

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

FRIDAY, 13 SEPTEMBER 1889

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cultural societies. The petition was similar to those previously presented on the subject; and he moved that it be received.

Question put and passed.

Mr. BARLOW presented a petition from the Queensland Pastoral and Agricultural Society of Ipswich, of similar purport and prayer; and moved that it be received.

Question put and passed.

QUESTION.

Mr. GANNON asked the Chief Secretary—

What action (if any) has been taken with regard to the petition presented for the release of the "Hopeful" prisoners?

The CHIEF SECRETARY (Hon. B. D. Morehead) replied—

This matter is now under the consideration of the Government.

MOTION FOR ADJOURNMENT.

MULVEENA *v.* THE RAILWAY DEPARTMENT.

Mr. SAYERS said: Mr. Speaker,—I wish to bring a matter under the notice of the Government, and it will be necessary for me to move the adjournment of the House in order to do so. I do not know as much about the case as I would like, because it is impossible for me to get the information; but perhaps the Government will be able to give it to the House. It is in connection with the Mulveena arbitration case; and in reference to that case the following paragraph appeared in the *Brisbane Observer* of the 12th September:—

"It was rumoured yesterday that the arbitration case *Mulveena v. the Railway Department*, which was being heard in the district court by the Hon. J. Thorneloe Smith and Messrs. Theo. Umnack, M.L.A., and Richard Gailey, had been brought to a sudden standstill. On inquiry we learn that this interruption arose from the behaviour of the claimant, who made some extraordinary statements, and objected to the case being proceeded with by the arbitrators, stating that he wished to have the case settled in the Supreme Court. When the arbitrators pointed out that the court with his consent had ordered the case to be settled by arbitration, he said if that was so the matter had been brought about by fraud. After a heated discussion, the arbitrators adjourned the case till Tuesday next in order to give Mr. Mulveena time for reflection. We understand that the assertion of fraud is the first statement of the kind made by Mr. Mulveena, who has hitherto proceeded in the arbitration in perfect acquiescence."

My reason for bringing this matter before the House is because nearly all the officials in the North in connection with the Railway Department, are in Brisbane at the present time; and, in looking through the Estimates, I see that this costs about £30 a day to the country. Those officials have been here for some months, I may say, and it is not fair that this case should be dragged up, after it has been six years in abeyance, and the country put to such expense through the neglect of Mr. Mulveena. I understand that the case had been adjourned three times to suit his convenience, and I have heard that he is not in a fit state to go on with the case. I have also been told that the costs of the case to the Treasury, if it is allowed to drag on, will be about £4,000 or £5,000. We know the Treasury is not too full of money at the present time; in fact, if any hon. member wants money for any particular work, the Treasurer says he has no money for the purpose. I am given to understand that the last time Mr. Mulveena attended the arbitration court he was in such a state that he did not know what he was doing, and could not find the door to go out. These officials from the North, to whom I refer, occupy high positions in the public service, with salaries something like £1,000 a-year, and they have been down here nearly three months in connection with this case. I am also informed that

LEGISLATIVE ASSEMBLY.

Friday, 13 September, 1889.

Petitions—grants to agricultural and horticultural societies.—Question.—Motion for Adjournment—*Mulveena v. the Railway Department.*—Licensed Auctioneers Act Amendment Bill—second reading.—Supreme Court Amendment Bill—second reading.—Union Trustee Company of Australia, Limited, Bill—second reading.—Adjournment.

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

PETITIONS.

GRANTS TO AGRICULTURAL AND HORTICULTURAL SOCIETIES.

Mr. BARLOW presented a petition from the Ipswich and West Moreton Horticultural and Agricultural Society, praying for additional assistance to be given to agricultural and horti-

the Press are not admitted, so that the public does not know what has taken place. If this money is to be squandered, we ought to know the reason why; and I hope the Minister for Railways, or the Chief Secretary, will be able to give some information to the House as to the action they intend to take. I believe it is fully six years since this matter first arose, and when cases are allowed to lie dormant for a long period like that, the Government should take steps to prevent them being brought forward again, and let the parties go to the Supreme Court. I understand that the arbitrators have allowed three different adjournments of a week, solely because this man has been unable to attend and give evidence.

The MINISTER FOR RAILWAYS (Hon. H. M. Nelson) said: Mr. Speaker,—The hon. member has, very improperly, brought before the House a statement consisting entirely of rumours and understandings, which he has acquired by some means or other, and to which it is impossible for me to reply. This case is *sub judice* at present, and it would be highly improper on my part to attempt to discuss the merits of it now. The hon. member himself has stated that the arbitration is being conducted in a court from which the Press are excluded. We have no definite information or any sufficient data upon which to form an opinion. It would consequently be absurd to express an opinion in the meantime, and not only absurd, but highly improper. The matter is one that was before the Supreme Court, and was taken by consent of both parties to arbitration. Until the arbitrators have reported, I can say nothing whatever upon the matter.

Mr. SMYTH said: Mr. Speaker,—This case of Mulveena against the Government will be a very costly affair. At the present time we know that there are several of the principal Northern engineers, Mr. Hannam, Mr. Gwynneth, and Mr. Wright, all men holding high positions and receiving large salaries, in Brisbane. Those officers, I presume, have to be paid their salaries, although they are not at work. Then there are the arbitrators, Mr. Unmack and Mr. Thorneloe Smith, together with the umpire, Mr. Gailey, who have to be paid, and altogether the case will cost the country a lot of money. If there had been any claim it should have been brought before the country years and years ago, and if it is allowed to go on in this way we shall have other cases following it. I consider the case should have been closed last week when Mr. Mulveena showed that he did not care about going on with it. The places of the Northern engineers have to be taken by men who, no doubt, do not understand the North as well as they do, yet those men are kept hanging about Brisbane because Mr. Mulveena thinks he has a grievance. Why should Mr. Mulveena not be compelled to conduct his case properly, and why should it be adjourned for a week because he is not in a fit state to conduct it? I think it is a great pity that the case was not taken to the Supreme Court and settled there. Then we would have had some information through the Press. As it is, we do not know how it is going on. This case will probably be only the first of many others that will be brought forward, and any railway contractor will in future be able to come forward and have his case referred to arbitration. In this morning's paper we read of a firm of Chinese merchants who were paying 60 per cent. for the use of certain money. Now I am told that there are Jews in this case of Mulveena's, and that they are backing him up. What they will receive for their trouble I do not know, but if this is anything like the other case, to which I have referred, it will not be under 60 per cent.

Mr. HYNE said: Mr. Speaker,—I think the hon. member for Charters Towers was quite right to bring this case forward without any desire to discuss its merits, because, of course, it is *sub judice*, and we cannot go into its merits. The hon. member has called the attention of the Government to the number of witnesses brought down here for examination, and who are retained in Brisbane, and he has done so in the hope that if the Minister's attention was drawn to the fact, they would be sent back to the North to do their work. The resident engineer for the Cairns line has been staying at the Belle Vue Hotel for the last three months. I think his evidence should be taken, and that he should be allowed to go back to his work. I have no desire to discuss the merits of the case, but I think those officers who are engaged in the case should not be retained here for an unreasonably long time, and thus increase the expenses of the arbitration.

Mr. SAYERS, in reply, said: Mr. Speaker,—I had no intention whatever to have this matter discussed on its merits. I wished to call the attention of the Government to the fact that I did not think it fair to the country to carry on the case in the way in which it is being carried on. I am informed that it is costing the country £30 or £40 per day every day it is adjourned. I do not see that that is interfering with the merits of the case. I only call attention to the fact that this man has not been in such a state as to conduct his case properly. He has not been in a state to give his evidence, and is the country to be put to the expense of £2,000 or £3,000 because the man will not keep sober? That is the plain English of it. It is a well-known fact in Brisbane, and it is being discussed outside the House. I do not wish to prevent any man, if he has a claim, having it justly settled. I should be quite willing to assist him by all reasonable means; but I do not think the country should be put to this expense, because the man will not do as any reasonable man would do—keep himself in a state to give his evidence. That is my reason for bringing the matter forward, and I think I am perfectly justified in calling attention to the great waste of public money that is taking place. If the case had been between Mr. Mulveena and any private individual, some steps would have been taken to bring it to a close if it could not be settled in the ordinary way. If the Government acted in the way he is doing, no consideration would be shown to them. Three weekly adjournments have now taken place, and the man will not keep himself sober. I do not think it right that the country should be taxed to keep this case going on for an indefinite time. I do not know the merits of it, and do not want to discuss it. I beg, with the permission of the House, to withdraw the motion.

Motion, by leave, withdrawn.

LICENSED AUCTIONEERS ACT AMENDMENT BILL.

SECOND READING.

Mr. BARLOW said: Mr. Speaker,—In rising to move the second reading of this Bill, I regret to say that it has been introduced in consequence of representations made to me by several farmers who have been victimised in the manner which this Bill is intended to prevent. I have not, in preparing this Bill, attempted to deal with the question of commission agents, or to follow the Victorian practice, where I believe an auctioneer is compelled to keep a trust account, as that practice would cause serious inconvenience to auctioneers in this colony. So far as I understand it, the position of an auctioneer in this colony is a very peculiar one. If I am correctly informed, until he commences to

sell goods, and while they are in his custody, he is in the position of a bailee of the goods, and if he deals with them in any other way than by auction, or makes away with them, he is liable to punishment. When he is selling the goods, I am informed that there is another relation entered into, that the auctioneer then becomes the agent of both seller and buyer, and I believe cases are recorded where the auctioneer has actually signed the book when the buyer has refused to do so. Well, having received the money for the goods, I am instructed it is then a mere matter of deposit—a mere matter of debt; and if the money is made away with, or the auctioneer becomes insolvent, there is no remedy whatever against him. I may be mistaken in the advice which has been given to me, but if so there are legal members in the House who can correct what I say. This Bill proposes to bring licensed auctioneers under the 85th section of the Larceny Act of 1865, 29 Vic. No. 6, which provides that—

“Whoever being a trustee of any property for the use or benefit either wholly or partially of some other person . . . shall with intent to defraud, convert, or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid . . . shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court may award as hereinbefore last mentioned.”

Those punishments are “penal servitude for any term not exceeding seven years and not less than three years,” or imprisonment “for any term not exceeding two years, with or without hard labour and with or without solitary confinement.” There is one thing which may occur to hon. members, and that is the difficulty of dealing with cases in which civil proceedings may have been instituted, but the last proviso in the 85th section of the Larceny Act is an entire safeguard in that respect. It is as follows:—

“Provided also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been heard or shall be pending.”

I am anxious to economise the time of the House, because my hon. friend the member for Burrum has a very important matter to bring forward, and with that view, I shall ask leave, if the second reading of the Bill is agreed to, to modify the notice of motion which I have given, and move it in the shape that this Bill be considered in committee at a later hour of the day. The several clauses of the Bill speak for themselves. The 1st and 2nd are the interpretation and definition clauses, and the 3rd clause is the enacting portion of the Bill. The 4th clause is merely formal, and is necessary to get over the first proviso in the 85th section of the Larceny Act, which requires the sanction of a law officer of the Crown before proceedings can be commenced. With these remarks I beg to move that the Bill be now read a second time.

Mr. GANNON said: Mr. Speaker,—Some of the remarks made by the hon. member are, I think, perfectly true, but I am afraid that this is too crude a measure to deal with such a very important matter. There are isolated cases in which people who have consigned produce to auctioneers have unfortunately found some difficulty in getting their money; but those are cases of dishonest auctioneers, and I must say that there are very few of that class in this colony. I quite believe that the hon. member has introduced this Bill with the intention of doing a certain amount of good, but it is too limited in its scope. If the hon. member will bring in a more comprehensive measure, on a future occasion, I shall

be very happy to support him; but I cannot see my way to support this Bill. I think that all persons dealing with property—brokers, commission agents, and so forth—should be brought under the provisions of such a measure. The hon. member stated that there were cases on record where the auctioneers had signed the book for purchasers. There is no doubt that they have that right under the present law. At any rate, I believe that is the case. If it is not so, there are members in the House who can correct me. There is no provision in any Act at present in force under which auctioneers could be prosecuted for withholding the funds of a client. The cases mentioned by the hon. member do not occur very often. There are particular cases, where farmers living at some distance from town send their produce to so-called auctioneers, who are not known and are of no standing; and, who, having managed to get hold of the money of their clients, the latter have great difficulty in getting it back. I have no desire to take up the time of the House in discussing this question. I intend to oppose the second reading of the Bill; but I shall be only too glad to assist the hon. member if, by-and-by, he will introduce a measure which will be more in accord with the views of business men. If there is anything in which I can be of assistance to the hon. member in passing such a measure, I shall be glad to render him any service in my power, because I believe there is room for such a Bill. This measure is, however, rather crude, and for that reason I cannot support the second reading.

