Queensland

# Parliamentary Debates
[Hansard]

## Legislative Council

**THURSDAY, 9 SEPTEMBER 1886**

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## LEGISLATIVE COUNCIL.

*Thursday*, 9 *September*, 1886.

Messages from the Legislative Assembly—Gold Mining Companies Bill—Opium Bill.—Immigration Act Amendment Bill—third reading.—Customs Duties Bill—committee.—Succession Duties Bill—committee.—Justices Bill—committee.

The PRESIDING CHAIRMAN took the chair at 4 o'clock.

### MESSAGES FROM THE LEGISLATIVE ASSEMBLY.

#### Gold Mining Companies Bill.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly forwarding a Bill to amend the law relating to the incorporation and winding-up of gold-mining companies, and to amend the Gold Mining Companies Act of 1873.

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

#### Opium Bill.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly forwarding a Bill to impose restrictions on the sale of opium, and to prohibit its sale to aboriginal natives of Australia and Pacific Islanders.

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

### IMMIGRATION ACT AMENDMENT BILL—THIRD READING.

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

### CUSTOMS DUTIES BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the House went into committee to consider this Bill.

Preamble postponed.

On clause 1—"*Ad valorem* duties increased to 7½ per cent."—

The HON. A. HERON WILSON said he should like to ask the Postmaster-General what the functions of that Chamber were. When the Members Expenses Bill was before the Council—a Bill like the present one, dealing with money matters—he was coolly told by the Postmaster-General that he declined to discuss the right of the Chamber to amend it. If that was the case, then he did not see what was the use of wasting the time of hon. members by going through the Bill. If any suggestions for improvement were made, the Postmaster-General simply said, "We have no power to make any amendments." He thought that if the Postmaster-General could show that they had no right to amend the Bill it was only wasting time to go through it.

The POSTMASTER-GENERAL said the hon. gentleman was under a misapprehension in coming to the conclusion that the Postmaster-General was present in the House for the purpose of educating hon. members in regard to a knowledge of the functions of that Chamber. The hon. gentleman asked, "What are the functions of the Chamber?" Well, those inquiries could be made elsewhere, and might be learnt outside as well as inside the House. The hon gentleman made a mistake in saying that, according to the Postmaster-General, the Chamber had no right to deal with money Bills; that was not so.

The HON. A. HERON WILSON: I did not say so; you declined to discuss the matter at all.

The POSTMASTER-GENERAL said he could only repeat the same observation now. He did not come there that afternoon prepared to discuss the constitutional question, or even the details of the Bill now before the Committee. There was no objection to discussing anything contained in the Bill.

The HON. A. HERON WILSON: What is the use of discussing it if we cannot amend it?

The POSTMASTER-GENERAL said he should offer no obstacle to the hon. gentleman treating the matter in any way that he thought proper, so long as he kept within the question.

The HON. A. HERON WILSON said it appeared that no matter what fault they might find with the Bill or what suggestions for improvement they might make, they had no power to amend it. If that was so, the Postmaster-General might as well tell them that in so many words. The Bill might as well be passed *in globo*, and that was the way it ought to be treated.

Clause put and passed.

Clauses 2 to 5, schedule, and preamble, passed as printed.

The House resumed, and the CHAIRMAN reported the Bill without amendment.

The report was adopted, and the third reading made an Order of the Day for Wednesday next.

## SUCCESSION DUTIES BILL—COMMITTEE.

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the House went into committee to consider this Bill.

Preamble postponed.

Clauses 1 and 2 passed as printed.

On clause 3, as follows:—

"In this Act, unless the context otherwise indicates, the following terms have the meaning set against them respectively, that is to say:—

'Treasurer'—the Colonial Treasurer of Queensland;

'Registrar'—the Registrar of the Supreme Court of Queensland;

'Curator'—the Curator of Intestate Estates;

'Administrator of land'—Any person to whom letters of administration of land of a deceased person who dies intestate after the passing of this Act are granted by the Supreme Court;

'Administrator of goods'—Any person to whom letters of administration of any goods and chattels, rights and credits, of a deceased person who dies intestate after the passing of this Act, are granted by the Supreme Court;

'Administrator with the will annexed'—Any person to whom letters of administration with the will annexed of any goods and chattels, rights and credits, of a deceased person who dies after the passing of this Act, are granted by the Supreme Court;

'Prescribed'—Prescribed by regulations made under this Act;

'Final balance'—The balance appearing upon any statement certified by the registrar."

