, and they might go on with the other clauses that did not hang upon it, and when the Government had time to consider the matter they might be prepared to recommend a clause or an

amendment which the Committee would accept; or they might have an expression of opinion from the Government as to whether they would be prepared to ask the House either this or next session to consider a Bill dealing with the question.

The PREMIER said the proposition really made now was this: that witnesses should be paid at the preliminary inquiry as well as at the trial before the jury. That was the proposition. What had that got to do with the Bill? Neither subject was at the present time dealt with in the Bill, which was a measure relating to justices. There was nothing in the measure to prevent a witness being paid his expenses, only a policeman was not bound to give him the money when he served the summons.

Mr. DONALDSON: A tender of expenses must be made in a civil case.

The PREMIER: That was to compel the witness to attend. If it was insisted that payment should be made in that way to witnesses summoned under the clause now before the Committee, the policeman would have to be provided with money to carry round with him; such an arrangement was impracticable. It appeared to him that the subject should not be dealt with separately in that Bill. At the present time witnesses attending the criminal courts were paid according to a scale fixed by regulations and under the safeguard of supervision by proper officers. No payment was ever made except on a voucher signed by a responsible officer of the Government certifying that the witness was entitled to the sum claimed. How would that system act in the casual sort of way witnesses were often got at the police court? Who was to know where a man came from? Every payment made with respect to witnesses in the other courts was investigated and scrutinised most closely by the Auditor-General. They could not introduce into that Bill any provision of that kind; it was altogether foreign to the Bill. The payment of witnesses was a subject of itself, and it was not reasonable to deal with it in that Bill. It was a difficult matter to deal with, and he hoped hon. members would give it further consideration, as the Government would do, and that they would be able to provide some satisfactory way for meeting the expenses of witnesses. He did not at present see how they were to get over the details and provide the necessary precautions which would have to be provided to see that the money was not wasted, and that it had only been spent in accordance with the provision made, and under the guarantee of some responsible officer of the Government. Those matters seemed to him to be the essentials. He dared say a scheme could be worked out. The clause under discussion, however, simply provided that when a witness did not attend after being summoned he could be brought up on warrant. That was all it did, and he hoped hon. members would not insist on delaying the Bill until they had dealt with an entirely different subject.

Mr. NORTON said he was sure that hon. members had no desire to delay the Bill. If they could get a promise from the Premier that he would introduce a Bill dealing with the subject they would be satisfied.

The PREMIER: That may involve extra taxation and all sorts of things. I am not going to give such a promise on the spur of the moment.

Mr. NORTON said he did not think there should be any great difficulty in the matter, and he was sure that if the hon. gentleman made up his mind to deal with the subject he would be able to devise a suitable scheme. There should be no difficulty in ascertaining where a witness came from; that had to be found out when he attended a higher court, and it might also be done at the police court. He repeated that his side of the Committee had no desire to delay the measure; but, on the contrary, they wished to see it pass. They would, however, like to have some promise that the matter of witnesses' expenses would be dealt with by the Government.

Mr. FOXTON said he sympathised with the Government in what might appear from their point of view an insidious attack upon the Treasury. At the same time he looked at the matter in this light: that the larger the amount involved the greater was the necessity for remedying the injustice. He certainly thought that three-fourths of the members of the Committee were of the same opinion as those who had spoken—namely, that witnesses should be paid; and he was also confident that a very large majority out of doors held the same view. He admitted that there was a difficulty in dealing with the subject, and that the simple verbal amendment proposed by the hon. member for Bowen would not meet the case owing to the difficulties pointed out by the Premier. But nevertheless a system something similar to that which obtained in the other courts might be adopted, possibly with greater safeguards. Police magistrates dealt with the majority of serious cases which came before the police courts, and if they could not be entrusted with the administration of a fund such as that which would be placed at their disposal for the purpose suggested, he thought they were not fit to discharge the duties with which they were now entrusted.

The PREMIER said it struck him that the best way to deal with the matter was this: At the present time witnesses' expenses at a trial were determined by regulations passed he did not know at what period, but it was a very long time ago. Those should be revised. In doing that, regulations could also be made to define how the money voted for the payment of the expenses of witnesses at preliminary inquiries should be expended. It might be provided that such payments should be certified to by a police magistrate as an officer of the Government, or a superior officer of police, or some other superior officer of the Government. He could see no difficulty in framing regulations in that way, and it seemed to him at the present time the most convenient way of dealing with the subject. Whether there should be an Act of Parliament was another matter. Probably it would be better that there should be. He could, however, undertake to say that when the Government were revising the other scale of witnesses' expenses they would take that matter into their consideration, and if they could see their way to deal with it in a way that would not involve large taxation they would be very glad to do it. He believed the opinion of the Committee was in favour of an allowance being made to witnesses—under some circumstances at any rate. He did not think that it was in favour of an allowance under all circumstances. For his part he would not allow expenses to persons resident in the town where the court was held. He would promise that the Government would take the question into consideration when dealing with the other matter, which was as much as he could say at present, and he hoped that would satisfy the Committee.

Clause put and passed.

Clauses 80 to 82, inclusive, passed as printed.

On clause 83, as follows:—

"When justices have authority to summon any person as a witness they shall have the like authority to require and compel him to bring and produce for the purposes of evidence all documents and writings in hi

possession or power, and to proceed against him in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

"Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which he would not be bound to produce upon a subpœna *duces tecum* in the Supreme Court."

Mr. PALMER said that was the proper place to call attention to a matter which he did not think had been referred to when the expenses of witnesses were discussed, and that was the great inconvenience to which medical witnesses, going long distances to give evidence, were put. He had shown last session that their evidence could be taken by affidavit, and a great deal of expense to the country, and a great deal of inconvenience to the medical men, would thus be saved. By travelling hundreds of miles, as they sometimes had to, they lost time and practice, being absent in many cases five or six weeks from their homes. Ordinary witnesses professed to lose a great deal, but medical men were put to great cost and loss of practice, and losing practice meant the loss of their livelihood. Ordinary witnesses lost their time and labour certainly, but he thought that none suffered so heavily as medical men, and some arrangement ought to be made so that their sworn evidence could be taken before the prisoner or defendant, who should have the option of cross-examining. If the evidence were then forwarded to the place of trial, it would relieve the witness from the necessity of attending to give the same evidence which he had already sworn to. It seemed simple enough, and would save great expense to the country and great loss to medical men; and at the same time the defendant or plaintiff would have an opportunity of cross-examining him.