Mr. GROOM said: Mr. Speaker,—I think the hon. member for Toombul has put his finger on the weak place in this Bill, and that is, that it does not go quite far enough. I am living in a district where farmers are necessarily obliged to send their produce to other persons for disposal, and I know that that district, in common with others, has suffered very largely, not from auctioneers, but from the class of persons who are not dealt with in the Bill—namely, commission agents. I know one case in which a consignment of butter, to the value of £80, was sent by one of my constituents to a commission agent in this city, and he never received a penny for that butter. The commission agent went insolvent, and wiped out the debt in that way. I think, if the hon. member for Ipswich will take the advice tendered to him by the hon. member for Toombul, who is a gentleman of business capacity, with a knowledge of this matter, and introduces a more comprehensive measure on a future occasion, he will receive the assistance of many hon. members in this House. I will be glad also to give the hon. gentleman the benefit of my experience. I have known an auctioneer to do this: He had a piece of land of sixty acres in extent, and he lodged the title deeds of it with a bank. He could not get the deeds from the bank until the money owing upon them was paid, but in the meantime he got another auctioneer to sell the land after it had been cut up into building allotments, some of the usual size of sixteen perches, some half an acre, some an acre, and some of two acres. The usual terms as to deposit and promissory notes were made, and the greater part of the unfortunate purchasers of the land paid their money, and when they came to apply for a title for their land they found it had been mortgaged to the bank; in fact, some of them have not got their deeds to this day, and litigation is still going on for them with the bank. That sort of thing is not dealt with in this Bill, and I am sorry to say I have heard of more than one case of the kind, which shows the necessity of some provision to compel an auctioneer to give a practical guarantee as to

the validity of the title of the land which he disposes of, so that the purchasers may know that they are really buying a *bonâ fide* article, and not a bogus one. The most serious matter to be dealt with is, I think, that which has already been referred to by the hon. member for Toombul, as there is no doubt that the farming community in all the districts outside Brisbane, and for which Brisbane is the natural market, have suffered more or less at the hands of dishonest commission agents. I think the hon. member would do well to withdraw this Bill and introduce a comprehensive one next session. A comprehensive measure dealing with all the branches of this subject is undoubtedly necessary; and it is only right that farmers sending produce to commission agents should be assured that the persons to whom they forward it are trustworthy, and that if their trust is betrayed by any commission agent guilty of fraud, he shall not be able to avoid the consequences of his breach of trust and fraud by filing his schedule in the insolvency court. The hon. member who has introduced this Bill will, I think, be wise if he accepts the suggestion of the hon. member for Toombul with regard to it; and I am sure he will have the assistance of every member of the House in any attempt to pass a comprehensive measure dealing with this subject next session.

The PREMIER (Hon. B. D. Morehead) said: Mr. Speaker,—I quite agree with the remarks that have fallen from the two hon. members who have preceded me, and I think the hon. gentleman will be wise to withdraw this Bill. I do not see why the auctioneer should be specially selected to be brought under the 85th section of the Larceny Act, when we know that there are many commission agents who are at times guilty of quite as improper actions as any done by auctioneers. We have even known banks to do very improper things; and I can give a case in point, where a man received £2,500 as a stock and station agent in another colony for cattle sold by him, and he paid it into a certain bank, where he had an overdraft. The overdraft was unsecured, but the man had no reason to think that the bank was dissatisfied with his position. The £2,500 was paid in to the credit of the firm, and perhaps it would have been wiser to have paid it in to a trust account, but the man had no warning that the bank would take any hostile action. As soon as the money was paid in this man drew his cheque to pay the owners of the stock he had sold, and he found the bank stuck to the money, dishonoured his cheque, and that there was no legal remedy against the bank. The owners of the stock were a very powerful company, almost as powerful as the bank, and they would have certainly gone to law only they were advised that they had no remedy against the bank, the officers of which took possession of that money which they knew they had no just claim to. I say that shows that banks might as well be included in a Bill of this kind as auctioneers, in order that they might be equally liable to punishment for making away with moneys which are not their own, and which are practically trust moneys. I merely mention that case to show that others besides auctioneers should be dealt with; and merchants are also in the same position with regard to the holding of trust moneys. The hon. gentleman will see the large question he is opening up in connection with this comparatively small measure, and will, no doubt, see the necessity for withdrawing it, so that the law may not invidiously affect one branch only of the trading community.

Mr. SMYTH said: Mr. Speaker,—I do not approve of this Bill, and I think the Government or some private member of the House should in-

troduce a much better Bill dealing with this subject. This Bill deals only with auctioneers; and I do not see why commission agents, who have no office and no security but a pocket-book and pencil, should go free when auctioneers have to pay £15 a year for a license to carry on their business. There is another class of persons whom I wish to get at, and they are the sharebrokers, and I speak particularly of my own district. Any man who can buy a pocket-book and a pencil is a sharebroker. He has no liability; and he can walk up and down the pavement, and his office is from one end of the street to the other. He may not be worth £5, and he may carry on transactions involving thousands of pounds. When people sell shares they expect to get a man's cheque for them, and they may get this man's cheque, but it may not be worth the paper it is written on. There should be some alteration of the law by which these sharebrokers and commission agents could be put on the same footing as solicitors in this colony. If a solicitor in this colony appropriates the funds of his client he is struck off the roll; and in the same way a sharebroker or commission agent who commits a fraud should be prevented from again plying that avocation. Let us have respectable auctioneers, commission agents, and sharebrokers, and give us the power to exclude persons who are not fit for those positions. I wish to call the attention of this House to the fact that we have now in this colony a number of so-called "sharebrokers" who should not be allowed to ply that avocation, and I hope the time will shortly arrive when those persons will at least, in addition to having to buy a pocket-book and pencil, have to pay the same fee to the State for permission to carry on the business as is exacted from auctioneers. This Bill does not go at all far enough; and I do not believe in singling out auctioneers, when commission agents and sharebrokers of all kinds should be put on the same footing. If commission agents and sharebrokers were obliged to pay the same license fee as auctioneers, and there is no reason why they should not, we should have a very different class of men in those lines of business.

Mr. JESSOP said: Mr. Speaker,—I agree with other hon. members that it is advisable that the hon. member for Ipswich should withdraw this Bill, and bring in a more comprehensive Bill next session. This measure does not go far enough, and it is only throwing a stone at a certain class of people. The hon. member told us that in some cases the auctioneer acts for both parties—buyer and seller—but I think such cases very seldom occur. I have heard of such cases certainly, but none ever came under my notice. I quite agree with what has been said by the hon. member for Gympie, and I think that sharebrokers and all persons who act in the same way as agents for others, should be made to pay a license fee the same as auctioneers. As the hon. member for Gympie has said, at present the ability to purchase a pocket-book and pencil enables a man to start as a broker and handle perhaps £100,000 of other people's money, and nothing can be got out of him if anything should go amiss. These agents are without any of the responsibility attaching to auctioneers, as, if an auctioneer makes a mistake, when he next applies for a license the bench may refuse it, because he has acted dishonestly. When a man applies for an auctioneer's license, a bench of magistrates may say, "No, you shall not have a license. You are not a fit and proper man to hold a license. You are not just or honest; you have robbed your constituents." I have always found that auctioneers render their account sales regularly, but I think the law as it stands is capable of great improvement, and I

shall be very glad to give the hon. member for Ipswich every assistance I can in drafting a Bill that will be comprehensive, and a benefit to the public.

Mr. BUCKLAND said: Mr. Speaker,—I think the hon. member for Ipswich is to be congratulated upon having brought forward this Bill; but, to my mind, it does not go anything like far enough. I have stated before in this House the necessity that exists, for the protection of persons who place property in the hands of others for sale; and in addition to that, I look at it from a revenue point of view. The necessity has arisen for making it imperative that everyone who acts as a commission agent, or a sharebroker, should be a licensed person, as the public would then to some extent be protected, at any rate to a greater extent than they are at present. We know perfectly well that the persons who have been the greatest sufferers have been those referred to by the hon. member for Toowoomba, the farmers. I know several instances in which farmers have consigned their produce to this market, and to others in the colony, and in which they have lost the entire consignment by the faithlessness of the persons to whom the consignments have been sent. If the hon. member for Ipswich will take the advice of those hon. members who have spoken upon this subject and withdraw this Bill, with the view of bringing in a more comprehensive measure next session, I am certain that he will have the hearty support of every right-thinking member of the community, and of the auctioneers also. I am certain there is no respectable man holding an auctioneer's license who would object to pay a higher license fee than at present. I speak for myself, and I know I express the sentiments of nearly all the auctioneers in the city. I trust the hon. member will take the advice that has been offered and bring in a more comprehensive measure next year.

Mr. R. H. SMITH said: Mr. Speaker,—I have not had any experience of any auctioneers who would be punishable under the clause in the Bill before us. But there is evidently a necessity for a Bill of this kind being carried through this House. Hon. members who have spoken are evidently all of one mind in regard to the present Bill, and that is that there is an absolute necessity to prevent fraud; but as it does not, in my opinion, go far enough, I hope the hon. member for Ipswich will be guided by the advice that has been tendered to him and withdraw this Bill with the object of introducing one of a more complete character next session, one which will include not only auctioneers, but all commission agents, sharebrokers, and others who have property entrusted to them for disposal in any way. It is rather a wonder to me that the present law should have been allowed to remain for so long in its present state; but I suppose that the character of the auctioneers has not made it evident to the public that any alteration is necessary. No doubt, the auctioneers we have are, as a rule, men of a respectable class, and have not defrauded their clients in any way. I hope the hon. member will withdraw this Bill, and introduce a more complete Bill next session.

Mr. O'SULLIVAN said: Mr. Speaker,—I had some little experience of auctioneering myself once, and have found that a measure of this kind is necessary. I presume this contemptible little Bill has been just brought in to suit a farmer or two; but the subject is a very comprehensive one. For instance, sharebrokers have been mentioned by the hon. member for Gympie, and I think it is essential that they should be included in any Bill dealing with the subject. An auctioneer pays £15 for his license, and under that license he has a right to sell all over the

colony. I paid £15 for an auctioneer's license and sold liquor under it. The liquor had been taken out of bond, and had been carted away to a certain place; but I was fined £30 for selling it, and the consequence was that I lost the use of my money, and the goods that were confiscated for some months, and I had actually to go to the District Court to recover my property. Cases such as that should be provided for in the Bill, and commission agents who conduct the transactions of other people with a pencil and book, as the hon. member for Gympie, Mr. Smyth, says, should also be included. That hon. gentleman put the case well. I have been an eye-witness to sales of that kind, where there has not been the slightest shadow of responsibility after the sale was made. It is a very large subject, and I certainly am not inclined to support a Bill dealing with it unless it is brought in by the Government. Some experienced hand should deal with a matter of this kind, instead of half-fledged members trying to make themselves popular by bringing in a patchwork measure of this sort. It is a contemptible Bill, and for that reason I shall vote against it.

Mr. MACFARLANE said: Mr. Speaker,—There can be no doubt that the object of the mover of this Bill is a very proper one. I, myself, have known several cases in West Moreton where people have been robbed by so-called auctioneers or commission agents, who took people's goods for sale and they never saw the money afterwards. Those men simply passed through the court and were whitewashed, and there was nothing more said about it, while the unfortunate farmers lost the proceeds of a whole year's labour. Although the Bill does not fulfil the expectations of some hon. members, I think it goes sufficiently far to protect farmers and others who send their produce to auctioneers for sale. I am not, of course, referring to auctioneers as a class, because, with very few exceptions, the auctioneers of the capital are well-known men of respectability and responsibility. It is with a class of men who call themselves commission agents to whom I more particularly allude, as it is to them the farmers chiefly entrust their produce for sale.

The Hon. Sir S. W. GRIFFITH said: Mr. Speaker,—The real difficulty has arisen, I imagine, not because auctioneers are especially guilty of dishonest practices, but because the word "trustee" in the section of the Larceny Act, to which the hon. member referred, has had a limited meaning put upon it. That clause provides that a trustee of any property, for the use or benefit of some other person, or for any charitable purpose, who fraudulently converts it to his own use, or misappropriates it, is guilty of a misdemeanour. It is understood to be the law that a man who receives money as agent for another and keeps it is not considered to be the trustee of that money within the Act. Some judges have been of a different opinion, but it is the general opinion that he is not a trustee within the meaning of that section. When an auctioneer receives property for another for sale, and receives the proceeds, he is not a trustee of the money for the owner of the property, and therefore cannot be prosecuted under that section. An auctioneer is only one of a large class of persons who receive money for other persons. What is really wanted is to extend the definition of a trustee to cases where persons receive the money or property of others; but that raises a very difficult question. Everybody who receives money for another, and does not pay it over to him, is in one sense guilty of appropriating another man's property; yet he is not ordinarily expected to pay over exactly the same money that he gets. That course of business ordinarily creates the relationship of

debtor and creditor. He receives his principal's money in the ordinary course of business, and of course ought to pay it. The difficulty is to draw the line between an ordinary debtor who does not pay his debt, and the man who is really a trustee. You cannot make the law of general application to any debtor who does not pay his debts; you must distinguish according to the way in which the debt is contracted. Is it to apply to every person into whose hands money goes for somebody else? That would apply to everybody who has business relations in any capacity—to solicitors, bankers, to almost everybody. The difficulty is great, and that is probably the reason why that section of the criminal law has not been extended. The difficulty is to draw a correct line distinguishing between the different classes of debts, and I see very great difficulty in dealing with it. The case of an auctioneer is particularly noticeable, because there have been some dishonest auctioneers here; but the course of business with most auctioneers is that instead of passing money to their employers when they receive it, they pay it into the bank, and it is paid over at the end of the month or the quarter. In such cases it is quite clear that the ordinary relationship of debtor and creditor is constituted. The Bill as brought in by the hon. member will not, I think, effect his purpose. What is required is to define who shall be a trustee within the meaning of that section—what class of persons who receive money and do not pay it shall be deemed to be trustees. It cannot be everybody, and the difficulty is to distinguish what class of persons it should apply to. I should advise the hon. member to consider the matter very fully before he attempts to formulate it. I am not at present able to offer any suggestion as to where the line should be drawn.