The HON. J. COWLISHAW said he would move that an addition be made to the clause providing that the term "children" should include "grandchildren," because he thought as the Bill stood it might act very unfairly. A child under the Act would be entitled to a bequest less half the succession duty charged to others, but if he died his children, he took it, would have to pay 5 per cent. He thought the interpretation of "children" should include "grandchildren," so as to prevent that. He understood that in interpreting wills the word "children" did cover "grandchildren." He moved that after line 25 the following words be added:—"Children shall include grandchildren."

The HON. G. KING said the question appeared to him to be whether grandchildren should pay the heavier duty or not, and, according to the Bill, supposing their parents died before them, they would have to pay a heavier duty. Was that the intention of the framers of the measure?

The HON. F. T. GREGORY said that if the hon. gentleman would refer to clause 7 he would see perfectly clearly that, whatever the intention of the drafters of the Bill might have been, it was quite clear that the reduction in duty only applied to children, because nothing was said about grandchildren being among those who were entitled to pay only half duty. The amendment proposed was really necessary to give grandchildren the same benefits as their parents.

The POSTMASTER-GENERAL said he was correct in his impression that the matter had been considered by the Cabinet very fully, and that the conclusion arrived at was that grandchildren were further removed than children, and the Bill being one of taxation, it was intended that they should not be mentioned in it. Under the circumstances, it was his duty to intimate that he was unable, on behalf of the Government, to accept the amendment.

The HON. J. COWLISHAW said the fact still remained that when a bequest went direct from the testator to the grandchildren some exception ought to be made.

The HON. A. J. THYNNE said in many cases the grandchildren were those who required the exemption more than the children of a deceased person. There were many people in the colony whose adult children were dead and who had to bring up their grandchildren. It would be very hard to ask those grandchildren to pay 5 per cent. on what came to them. If anything could be said in favour of exempting children, ten times more could be said on behalf of grandchildren. He should support the amendment, which was one the Government ought not for one moment to question.

The POSTMASTER-GENERAL said he hoped no serious support would be given to the amendment. If compassion was to be exercised

according to remoteness from the testator then great-grandchildren deserved more sympathy than grandchildren. The line had been purposely drawn at the first degree.

The HON. G. KING said the only thing in favour of what the Postmaster-General said was that if the parent had been alive he would have had to pay half the duty, and his children at his death would have to pay half the duty likewise.

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

CONTENTS, 10.

The Hons. W. Pettigrew, J. Cowlishaw, F. H. Hart, F. T. Brentnall, E. B. Forrest, W. G. Power, A. Raff, F. T. Gregory, G. King, and A. J. Thynne.

NON-CONTENTS, 5.

The Hons. T. Macdonald-Paterson, W. Horatio Wilson, A. Heron Wilson, W. F. Taylor, and J. D. Macansh.

Question resolved in the affirmative.

Clause, as amended, put and passed.

Clauses 4 to 6, inclusive, passed as printed.

On clause 7, as follows:—

"There shall be paid to the registrar, to be by him paid into the consolidated revenue of Queensland, by every executor, administrator of land or goods, and administrator with the will annexed, duty at the rates following, that is to say:—

| | |
|---|---|
| Where the total value of the estate of the deceased person, after deducting all debts, does not exceed £100 | No duty. |
| Where the value exceeds £100, and does not exceed £1,000 ... ... | 2 per cent. |
| Where the value exceeds £1,000, and does not exceed £10,000 ... ... | 3 per cent. |
| Where the value exceeds £10,000, and does not exceed £20,000 ... ... | 4 per cent. |
| And over the value of £20,000 ... ... | 5 per cent. |

Provided that—

(1) When the widow of a testator, or the widow and children of a testator, or the children of a testator, is or are the only person or persons entitled under his will, the duty in respect of his estate shall be calculated at one-half only of the percentage aforesaid, and when other persons are also entitled under the will the duty shall be calculated so as to charge only one-half of such percentage upon the property devised or bequeathed to the widow or children of the testator;

(2) When a person dies intestate leaving a widow, or a widow and children, or children, the only person or persons entitled in distribution to his estate, the duty shall be calculated at one-half of the percentage aforesaid; and when a person dies intestate leaving a widow and no children, the duty shall be calculated so as to charge one-half only of such duty upon the distributive share of the widow.

"Such duty shall be payable upon the whole of the estate disposed of by the will, or in respect whereof administration is granted, as the case may be.