The ATTORNEY-GENERAL said that would necessitate an alteration in the law of evidence. It did sometimes seem unnecessary that the evidence of a medical witness given once in the police court should have to be given *vivâ voce* in the higher court; but it must be borne in mind that the medical witness was often a witness of great importance. In many cases counsel did not appear for the accused person in the police court, but did appear before the criminal court; and in that case it was of the utmost importance that the medical witness should be present to be cross-examined. The prisoner certainly had the right to cross-examine any witness at the preliminary hearing; but the evidence of a medical witness was often of a very scientific character, quite beyond the capacity of the prisoner to understand.

Mr. NORTON said there was a still more important point involved in the question. There were many towns in the country where there was not more than one medical man, and if he were compelled to leave his patients it might result in loss of life.

Mr. PALMER said the particular case brought home to him was that of a doctor at Cloncurry, who was the doctor of the hospital. He had to appear at Townsville as a witness in a criminal case, and merely gave the evidence he had already given in Cloncurry. He believed that if medical men had to incur such a tremendous loss they should receive a more liberal allowance than ordinary witnesses who did not suffer twice over—the loss of practice and the loss of time. Besides, as was pointed out by the leader of the Opposition, there was the danger and loss to the community as well.

The PREMIER said that in this case as in many others they had to deal with the balance of convenience or disadvantage. It was a great disadvantage if the only medical man in a town were taken away to attend as a witness; but, on the other hand, if he were absent the prisoner would perhaps be convicted unfairly. The principle acted upon—and he thought it a sound one, whether there might be possible exceptions to it or not—was that no man should be convicted unless the witnesses against him had appeared face to face with him and undergone examination and cross-examination.

Mr. PALMER: But in this case the witness had.

The PREMIER: He had nominally, but the examination at the police court was only a nominal one; and—as the Attorney-General had asked—what could a prisoner do in the way of cross-examining a doctor?

Mr. PALMER asked who would be responsible in case loss of life occurred through a medical man being taken from a district—the Government who compelled him to go, the doctor who went, or the prisoner who was the cause of his going?

Mr. CHUBB said he thought that in a case of life and death a man would be justified in disobeying the subpœna.

Clause put and passed.

Clauses 84 and 85 passed as printed.

On clause 86, as follows:—

"Any justices may order the defendant to be brought before them at any time before the expiration of the time for which he was so remanded, and the officer in whose custody he then is shall duly obey such order."

Mr. DONALDSON said that in the discussion last night on clause 28 there seemed to be a general desire that the police magistrate should have the power to override the decision of justices on the bench. Now, a police magistrate at one place was sometimes a visiting magistrate at another, and it might happen, unless the clause were amended, that when he had gone away leaving a case remanded, the justices in his absence would deal with the case.

The ATTORNEY-GENERAL said it was not likely the police magistrate would make a remand by which a prisoner would be prejudiced. Besides, unless the police magistrate was alone on the bench at the initiation of the proceedings—if there were two other justices present—they could go on with the case in the absence of the police magistrate. If the magistrate had to go a long distance, he was hardly likely to make all parties concerned subservient to his convenience.

Mr. DONALDSON said what he wished to point out was this: It was only in the case of a committal that the police magistrate would have power to override the decision of the other justices; and it was quite possible that a day or two prior to his going away the other magistrates might say, "We will remand this case for so many days." The police magistrate would have no power to prevent that, and perhaps during his absence the justices would bring the prisoner up again and deal with him.

The ATTORNEY-GENERAL: There is no way of avoiding that.

Mr. CHUBB said that would be a case of corruption. He thought the hon. member did not understand the object of the clause. The magistrates might remand by a written order for eight days, or verbally for three days. Now the clause provided that if, in the interval, evidence was at hand which would enable the case to be dealt with, the man need not be kept under remand till the eight days had expired, and be then brought up.

Mr. DONALDSON said he was quite aware of that. He was simply pointing out that certain things might be done under cover of it.

The bench might remand a prisoner for three days by a majority, and then dismiss the case against him when the police magistrate would necessarily be absent.

The ATTORNEY-GENERAL said that in a case so transparent as that there would be very good grounds for preventing those gentlemen from repeating it in the future.

Mr. NORTON said he thought remands were sometimes granted too frequently. He had noticed many complaints on that subject lately in the papers, and in looking through the police records in different parts of the colony there was nothing but remand after remand. It seemed to him that the thing was sometimes carried too far.

The ATTORNEY-GENERAL said the police had to arrest a man when the opportunity presented itself. If they waited until all the witnesses were got together the man would have got away. After arresting him they had to show that there was a possibility of getting certain evidence to prove the offence. If that evidence could not be got together within two or three days, it was not, in nine cases out of ten, the fault of the police. If there was any well-founded charge of unnecessary delay on the part of the police or the authorities, the Government would very soon inquire into it. It was inevitable that there must be remands in cases of a very serious character, and he did not see how they were to be avoided.

Mr. NORTON said it struck him that sometimes the police were not active enough in getting the witnesses together after a man had been arrested. He had noticed cases where the accused had been remanded three or four times, and eventually the evidence was not sufficient to justify the man being detained any longer, and he was accordingly discharged.

The ATTORNEY-GENERAL said the police sometimes experienced the greatest possible difficulty in inducing persons who, they were sure, were in possession of a knowledge of the facts to give evidence of those facts. If the difficulties which the police authorities encountered in bringing home crime to criminals were more fully understood, they would be more sympathised with in the delays that sometimes took place. It often happened that people were in the first instance willing to come forward and give evidence, but before the hearing they were got at by the friends of the prisoner and what was called "squared." It was often morally certain that a prisoner was guilty, but when the witnesses were "squared" the police were obliged, in the interests of justice, to cast about for other witnesses to give the necessary evidence.

Clause put and passed.

Clauses 87 to 93, inclusive, passed as printed.

On clause 94, as follows:—

"When justices have fixed as regards any recognisance the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, need not be entered into before the same justices, but may be entered into by the parties before the same or any other justice or justices or before any clerk of petty sessions, or before an inspector or sub-inspector of police or other police officer who is of equal or superior rank or who is in charge of a police station, or, where any one of the parties is in gaol, before the keeper of such gaol; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before justices shall apply, as if the recognisances had been entered into before such justices as heretofore by law required"—

The ATTORNEY-GENERAL stated that the clause was taken from the Imperial Act, and would be a useful addition to the Bill.

Clause put and passed.

Clause 95 passed as printed.

On clause 96, as follows:—

"When a recognisance is conditioned for the appearance of a person on a certain day before justices, or to take his trial before the Supreme Court or a district court, if the sureties bound by such recognisance have reasonable ground for suspecting that such person will not voluntarily surrender himself, they may before the day so appointed apprehend their principal and bring him before justices, or deliver him into the custody of the keeper of the gaol named in the warrant of commital, as the case may be. And any police officer shall, if required by such sureties, assist them in such apprehension"—

The ATTORNEY-GENERAL said that was understood to be the law in the colony at the present time, but it did not exist in statutable form. It was desirable, therefore, that a provision of that kind should find its place in the Bill.