Mr. AGNEW said: Mr. Speaker,—I regret I was not in the House when the hon. member moved the second reading of this Bill. I think there is a great opening for a considerable amount of amendment in the existing way of doing business by auctioneers in general. I have had one or two rather painful experiences in connection with this matter; but the present Bill would not have protected me in the particular position I found myself in. The subject is one deserving the attention of the House, and I should be very pleased to support a measure which would reach the grievances that have come under my own notice. But the Bill as it stands will not have any practical effect, and I hope the hon. member will accept the advice given to him and hold the matter over, and that early next session he will bring in a measure more comprehensive in its scope, and one which will achieve the ends he has in view. In the framing of such a Bill, I am sure the hon. member will receive every assistance from the honest auctioneers—and we have them in this city—for it is one which they desire to see passed. They will be the foremost to afford the hon. member practical assistance in framing clauses that will be of benefit to the entire community. I regret I cannot support the Bill as it stands at present.

Question—That the Bill be now read a second time—put and negatived.

SUPREME COURT AMENDMENT BILL.

SECOND READING.

Mr. POWERS said: Mr. Speaker,—In introducing this Bill I may say that most of the important clauses in it were included in the Legal Reform Bill which I introduced into this House on the 14th of last June. It was then suggested that there were too many subjects in

that Bill, and that it would be better to bring in a Bill dealing with such parts of it as could be included in one Bill. Immediately after the second reading of the Legal Reform Bill, I introduced the District Courts Amendment Bill, dealing with district courts; but it was arranged that the Government should bring forward a Bill dealing with that question, and I promised to take up another part of the subject. The Bill I am now introducing is a Bill making provision "for the better administration of justice in Queensland, to amend the laws and practice of the Supreme Court, and for other purposes." I referred to the important clauses of the Bill when speaking on the second reading of the Legal Reform Bill, so that it is not necessary to detain the House very long upon the present occasion. Whatever doubts I may have had in my mind as to the wish of the public for some sort of legal reform have been removed by the reception the Legal Reform Bill met with in this House, and by the expressions of opinion from persons all over the colony; and I am now satisfied that the public generally look for the introduction of some such measure as this. The first few clauses are of course formal, and in accordance with those in similar measures. The first important clause is clause 5, which deals with actions being brought in the Supreme Court when the claim does not exceed £30. The clause is as follows:—

"No Supreme Court writ shall hereafter be issued where the plaintiff's claim does not exceed thirty pounds, unless the sanction of a judge of the Supreme Court has been first obtained to such writ being issued in the said court, or unless the writ is for service out of the colony."

I have previously referred to the number of writs which are issued for amounts under £30, and I showed by a report I received from the office of the Registrar of the Supreme Court, that in the year ending October, 1888, 208 writs were issued for sums under £30 in the Supreme Court. On all of those writs £4 14s. 6d. was charged, and if not paid within eight days then nine guineas were charged, and by the time the cases came before the Registrar, the charges amounted to £14 or £16. I know of one case where the claim was under £30 in which the costs came to £37, and that was in an ordinary action. This state of things has continued, and in December last I find that out of 132 writs issued, there were twenty-five for under £30, twenty-seven for amounts between £30 and £50, and forty-six for amounts between £50 and £200. Writs are issued in the Supreme Court for most trivial sums, and on charges which the parties have not the slightest chance of defending. I saw a writ to day for £1 10s. 6d. in the Supreme Court. I believe that claim is for goods supplied. I asked the solicitor who obtained the writ, why that writ was issued in the Supreme Court for such a trivial claim, and he replied, "It has been issued because I cannot obtain a speedy judgment in the district court. The man is in Townsville, and there will be no sitting of the district court there till December. I have had to issue this writ, and I am now going to ask the judge for costs in the case." I am sorry I am not able to inform the House what costs were allowed, but eight and fourteen guineas are allowed upon the most trivial claims. As a matter of fact they are issuing writs in the Supreme Court for such sums as that, and I can assure hon. members of this House that not one, but dozens of writs are issued in the Supreme Court for sums of £10 or £15, with £4 14s. 6d., or nine guineas if not settled within eight days, marked upon each. No solicitor would advise his client to defend one of these cases, for there is no use in his doing so, as he would lose more than he would gain by going

to the judge and getting permission to defend. There is a rule in the Supreme Court that no costs shall be allowed in cases involving less than £30, but then that rule states that that is so unless the judge otherwise orders. Since I last spoke upon this subject I have been before a judge myself in a case of this sort, and costs were allowed. I do not believe that applications to the judge for costs in suits for less than £30 are opposed once in a dozen cases, and I consider it is the duty of this House to put a stop to the practice which prevails at present of bringing these cases before the Supreme Court. The 6th clause deals with the privileges of defendants, and provides as follows:—

"No action shall be brought in the Supreme Court against any person where the amount claimed does not exceed five hundred pounds, and the district court has jurisdiction to hear and determine such action if such person objects thereto, and if within the time limited for entering an appearance to any writ of summons in any such action in the Supreme Court, the person sued or his solicitor or agent gives a written notice to the plaintiff and to the registrar of the Supreme Court that he objects to being sued in such court, no proceedings shall be afterwards had in the Supreme Court in such action."

It is a privilege that is extended under the Justices Act to persons sued in court, and who do not wish the matter to be tried in that court, to say: "I will take no notice of that action; you must try it in another court." It is an extension of that privilege. Then, by clause 7, when a person is sued for defamation, no matter what the amount may be, he can object to it being tried in the Supreme Court. I shall here refer again shortly to the words of Sir E. Clark, Solicitor-General of England, when speaking on the question of legal reform. He said:—

"At present certain classes of actions cannot be instituted in the county court. Libel is one of them, and it is only necessary to look at the columns of the newspapers to see that the trial of libels, many of them of a frivolous character, occupies our judges during many days of their work. There is no reason why these actions should not be tried at the county court, and if that change were made, a very large class of work would be thrown open to the advocacy of solicitors."

Those are the opinions of that gentleman, and I believe they are endorsed by most members of the profession—that these cases should not take up the time of the Supreme Court, but should be tried in the district court, because in only one case, so far as I know, has the verdict exceeded the amount that could have been given in the district court. This clause is moved with that view, but I am not going very fully into the matter now, because I hope the second reading of the Bill will be passed, and I will give my reasons in support of the clauses when we are in committee. Section 8 deals with defendant's rights in actions of tort brought in the Supreme Court, and is chiefly intended to meet trifling actions. Any man may bring an action against another in the Supreme Court for assault; he may claim £500 damages instead of going into the police court. He may bring actions for the most trivial things in the Supreme Court, and this clause gives the defendant the right to go into the court and say, "This is only a trifling action; let us have it tried in the court to which it belongs." I think the necessity of some such provision is patent from the Act passed in England last year, where they are going into the question of legal reform and allowing trivial cases brought in the superior courts to be tried in the inferior courts at something like reasonable cost. Then the plaintiff may be required to give full security for the defendant's costs to the satisfaction of one of the registrars of the Supreme Court. It is provided in clause 9 that every Supreme Court writ issued after the 1st January

next, where the claim does not exceed £500, shall bear on the face of it a statement to the effect that the defendant is at liberty at any time to apply to a Supreme Court Judge in Chambers to order the action to be tried in a district court. The object of that is to prevent any person who receives a Supreme Court writ for £10 or £15 from being afraid that he will have to pay a lot of expenses or else pay the money. If the writ is for £50 or £100 he may go into court and ask the judge to order the action to be tried in the court to which it properly belongs. Section 10 is one to which there are clearly two sides. As the matter stands at present, under order 35 of the Judicature Act, if a man does not say where he wants his action tried it will be tried in Brisbane, and, as present Acting Judge Chubb is reported to have said the other day, there are too many cases tried in Brisbane that ought to be tried in other districts, as they take up too much of the time of the court in Brisbane. When the Bill goes into committee I will explain further why I think the clause should be passed. Clause 11 provides that in any action in the Supreme Court tried before a judge and jury, the jury shall decide whether costs shall be allowed to the successful party. I know that, under order 54 of the Judicature Act, the costs are to abide the event, unless the judge otherwise orders; but as the costs are often as important a question as the verdict, I think the jury should decide whether costs should be allowed. However, it is debatable matter, and I will give my reasons in support of the clause when we go into committee. After hearing argument on both sides we can decide whether the clause should be passed or not. Clause 12 relates to the payment of proceeds of executions. As a matter of fact now, whenever a person gets a verdict he has to apply to some agent in Brisbane to get the proceeds of the execution, and I think in all such cases the sheriff should forward the net amount realised to plaintiff's solicitor, in whatever town he may be practising. Clauses 13 and 14 are introduced for this reason, that under the Real Property Act at present when a person has obtained judgment, and that judgment appears on the face of the certificate of title, and the sheriff can sell the property—although it appears there, the person against whom the judgment has been obtained can transfer, and thus defeat judgment. I shall now ask the attention of hon. members to clauses 15, 16, and 17, dealing with contempt of court. Clause 15, except in so far as it allows a judge to commit for trial for contempt, is a copy of the clause in the District Courts Act, which gives the judge power to keep his court in order, and to insist upon persons behaving themselves in court. The clause gives judges of the Supreme Court power, or rather limits their rights as to behaviour in court, to the authority given in the District Courts Act, and I think, after what we have seen going on in the colony, there should be some limit defining the right of a judge to commit for contempt. Whether this is the right way of doing it or not, it is the best way that I can see to lay before the House, and if in the discussion of the Bill a better way is shown, I shall be very glad indeed. I do not say a better way cannot be shown, and I believe it is our duty, as things now stand, to define in some way the powers of Supreme Court judges to punish for contempt, so that the public shall know their rights, and that it shall not be left to the judges to commit in an indefinite and uncontrolled way. As it is now, it appears that there is no limit to the amount of fine, and a judge can imprison for three years. I think it is not right, knowing how things are going on, that this state of things

should exist without trying in some way to remedy it. These three clauses are the best way I can see out of the difficulty which we, as representatives of the people, are called upon to face. They do not take away the right of the judges to keep order and authority in their own courts, or to enforce any arrest they may order. Clause 17 protects their right to make arrests and to imprison for disobedience of orders. Clause 16 allows them to commit for contempt for seven days; if they wish to go beyond that they must commit the offender for trial by a jury. I think the principle of the Bill may be approved, with these clauses, which may be altered in committee if it is deemed necessary. Clause 18 is also new. It enables any person to prepare and register real property transfers of unencumbered law. That was the intention of Torrens' Act, to simplify the process and enable everyone to transfer. But at the present time, under our Act of 1867, it is contempt of court to do so, and persons are liable to a penalty of £20 if they charge anything for it. I think it is time that that should be remedied, because once a transfer is passed it is indefeasible, whoever gets it. At any rate it is absurd to talk about contempt of court for doing anything of that kind, and I do not think such an incongruity should exist any longer. Clauses 19 and 20 deal with the admission of solicitors and barristers. There are some who say we should leave this entirely in the hands of the judges; but I contend that we, having had experience of the present Act, and seeing that improvement can be made, it is our duty to improve it. The very fact of its having been in force for twenty-two years is enough to show that it has had a fair trial. The clause provides that anyone who has been articulated to a solicitor in any of the colonies, and has passed his examination, should be admitted here. I see no reason myself why it should not be so; and, besides, I think that provision will assist federation to some slight extent. If we allow these privileges, even if any of the other colonies do not do so, I think it only right that we should do what we can to assist in making the action uniform. Then clause 20 provides—

“Every attorney, solicitor, or proctor of the Supreme Court of Queensland shall hereafter have and be entitled to audience in his professional capacity before any Circuit Court or Assize Court or any other court held before a single judge of the Supreme Court or before the judges of the Supreme Court in Full Court.

With the exception of the last few words, that is a copy of what was passed in 1867, and it was never altered until the Legal Practitioners Act was passed, which proposed to give a right to attorneys to appear in court, but only if they called themselves legal practitioners.