"Such duty shall in the first instance be calculated upon the final balance appearing upon the statement."

The HON. J. COWLISHAW moved the insertion after the word "debts" of the words "and all moneys payable under any policy or policies of insurance issued by the Australian Mutual Provident Society." Under the 9th, 10th, and 14th clauses of the Bill duties became debts, and defined the process by which those debts could be recovered. The 14th clause of the Australian Mutual Provident Society Act stated:—

"The property and interest of every member or his personal representatives in any policy or contract made or entered into *bonâ fide* for the benefit of such member or his personal representatives, or in the moneys payable under or in respect of such policy, or contract (including every sum payable by way of bonus or profit), shall be exempt from liability to any law now or hereafter in force relating to bankruptcy or insolvency, or to be seized or levied upon by the process of any court whatever."

He understood that if the Bill was passed as printed it would be in direct opposition to that clause, therefore it was necessary that an exemption should be made in favour of those policies. At the time the Australian Mutual Provident Society Act was passed in New South Wales that provision was inserted in order that the society, which was the first formed in the colony, might have a better standing than other companies, so that people might be induced to become policy-holders. It was just possible that the whole estate of a deceased person might be represented by insurance policies in the society, and that it would be the only asset; and if the executor did not administer the estate within a certain time according to clause 9 the registrar could move the court and have a sufficient portion of the estate sold to pay the debt. That was contrary to the provision contained in the 14th clause of the Australian Mutual Provident Society Act.

The POSTMASTER-GENERAL said the last amendment proposed by the hon. member was a great surprise, and he was sorry he did not insist on having it in print before dealing with it; but it was passed, and they knew what the effect would be. The business of the country would be retarded, and that was evidently the intention of the mover of the amendment. If the hon. gentleman had well considered his proposals, why were not the amendments circulated the moment he conceived them? He should have followed the custom of all civilised countries, and intimated the amendments to the person in charge of the Bill. All hon. gentlemen should have the opportunity of considering the effect of intended amendments, and those proposed by the hon. gentleman should have been printed and circulated. Under the circumstances, if any other amendments were proposed, he should proceed no further with the Bill, and as it was he should not proceed with the clause. The matter was entirely new to everybody present. If the amendment was thought of only just now, it should be considered further by the mover; if it had been well considered by him, other hon. members should have an equal chance of considering the utility of the proposal or otherwise. If the hon. gentleman would withdraw his amendment and have it printed and circulated, he (the Postmaster-General) would postpone the clause.

The HON. J. COWLISHAW said the Postmaster-General had no right to say that his object in moving the amendment in a previous clause was to impede the business of the country.

The POSTMASTER-GENERAL: I said that would be the effect.

The HON. J. COWLISHAW said the hon. gentleman had no business to assume that such was the intention of the amendment. The amendments occurred to him during the morning, and he thought that the Postmaster-General would have regarded them as equitable amendments. He did not think the hon. gentleman, being a lawyer, would require to give them any consideration, but would see at once the force of the amendments. He saw that in passing the Bill as it stood it would be in direct opposition to an Act already on the Statute-book; but if that was a matter which required the consideration of the Postmaster-General he would withdraw the amendment with pleasure. He had no desire to embarrass the Postmaster-General or to make matters unpleasant for him in any way.

Amendment, by leave, withdrawn, and clause postponed.

Clauses from 8 to 24, inclusive, passed as printed.

On clause 25, as follows :—

"If any person has made, or shall hereafter make, any conveyance, assignment, gift, delivery, or transfer, of any estate, real or personal, or of any money or securities for money, in anticipation of the passing of this Act, or with the intent to evade the payment of duty thereunder, then upon the death of such person the property comprised in any such conveyance or assignment, or being the subject matter of any such gift, delivery, or transfer, shall be deemed to form part of his estate upon which duty is payable under this Act, and the payment of the duty upon the value of such property may be enforced against such property in the same way as duty under this Act is enforceable, and as if such person had devised or bequeathed the property to the person to whom the same was so conveyed, assigned, given, delivered, or transferred.

"Any conveyance, assignment, gift, delivery, or transfer, of any estate, real or personal, or of any money or securities for money, already made, or which may hereafter be made, either in escrow or otherwise, to take effect upon the death of the person making the same, shall be deemed to have been made or to be made, as the case may be, in anticipation of the passing of this Act, and with intent to evade the payment of the duty thereunder."