Clause put and passed.

Clauses 97 to 103, inclusive, passed as printed.

On clause 104, as follows:—

"After the examination of all the witnesses on the part of the prosecution is completed, the justice, or one of the justices before whom the examination has been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the defendant the depositions taken against him, and shall say to him these words or words to the like effect:—

"'Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. You are clearly to understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding any such promise or threat.'

"And whatever the defendant shall then say in answer thereto shall be taken down in writing and read to him, and shall be signed by the justice or justices, and by the defendant, if he so desires, and shall be kept with the depositions of the witnesses, and shall be transmitted with them to the proper officer as hereinafter provided.

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

The ATTORNEY-GENERAL said that clause was in effect, with the exception of the last paragraph, the same as clause 31 of the Evidence and Discovery Act. It was, however, now framed in a form which made it more easily understood. Instead of leaving a magistrate to carry out his own idea of making it clear to the defendant that he had nothing to hope or fear in regard to any admission he might make, as was the case under the clause of the Evidence and Discovery Act to which he had referred, he was required to use the exact form of words laid down in the clause. That was considered much more satisfactory than leaving it to the discretion of the justice, who in the attempt to make the caution clear might make it exceedingly foggy and unintelligible. The last paragraph, which was new, was a very useful provision by which a great deal of time would be saved. It provided that if at any stage of the proceedings the depositions had been read over to the defendant it should not be necessary to read them over again formally before he was committed for trial. As it now was, every time a prisoner was committed for trial the magistrate had to read through the depositions in the case from beginning to end, however voluminous they might be. This provision would therefore effect a considerable saving of time, as the depositions would not be read over again unless the prisoner desired it.

Mr. CHUBB said the first part of the explanation of the hon. the Attorney-General was scarcely consistent with the section, because in the 5th line it provided that "words to the like effect" might be used. It was therefore left to the discretion of the justice, to some extent, to use what words he thought fit.

The ATTORNEY-GENERAL: If he used a synonym it would not vitiate the proceedings.

Mr. CHUBB: There was, at any rate, some difference between the hon. gentleman's explanation and the section itself. As to the last proviso, he (Mr. Chubb) thought he might take the credit for it, having mentioned it when the Bill was under discussion last year. He had seen it in operation so often; in a case that took, perhaps, a fortnight or three weeks to hear, the evidence had to be read over ten or a dozen times. Although no one wanted it, the law required it; it had to be done, and the waste of time was very great.

Mr. NORTON said the reading over of the evidence might be very properly abolished altogether, except when the prisoner wanted it. He thought that unless the evidence had been read over the prisoner should be asked whether he would like that to be done.

The ATTORNEY-GENERAL: Oh, no!

Mr. CHUBB: The proviso says, "on being asked."

Mr. NORTON: The clause provided that if the prisoner was asked to express a wish, and he then desired that the evidence should be read over, it would be read over; but he thought the prisoner should be asked. The evidence should not be read over merely for the sake of reading it; but unless it was made compulsory that the prisoner should be asked if he desired it, it might escape the justice's memory altogether.

The ATTORNEY-GENERAL: It would be of no practical value to the prisoner.

Mr. NORTON said he was not so sure of that. At any rate, he thought the question should be put to the prisoner, and he should have the option of having the evidence read over or not.

Mr. PALMER said the clause provided for the defendant being cautioned by the magistrates as to any statement he might make, but there was another complaint frequently made to which he thought it was necessary to refer—was, that policemen, on arresting prisoners, were in the habit of extorting words from them and afterwards using those words in evidence against them. It was a common cause of complaint that prisoners when taken were worked upon in some way or another, and—he would not say actual false pretences, but false promises or hopes were held out to them to make admissions, and so soon as they were made they were used in evidence gainst them. He certainly thought that such admissions should not be extorted, unless the prisoner was cautioned by the policeman in some such way, as it was provided by the clause that he should be by the justice.

The ATTORNEY-GENERAL said there was a well-known rule of evidence bearing upon the admissibility of admissions made by prisoners to constables or any other persons; but, even if it could be introduced into a measure like that before them, he thought it would be very difficult indeed, and very undesirable, to attempt to prevent constables asking prisoners questions. For example, a man might be arrested for having a watch in his possession which was known to have been stolen, and the constable might ask, "Where did you get that?" That was not extorting evidence; and he thought it would be unwise to pass a law to prevent questions of that kind being asked.

Mr. SHERIDAN said the usual practice was for the apprehending constable to give warning to the accused person as to what he might not say. His experience was that when the constable had not given that warning anything that the prisoner might say was not admissible in evidence; but when the warning had been given, and the accused made any statements, it could be used as evidence against him.

Clause put and passed.

Clauses 105 and 106 passed as printed.

On clause 107—"Discharge of defendant"—

Mr. NORTON asked what was the practice at present when prisoners were discharged after having been brought from a distance? Were they allowed any means of getting back to their own districts?

The PREMIER said he was not prepared to say at a moment's notice. He did not remember any particular case coming under his notice. In hard cases redress should be made.

Mr. NORTON said he mentioned the subject because he had heard of several cases where prisoners had been brought to the superior courts, had been acquitted, and had suffered great hardships through not being allowed any means of getting back to their homes.

Clause put and passed.

Clause 108 passed as printed.

On clause 109—

"But if there is only one justice present, and the evidence is such as neither to raise a strong or probable presumption of guilt nor to warrant the dismissal of the charge, such justice shall order the defendant to be remanded from time to time until he can be taken before two or more justices"—

Mr. HAMILTON said that was a very singular clause. The prisoner was not supposed to bring evidence to warrant his dismissal. It was for the accuser to bring evidence to show that there was a strong or probable presumption of guilt, and yet, if there was no evidence produced to show that, the prisoner was subject to be remanded from time to time until an additional justice came upon the scene. There were many places in the interior where there was only one justice within a hundred miles or more, and in such cases it would simply mean that a person against whom there was no strong or probable presumption of guilt might be remanded for an indefinite time. What benefit would accrue from the other justice coming?

The ATTORNEY-GENERAL said the clause was simple enough. It meant that where a justice had a man brought before him, and the evidence was such that he could not say whether he ought to be dealt with or discharged, he could remand him until further evidence could be obtained. If the justice said to himself, "I cannot conscientiously discharge that man, or do anything else," what was the proper course under the circumstances, but to remand him until some other justice came to help him to make up his mind.