The HON. SIR S. W. GRIFFITH: There is nothing about that in the Act.

Mr. POWERS: They must say they are practising as barristers or legal practitioners before they are allowed to appear, because an attorney has no right to appear in court as an attorney. I think that will be admitted. It is a fact that the right of an attorney to appear in court has now been dispensed with.

The HON. SIR S. W. GRIFFITH: No!

Mr. POWERS: I can assure hon. members that an attorney is asked if he appears as a legal practitioner, because it is said the clause allowing an attorney to appear has been repealed. So it is; but if an attorney likes to appear, and to call himself a legal practitioner or barrister, then he can do so. There are a great many solicitors in this colony who will not call themselves legal practitioners, or who, being only attorneys, will not call themselves barris-

ters, and I know of attorneys employing counsel simply because they will not say they are barristers when they are not barristers. The law does not entitle a solicitor to be a barrister without passing an examination in mathematics or classics, or serving for five years as a solicitor. For those reasons there are many persons who will not call themselves legal practitioners or barristers, and it is all very well for barristers and legal practitioners to say there is no need of such a clause, because there really is. In Chamber business, where a great deal of the work is done, we all appear, and we are singled out by the judge in the order of seniority. If the Minister of Justice or the Hon. Mr. Macpherson appear, they have to wait their turn until all the barristers, senior and junior—even down to those who have only been admitted three months ago before the judge—and have to play second fiddle to all the others. This clause will give all a right to appear whether they are barristers, solicitors, or legal practitioners. The judges say they have to carry out the Act, and before they give an attorney the right to appear in the Supreme Court, they ask the question whether he is practising as a legal practitioner or as a barrister.

Mr. DRAKE: Is that always done?

Mr. POWERS: I will not say it is always done, but, as a matter of fact, it is done. I know solicitors who would not appear, because they will not say they are practising as either one or the other. I hope, therefore, to see that clause passed, and also the clause providing that a solicitor of five years' standing may, on application, be admitted as a barrister. I would like to point out that three out of four of the gentlemen who are now judges in Southern Queensland were solicitors, and one was raised to the bench without passing any other examination than that of solicitor. He was practising as a solicitor when he was raised to the bench, and when Sir Charles Lilley was in this House, he strongly advocated this clause, allowing persons who had been attorneys for five years to be admitted as barristers. He made a very strong speech in favour of such a provision, which can be found in *Hansard* of 1872. I can, however, refer to that matter when the Bill gets into committee. Clause 22 deals with the liability of barristers, making them and legal practitioners liable in the same way as solicitors. The question has been raised that they are not liable; but, if they neglect their work after having accepted briefs, I think they ought to be liable. Clause 23 deals with articulated clerks, and provides that a barrister practising as a solicitor, or a barrister, may receive articulated clerks. Many of them, I know, are most anxious to do so, and I do not see any reason why they should not.

The HON. SIR S. W. GRIFFITH: Do they not do it now?

Mr. DRAKE: They cannot get any decision upon the point.

Mr. POWERS: They have been told that it is not allowed, although they are very anxious to take articulated clerks; and, as I say, I do not see why they should not be allowed to do so. Clause 24 refers to the disposition of fees received for admission of solicitors, and the fees received from articulated clerks resident outside Brisbane. At present those fees are all paid into the library fund in Brisbane; and the last report of the fund presented to the Full Court showed that there was a balance of over £600 to the credit of the account. I quite admit that there must be a good Supreme Court library in Brisbane; but I believe there is one here already, and if some of that money was available in the country

districts, it would be a great benefit and assistance to articulated clerks who have served their time in those districts where the money really comes from. I think those places should have some portion of the funds divided amongst them, even if it were only to keep up the law reports in those places, so that barristers on circuit and others might have them at hand. Clause 25 reads as follows :—

“Solicitors and justices of the peace are hereby authorised to take affidavits throughout the colony as fully and effectually as commissioners duly appointed for taking affidavits in the Supreme Court.”

I think that also will be a great benefit to the country districts. I can assure hon. members that persons in my district have had to travel thirty or forty miles to make an affidavit, because there was no commissioner in the district. In insolvency, justices of the peace can take affidavits, but not in other matters, and it is a great inconvenience to people in the country districts to have to come thirty or forty miles into town in order to swear an affidavit. As justices of the peace are allowed to take affidavits in insolvency, I think we should extend their power to other matters. In Brisbane if a person wants to swear an affidavit, he has to go to the Supreme Court and swear it before one of the few persons who are entitled to take affidavits. That is an absurdity, and often causes serious inconvenience to business people. It would, I am sure, be a great advantage to the community generally if the Bill passed with this clause alone. The question has been raised as to whether magistrates should be paid for taking affidavits. I say they should not, that they should take them without fee. As to solicitors, nearly all country solicitors are allowed to swear affidavits, though the solicitors in Brisbane, I understand, are not. One or two were allowed to do so in the old time, but no others are allowed now, and affidavits have to be made before a judge's associate, the Registrar or Deputy Registrar of the Supreme Court, or the Supreme Court Librarian. I do not, however, so much mind what is done so far as Brisbane is concerned. What I chiefly desire is that justices of the peace in the country should be authorised to take affidavits. Clause 26 provides that :—

“From and after the commencement of this Act all other enactments and rules of any court or judges inconsistent therewith shall be repealed.”

There is only one other matter that I wish to refer to, and that is in connection with the admission of solicitors and barristers. I would like to see provision made for the admission in this colony of solicitors and barristers who have been admitted in the other colonies. The Bill was introduced on the 16th of July and this is the first day I have been able to bring it before the House, so that I hope that those hon. members who believe in it will help me to get on with it, and that other members will not be offended with me for having taken in hand the matter of the Supreme Court. Anyone who reads the measure will see that no attempt is made to interfere with the Supreme Court practice, except to allow actions for small sums to be kept out of the Supreme Court. Of course, as other members have notices on the paper, I do not intend, if I am successful in getting the second reading of this Bill passed, to move that it be considered in committee to-day, even though I have had the matter so long on the paper. Having taken the matter in hand, and the Bill which I presented earlier in the session having been so well received by the House, I have much pleasure in moving that this Bill be now read a second time, in the hope that some portions of it, at least, will become law.

The Hon. SIR S. W. GRIFFITH said: Mr. Speaker,—Unfortunately there is no member of the Government in a position to express an opinion on this Bill, and criticise it as it should be criticised. The hon. member who has moved its second reading appears to think that the way in which the Bill formerly introduced was received, justifies him in expecting that this Bill will become law. I think that on the previous occasion the House listened with great attention to the very interesting speech the hon. member made; but I am not at all sure that hon. members concurred with the provisions of the Bill, in introducing which that speech was delivered. I am sure some hon. members would like to know what would be the effect of the Bill, what change it would make in the law, before they agree to it. It is very easy to point to some institution, see some blemish in it, and say, “Here is an institution in which something has gone wrong; what a scandalous institution; abolish it.” But you may find 500 cases in which that institution works well, for one or two in which it works badly, and you would not abolish the institution altogether for the sake of the few cases in which it works badly. When a proposal is made which will interfere with the general administration of justice in the colony I am bound to call the attention of hon. members to the fact that some of its proposals are very much like what I have suggested—namely, that because something in an institution is not perfect we should abolish the institution altogether. I take it that it is to the interest of the lay members of this House, quite as much as the legal members, to see that justice is properly administered in the interest of all parties alike. There are two parties to an action, the plaintiff and defendant. In some cases the claims may be such as are fairly disputable; in others the plaintiffs have suffered some serious injury, or some person will not pay them what he does owe. This Bill is framed entirely in the interest of defendants, the people who have done the wrong, or who owe the money. I do not see why they should receive more consideration than the persons injured, the persons to whom they owe the money. Of course unjust claims may be made by plaintiffs; but, on the other hand, just claims may be unjustly resisted by defendants, and in dealing with a question of this kind we must bear in mind both classes of persons. These remarks will prepare the way for some observations on the provisions of the Bill, all of which are, more or less in the interest of defendants. With respect to clauses 2, 3, and 4, the effect of the Bill will be the same whether they are kept in or left out. The 2nd and 3rd clauses simply provide that unless otherwise altered by this Bill the law shall stand as it is at present, and the effect of the 4th clause is that where the law is altered by this Bill it is to be so construed. The first proposal the hon. member makes is to abolish all actions in the Supreme Court where the plaintiff's claim does not exceed £30. It is quite right that the Supreme Court should not be made an institution for collecting small debts, and that persons who owe small sums of money should not be harassed by having to defend an expensive action in the Supreme Court. With that I quite agree. But what is the remedy for that? Is it to prevent anybody from making a claim for £30 in the Supreme Court when he cannot get the same redress anywhere else? Surely the remedy proposed is altogether disproportioned to the evil. The result of the proposal made in this Bill would be that no person who had a claim for less than £30 could go to the Supreme Court to recover the debt unless he lived in Brisbane or Bowen. At the present time writs can be issued not only in Brisbane, but in many of

the provincial towns in the colony. Suppose a debtor was about to abscond to evade the payment of his debts, the only way to prevent that would be to issue a *capias* against him.

Mr. POWERS: The plaintiff can get the sanction of the judge.

The HON. SIR S. W. GRIFFITH: If he is in Brisbane he can get the sanction of a judge, but I am speaking of the country. This proposal will make no difference in Brisbane, except to make it more expensive to take an action for a small sum into the Supreme Court; but in the country, where a man wants speedy relief, this will take the speedy relief out of his power. This clause is entirely in favour of Brisbane clients and Brisbane solicitors, and is an injustice to persons in the country. Some people may not know that the relief to be obtained in the Supreme Court is greater than that to be obtained in the inferior courts. You can get at property in the Supreme Court that you cannot get at in the inferior courts. In the small debts court you cannot take land to satisfy a judgment, and the district court is open to objection for other reasons which have been before stated. If this clause is passed we shall simply be conferring special advantages upon Brisbane suitors and Brisbane solicitors, and I do not think that is a desirable thing to do. It seems to me that what we want to do is to decentralise, and this is a proposal to centralise, and I cannot see what advantage the general public will gain by it. What is required is to prevent persons putting a defendant to unnecessary expense; but if a plaintiff chooses to go to the luxury of a Supreme Court action at his own expense, there should be no objection to his doing so, so far as I can see. If a plaintiff chooses to bring an action to recover less than £30 in the Supreme Court, he has to bear the expense of the action himself, unless the judge makes an order to the contrary. What is wanted is that if it is thought judges do not administer their powers in this respect on wise principles, we should define the principles upon which they are to exercise those powers. The remedy is to state the circumstances in which a judge shall allow costs to the plaintiff, and not entirely abolish the rightful privileges of the plaintiff in order to protect the defendant. The hon. gentleman argues that because judges have, in his opinion, sometimes made an unwise use of their discretion in granting costs to a plaintiff we should therefore abolish all remedy for the plaintiff. Surely the proper remedy is to lay down rules under which costs may be recovered in a Supreme Court action for less than £30. You can do that without doing any injustice to the plaintiff, but it is no reason why a man should not bring an action to recover £30 in the Supreme Court if he likes to pay for it. It is only his own foolishness, and if he knows that he will not get any costs from the defendant, unless under certain circumstances, he is not at all likely to do it. That provision of the Bill then, as it stands, appears to be a dangerous one; it is calculated to do a certain injustice to persons in places other than Brisbane, and is of no particular good to anybody. The next provisions of the Bill are called "Privileges of defendants," and I do not think the hon. member has seriously considered any of these provisions. He proposes that if an action is brought against a man for any kind of wrong he may at once say to the plaintiff, "I decline to submit to the jurisdiction of the Supreme Court." Does not that seem to be rather absurd? What does the Supreme Court exist for if not for the enforcement of rights? The most difficult cases arise out of wrongs, more difficult than many that

arise out of contracts; and in connection with these most difficult cases, under these provisions the defendant is to have the option of saying "I decline to go into the Supreme Court, because I prefer to go to an inferior court." In most parts of the colony the district court sits only once in six months, and if a man brings an action against another in the Supreme Court to recover compensation for a wrong done to him—and it may be an action involving a most difficult question of the title to land, the right to buildings, injury caused by a collision at sea, and all kinds of cases and any kind of wrong other than breaches of contract—the very cases in which the greatest difficulty arises—the defendant may say, "I decline to submit to the jurisdiction of the Supreme Court," and then the plaintiff must go to the district court, which may sit within a short period, or may not sit for six months. That seems to me an injustice. More than that, these provisions apply to all other cases, even to cases of contract, where the amount claimed is not more than £500. Take the case of an absconding debtor.

Mr. POWERS: We can provide for all that.