The HON. F. T. GREGORY said that on the second reading of the Bill he drew attention to the inconvenience and disadvantage which might result from the clause being passed in its present form. He did not take exception to the spirit of the clause, because it was intended to provide against the evasion of liability imposed for the purpose of raising revenue, and it was assumed that they passed the Act believing it to be the most expedient way of deriving revenue. He could see the possibility, however, of the clause being made exceedingly oppressive and even unjust and inequitable, unless it was governed by another part of the Bill, or by an amendment added to the clause which would clearly define that the onus of proof must rest with the Treasurer, who was the party to whom the moneys were due. If it was clearly understood that he had to prove that, before the duties could be levied, he should take no exception to the clause; but he now stated that there was great fear that harassing prosecutions, and persecutions even, might result. He would only say, however, that harassing prosecutions might result by someone suggesting and putting the Treasurer in action to recover a duty where there was no original intention whatever to defraud. It was within his own knowledge that very recently several persons, who he had no reason to suppose did it with the object of evading the duty, had conveyed and assigned to sisters, wives, brothers, and others property, in some instances where there was no consideration, and others where there was a consideration, though that consideration never appeared in the conveyance. It particularly referred to cases where he had known selectors, for the purposes of consolidation, to make an arrangement to consolidate by exchange transfer of selections which had so far arrived at maturity as to become real property. These cases had frequently come under his own cognisance. He trusted the Postmaster-General would be able to make it quite clear that such cases would be safe from the prosecutions which might otherwise be commenced. If the hon. gentleman could not do that he (Hon. Mr. Gregory) should deem it his duty to propose an amendment to the clause. He hoped the Postmaster-General would give them some little insight into what he believed would be the working of the clause.

The POSTMASTER-GENERAL said the clause appeared to him to be very clear. Such instances of transfer of selections took place every day in the ordinary way of business, and they contributed to the public revenue under the Stamp Duties Act.

The HON. F. T. GREGORY said the cases which came under the category which the hon. gentleman had just mentioned were cases where transfer was made under the form of love and affection, and where the stamp duty only amounted to 7s. 6d.

The HON. A. RAFF said one matter did not appear quite clear to him. A parent might make a gift to his daughter on the occasion of her marriage, and he might live for many years afterwards; or he might make a present to his son of a sum of money to commence business with, and he might live for many years afterwards. Would those amounts be subject to the payment of duty, although they had been given years before the death of the donor, and with no intention of defrauding the revenue, or of evading the amount of duty lawfully payable at death?

The POSTMASTER-GENERAL said the case mentioned by the hon. gentleman would not apply at all. Marriage settlements or gifts to sons to start them in business would go on just as before, because they took effect at once. The latter part of the clause referred to settlements that took effect upon the death of the donor or person making the gift, but the cases referred to by the Hon. Mr. Raff took effect during the lifetime of the giver, and therefore the Bill would not apply to such gifts. It was as well to inform hon. gentlemen that, speaking strictly from memory, he believed clause 25 was almost a copy of the clause in the Victorian Act applying to the same subject, and it had been found there to act as it was intended to act. There had been, he believed, only one case of attempt to defraud the revenue in that colony, and he believed that the clause generally had a greater moral than practical effect.

The HON. J. COWLISHAW asked whether settlements made some years ago would be deemed under the Act to have been made in anticipation of the passing of the Act. The clause said, "Any conveyance, assignment, delivery, or transfer of any estate, real or personal, or of any money or securities for money in anticipation of the passing of this Act." He should like to obtain an opinion from the Postmaster-General.

The POSTMASTER-GENERAL said the mode of settlement which was referred to by the hon. gentleman was simply another mode of making a will. The word "will" implied all those things. A man distributed his property by different modes of legal formulæ, and practically such settlements were wills.

The HON. E. B. FORREST said those settlements would not be made in anticipation of the passing of the Act. Nobody had any idea five or ten years ago that such an Act would be passed, and he trusted that the Postmaster-General would assure them that the settlements mentioned by the Hon. Mr. Cowlishaw would not come under the operation of the Act. He hoped they would not, at all events.

The POSTMASTER-GENERAL said they could not reach property in any other way than by such a clause, but if there was no such provision in the Bill then it could only apply to settlements made after the passing of the Act. It was intended to reach those wills which the settlements mentioned by the Hon. Mr. Cowlishaw practically were.

The HON. E. B. FORREST said he thought it should be shown that the settlement had been made in anticipation of the passing of the Act. The onus of proving that should be thrown upon those who administered the Act.