Mr. LUMLEY HILL said that was what he called giving the prisoner the benefit of the doubt. It was a benefit that he was entitled to. When a man was taken before a magistrate, he had better wait to make quite sure that the man was innocent before he was let go. If there were any doubt it would be better to get a second opinion.

Mr. HAMILTON said it was not giving him the benefit of the doubt, because it stated distinctly that a justice could remand a man if he were not satisfied that there was sufficient evidence against him.

The ATTORNEY-GENERAL asked if a magistrate should discharge a man when he could not conscientiously do so? The hon. gentleman wanted the magistrate to do a thing that he said he could not do. It was hard to coerce a magistrate to go against his conscience in any way. The man might only be remanded for twenty-four hours.

Mr. HAMILTON: There may not be another justice within 200 miles.

Mr. CHUBB said there might be two justices, and both be in the same quandary, and were they to remand until they could get more justices? One justice had the power to commit an accused person for trial. No doubt the clause would work harshly in the more sparsely populated districts, where only one justice could be obtained perhaps in fifty miles; because he might not be strong enough to make up his mind one way or the other. They should put him to the point of making up his mind, and if he did discharge a man wrongly he could be arrested again, as discharge by a justice did not end the proceedings for an indictable offence.

Mr. LUMLEY HILL said there was a particular advantage about the clause in the outside districts. In some cases where a man was brought up for an offence which was pretty well known and pretty fairly proven, and the magistrate knew that there would be a considerable expense to the colony in sending witnesses down, punishment might be meted out by several remands. In his capacity as magistrate, he had frequently remanded prisoners whom he knew were guilty and whom it was not worth while to send down for trial. It was a very good clause indeed, and magistrates would not remand unless they were fairly certain that the individual was guilty.

Mr. HAMILTON said the objection he had to the clause was this: It was stated the other evening that one reason why certain powers should be taken out of the hands of justices was that they might be biased in favour of a prisoner; and he thought it was possible that they might be biased also against a prisoner, and a justice might make a malicious use of his power to punish a person against whom he was biased. Power was given under the clause to remand a prisoner for an indefinite time, and yet there might not be sufficient evidence to raise a strong or probable presumption of guilt against the man. He had been in a place where there was only one magistrate within a distance of 150 miles. He had been in a place for four or five months where there was only one magistrate within the distance he had mentioned, and a man might be remanded for four or five months in such a place.

Mr. PALMER: Is there any limit to a remand by one justice?

The ATTORNEY-GENERAL: Yes; eight days is the outside limit.

Clause put and passed.

On clause 110—"Justices need not be present during whole examination"—

The ATTORNEY-GENERAL: This is an affirmation of the existing law.

The PREMIER said of course the clause was necessary. A man might be brought up in Brisbane and remanded to Normanton. A similar case arose the other day. A police magistrate went into a different town to the one in which he usually sat, and while there heard all the evidence brought before him. He then left and went sixty or seventy miles away, being given to understand that further witnesses would be called in the case. When the case again came on no other evidence was forthcoming, and some difficulty arose as to whether the justices then present could commit the accused as they had not heard the whole of the case. The result was that the case was hung up until the justices were informed that they had power to commit. It was very desirable that the doubt should be removed, and that justices should know what they had power to do in such a case.

Clause put and passed.

Clause 111—"Depositions of persons dead or absent"—passed as printed.

On clause 112, as follows:—

"Nothing in this Act contained shall be construed to require any justices to hear evidence on behalf of any person charged with an indictable offence as such unless it appears to them to be conducive to the ends of justice to hear the same."

The ATTORNEY-GENERAL said the clause had provoked a considerable amount of discussion, and he would move that it stand part of the Bill with a view of negativing it and substituting for it a new clause which had been circulated among hon. members.

Mr. PALMER asked whether under the clause the evidence of a wife for or against her husband would be available?

The ATTORNEY-GENERAL said the provision referring to the wife or husband of a defendant giving evidence referred only to cases of simple offences or breach of duty, and was not applicable under the clause in the hearing of indictable offences.

Clause put and negatived.

The ATTORNEY-GENERAL moved that the following new clause, 112, stand part of the Bill:—

When a person is charged with an indictable offence as such, the justices shall be bound to hear any evidence tendered on his behalf tending to show that the defendant is not guilty of the offence with which he is charged.

The clause did not require any particular explanation. There might be cases such as were referred to by the hon. member for Bowen, where on a preliminary hearing the charge might turn out to be an indictable offence. In other cases—simple offences—evidence might be given on behalf of the defendant by the defendant if he chose. The new clause dealt with cases in which the charges in their nature were indictable offences, and made the provision which hon. members in discussing the matter contended should be made in cases of the sort.

Mr. CHUBB said he was glad to see the Government had accepted the suggestion of his side of the Committee. The new clause exactly met their objections. It was an improvement upon the Bill, and would be found to enable complete justice to be done.

New clause put and passed.

On clause 113—"Bail in treason and capital felony"—

The ATTORNEY-GENERAL said there was an alteration in that clause which he thought would be admitted to be an improvement upon the existing law. The law at present was that "no justice of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail except by order of one of Her Majesty's Secretaries of State or by Her Majesty's Court of Queen's Bench at Westminster or a judge thereof in vacation." It was proposed to substitute "the Minister" for Secretary of State. In the draft last year the Governor was put in, but as he always acted on the advice of the Executive Council, and the Council was guided by the Minister in charge of the department, it was thought desirable to put in "the Minister."

Clause put and passed.

Clauses 114 to 118, inclusive, passed as printed.

On clause 119—"Bail for persons charged with other misdemeanours"—

Mr. NORTON said he did not know whether it was worth while saying anything about that provision, but it had been pointed out to him that it had not unfrequently happened that a person admitted to bail had "skedaddled"; and he had heard of a case where bail had been allowed apparently with the intention that the accused person might escape. He did not know whether they could do anything to prevent that.

Clause put and passed.

Clauses 120 to 127, inclusive, passed as printed.

On clause 128, as follows:—

"If in any case a defendant is committed to take his trial before a court which has not jurisdiction to try the case, or before which he ought not to be committed to take his trial, or the judge whereof is by reason of interest or otherwise incapacitated from trying the case, the committing justices or any other justices may at any time before the time appointed for holding such court direct the defendant and the warrant of commitment to be brought before them, and may upon production of the depositions and without further evidence cancel the warrant of commitment, and may commit the defendant afresh to take his trial before another and the proper court, or if the defendant is brought before the court at the time appointed for holding the same, the court may, notwithstanding such defect of jurisdiction or incapacity, remand him to take his trial before another and the proper court.