The HON. SIR S. W. GRIFFITH: Yes; I know these things can be provided for, and I pointed out on a previous occasion how these matters have been provided for under an Act passed in England quite recently; but they cannot be provided for in this way. To allow a defendant to decline to submit to the jurisdiction of the Supreme Court appears to me to be an idle and ridiculous proposal. Surely the remedy is that adopted in England in cases of this kind! Whenever an action is brought for a wrong, whatever the amount may be, or for breach of contract, if an inferior court has jurisdiction with respect to it, the remedy is to provide that the defendant may apply to the Supreme Court for an order referring it to that court for trial; and that if the plaintiff cannot show good reasons to the contrary, the court shall make such an order. That is the law in force in England, and to which I called the hon. gentleman's attention three months ago. I thought he was going to accept that; but the place for a provision of the kind would be in a District Courts Act. I understood that that was what the hon. gentleman intended to introduce, and I spoke strongly in favour of such a provision. It should not be in a Bill of this kind; and, in any case, to allow a defendant the option of declining to submit to the jurisdiction of the Supreme Court is preposterous. Then I come to another instance in which the hon. gentleman considers only the interests of those trying to evade just claims against them, and that is a section giving a defendant an absolute right to have the action tried in the place where the cause of action arose. He has an absolute right now, unless it appears to the court unjust to have the trial there. Who can ask for more than that? Under the present law that right is provided, unless the plaintiff satisfies the court that it would be an injustice to grant it, and the hon. gentleman proposes simply to withdraw the present protection of the plaintiff; and he says, even if it is unjust to do so, nevertheless it shall be done. That is all the clause means. Another point I forgot to mention with respect to actions for less than £30 is, that the reason why these actions are brought in the Supreme Court is because the parties can get speedy judgment. If you can give the powers of speedy judgment in the district court, then by all means do so, but you must give some corresponding relief for any you take away. This Bill proposes simply to take away existing privileges of great value, and gives nothing in their place. You should

surely provide some compensating advantages before you take away existing rights. In another provision the hon. gentleman proposes to give the right to a jury to decide whether costs shall be given or not. That is a matter for discussion, and it may not make much difference whether you do so or not. I think, however, costs should be governed by some general rule, and there is a great deal to be said against the provision. I cannot see what advantage anyone can gain from it. A man may have an action brought against him, and a very unjust action, and the jury may give a verdict and not allow costs; you cannot control the discretion of the jury. The matter will be simply left to their caprice. I hold that the principles upon which justice is administered in all civilised countries should be removed, as far as possible from caprice. This is like Eastern justice, the justice of the Cadi, who orders a man to be bastinadoed, the number of stripes depending on his caprice. The number might depend very largely upon how much sleep he had had the night before, or whether he had been annoyed that morning. I do not think caprice should be introduced into the administration of the law more than is absolutely necessary. Then the hon. member proceeds to deal with provisions for the payment of proceeds of executions, and proposes to provide that they shall be paid at the town where the plaintiff's solicitor practises. I do not see the advantage of it, except that it might effect the saving of a very small sum by way of exchange, otherwise I do not see what object is to be gained. Then, clauses 13 and 14 propose to alter the Real Property Act, which is a very intricate subject. Does the hon. gentleman know what will be the effect of the proposed alteration? I am not prepared to say what the effect will be. I know what the law is now, but I cannot say what it will be then. This is a law which the hon. member does not seem to know. If you register an execution against land under the Real Property Act, the land must be sold within a certain period, or the execution lapses. The execution creditor cannot encumber the land for ever; and if he wants to make use of that remedy to recover a debt, he must do it speedily. The present law is like a wheel that goes round in a certain way, and the hon. member proposes to put a stick through it. He certainly will alter the law, but to what extent he does not know. The clause will allow a judgment to remain for ever as a permanent, perpetual encumbrance upon the land; the hon. member puts a mortgage upon it for ever. He has not thought the matter out. An alteration in our real property laws is a matter for grave consideration. Then he deals with another subject—contempt of court—which is a difficult subject also. That subject was referred to here incidentally the other day. The Hon. Minister for Mines and Works reminded the House that he had once asked me if I would take the matter in hand, and codify the law in some way. I have thought of it a good many times since, and I think still that it is a very difficult matter to deal with. I am by degrees getting my mind settled as to what the law is, and as to what it should be made. I have not even yet arrived at any definite conclusion; but the hon. member for Burrum seems to see through the subject at once plainly; he sees how to do it easily. For instance, a judge on circuit at Rockhampton is grossly insulted in open court, or something is done in the court of a very serious character, for which a fair punishment would be six months' imprisonment, perhaps; but instead of the case being disposed of there and then, it is to stand over until the next sittings of the court, or some other court. How would

that do in the Northern district, where another judge would have to try the case? The same judge cannot sit and try a case if he has been personally insulted. The judge who was presiding over the court in which the contempt was committed, will not be able to try the case, he may possibly be wanted as a witness.

Mr. POWERS: That is provided for in clause 16.

The Hon. SIR S. W. GRIFFITH: It does not say so. It says the person so committed shall be tried at the sittings of the Supreme Court then being held, or at the next sittings of such court. Supposing a man commits contempt of court at Normanton, and one month's imprisonment would be a sufficient punishment; he would have to wait for months and then come to Townsville to be tried.

Mr. POWERS: That is better than the same judge trying the case himself.

The Hon. SIR S. W. GRIFFITH: It would be a great hardship upon the person committed. It seems to me that that will not do at all. That is one difficulty in the way. Then to say that a man shall not be committed to prison, without trial by jury, for a longer period than seven days is, I think, rather absurd. Take the case of the man who tried to shoot me in the court, would seven days be a sufficient punishment for him? As for the provision regarding preparing documents under the Real Property Act, I do not think that matters one way or the other. It has been discussed often in this House. Then come the conditions regulating the admission of barristers and solicitors. The 19th clause provides that every person who has been admitted to practise in any of the other colonies shall be admitted to practise here. I notice that Western Australia is omitted. The law is now that any barrister or solicitor may be admitted to practise here, if he comes from a colony in which our barristers or solicitors are allowed to practise. But if they will not admit ours, why should we admit theirs? That is the law now, and it is fair; what more can be wanted? I moved the admission of a Tasmanian solicitor as a solicitor of our court the other day, and he was admitted at once, because our solicitors would be treated in the same way in that colony. I entirely object to the clause upon the principles of reciprocity. As to the right of solicitors to practise in court, they have had that since 1874.

Mr. POWERS: That has been repealed.

The Hon. SIR S. W. GRIFFITH: The words have been altered, but the substance stands. The hon. member seems to be frightened, and shies because a judge once said jocularly, "Oh! are you a legal practitioner?" I suppose the hon. member does not like the name "legal practitioner"; it is not a name known to the law. But because a judge once made a joke, and said that, is no reason why the law should be altered.

Mr. POWERS: It is not that at all.

The Hon. SIR S. W. GRIFFITH: Well, there is nothing else in it. The hon. gentleman can call himself anything he likes. I call myself a barrister and practise as a barrister.

Mr. POWERS: You would not call yourself a solicitor.

The Hon. SIR S. W. GRIFFITH: If I were practising as a solicitor, I should not object to do so. The next provision is to the effect that any solicitor who has practised for five years in the colony may be admitted as a barrister-at-law. I do not care a straw how that goes, if the solicitor has the necessary knowledge. I have a great objection to any system of admitting members to either branch of the profession if they are not possessed of the amount of knowledge

required. It is not in the interest of the public that incompetent persons should be admitted. The other clauses in the Bill do not matter one way or the other. That in relation to article clerks I believe to be the law now. After all, there is very little in the Bill that will be useful; but there are many provisions that will be extremely dangerous and objectionable. The three sections after the first have no meaning whatever. Clauses 5, 6, 7, 8, and 9 will clearly want some fresh amendment of the law to supplement them, and clauses 13 and 14 are very dangerous and ill-considered alterations. The provisions as to contempt of court require a great deal more consideration than has been given to them in the Bill; and the others are almost trivialities. I cannot congratulate the hon. member. When I spoke on the previous occasion I thought he was trying to do some very good and useful work, but he has abandoned the useful work. This Bill is only the odds and ends of things that are either useless or dangerous.

Mr. GROOM said: Mr. Speaker,—Lay members must naturally feel some diffidence in entering on this discussion, but I certainly am one of those who think the hon. member is right in asking the House to do something in the way of dealing with contempt of court. It is a question which has attracted attention not in Queensland only but in all the colonies. In Queensland we have had an instance of a judge who sentenced a man who wrote a letter to a newspaper—a contempt which occurred outside the court altogether—to twelve months' imprisonment. In Victoria quite recently a Mr. Daly, a solicitor, who wrote a letter to a newspaper, in reply to some very severe strictures by Mr. Justice Williams, was sentenced to a month's imprisonment for writing that letter. In this colony, there was a very strong feeling indeed that the former sentence was an outrageous one, quite out of all proportion to the offence—if, indeed, the man committed any offence at all in writing a letter reflecting upon the court. If anything which appeared in a public newspaper is to be treated as contempt, almost every newspaper in the colony might be brought up, and the publishers sentenced to long terms of imprisonment. I should like to read to the House what really has occurred, and may occur again, if something is not done to curb the arbitrary powers sometimes exercised by the judges. I daresay hon. members have heard of the case which occurred in New South Wales, where Mr. Justice Windeyer—a gentleman known to have a most ungovernable temper, and who does not hesitate to show it very frequently—sentenced two witnesses, one to six months' and the other to twelve months' imprisonment, for contempt of court. I have here a verbatim report of this case as it occurred, and I will read it for the information of the House. The case occurred at Tamworth, Mr. Justice Windeyer presiding. The Crown Prosecutor had ordered a witness named William Burkill to be brought in. The report goes on to say:—

"William Burkill was then called, and immediately he appeared it was patent that he was in a thorough state of intoxication.

"Mr. Gordon: I do not know whether the Crown intend to rely upon the evidence of a man like that. I submit he is not in a fit state—

"His Honour to witness; What is your name?"

"Witness: William Burkill (hic).

"His Honour: Is the person a material witness?"

"The Crown Prosecutor: Most material. Of course I can assure your Honour that this difficulty was anticipated, and every effort has been made to shepherd this man since the day before the court sat. I understand that he got away from his shepherds—

"His Honour: Show me the depositions

"The depositions were handed to his Honour, who perused them. In addressing witness, his Honour said: 'You knew you had to come here and give evidence to-day?'

"Witness: Yes.

"His Honour: You were waiting yesterday?"

"Witness: Yes.

"His Honour: You have been drinking?"

"Witness: Well, I've had a drink.

"His Honour: This is most gross contempt. I now call upon you to show cause why you should not be punished for contempt of court. Have you anything to say?"

"Witness: Nothing.

"His Honour: This is very gross contempt in your coming here in a state of intoxication. It is calculated to defeat the ends of justice. It is a wrong to society at large. A person who knows he has to give evidence, and goes and makes himself intoxicated, is guilty of very gross contempt of court. You are guilty of contempt, and I sentence you to imprisonment, in Her Majesty's gaol at Tamworth, for a period of three months. You will please remove him. Take him to gaol.

"The witness was then conducted outside the court room.

"His Honour: Bring in that man—that man that I committed. Bring him in again.

"The witness Denton was brought into court instead of Burkill as his Honour ordered. Denton was trembling and his nerves were apparently in a very shaky condition.

"The Crown Prosecutor asked would it not be better for a doctor to examine into Denton's state because he had broken down in a very similar manner at this part of his evidence at a previous inquiry.

"Denton was then put into the witness box.

"His Honour: You have been brought up as a witness before?"

"Witness: Yes.

"His Honour: And you broke down just in the same part of your evidence. Have you been drinking this morning?"

"Witness: No, your Honour.

"Inspector Creaghe: He was very drunk yesterday, your Honour, and had to be locked up last night.

"His Honour (to witness): You knew you had to give evidence yesterday?"

"Witness: Yes.

"His Honour: I call upon you to show cause why you should not be punished for contempt of court. It is gross contempt for a witness to come here suffering from drink. Have you anything to say why you should not be punished for contempt?"

"Witness: No.

"His Honour: Well then I commit you to Her Majesty's gaol at Tamworth for a period of six months.

"Witness was then removed, and Burkill was brought back into court.

"His Honour: I find out now that you are the principal witness in this case—in fact, the case can't go on without you. You have, may be, prevented the conviction of people who are guilty of a crime by rendering yourself unable to give evidence by getting intoxicated. The same thing may have occurred in a capital case of the greatest interest to society. The administration of justice would never be safe. I alter your sentence, because I see the Crown relied on your coming into court in a condition capable of giving evidence. I alter your sentence from three months and commit you for a period of twelve months, as a warning to people to come into court in a fit state to give evidence.

"Burkill was then removed."