The HON. F. T. GREGORY said there was no doubt some force in the argument used by the Hon. Mr. Forrest. The cases the hon. gentleman referred to were cases where people would never have looked forward to any Act of that

sort being passed. He did not, however, attach the same weight to the objections raised by the Hon. Mr. Cowlishaw as to that which had been raised by himself, and he would again point out that that particular part of the clause to which he had drawn attention might act very unfairly and inequitably. In order to do away with the injustice, he would suggest that the period should be limited, and that the Act should not apply to settlements made prior to a certain specified time. Of course, the Postmaster-General could not pledge the Colonial Treasurer to any particular course of action, but if he was prepared to say that his view of the case was that no such prosecution as he (Hon. Mr. Gregory) had mentioned, would be undertaken, except where there were weighty reasons for believing that an act had been done with the intention of defrauding the revenue, then he would withdraw his objection.

The POSTMASTER-GENERAL said he should be happy to give that assurance. The Bill was similar in its provisions to an Act in force in Victoria, and although the duties were not specifically the same, yet the clause to which objection had been taken was part of the Victorian law, and he thought there had never been one case of fraud attempted since the Act came into operation. The clause had had a very wholesome effect indeed.

The HON. G. KING said the objection that had been taken to the clause seemed to be on account of the inquisitorial powers which it gave to the Government, but that was inevitable. If an income tax was imposed, that would be inquisitorial. A property tax had the same objection, and even *ad valorem* duties to a certain extent brought about inquisitorial powers. Therefore he thought that no objection should be taken on that account. Moreover, provision must be made in a clause like that, so that no evasion of the law could take place, because if there was an evasion people with elastic consciences would not suffer, while those with more conscience would suffer. Therefore he did not object to the clause on account of its inquisitorial nature; he thought it was only a precaution. He took that opportunity of saying that in giving his last vote he had acted inconsistently as compared with his usual expression of opinion upon the constitutional privileges of that Chamber. He had always held that they could not amend a money Bill, but the question which had been last decided came very unexpectedly upon him, and it struck him as being very hard that grandchildren should be taxed in the way the Bill proposed to tax them, and in sympathy with the remarks made he had entirely lost sight of the fact that this was a money Bill, and that this House could not constitutionally deal with it. He hoped the discussion which had taken place might have the effect of attracting the attention of hon. members in the other House to what he really thought was somewhat hard. But he trusted that it would not have the effect of bringing them into collision with the other House

Clauses 26, 27, and 28 passed as printed.

The POSTMASTER-GENERAL moved that the Chairman leave the chair, report progress, and ask leave to sit again.

The HON. J. COWLISHAW said, as the object of postponing clause 7 was that it might be fully considered, he might mention that since handing in his amendment he had turned up the Act passed by the present Attorney-General in September, 1879, the title of which was "An Act to protect life assurances and other like provident arrangements"; and on reading the 2nd clause he found that it was similar to a clause in the Australian Mutual Provident Society Act. When the Bill came on for further consideration he hoped hon. gentlemen would read the clauses to which he had referred, and see if they were not inconsistent with clauses 9, 10, and 14 of the Bill.

Question put and passed.

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

## JUSTICES BILL—COMMITTEE.

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

On clause 4—"Interpretation"—

The POSTMASTER-GENERAL moved the omission on page 3 of the definitions of the terms "municipal district" and "chairman of a municipal district."

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

On clause 28, as follows:—

"Except as hereinbefore provided, when two or more justices are present and acting at the hearing of any matter and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion, the case shall be reheard at a time to be appointed by the justices.

"Provided that upon a complaint for an indictable offence a police magistrate, if he is one of the justices, may commit the defendant for trial notwithstanding that a majority of the justices are of opinion that the defendant should be discharged. In any such case, a memorandum of the dissent of the majority of the justices shall be made upon or attached to the depositions."

The HON. A. J. THYNNE moved the insertion after the word "justices," in the 2nd line, of the proviso of the following words: "and in the absence of a police magistrate any one or more of the justices." In moving that amendment he would say shortly that he thought when a police magistrate was present he was the proper person to vindicate justice against a possible packing of the bench; but if there was no police magistrate present then he thought any of the magistrates who might happen to be on the bench, though they were in a minority, should not be obliged by the majority to discharge a man whom they considered should be sent up for trial.