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

The ATTORNEY-GENERAL said that was an entirely new clause, and, as had already been pointed out, had been introduced for the purpose of making provisions by which a great deal of loss of time and money, not only to the Crown but also to prisoners and witnesses, might be obviated. He intended to propose an amendment in the clause. It not unfrequently arose that a defendant was committed to take his trial at the wrong court. In fact that frequently occurred. A case happened only last week, and many cases had happened during his experience, and must also have happened during the experience of the hon. member for Bowen. There had been no alternative in some cases but to adopt a course not sanctioned by the law. The hon. member for Warrego was familiar with one case of that sort; and unless some provision of the kind proposed became law, the object for which the district courts had been established in distant parts of the colony would be defeated. He did not wish to speak at unnecessary length of cases which the clause would have prevented. A man might be committed to take his trial at a district court which was not the district court nearest to the place where the offence had been committed. For instance, one case occurred in the neighbourhood of Thargomindah. The justices at Thargomindah, for some reason which he did not know, took upon themselves to commit the defendant, not to the neighbouring district court at Cunnamulla, but to the district court held at Roma. Their reason for so doing probably was that the court at Roma was likely to be held a few days before the court at Cunnamulla. Now, the district court had been established at Cunnamulla for the express purpose of meeting a want felt in that far-away district. It was very well known to hon. members that there were witnesses, as had been pointed out that afternoon, who would not give evidence against a man if they expected to be dragged an enormously long distance, as from Thargomindah to Roma, in order to give their evidence; but they had no such reluctance when the court was within a reasonable distance, as from Thargomindah to Cunnamulla. It seemed rather farcical that the judge of the district court and all the machinery of that court should be employed at great expense for holding a court at Cunnamulla, quite close to the place, and merely because the Roma sittings began a few days before the prisoner was committed to that court, all the witnesses should be put to the expense and loss of time of going to Roma. Now, that was a case of wrong committal; and while the present state of things existed there would be no way of removing the difficulty. He (the Attorney-General) could not order the man's discharge, nor could anybody else, and that man would have to remain as he was until he was discharged by the order of the court and recommitted to the proper court. Then if the witnesses did not appear they would have to go to the expense of waiting for the witnesses to give their evidence, and the whole case would have to be gone through again, and the witnesses subjected to the double hardship of taking two journeys without their expenses being provided, to ensure the committal of the man.

Mr. CHUBB said that all he had to say on the clause he had said on the second reading. It was a very useful one, as the Attorney-General had said, and had been very much wanted. He remembered one case—a very bad case—of fraudulent insolvency which occurred at Gympie, and the accused person was arrested in Brisbane, and committed for trial at the local district court. He was brought before the judge and discharged. The clause, however, would meet a difficulty like that.

The ATTORNEY-GENERAL moved that there be inserted the words "if any," after the word "commitment" in the 4th line on page 21, and the words "whether the defendant has been admitted to bail or not," after the words "before them" in the same line. The object of the latter amendment was that as the clause stood at present it met the case of a man who was in gaol on a warrant of commitment, but not the case of a man on bail, and the insertion of those words would cure that.

Mr. PALMER said that of course there were various ways of looking at that clause. A case struck him as likely to happen which he thought the Attorney-General had failed to see in his explanation. Say, a man had been committed at Normanton to the district court at Cooktown, and that he had taken his passage for Cooktown. In that case, if the justices at Cooktown were not able to deal with the case, or supposing the court had no jurisdiction, would he have to go back to Normanton for recommittal?

The ATTORNEY-GENERAL: The justices at Cooktown could recommit him.

On motion of the ATTORNEY-GENERAL, the clause was further amended by the insertion, after the words "proper court," of the words "and may in a proper case admit him to bail as hereinbefore provided, or enlarge his bail if he has been already admitted to bail"; by the insertion at the end of the 1st paragraph of the words "and may in a proper case admit him to bail subject to the provisions hereinbefore contained, or enlarge his bail if he has been already admitted to bail"; and by the insertion, after the word "commitment" in the 2nd paragraph, of the words "or remand."

Clause, as amended, put and passed.

On clause 129, as follows:—

"At any time after all the depositions have been taken, the defendant, whether he has been committed to gaol or admitted to bail or has been discharged, may require and shall be entitled to receive copies of the

depositions from the officer or person having the custody thereof on payment of a reasonable sum for the same, not exceeding the rate of twopence for each folio of ninety words.

"Provided that the judges of the Supreme Court, or any three of them, of whom the Chief Justice, or in his absence the senior puisne judge, shall be one, may by general rule fix some other rate not exceeding fourpence per folio, which shall be paid for copies of depositions had under this section."

Mr. CHUBB said that in the debate on the second reading he objected to prisoners being compelled to pay for depositions; and he thought hon. members generally agreed that they should have the depositions as a right without payment. He therefore moved the omission of all the words after "custody thereof" to the end of the clause, with the view of inserting the words "without payment."

The ATTORNEY-GENERAL said he was sorry he could not accept the amendment. The effect of it would be that every person committed for trial would as a matter of course apply for a copy of the depositions, however unnecessary they were, or however little use he might be able to make of them. There would then have to be a staff of clerks employed in the Crown Law Offices transcribing depositions. The prisoner might be a man with plenty of money, able to employ solicitors and counsel, and yet require the State to undertake the duty of finding a clerk to copy depositions for the use of his counsel. He thought the hon. gentleman would admit that was not a proper thing to do. No real cases of serious hardship had arisen under the existing practice. When a man was charged with a very serious offence, and had not money, and the gaoler certified to the Attorney-General that that was so, a copy of the depositions, at the expense of the Crown, had never been refused. He had done it over and over again. If given as a matter of right the system would be liable to be abused. Men charged with simple larceny or cattle-stealing would demand a copy of the depositions for the simple purpose of getting a witness to contradict himself, by asking, "Didn't you say so-and-so at the police court?" In cases of that kind it was advisable that a charge should be made; in grave cases, when a prisoner applied for a copy of the depositions, he would get it.

Mr. S. W. BROOKS said that if the hon. gentleman was not able to accept the suggestion of the hon. member for Bowen, perhaps he would explain why a differential rate was sought to be imposed for copies of depositions—2d. per folio under certain conditions, and 4d. under others.

The ATTORNEY-GENERAL said the judges of the Supreme Court had power to make rules in regard to the terms upon which defendants might have copies of depositions, and that was the provision of the existing law. As a matter of fact the lower price was the price generally charged.