When the case occurred I cut out that extract, thinking it would be useful some day. I think it a most extraordinary exhibition on the part of the judge. It has attracted great attention in New South Wales; two or three times it has been brought before the House of Assembly, and the Government is now investigating the charges with the view of releasing the men from such arbitrary sentences. In the case of Mr. Daly, who was committed in Victoria for the period of one month for contempt, the entire Press of that colony took the matter up as being a perfect outrage on the administration of justice. I must point out to the hon. member in charge of this Bill that in the clauses he has drafted he

has made no provision as to the power of a judge to commit for contempt of court for something which has occurred outside the court, as in the case of Mr. Daly. Immediately after that case the *Australasian* had an interesting article on the whole question, and the words of the writer are so pertinent to this discussion that I will read them for the hon. member's information:—

"The affair is further complicated, however, by the sentence which has been passed upon Mr. Daly for contempt of court. Two interesting points lie on the surface of this episode, which are now widely discussed among all classes of the community. The first is the question as to whether the judgment passed upon Mr. Daly is not too severe, taking into account all that had been said on the conclusion of the first trials, and the provocation he undoubtedly received. Not only did Mr. Justice Williams refer to untried prisoners in the unfortunate harangue which he was tempted to deliver, but he went out of his way to suggest that they were guilty of a conspiracy, which was not mentioned in the indictment. Mr. Justice Williams, in effect, tried the accused for perjury and sentenced them for conspiracy; and, as he forgot the familiar maxim of keeping his reasons to himself, this indiscretion must certainly be held to be some excuse for Mr. Daly's conduct. If judges indulge in the habit of delivering premature speeches, which may possibly affect the results of trials to come, they must expect to be answered. It is for the Supreme Court bench to set the example of decorum, and then no one will be able to complain when it vindicates its dignity by the exercise of the ample powers entrusted to it. Mr. Daly's letter was written in bad English and worse taste, and had Mr. Justice Williams only restrained his oratorical proclivities there would have been no excuse for the composition, and no sympathy for its author. But one is compelled to ask whether in the present day there is any necessity for continuing such a vague charge as contempt of court, or allowing a judge to commit people to prison summarily on this ground, at least when the alleged offence takes place outside? Inside his court the presiding judge must, of course, have the power of keeping order. But how far, it may be asked, should his privileges extend to events that occur outside? Suppose that under the present rule a man is accused of contempt of court for something that does not directly interfere with the working of the trial, but is alleged to have a possible influence with the jury. He is then liable to be haled before the judge, who decides at once both on the law and the facts of the case, and he may be committed to prison without the ordinary forms of justice. It is admittedly essential to stop outside legislation. But when a charge is made, why should not the accused be tried before a jury, or better still, perhaps, before judges who have not been directly concerned in the case? The accusation would stop him from continuing in his contempt; the punishment would only be awarded in the usual way. It is a bad system that makes a man both prosecutor and judge, and that places no check upon a power which, however essential, requires to be used with caution. If a judicious restriction can be made, it would certainly be advisable."

That is an illustration of the kind of comment which this subject has been receiving from the Press, and, therefore, I really do think that so far as the clauses dealing with contempt of court are concerned, the hon. member for Burrum is discharging a public duty, and one which the general public will hail with very great satisfaction. I think that he has at all events made an effort in the right direction, and I am quite prepared to give him my support and assistance in passing this part of his Bill.

Mr. GANNON said: Mr. Speaker,—I have only one or two words to say upon the Bill, and I may say that I intend to support the hon. member for Burrum through thick and thin, as I consider that it is a step in the right direction. Following up the remarks of the hon. member for Toowoomba, I think that the cases he referred to will show this House that it is nearly time that we did something to stop to a large extent the very great abuse of power by the judges of the Supreme Court. Cases are cropping up every day of this kind. Even this afternoon two or three hon. members committed gross contempt of court in bringing

up the case of Mr. Mulveena, which was *subjudice*, as it was under arbitration at the present time. Had those hon. members not been sheltered by their privilege as members of this House, we would have found that to-night or to-morrow they would have been arrested, and been liable to imprisonment for six or twelve months, according to the temper of the judge before whom they were brought. I feel very strongly in this matter of contempt of court, and in cases where judges are able to put men in gaol without any trial at all. I recollect when I was in Sydney many years ago the sexton of St. James' Church of England was tolling a bell for the funeral of some highly respected citizen. Sir Alfred Stephens was sitting on the bench, and he ordered the toller of the bell to stop, sending his tipstaff out to give directions to that effect. The bell kept on tolling however, and at last the judge sent a couple of constables to drag the man before him, when he sentenced the unfortunate individual to a term of imprisonment, though not a long one. Then there was the case of Mr. Daly, in Melbourne, some time ago, and there are cases cropping up now, and unless this House puts a stop to them they will become a perfect scandal. I know of a case in New South Wales where the judges made themselves the laughing-stock of the community owing to the manner in which they conducted themselves upon the bench. There is no doubt that we, who have been sent here as the representatives of the people, should stand up for the privileges of the people, and stop what these judges are doing, as they are making very grave mistakes, and bringing the judicial proceedings into contempt. As I said, I intend to support the second reading of the Bill through thick and thin. I trust that the Bill may pass the second reading, and that when it is considered in committee, if there is anything which can be improved in it, the legal members of the House will do all they can to improve it.

Mr. AGNEW said: Mr. Speaker,—I entirely support the attempt made by the hon. member for Burrum to improve our Supreme Court laws; and I hope that the session, long as it has been, will not terminate till we have carried out the intentions of the originator of this Bill. One point which has particularly come under my notice during the last few months ought to be remedied immediately. A few months ago I found that there was under our present laws a very simple means of levying blackmail in the petty debts court. An ordinary citizen, who never in his life employed labour, or visited places like Cairns, Port Douglas, or Normanton, may find himself in receipt of a summons to defend a petty debts case in one of those towns; and unless he puts in a personal appearance to defend the case he must pay the claim. It seems to me that is a very dangerous but effectual system of blackmailing; and it is one to which I think the legal members of this House should direct their attention to prevent it becoming general. Some time ago I received a summons from Townsville, and rather than have my name, or that of the firm with which I am connected, sullied, I went to Townsville, at an expense to myself of about £30. When my name was announced as having arrived there, the person who had attempted to blackmail me asked for permission to withdraw the case. Of course the case was not allowed to be withdrawn, and I obtained a verdict; but though I came back victorious, I came back a loser to the extent of about £30, as the claimant could not pay the expenses, having no means whatever. I know a firm in this city which has been attacked in a similar manner, and their case comes on in about a week at one of the Northern ports. Unless they are prepared to send one of their

representatives up, and waste his valuable time in defending a case where £8 or £10 is claimed, they will have to pay that amount and obtain a character they certainly do not deserve. As the hon. member for Toowoomba has said, this is a difficult matter for lay members to deal with, especially as we have several very able members of the legal profession in this House. It appears to an ordinary outsider that there should be some means by which a man so attacked should be able to give evidence under cross-examination in the town in which he is served with the writ, instead of being compelled to go to a town in a distant part of the colony in which some unscrupulous person chooses to take out a summons against him. I trust that the hint I have thrown out will not be lost sight of by the hon. member for Burrum, who has the necessary courage and ability to bring forward reforms of this kind. I took the opportunity a few days ago, on behalf of the people who are going to be the latest attacked in this way, to wait upon our highly esteemed police magistrate in Brisbane, who commands the respect of all who come in contact with him; and he agreed with me that there was real necessity for reform in this matter. I therefore trust that the hon. member for Burrum, or the more distinguished leader of the Opposition, will take the question into consideration, and bring forward some legislation to protect the trading public from being blackmailed in the manner I have indicated.

Mr. TOZER said: Mr. Speaker,—I want to draw the attention of the House to the converse proposition with respect to the matter mentioned by the hon. member for Toowoomba. There are two sides to that story. The Chief Justice of New South Wales inquired into the matter, and his letter on the subject was brought before the lower branch of the legislature in that colony. There seems to have been considerable discussion on the matter, and it was clearly demonstrated that the power exercised by the judge was a very wise one indeed. That was admitted by the leader of the Government. This is the concluding paragraph of the Chief Justice's letter:—

"These men, as you are aware, were not imprisoned merely 'for appearing in the witness box in a state of intoxication,' but were imprisoned for deliberately getting drunk, or feigning drunkenness, and thus enabling a possibly guilty man to escape just punishment. Such a crime is as serious and as dangerous to the well-being of the community as can well be conceived. If I may be allowed to offer an opinion on the matter, and as to the length of the sentences, it is this: that Mr. Justice Windeyer is to be highly commended for what he did in the vindication of justice; that the sentences are not one day too long; and that to let these men out one day sooner than the term of their sentence would be striking a blow at the proper and efficient administration of justice, from which it will not easily recover. This is my deliberate opinion, formed after mature consideration."

I thought I would just mention that, because the hon. member for Toowoomba perhaps has not seen the article in the paper in which it appears, and because it is not one of the cases in which contempt of court has been brought into abuse. Without referring at great length to the Bill, I may state that the efforts of the hon. member for Burrum in the cause of legal reform have always had my countenance. I have not gone deeply into this Bill, because I have been waiting for the amending Bill of the District Court Acts which the Government are bringing forward. That Bill, no doubt, contains much that the hon. member suggested previously, and it occurs to me that it would be advisable, now that the end of the session is drawing near, for the hon. member to wait and see what the measure introduced by the Government contains, and let that be first tried as an experiment. Then much that

is contained in this measure might form the subject of legislation next session. There is no doubt that there is much necessity for legal reform; at the same time there is much in the Bill which I cannot support. The proposal with regard to actions in the Supreme Court under £30 has my sympathy, because I know that in some cases they are brought simply for the purpose of blackmailing. I have known dozens of instances in which a person has been served with a writ, in the town in which I live, for a sum under £10 in the Supreme Court; and sooner than defend the action he has paid the amount specified on the writ of summons. I may say that the difficulty all legal members have in speaking on the question of legal reform is, that the public look upon every legal member who speaks on the subject as pleading his own cause. We know full well that if we were to let some of these matters go without comment the result would be disastrous; on the other hand, we do not like to have motives always imputed to us; and there is the difficulty. For bringing these matters before the House the hon. member for Burrum is entitled to great credit; for the criticism of those matters the leader of the Opposition equally deserves the thanks of the country, and I am satisfied that both hon. members are endeavouring to do all they possibly can to simplify the administration of justice. I am not going to say much on this contempt of court business. It is a matter of difficulty, and there is a great deal to be said on both sides. It is such a large matter that I really think, if it is taken up at all, it should be taken up by the Government. I can quite understand the motives of the hon. member for Burrum; at the same time it is a matter of difficulty to provide that the question of contempt of court shall be tried by a jury. It is a matter which the judge sees at the moment; and I see difficulties on both sides. With reference to matters of detail, I have no doubt that some of them will work well; but I may say, in connection with the admission of solicitors and barristers, that I do not think it is wise at this end of the session to introduce matters of a contentious character. I desire to place on record the particular clauses in the Bill which I can most willingly assent to, and it will make matters clear as to what principles I consider good. Clauses 1, 2, 3, and 4 are formal. Clause 5, which relates to actions under £30, I thoroughly approve of. I consider all the objections raised against it can be removed. When a man has the district court and the small debts court to try such cases, I do not think he needs a third remedy. In amending the District Courts Act we can ensure all the remedies he requires, such as have been pointed out by the hon. the leader of the Opposition. With reference to the 6th clause, that any defendant may object to be sued in the Supreme Court, the same principle causes me to support that. If every man throughout the colony has a remedy up to £500 in the district court, on the principle that you should use up all available remedies before inundating the higher court with actions, I think the clause is good and will work well. But I trust that that will be provided for, not in this Bill, but in the District Courts Act Amendment Bill introduced by the Government. I do not like clause 7—that a defendant in a libel action may object to proceedings in the Supreme Court—and shall not vote for it. The 8th clause has a great deal of good in it. I have known so many cases where persons have brought actions for tort in the Supreme Court, where they knew full well they could not succeed, and where the costs have amounted to about £400, that I think,

in the interests of the public, the clause is a good one. The 9th clause is a very good one. The 10th, making it compulsory not to try cases in Brisbane, but in the places where the cause of action arose, I certainly object to, I believe it would work a great deal of injury. Clause 11—jury to decide question of costs—is one, I cannot agree to; I think it is better that the judge in every instance should decide that. Clause 12—payment of proceeds of executions—I know what that means. It means that any person who gets a judgment should realise the value of it as soon as possible. I know it is a long way for persons to come down to Brisbane from Townsville and other places in the North about these matters, and I think the clause a wise one. Clauses 13 and 14, relating to the Real Property Office, I think can be made to work, and I shall support them. With regard to clauses 15, 16, and 17, having reference to contempt of court, what I am afraid of is that in getting away from Scylla we shall get into Charybdis. I do not think they will work, and I shall not support them. I have studied the question thoroughly, and although I am satisfied that the hon. member has made a good effort to overcome what is at present a difficulty, I do not think these clauses will accomplish it. Clause 18, giving power to any person to prepare and register real property transfers, is one in which we attorneys may be considered to be personally interested; but I suppose no solicitor has prepared less than I have, because I reside on a goldfield. I do not approve of the clause, because I am satisfied that the interests of the public will be better looked after by persons who are licensed to do so, and that they would be no gainers by the alteration. As to clause 19, in the interests of our own children I do not see why we should hold out inducements to people to come here and compete with them; and I am opposed to solicitors from the other colonies being admitted here without reciprocity. Clause 20 is a simplification of the law and I shall support it. I think it a wise provision. Clause 21, allowing attorneys of five years' standing to act as barristers, I do not intend to support. I do not think it would work at present. The time may come when there will be only one class in the colony—probably called "advocates"—but until that time comes I think it wise not to pass the clause. The remaining clauses of the Bill are all right. I have now stated more clearly than I did before the clauses I approve of, and all I have to say further is this: A District Courts Act Amendment Bill has been introduced by the Government, and the hon. member for Burrum should remember that the leaders of the House at this period of the session are very tired, not having the opportunities for rest and recreation that other members have; and looking at the fact that the effort he has made has been appreciated by the House, he should consider whether there is any chance of getting the Bill through this session. We are now nearly at the end of the session, and although the hon. member may rely upon me for support on every one of the clauses I have named, still at the same time I suggest to him that some may be embodied in the District Courts Act Amendment Bill brought in by the Government, and others may, with wisdom, be deferred until next session, when I am sure hon. members will come to this House better prepared to study the measure. I know that some hon. members will be going away next week, and the hon. member would, I am certain, like all members to have a chance of voting on a question of this kind. Many legal members are away on circuit; others of course are here, but if the hon.

gentleman still considers it desirable to go on with the measure, I will give him my cordial support in the direction I have named.