The POSTMASTER-GENERAL said, in a word, the amendment of the Hon. Mr. Thynne meant that any one justice might commit, and that, he thought, was most highly objectionable. Hon. gentlemen having in view the necessarily large number of persons who were on the Commission of the Peace who were inexperienced, and who were subject to local jealousies to an extent that did not exist in larger centres of population, would come to the conclusion, he thought, that it would be very undesirable and most reprehensible to allow any one justice to have power to commit. Moreover, provision was made in the clause that where a majority of those present were in favour of committal, then the accused person should be committed. No hardship would accrue from allowing the clause to remain as it was, but he could see grave hardships that might arise if one justice was allowed to commit in spite of the opinion of the majority of the bench. Hon. gentlemen would recollect that the powers of justices had always been guarded. Throughout all the years of experience that they had had in Australia, it had always been recognised that two justices should perform certain acts where a police magistrate acting alone might perform them. They had never admitted that the experience of any one justice was equal to the experience of a stipendiary magistrate. He thought they should be conservative in a matter of that kind, because

it was a subject that affected the smallest as well as the largest community in the colony. He hoped the hon. gentleman would not press his amendment, but if he did he trusted hon. members would refuse to accept it.

The HON. A. HERON WILSON said he agreed to a certain extent with the Postmaster-General that one magistrate alone should not commit, but if the Hon. Mr. Thynne amended his amendment so as to provide that two magistrates might commit, he should then support him.

The HON. W. F. TAYLOR said he thought he was correct in stating that at the present time any one magistrate had power to commit when indictable offences were concerned. He believed that was the practice both in New South Wales and Victoria, and he had not heard that the law had been changed in any of the colonies. He did not think any evil had arisen through the existence of such a law. In country places it was a very usual thing to try and pack benches for many purposes, and when local magistrates licensed public-houses it was a notorious fact that applicants went round to the different magistrates and asked them to sit on the bench. The Act which took the power to license public-houses out of the hands of local benches and placed it in the hands of boards constituted for the purpose was a very good Act indeed, and highly necessary. In the country districts where there were no police magistrates, benches might be packed in certain cases, and the majority might not wish to commit certain persons against whom a strong *primâ facie* case was made out; and under the circumstances he thought any single magistrate should have the power to commit. It did not follow that the person would be convicted, but it would be a safeguard if the power were given. The Hon. A. H. Wilson had suggested that the amendment might be amended so as to provide that two or more magistrates might commit, and that would perhaps be better for some reasons; but many cases might arise when only three magistrates were on the bench, and two might acquit the prisoner, though there might be a strong *primâ facie* case against him. In country districts gentlemen were put on the Commission of the Peace for various reasons, very often for political reasons, and the best men were not always appointed. Consequently the Committee could not be too careful in providing against conduct on the part of magistrates which would allow a person charged with an indictable offence, against whom a strong case might be made out, to go free. He thought it would be wise to adopt the amendment.

The HON. W. G. POWER asked whether, in the case of a gross mistake made by the justices in refusing to commit, the Attorney-General could not intervene, and cause further proceedings to be taken?

The POSTMASTER-GENERAL: Yes.

The HON. W. G. POWER said he thought that was sufficient.

The HON. A. J. THYNNE said that at the time the Attorney-General would have an opportunity of causing a fresh information to be laid the defendant would be a most difficult person to find. If it was worth people's while to get magistrates to strain their functions in order to set them at liberty, it was just as much worth their while to get out of the way as quickly as possible. The Postmaster-General had said that they could not be too conservative in such matters, and what he (Hon. Mr. Thynne) wished to do was to conserve the powers magistrates at present possessed. Any one magistrate had now the power to commit for trial, though there might be ten or twenty magistrates on the bench of a different opinion. He thought a clear instance of misfortune or injury arising from a committal by one magistrate should be given before the Committee refused to allow the amendment to pass. Magistrates had not the power to convict; they merely sent the case to the Crown law officer for decision as to whether a prosecution should take place or not.

The HON. F. T. BRENTNALL said he should like to be clear as to how the amendment would agree with the provisions of the first part of the clause, which were very specific:—

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

If that was to be the case, it seemed as if the amendment would revoke the provision as to the decision of the majority being the decision of the bench.

The HON. A. J. THYNNE said it was revoked already by the proviso, so far as indictable offences were concerned.