Mr. CHUBB said he knew as a fact that formerly, at the Crown Law Offices, the charge was never less than 4d. per folio, and if a defendant offered to pay less it would be a very long time before he got the copies. The system had been abused in the past, and it was time it was done away with. Although some defendants might be able to pay large fees to counsel and solicitors, there were many who could not, and all ought to have a statutory right to a free copy of the depositions. The reason given against it by the Attorney-General, that they would be able to baffle the constables in the witness-box, was a very poor one. A man was entitled to make his defence as free and untrammelled as possible; and he ought to know what was the evidence proposed to be given against him. Constables, he knew, took minutes of the evidence given before the justices, and he had seen them refreshing their memories from their notes a few minutes before the trial was called on as to what they had sworn before the justices. A prisoner had no such advantage, and it was only right and just that the Crown should supply him before the trial, free of charge, with a copy of the depositions—that was, if he desired it.

Mr. S. W. BROOKS said he would suggest the insertion of something like the *in formâ pauperis* provision of the Insolvency Act, and that for those who can afford to pay the charge should be fixed beyond the interference of the judges at 3d. per folio.

Mr. JORDAN said he should like to see the clause altered as suggested by the hon. member for Bowen. When a man was accused of crime every facility should be given him by the Crown for proving his innocence. On that ground alone—leaving out of question the allegations that the 4d. per folio had gone into the pockets of certain officials—the time had come when there should be no charge whatever. As to a prisoner putting the depositions to the use indicated by the Attorney-General—confounding witnesses—they all knew what license was given to counsel in courts, how it was sometimes abused by them, and how honest witnesses were confused very often by the skill and somewhat sharp practice of gentlemen learned in the law. He would give every advantage to a prisoner to let him confound witnesses as much as ever he could, not by tricks of oratory, but by the facts of the case, in order to bring out the truth. The matter was a most important one, and the reason given the other night by the hon. member for Bowen carried conviction to his mind. Some of the arrangements at our courts were admirable; others were relics of the dark ages, and ought to be swept away in these enlightened times and in this advanced colony.

Mr. BROWN said the word in the clause was "copies." He would suggest that a defendant should be entitled to one copy free of charge, and for further copies the defendant might reasonably pay 3d. per folio, as suggested by the hon. member for Fortitude Valley.

Mr. NORTON said there was one point which had been missed, and that was that in a good many cases the person who was charged was not guilty, and it was rather hard to make a man who was not guilty buy his defence from the State. That was practically what it amounted to. Of course, even criminals they pretended to regard as innocent until they were condemned, and if they regarded them as innocent they ought to show every consideration to them, and enable them to prove that they were innocent, or rather to prevent their guilt being proved. Unless a person's guilt was proved in the eye of the law he was innocent.

The PREMIER said he did not think it mattered much whether the words were retained or not. At present, if a man wanted the depositions relating to his case and could not pay for them he got them, but it would be a pity to lose the payment of men who could pay and who were righteously in gaol. That was the only regret he should have, but he did not think it was a matter of very much consequence.

Mr. PALMER said it might be a matter of great consequence in outside places where the police magistrate had to act the part of clerk of petty sessions, and who, in addition to taking down the depositions, would have to supply the copy required.

Mr. SHERIDAN said he looked upon the latter part of the clause as very objectionable,

and with that view he would propose an amendment to this effect, that the whole of the proviso be struck out.

Mr. CHUBB: That is what my amendment amounts to.

Mr. SHERIDAN said then it should have his cordial support.

The HON. J. M. MACROSSAN said he thought he was correct in saying that at the present time, in Scotland, persons could get a copy of depositions free of charge. The Premier very likely knew whether that was so?

The PREMIER: No; I do not.

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

On clause 130—"Copies of depositions"—

Mr. DONALDSON said probably he did not pay quite sufficient attention when the Attorney-General was moving the second reading of the Bill, but he would like to know a little about the powers of coroners.

The PREMIER: There are none at present.

Mr. DONALDSON: The Magistrates Act provides for coroners.

Clause put and passed.

Clause 131 passed as printed.

On clause 132—"Remand to another place"—

The ATTORNEY-GENERAL said that was a new clause, and a very useful one. It provided that when a case had been partly heard the magistrate might bind over such witnesses as had been examined, and might by warrant order the defendant to be taken before some justices having jurisdiction in or near the place where the offence was alleged to have been committed. That would save a lot of time and trouble, and would be generally of great advantage.

Mr. CHUBB said the clause was a most useful one. He remembered an instance where a man was arrested in Cooktown for horse-stealing, and one witness was examined; and the magistrate, instead of sending the prisoner up to Thornborough, where there were about twelve witnesses in the case, had them all brought down to Cooktown. The clause under consideration would put the matter on a plainer footing, for although justices had the power now to do what the clause provided for, yet more often than not they adopted the other course.

Clause put and passed.

Clauses 133 and 134 passed as printed.

On clause 135—"Procedure on apprehension under backed warrant"—

Mr. JORDAN said he thought the Bill was going through too quickly. He was endeavouring to understand the clauses as they came before the Committee, but his mind was a slow one and there was not sufficient time.

Mr. ALAND said his opinion was that the clauses were not being put quickly enough. If the hon. member for South Brisbane wanted to discuss them he should have marked his Bill before he came, so as to be able to refer at once to the provisions on which he required information.

Mr. CHUBB: How many have you marked?

Mr. ALAND: None.

Mr. PALMER said it was only after light was thrown on the various provisions of a Bill by discussion that new ideas presented themselves, and for that reason he thought they should not proceed too quickly. It was next to impossible to sit down in cold blood and mark the clauses on which information might be required.

The CHAIRMAN said he was sorry that any member should consider the clauses were put too quickly. If no member rose to make a suggestion, it was his duty to put the clause.

Clause put and passed.

On clause 136—"Defendant may have to pay costs"—

Mr. PALMER asked how it was to be decided whether a defendant was in a position to pay? If he travelled by steamer, was he to travel steerage or saloon? if by coach, was he to go inside or outside?

The ATTORNEY-GENERAL said that sometimes money was found in a man's possession when arrested. He might have horses or other property in his possession, of which he claimed to be the owner, or he might have a savings bank pass-book in his pocket. There were many ways of ascertaining whether a man had means or not. Of course, he would not be put to greater expense in travelling than was necessary.

Mr. ALAND said he remembered a case which occurred about twelve months ago at Ravenswood. Two men were travelling about Ravenswood begging and were taken up under the Vagrancy Act; when searched, between £70 and £80 was found on them. They were found guilty and the sentence of the police magistrate was something like this: They were to be sent to the Townsville goal for a certain length of time; the cost of transit was to be paid out of the money they had, and they were to pay for their maintenance while in gaol at Townsville. They were also fined, and all that money was taken out of the sum they had in their possession. He did not know whether the magistrate acted legally or not, but he thought that magistrates should have the power to do as that one had done, because when there was a chance of potting a vagrant it ought to be taken.