Mr. DRAKE said: Mr. Speaker,—It is not very clear to me what advantage the hon. member for Burrum expected to gain by withdrawing the Bill which he brought in in the earlier part of the session. That Bill I believe contained all that is in the one now before us, and also a great number of other provisions, some of which were more of a reformatory character than the provisions contained in this Bill. It would have been a very easy thing for the hon. member to have gone on with the Bill, and dropped out of it any clauses which were not then requisite. The hon. member was very prompt, I admit, in bringing the Bill forward at the commencement of the session; it was well up on the notice paper; he got it through its second reading, and then withdrew it.

Mr. POWERS: It passed its second reading after I had promised to withdraw it.

Mr. DRAKE: What I understood was this: that the understanding was that if he withdrew the Bill as being too comprehensive—vague, I might almost say—that a Bill containing the best provisions of his measure would be introduced by the Government. If such a Bill was not to be brought in by the Government, it seems to me there was no advantage in the hon. member dropping his Bill after it had passed its second reading, because the clauses which he intended to endeavour to push through the House might have been retained in the Bill and the others cut out. I remember that the hon. member in his speech on one occasion said that he expected, from the action that he had taken, that his brothers in the profession would to a certain extent ostracise him. I do not know whether he used that expression, but it was something to that effect—that his brethren in the profession would look coldly upon him, in consequence of his action as a reformer. Subsequently the hon. member has admitted that he has received assistance from various quarters, including the Queensland Law Society. Now, I think the hon. member ought to be rather cautious in this matter—he ought to be a little doubtful of the Greeks at all times. If the hon. member wants to bring in any measure of law reform, he must make up his mind that he will have to meet with a very great deal of persistent opposition from the legal profession as a body; and I am sorry to see that this Bill which he has brought in now does not contain some of the most drastic provisions which were contained in the previous measure. Why they are omitted I do not know. With regard to the question, whether there is any organised opposition to law reform in this colony—because some people still seem disposed to doubt it, and, as suggested by the leader of the Opposition, to regard the remarks that are made from time to time by, at all events, one of the judges, as simply the outcome of an exuberant wit and humour—yet I am inclined to think that the evidence is overwhelming in the opposite direction. I believe there is an organised opposition, and in order to show that clearly I may give one or two illustrations. Soon after the Legal Practitioners Act was passed the *Queensland Law Journal*, which may be said to represent the legal profession, contained a short article, in which the position was taken up that the Bill having become law the judges were going to make rules under it, and that it would be observed by the profession generally. I will just read the article, which is a very short one:—

"Now that the Legal Practitioners Bill is law, let us inquire how far the intention of its promoters will be carried into effect. The leading idea of the supporters of this Bill was—as anyone who took the trouble to read the debates on it, must have seen—to cheapen

legal proceedings. The profession is now waiting for the rules which the judges may make under the Act; and, no doubt, they will try to carry out its spirit as far as possible. The question of costs will, doubtless, occupy their chief attention. Under the present system of procedure, at least in cases before the Supreme Court, it is doubtful whether law can be made cheaper. Under the new Act, just as under the old system, there are numerous cases in which it is impossible for one man to do all the work; and this is true, whether the case is carried through all its stages by one firm, or not. Moreover, there always will be a class of men in the legal profession better experts than the rest, who must be paid more highly if the public wish to have good law. We think that the chief end of the promoters of this Bill will not, except perhaps in small cases, be effected. The experience of the other Australian colonies, where amalgamation exists, has determined this. The end sought for is rather to be gained by such a change in procedure as will end in the abolition of pleadings (except in certain cases), and the doing away with those numerous formalities and proceedings which now intervene before the real merits of the case are reached. The working of the Judicature Act in England has been found to be unsatisfactory—at any rate, as regards cheapening law. We are inclined to believe that such a simplification of legal procedure will not be injurious to the interests of the profession generally. The true interests of the public always have been the same as those of the legal profession. Our legal reformers in Parliament will find it better, for the future, to call in the assistance of the leading men of the profession, when they again try to deal with matters which require the skill of professional men."

It will be remembered, of course, that when the Bill was passing it had the assistance of the leading legal gentlemen who were in the House at that time, including the present leader of the Opposition, the Hon. J. F. Garrick, the ex-Attorney-General (Hon. A. Rutledge), and others.

Mr. POWERS: That article does not say they supported it.

Mr. DRAKE: It says this, that the profession were waiting for the judges to make rules, and that, no doubt, the judges would endeavour to carry out the spirit of the Act as far as possible. Well, Mr. Speaker, one barrister commenced shortly after to practise as a solicitor, and he seems to have had a very unhappy time of it, so much so that on the 1st of March, 1882, the same journal published a letter from that gentleman, part of which I will read. He says:—

"Before the Legal Practitioners Act became law I had, in private and in the Press, made known my opinion that these rules required amendment. At a Bar meeting held after the Act became law I explained my willingness to abide by the rules, if relaxed to the extent only of permitting counsel to see and advise clients, but without undertaking the duties of an attorney. My views not being entertained, I openly informed the members of the bar present 'that as they would not agree to any relaxation of the rules I should avail myself of the amalgamation given by the Act, and that as the legislature had taken the shackles off I would not allow the bar to put them on again.'

"On leaving that meeting I had no desire to practise as a solicitor, but from that time I have been subjected to petty insults by members of each branch of the profession, and informed by several solicitors that they dare not brief me—that it was generally understood that I was not to be retained by any solicitor, that no barrister would act with me, and that no solicitor dare risk the ill-will he would incur by giving me any business.

"The truth of these statements of an intention to taboo and crush me has been unmistakably confirmed by the fact that I have never since been retained by any solicitor, and that in the streets, and even at the table of the Union Club, I have been since designedly insulted by observations addressed at, but not to, me by members of both branches of the profession.

"All this I endured before I issued an advertisement or a circular. Shut out by a powerful combination from professional support, what could I do but seek the support of the public?

"But the public know me only as a barrister. For thirteen years I had been before them in that capacity. By what other means than a circular could I acquaint the public that I was willing to act as a general practitioner?

"But your correspondent, signing himself 'A Solicitor,' knowing that as a solicitor I was doing no more than he has probably done himself, takes pains to hold me up to condemnation as a member of the Bar of Queensland, although he knows well enough I have refused to abide by its rules (which are, in fact, opposed to the law) and have, in consequence, been excluded from the meetings of that body.

"But what is this 'recognised professional etiquette' I am accused of having broken? If neither the Bar nor the solicitors will acknowledge me, I owe no allegiance to either. But, as a fact, in all colonies where barristers practice generally, and in France, members of the local bars (although quite distinct from the attorneys) advertise. And if they do nothing worse than that, they may lay claim to greater respect than many who do not. As to solicitors, they, as a rule, advertise in more ways than one. On their cards, their letter-paper, their envelopes, their windows and their door-posts, and in the public papers, we see, 'Mr. A. Solicitor, etc.'; 'Messrs. C and D, Solicitors, etc.'; 'Mr. E, Attorney and Notary Public'; 'Mr. F, Solicitor and Commissioner for the Supreme Court of —'; or 'Mr. G, Solicitor, etc., money to lend on freehold securities.' And let a solicitor receive a new partner, or lose one by death, or change his offices, then out go hundreds of circulars and scores of notices in the papers. And what are these doings but advertising for clients?

"But the gravamen of the charge against me is found in the last paragraph—that I have addressed these circulars 'to firms and individuals' who have had for years their retained solicitors; possibly to some client of the aggrieved one. Well; my answer to that is, he is one of that highly honourable body who have conspired to starve me out of the profession; he ought not therefore to complain if I adopt the only means in my power for defeating that opposition by letting the public know I am prepared to advise them as a general practitioner."

That gentleman was starved out of Queensland, and driven into New South Wales, where he was made a judge.

Mr. POWERS: Who was that?

Mr. DRAKE: Mr. Cansdell. I could give a number of other instances, but many hon. members are aware of the facts in connection with the matter, and can fill up the blanks for themselves. My remarks are intended to be suggestive rather than exhaustive. But I will give another instance to show the tone of solicitors towards barristers who have adopted the provisions of the Legal Practitioners Act. A case was mentioned in the House the other night in which a charge was made by the Law Society against a barrister who was also practising as a solicitor. That matter is still *sub judice*, and it is generally held that it is not a fair thing, at any rate not a gentlemanly thing, to make an attack on a gentleman against whom a charge is pending. This is what the hon. member for Rockhampton North, Mr. Rees R. Jones, said on the matter:—

"It was an *ex parte* application by the Law Society, calling upon this man to answer certain affidavits, and I say that under the circumstances the name is rightly withheld. This man is a 'legal practitioner,' whatever that nondescript animal may be. It is some sort of a hybrid, I believe, and I know I am not one of them, as I am a 'pure solicitor.'"

I do not know what the opinion of most hon. members may be, but if that is a proper course for a "pure solicitor" to take, I think a man may congratulate himself that he is not a "pure solicitor," and I will further say that the hon. member would have shown a little more modesty, if not wisdom, if he had waited until somebody else testified to his purity. If report speaks truly, the hon. member for a long time past—he can contradict me if I am wrong—has been continually in the habit of doing work that is generally supposed to belong to counsel and not to an attorney, and I would like to know what right a gentleman who has been in the habit of actually doing the work of both branches of the profession on the quiet for years has to fling stones at any man who does the same thing openly? At all

events, we find that the hon. member was only doing surreptitiously what he might have done openly and without reproach if his nature inclined him so to do. I will now give another instance to illustrate the attitude of the legal profession as regards legal reformers. This time I am going to quote from an English paper, an article called "The Attorneys' Caucus." I do not know whether the hon. member for Rockhampton North, being a "pure solicitor," will object to the term "attorney." It was a meeting of attorneys that was held, and one gentleman, whose name was Hastie, appears to have committed the unpardonable sin of having communicated to the Press his intentions respecting legal reform. The article says:—

"The two professions for which the profoundest antipathy may most fairly be entertained are the medical and the legal. We should undoubtedly be far better off without either. Medicine and law are selfish professions; they pay their followers at the expense of the public. We were more healthy without medicine men; we were happier without lawyers.

"It has always been manifest to the average outsider that the average attorney is an unnecessary at best, and often something far more harmful. He seems to have one great instinct, which is self-interest. He never hesitates to overcharge his client, knowing well that he can generally do so within limits, with impunity, despite such things as Solicitors' Remuneration Acts and taxing masters; and even the more respectable of his class are not ashamed to charge higher rates than the master would pass. In fact, it often happens that the more 'respectable' is also the more expensive. The difference between him and his less respectable brother is that he thinks his services worth more than they are, while the latter tries to get more than he knows they are worth. Yet all lawyers hang together, and the motherly old Incorporated Law Society does very little, and that little very perfunctorily, to raise their tone, or to diminish their excesses, or to prevent defaults, or even to punish their shortcomings.

"The latest instance of all this was furnished at last Friday's meeting of the Incorporated Law Society, for which meeting a Mr. A. H. Hastie had given notice of certain resolutions, the bare suggestion of which sufficed to make the average members of the profession sit up very straight. Mr. Hastie's language was strong—so strong that he even talked of the 'recent frauds and thefts of solicitors' as having 'greatly shaken' public confidence in the profession; but that is no doubt due to the healthful enthusiasm of the young reformer (Mr. Hastie is, according to the 'Law List,' a solicitor of hardly ten years' standing), and it was well founded, if not diplomatic. A meeting of several hundred hostile lawyers assembled to set upon the Daniel come to judge them. Mr. Lake, the president, began as though Mr. Hastie were a naughty boy. He 'greatly regretted' the course which Mr. Hastie had thought fit to adopt—namely, to communicate to the public newspapers (*sic*) the charges against his own profession before he had made any inquiries into the real circumstances. That was because Mr. Hastie had dared to give notice of his resolution to the Press; most properly, as we think, since they concerned the public far more than they concerned the profession, and since they were to be moved at a private meeting.