The HON. F. T. BRENTNALL said that was only when a police magistrate was present. The clause said that if he was one of the justices he might commit the defendant for trial, notwithstanding that a majority of the justices were of opinion that he should be discharged. Every opportunity was given to arrive at a right decision; but how could the decision of the majority be the decision of the justices if the Committee inserted a provision to the effect that one should have power to commit though all the others might be against him? That seemed to be going against the resolution that the decision of the majority should be the decision of the bench, also against the provision for rehearing the case. He could not agree to the amendment, which would alter the intention of the clause, and put it into the power of one or more justices to commit a defendant for trial against the opinion of the majority.

The HON. A. J. THYNNE said the first part of the clause applied to all the functions of magistrates, but the second part intended to make a special provision in exception to the general rule. If the proviso were omitted altogether the position would be that neither a police magistrate nor any other magistrate could commit a man for trial if there happened to be a majority of a different opinion on the bench. It was quite safe to leave the matter to a police magistrate, if he happened to be there; but if he were not there, one conscientious justice, who was prepared to take the responsibility of submitting the case to the Crown law officers, to show whether there should be an investigation or not, ought to have the power to do so. It would not be safe or judicious to take away that safeguard against the encouragement of crime.

The POSTMASTER-GENERAL said he would like to hear some stronger arguments in favour of the amendment. The last sentence of the Hon. Mr. Thynne amounted to saying that where fourteen out of fifteen magistrates agreed not to commit the defendant for trial the fifteenth was the only conscientious man on the bench. The question of consolidating the laws relating to justices of the peace had been left a long time in abeyance, and the clause providing that the majority should have it in their power either to commit for an indictable offence or not was one of the cardinal points of the Bill. As a private citizen, he should not like to be in the hands of any one man in the outside districts, and he should be sorry to be in the hands of any one magistrate in any of the cities of the world. It

was by majorities that most of the affairs connected with this mundane sphere were regulated, and that principle might be applied with equal safety in such cases as those described by the Hon. Mr. Thynne. He was at a loss to understand the preference for a solitary magistrate, and the assumption of the absence of conscientiousness in the rest of the magistrates on the bench.

The HON. J. COWLISHAW said the Postmaster-General objected to giving one magistrate the power to commit against the wish of the majority. If one magistrate were not allowed to do so, why should a police magistrate be put into that peculiar position?

The HON. W. G. POWER said there was a great difference between the police magistrate and an ordinary magistrate. A police magistrate held a responsible position, and would lose his situation if he acted vindictively. Another magistrate might do a very vindictive thing without incurring any responsibility. It was better, in his opinion, that a criminal should escape than that an innocent man should be persecuted.

The HON. A. J. THYNNE said that a great deal was said on the point last year, and he would quote a few remarks made by the Hon. Sir Arthur Palmer:—

"There was a great deal in the point raised by the Hon. Mr. Thynne. He had known cases where there would have been a very grave miscarriage of justice if the majority had been allowed to decide whether a man should be committed or not, and he thought it a safe thing to leave the committal to any justice on the bench, bearing in view the fact that no justice would by himself commit a man to trial in opposition to the majority unless he was very sure that a strong case had been made out."

The Government had recognised the force of it to a certain extent by inserting the proviso, which did not appear in the Bill last year; but they went too far in taking from one magistrate the power to commit.

Amendment put and negatived.

The HON. A. J. THYNNE moved the insertion, after the word "justices," of the words "and in the absence of the police magistrate any two or more of the justices."

The POSTMASTER-GENERAL said the amendment was opposed to the principle to which the Government were determined to adhere—namely, that the matter should be decided by the majority. Suppose there were twenty-five justices on a bench—a thing that had happened before in Queensland—were twenty-three of them to be overruled by any two of them? Very often men of weak intellect were found to run in couples. Such a man generally hung on to some person very much like himself, and in general harmony with his way of thinking. He would not trust two men any more than one. It was the majority that should rule in those cases, and he should oppose the amendment.

The HON. F. T. GREGORY said there might be some doubt in the minds of hon. members as to whether one justice should have the power to commit in a case where there was a strong majority against him, but he thought that if two magistrates were decidedly of opinion against any majority that might be present that there should be a committal—he thought such committal should ensue. He remembered a case which occurred a long time ago in the Maranoa district where no less than five justices were got together from different directions with the view of preventing a cattle-stealer from being committed, but the case went so strongly against him that, though he was acquitted, it was only on a technicality. He certainly thought that they should not go too far from the existing state of things, and they would not be doing so if they accepted the amendment.