Mr. NORTON said that was a very good idea in regard to that case, but some cases which would come under the clause were very different. In the eyes of the law a man was innocent until proved to be guilty; and why should that money be spent before he was found guilty? If he was convicted, let him pay by all means; but if he was not convicted, he did not see that any justification could be shown for spending his money.

Mr. CHUBB said he wished to draw the attention of the Attorney-General to a very important matter which he (Mr. Chubb) omitted to mention on the second reading of the Bill. It had occurred to him that a clause might be framed by which an accused person brought before justices, and acknowledging his guilt after evidence was taken, might be sent up for sentence without the witnesses having to be sent up to the higher court. It would save a lot of money, and a great deal of time and trouble on the part of the witnesses. A short clause, giving power to justices to send up such a person with the depositions, and discharge the witnesses at once, would save the country a great deal of expense, and save witnesses a great deal of trouble and loss of time.

The ATTORNEY-GENERAL said he was of opinion that very few cases of that sort happened.

Clause put and passed.

The PREMIER said the suggestion of the hon. member for Bowen was a good one, and while the hon. gentleman was speaking he (the Premier) had framed the following new clause to give effect to it:—

When a person charged with an indictable offence as such admits, after all the depositions have been taken, that he is guilty of the charge, and upon being asked does not desire that the witnesses should attend

at the court before which he is committed to take his trial, then it shall not be necessary to bind the witnesses by recognisance to appear at such court. And that court, upon the arraignment of the defendant, and upon production of the depositions and the statement of the defendant, shall direct a plea of guilty to be entered, and shall proceed to pass sentence upon him accordingly.

He thought that would meet such cases as had been mentioned.

Mr. PALMER: What if the defendant alters his mind?

The PREMIER: That was the only danger—that he might change his mind in the meantime. But of course he would not be able to change his mind after pleading guilty. If he admitted that he was guilty he must take the consequences. He (the Premier) did not think any harm would come of the clause. He did not believe many persons would avail themselves of it.

Clause put and passed.

On clause 137, as follows:—

"When a defendant who has been lawfully committed to gaol to take his trial before a district court for an offence for which such court has jurisdiction to try him, is in gaol, and before the day appointed for the sitting of such court, a circuit court or a court of general gaol delivery is held in the place where the defendant is in gaol, the defendant shall not be discharged from custody by the last-named court."

The ATTORNEY-GENERAL said he explained the other night that this clause was necessary to prevent a prisoner who had been committed, say to the district court, from being discharged by a judge of the circuit court. The circuit court was a court of general gaol delivery, and all the prisoners who were returned by the sheriff on the calendar as being in prison were discharged, if not otherwise dealt with by the judge. That was found to work with very considerable inconvenience. Some gaols were receiving gaols—for example, that at Maryborough—and if a prisoner was found in that gaol who had been committed for trial at the Gympie district court the judge of the circuit court on finding him there would be bound to discharge him. The clause was intended to prevent that being done.

Clause put and passed.

On clause 138, as follows:—

"Except as hereinafter provided, complaints of simple offences or breaches of duty shall be heard and determined at a place appointed for holding courts of petty sessions within the district in which the offence or breach of duty was committed. Provided that if the offence or breach of duty was committed outside of a district, but within ten miles of the boundary thereof, the complaint may be heard and determined at a place appointed for holding courts of petty sessions either within that district or within the district in which the offence or breach of duty was committed."

Mr. CHUBB said it seemed to him that a case of hardship might arise under the clause. For instance, supposing an offence was committed, say in a district within ten miles of the boundary, and there was a court fifteen miles from the boundary of that district, and another court in the other district forty miles away, although it was naturally to be expected that the party would be tried at the nearest court, he might be taken to the furthest court and be tried there. As the clause stood he might be tried at either court and be taken a very long distance. He did not know what was the object of the provision. Perhaps the hon. the Attorney-General would explain the reason for it.

The PREMIER said the matter referred to was one of administration. There was a prevalent opinion that a case must be heard in the police district in which it occurred. That was not the law, although it was a very convenient rule to follow. It was often found difficult to establish a police court in the centre of a district. For instance, Tambo was at the extreme edge of the police district. A convenient boundary could not be obtained anywhere except in that place, and there were some other places in very much the same position. It would be very much more convenient for a case occurring twenty miles from Tambo to be heard there than at Taroom or Charleville. It might be safer to make the distance twenty miles. It was entirely an arbitrary line—a question of convenience. The next clause provided for sending from one place to another. Of course it was not desirable to drag a man too far; but perhaps twenty miles would be better. Although there was supposed to be a rigid rule at present, it did not, in point of law, exist.

Mr. CHUBB said that, although there might be a court within five miles of where an offence was committed, under the clause a man might be taken fifty miles.

The PREMIER said the nearest place might be almost inaccessible by any convenient road. There were many such cases in the Palmer district, where a place close by was quite inacessible.

The ATTORNEY-GENERAL said that if a provision like that existed in regard to district courts it would be a great convenience. He knew of an instance that occurred near Blackall, where the nearest court was not more than five miles away from where the offence was committed, but it was not in the same district, and the prisoner had to be sent to a place a long distance off. He moved that the word "twenty" be substituted for the word "ten" in line 3.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 139 to 147, inclusive, passed as printed.

On clause 148—

Mr. NORTON asked what was the meaning of the words "the justice shall, if required so to do, make an order of dismissal." Required by whom?

The PREMIER: By the defendant.

Mr. NORTON: Why should they not do it in all cases?

The ATTORNEY-GENERAL said the defendant could get it if he wanted it, and if he did not want it there was no use taking up time in making it out.

Clause put and passed.

Clauses 149 to 152, inclusive, passed as printed.

On clause 153, as follows:—

"When a conviction or order is made or a complaint is dismissed by justices, all parties interested therein shall be entitled to demand and have copies of the complaint and depositions and of the conviction or order, in like manner and on the same terms as are hereinbefore provided respectively with regard to depositions taken in the case of a person charged with an indictable offence."

The ATTORNEY-GENERAL moved the omission of all the words after the word "order" in the 4th line of the clause, with a view of inserting the words, "from the officer or person having the custody thereof on payment of a reasonable sum for the same, at a rate to be prescribed by the Governor in Council, but not to exceed 3d. for each folio of seventy-two words."

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

On clause 154, as follows:—

"When the justices upon a conviction adjudge the defendant to be imprisoned with or without hard labour they shall issue their warrant of commitment accordingly."

Mr. CHUBB said he would like the Premier to tell the Committee what was the difference between "labour" and "hard labour." He had been informed that there was no difference, and that whether a prisoner got hard labour or not he had the same amount of work to do in the gaol, though if he got hard labour he was better fed for it.

The PREMIER said he was not able to give an answer to the question. It was a subject he did not deal with, and had not the time to deal with.

Mr. PALMER contended that where possible the prisoner's labour should be made beneficial to the town from which he was sentenced. Two or three prisoners in charge of a constable might be employed usefully around a town in stumping the streets and such work, instead of lying idle and eating their bread at the expense of the taxpayers of the colony.

The PREMIER said they could discuss that when they came to the Estimates for gaols. It had nothing to do with the Justices Bill.

Mr. NORTON said he knew of an instance that occurred not long ago when the corporation at Roma employed some prisoners, and the experiment did not turn out well.

Clause put and passed.

Clauses 155 to 162, inclusive, passed as printed.

On clause 163—"Payment by instalments of, or security taken for payment of, money"—

The ATTORNEY-GENERAL said that was a very useful provision indeed, and was taken from the Imperial Summary Jurisdiction Act.

Clause put and passed.

Clause 164 passed as printed.

Clause 165—"Commitment in other cases"—passed with a verbal amendment.

Clauses 166 to 170 passed as printed.

On clause 171—"Procedure on execution"—

The ATTORNEY-GENERAL said that was a very useful provision taken from the Imperial Summary Jurisdiction Act of 1879.

Mr. NORTON said the 5th subsection of the clause provided that—

"When a person charged with the execution of a warrant of execution wilfully retains from the produce of any goods sold to satisfy the execution, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable to a penalty not exceeding five pounds."

He thought the maximum penalty should be higher than five pounds, and would move that the word "five" be omitted with a view of inserting the word "twenty."

Mr. CHUBB said the offence mentioned in that paragraph amounted to stealing money. If an officer in charge of an execution warrant deliberately abstracted a portion of the money that certainly was a crime, and a penalty of £20 was not nearly enough; but he thought what was aimed at in the clause was extortionate charges.

The PREMIER: Yes.

Mr. DONALDSON said there was hardly sufficient provision made with regard to persons who sold their goods before execution was issued, as often happened. After a verdict had been given a person transferred his goods to someone else, and although they might be in the possession of the defendant when execution was issued, he said they did not belong to him, and they were claimed by a third party, and verdicts had often been worthless on that account. He thought that the onus of proof in such cases should rest with those who held the goods.

The ATTORNEY-GENERAL said that in the case of such a colourable transaction as that referred to, the transfers could always be avoided by proceeding at law. A man who made a transfer of, say, his furniture to somebody else, with a view of defrauding his creditors, and after the execution of the so-called bill-of-sale remained in possession of the property, did not protect himself in that way.

Mr. DONALDSON asked whether the onus of proof rested with the parties who had the goods—a horse and cart, for instance, or anything of that kind?

The ATTORNEY-GENERAL said the law declared that transfers made to defraud creditors were void, and it was usually not a very difficult proceeding. Of course, the person who levied had to prove that. It was, as a rule, sufficient to show that the transfer had been made under those circumstances, the transferror remaining in possession of the goods.

Mr. DONALDSON said a man might have anticipated the verdict by a day or two, and given a transfer for the purpose of evading payment of the debt. Would it be possible to recover then?

The ATTORNEY-GENERAL: Yes, by a proceeding at law.

Mr. DONALDSON: Before justices?

The PREMIER said it would require very elaborate provisions to deal with the matter, and it did not seem worth while to make them.

Mr. DONALDSON said there was another matter he wished to call attention to with regard to towns near the border. It frequently happened when a case came on that, before the verdict was given, the debtor made tracks across the border. Would it not be possible to provide a simple process by which the creditor might take oath before a magistrate that he believed the debtor was about to clear out, and make him give security before the case was tried? Otherwise all his goods and chattels might be taken over the border, and be beyond the jurisdiction of the court.

The ATTORNEY-GENERAL said the proceedings in cases of that kind were before the small debts court, and would come under a different series of provisions from those contained in the Bill. There were cases where immediate execution was issued on an affidavit of that sort.

Amendment agreed to.

The ATTORNEY-GENERAL said it was desirable to provide for the summary recovery of the amount of penalty for the offence specified in subsection 5. He therefore moved the addition at the end of the subsection of the words, "And the justices before whom he is convicted may order him to pay any sum so retained, exacted, or improperly charged to the person entitled thereto." He would thus have to refund the money and pay the penalty as well.

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

On clause 172—"Instigation of punishment by justices"—

Mr. NORTON asked what was the meaning of the words "any other Act, whether past or future?"

The ATTORNEY-GENERAL said the clause was to be prospective and retrospective.

Mr. CHUBB said he had not given the subject much consideration; but it was questionable whether they could anticipate future legislation. He knew the Chief Justice on one occasion decided that the Queen could not by anticipation apply a law not yet passed.

Clause put and passed.

On clause 173—"Scale of imprisonment for nonpayment of money"—

Mr. NORTON asked if the clause was intended to override the provisions of past Acts?

The ATTORNEY-GENERAL: Yes.

Clause put and passed.

Clauses 174 and 175 passed as printed.

On clause 176, as follows:—

"The Governor may remit the whole or any part of any fine, penalty, forfeiture, or costs imposed by a conviction, whether any part thereof is payable to any person other than Her Majesty or not, and upon such remission the conviction shall cease to have effect either wholly or partially as the case may be."

The ATTORNEY-GENERAL said that, as he had pointed out the other evening, the clause conferred power which did not at present exist. The Governor, by Royal letters patent, had power to remit any penalty which was made payable to Her Majesty, but he had no power to remit any penalty that was not made payable to Her Majesty. That power was proposed to be conferred by the clause.

Clause put and passed.

On clause 177—"Power to withhold fines payable to informers"—

The ATTORNEY-GENERAL explained that that was already the law in places where the Towns Police Act was in force.

Clause put and passed.

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

MESSAGE FROM LEGISLATIVE COUNCIL.

The SPEAKER announced that he had received a message from the Legislative Council returning Appropriation Bill No. 1 of 1886-7 without amendment.

ADJOURNMENT.

The PREMIER, in moving the adjournment of the House, said that when the House next met it was intended to proceed, first, with the amendments of the Divisional Boards Act and the Elections Act, the Employers Liability Bill, the Mineral Lands Act Amendment Bill, the Goldfields Act Amendment Bill, the Sale of Opium Bill, the Mineral Oils Bill, and the other business in the order in which it appeared on the notice-paper.

The House adjourned at five minutes to 10 o'clock until Tuesday next.