The POSTMASTER-GENERAL said that such a case as had occurred in the Maranoa district could not very well occur now; the circumstances of the colony were altogether different. Considering the sparseness of population, police magistrates were now very numerous; and in order to prevent the evil mentioned from taking place, it was provided that a police magistrate had the power to commit, no matter what number of justices might be on the bench.

The HON. F. T. GREGORY said the Committee wished to meet cases where no police magistrate was present.

The HON. A. J. THYNNE said that no danger would arise if a police magistrate happened to be one of the justices, but unless his amendment were adopted, though two justices might be satisfied that there should be a committal, their hands would be tied and they would be prevented from doing justice. If one instance occurred in the history of the colony where one or two justices were gagged by a majority, and were prevented from sending a man to trial who ought to be sent, that would outweigh any other consideration. Such cases had occurred already, or would have occurred but for the moral courage of those who committed the defendants against the wishes of majorities, and in many instances such defendants had been convicted and received severe sentences. The inquiry into an indictable offence was really a ministerial office to a great extent. It was not for the magistrates to judge whether a man was guilty or not; their duty was simply to see whether it was a case for further inquiry, and if two magistrates came to the conclusion that it was a case for further inquiry, it was wrong to deprive them of the power of sending the case up for further inquiry.

The HON. J. D. MACANSH said he thought that where there was a police magistrate it should be left to him to say whether a defendant should be committed for trial or not; but there were some places where there was no police magistrate, and it was in those places that there was a danger of some men escaping from justice. He thought there was much more risk of some cattle-stealer or other offender escaping than of an innocent man being committed for trial. He was surprised that the Postmaster-General did not accept the first amendment on the clause. He had spent the greater part of his life in the bush, and he knew well what a number of the magistrates in the country were. It was quite possible, and very probable, that a bench of magistrates would be packed, where there was no police magistrate, for the express purpose of getting some friend off who would otherwise be committed for trial. He hoped the amendment would be carried.

The POSTMASTER-GENERAL said he hoped hon. gentlemen would not forget that the Government were not likely to relinquish the oversight of the magistrates of the territory from year to year. One would almost imagine, from what had been stated, that a great many of the magistrates were prepared to assist people to escape the consequences of crime by allowing those who ought to be punished to go scathless. But he imagined it would be hard to find a case where the majority did not give a wise decision.

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

CONTENTS, 9.

The Hons. G. King, J. D. Macansh, W. F. Taylor, A. Heron Wilson, A. J. Thynne, J. F. McDougall, J. Cowlishaw, E. B. Forrest, and F. T. Gregory.

NOT-CONTENTS, 6.

The Hons. T. Macdonald-Paterson, W. Horatio Wilson, F. T. Brentnall, A. Raff, W. G. Power, and W. Pettigrew.

Question resolved in the affirmative.

Clause, as amended, put and passed.

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

On the motion of the POSTMASTER-GENERAL, the Presiding Chairman left the chair, and the Bill was recommitted for the purpose of further considering clauses 69, 80, and 125.

On clause 69—"Bail of persons arrested without a warrant"—

The POSTMASTER-GENERAL moved the insertion of the words "clerk of petty sessions" after the word "such," in line 9.

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

On clause 80—"Warrant may be backed, if necessary"—

The POSTMASTER-GENERAL said hon. gentlemen were aware that the amendment had been made in that clause on the motion of the Hon. Mr. Thynne, and the hon. gentlemen had since agreed that it would be better in a different form. He, therefore, begged to move that the following words which were originally in the clause be reinserted: "as hereinbefore provided in the cases of warrants for the apprehension of defendants."

Amendment agreed to.

The POSTMASTER-GENERAL moved the omission of the words, "and shall be executed as hereinbefore provided in case of warrants for the apprehension of defendants," with a view of inserting the words, "and when so backed may be executed as hereinbefore provided in the case of such warrants."

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

On clause 125—"Justices may commit refractory witnesses"—

The POSTMASTER-GENERAL said he had an amendment to move, which hon. gentlemen had in their hands. He moved that after the word "charged," in line 35, the following words be inserted: "or if the Attorney-General or other duly appointed prosecuting officer declines to file an information against the defendant for the offence."

Amendment agreed to.

The POSTMASTER-GENERAL moved, as a further amendment, that after the word "justice" the following words be inserted: "upon being duly informed of the fact."

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

The House resumed, and the CHAIRMAN reported the Bill with further amendment. The report was adopted, and the third reading of the Bill made an Order of the Day for Wednesday next.

The House adjourned at twenty-one minutes past 6 o'clock.