"Mr. Hastie was naturally, though unpolitely, greeted with yells of laughter. When he referred to the scandalous frauds of thieving attorneys who have been struck off the roll, the assembled lawyers seemed to enjoy a huge jest. His proposals—first, for a system of mutual insurance, whereby the good solicitors should recoup the victims of their wicked brethren; and, secondly, that solicitors should be required on admission to give security against their possible future default—were divided. No argument could serve with this caucus, which jeered at its would-be reformer, calling him names and making clear its regret that it could not suppress him physically. And when Mr. Hastie finished by interpreting the writing on the wall, which these men of law will not see; when he prophesied that they, refusing reform from within, would be refused by force from without, there arose a perfect storm of scoffs and gibes. Presumably, lawyers take no thought for their successors. They pluck the day, unmindful of the future."

It is as well to remember that these sneerers and jibers who combined together to drown the voice of one man who had the courage of his convic-

tions, were all, like the hon. member for Rockhampton North, pure solicitors. I think these illustrations are enough to show the difficulties to be met with, and hundreds more could be given if necessary. The treatment Mr. Torrens received in South Australia, because he introduced a reform of the law which interfered with profits, hon. members are no doubt acquainted with. All this goes to show clearly that any man going in for an attempt to reform the law has to stand against organised opposition. I mention this now, because, as I said before and repeat now, the hon. member for Burrum is to be complimented upon the action he has taken in endeavouring to introduce some reform of the law. I mention it, because I feel sure the hon. member must make up his mind to face such opposition as has been formed against anyone who takes advantage, for instance, of the Legal Practitioners Act. It is not a myth; there is undoubtedly an organisation to prevent that Act coming into force. In speaking of the Bill the hon. member introduced before, with regard to this very branch of the subject, it seems to me that the House is stultifying itself in passing clauses providing for certain things that are already law. If this House has come to the conclusion that it made a mistake in passing the Legal Practitioners Act, why does it not repeal it? If it considers that it did not make a mistake, and that it was a right thing to do to pass that Act, then I say the proper course for us now to take is to pass such an Act as will compel the judges to abide by that Act. At the present time, and I say it unhesitatingly, they are not carrying out the spirit of that Act as far as possible, and it is not accidental that one of the judges never loses an opportunity of sneering at a legal practitioner. The offensive remarks made use of the other night by the member for Rockhampton North, about a gentleman who was absent from the House, and whom he should not have attacked, were, so far as his memory served him, quoted from his Honour Mr. Justice Harding. There is not the slightest doubt about it; and only three or four days ago the same matter was brought up again, to the huge delight of course of certain junior barristers who desire to stand well with the court. There is not the slightest doubt about that, and it is quite useless for hon. members to come here and say it was accidental and was only a jocular remark. It is nothing of the kind. It is, as Mr. Cansdell said, a deliberate attempt to ruin and starve out everyone who takes advantage of the provisions of that Act. In connection with this Bill, with regard to the contempt of court provisions, I think the hon. gentleman will have to amend clause 15 to a certain extent, because as it stands at present it is an offence punishable with imprisonment not exceeding seven days to wilfully insult a bailiff or other officer of the Supreme Court.

Mr. POWERS: During the sitting.

Mr. DRAKE: Or going to or from it, and unless the clause is modified it will be a very serious offence to insult a bailiff. I think also that it would be very desirable that we should discuss the District Courts Bill now before the House, before going on with this Bill. Perhaps in the natural order of business the District Courts Bill will come on for consideration before this, because it appears to me that a great many modifications of this Bill will depend upon the form in which the District Courts Bill goes through. I may mention here that as a measure of reform this Bill appears to me to be weak, in that it contains a confession of weakness. As I understand it, the hon. member's chief reason for bringing forward his proposal for legal reform is, that at the present time enormous bills of costs

are run up in the Supreme Court, and they are as a rule recovered from the pockets of unsuccessful litigants. That, as I understand it, is the chief evil the hon. member desires to remedy. Well, we are led to look upon the Supreme Court as the palladium of justice, the shield of the oppressed, and all that sort of thing, and it seems to me it is a confession of weakness in this Bill that we should be asked by it to provide another court to give people a chance of escaping from the shield of the oppressed. If there is anything wrong in the Supreme Court there ought to be some means of getting at it and putting it in order. What this measure proposes at the present time is simply to give people an opportunity of escaping from the Supreme Court to the district court. It is a proposal to give people an opportunity of insisting upon having their cases taken to the district court and not to the Supreme Court. With regard to the provision respecting articulated clerks, the leader of the Opposition expressed the opinion that it is the law at the present time for a barrister practising as a solicitor to have an articulated clerk; but the position really is that it is impossible to get any definite ruling on the subject. I wanted one myself, and I found that the Board of Examiners would not express any opinion, because they say it is not their duty to advise on the subject. The board of examiners simply say, "We are not here to advise." Of course the question is put to them, "If a barrister takes an articulated clerk, will those articles be good? And they say, "We are not here to advise," and to a certain extent they have some grounds for saying that, because the action of one board cannot govern that of its successors. One board might say, "Yes, the articles are good;" and when the time came for an articulated clerk to go up for his intermediate examination, another board might say, "We hold those articles are not good," and the decision of the former board would not bind either party. An effort was made at one time to obtain the opinion of the Supreme Court, when I was on the board of examiners, and I was advised that it was no use doing that because the Supreme Court would say the same thing, "We are not here to advise." That, in my mind, shows a weakness in our present system of jurisprudence, because as the matter stands at the present time, the only way we can apparently decide the matter is by legislation. A young man may become articulated to a barrister and work for two and a-half years and then go up for his intermediate examination, but even if the board allow him to go up for his intermediate examination, he would have no assurance that, after he had served five years and went to the Supreme Court, the Supreme Court would not say, "We are not governed by what the board of examiners may do."

The HON. SIR S. W. GRIFFITH: I remember a case exactly analogous.

Mr. DRAKE: A case was brought before the board of examiners at the time I was a member of it, five or six years ago, and since then I myself have made an application of the same kind, and that was all the information I could obtain, and I was advised it was no use going to the judges, because they would not express an opinion. One matter I would suggest to the hon. member for Burrum is the addition of a clause in regard to legal conveyancers. A Bill was introduced into the New South Wales Parliament not long ago, with a view of altering the status of legal conveyancers, and it was not proceeded with. At the present time legal conveyancers have to pass very difficult examinations in real and personal property law, and I notice that there is a provision in this Bill which gives power to anyone to draw transfers of real property. That is really the work

that these conveyancers do, and so far as they are concerned the clause will throw a great part of their work open to the public and deprive them of a privilege they now enjoy. The proposal in the Bill introduced in New South Wales, which I would suggest to the hon. gentleman to adopt, is this: That after a certain date no more conveyancers shall be admitted; but those who are already admitted, after they have served as conveyancers for five years, upon passing an examination in all the other subjects that are required of attorneys, shall be admitted as attorneys or solicitors. There is one other amendment which might be very well introduced, and which was also in the New South Wales Bill, and it is to this effect: that it shall not be necessary for any solicitor, attorney, or proctor, when appearing before the court, to wear either band, gown, or wig, as heretofore worn at court when so appearing. It seems to me that the wearing of this uniform is a sort of relic of barbarism. I do not see what good it is at the present time. It might have been some good in the distant past when it was useful for overawing the public; but I do not think it is any use now, especially the wig, which is very unsuitable for a hot climate like this; and what good they are except to put a man who has a low forehead and beetling brows, on the same level with a man whose frontal development indicates mental capacity, I do not know. As I said, in times past it may have been used to overawe the masses; but I think, at the present time, people are too well educated, and too acute to be frightened by anything of that kind. They only see the thing in its ridiculous aspect, and, I think it is well that the administration of justice should command as much respect as circumstances will permit. I, of course, support the second reading of the Bill, and hope the hon. member who has introduced it, will see his way in committee to consider the amendments I have suggested.

Mr. REES R. JONES said: Mr. Speaker,—When I first had the honour of knowing the hon. member for Enoggera he was a barrister pure and simple, and I believe he had one brief from me, if not more. But then that gentleman chose to assume the rôle of a solicitor, and took advantage of the Legal Practitioners Act, and came into competition with me. Then he came out again as a barrister, and can he expect any solicitor to send him a brief? I should say not. Let him stick to one branch of the profession or the other. I am very glad that he has had the audacity to attack me for what I said about him, and I am also glad that he has done it openly in this House to-night, and not taken advantage of a paper of which I believe he is part proprietor to get other people to say things about me which I do not care for. I do not pretend to be a legal practitioner nor a barrister. Unfortunately in the town in which I reside we are not always able to obtain the services of a gentleman learned in the law, so if any person wants an opinion I venture to give him one; but if it is an important case, or a difficult one, I consult a superior counsel for the safety of my client. If my client has confidence in my opinion I give it; but I never wilfully trespass where I can obtain the services of a barrister. I believe the functions of a solicitor are quite different from those of a barrister practising in the courts. I am no advocate of the amalgamation of the professions. What will be the effect of it? The effect will be that people will enter into partnership, one performing the functions of a solicitor or attorney—I am not afraid of the name of attorney, I would adopt that just the same as I would that of "solicitor,"—and the other would practise as an advocate. That has been

the case in America and in nearly every other country, in which this so-called amalgamation of the professions has taken place. In this country, I have no objection whatever to any man who practises as a barrister for a certain number of years throwing that aside and becoming a solicitor, and having the sanction of the court for doing so, or if any solicitor, who has been practising in the colony for, say, five years, chooses to take up the *rôle* of a barrister, let him do so. I am perfectly willing. It will not affect me one penny either one way or the other. When any man who is a solicitor wishes to become a barrister pure and simple let him do so if he has the knowledge. I am sure the profession generally employing barristers will soon see whether they are men worthy to be employed as advocates, and the result will show whether they adopted a wise course, so far as their own interests are concerned, going from one branch of the profession to the other. We have had instances, and shining instances, in this colony of persons who have been solicitors becoming barristers and rising to the top of their profession. With regard to the Bill as a whole, I think the hon. member for Burrum deserves very great credit indeed for having brought it before the House; but as it is now very near the end of the session, and, as I understand, several of the amendments he desires to bring about are embodied in the District Courts Bill—a Bill that has been sadly needed for many years past—I should advise him to be content with the second reading of this Bill, and to allow it to proceed no further. As to the provision that no action under £30 shall be brought in the Supreme Court, if that became law it would be very detrimental to the interests of many people who reside in districts where there is no stated sitting of the district court, except once every six months. Rockhampton is one of those favoured towns where the district court sits four times a year. Am I to wait for three months before I can bring an action to recover judgment against a man because he owes me less than £30? During the interval the man may have left, or made away with his property. What is the fact, so far as district court proceedings are concerned? If a man has been so lucky as to obtain a judgment upon a person, he cannot, according to a rule passed by the judges in 1866 or 1867, issue execution until he goes to a judge—all these applications, I need hardly say, multiply costs—and makes an application for the purpose. This occupies some time, and often when the bailiff goes to levy the property has been made away with, and if it is a small transaction, the matter does not proceed any further. Practically the district courts have proved so unproductive that no man goes there if he can possibly help it; he has to resort to the Supreme Court. The present law is that if a man brings an action for under £30 in the Supreme Court he is not entitled to any costs unless the judge orders otherwise. With respect to the admission of solicitors and barristers, previously to the 23rd of George II. barristers had the privilege of employing artied clerks as well as solicitors, and those clerks were entitled to be admitted as solicitors. That was done away with by a subsequent Act, and since that time it has not been customary for barristers to employ artied clerks, who after a certain number of years' service could be admitted as solicitors. But if the door is to be opened, every facility ought to be given to the youths of the colony to be admitted as solicitors or barristers of the Supreme Court. What I do complain of is that persons educated outside the colony, and who have no connection with the colony, are admitted as solicitors and barristers on a mere motion before the court. I believe I am one of those persons who, having been in

practice as a solicitor for several years, and possessing certain attainments, could, if I presented myself to the Supreme Court to-morrow, be admitted as a barrister. I have not done so. If a man comes from England as a barrister he can be admitted here, but if I go to England I cannot be admitted as a barrister or solicitor of the Supreme Court of Judicature there.

The HON. SIR S. W. GRIFFITH: You can as a solicitor.

Mr. REES R. JONES: I beg the hon. gentleman's pardon. I cannot, unless the law has been altered within the last two years. I am aware that there is a Solicitors' Act, but that Act has never been declared by the Queen in Council to be in force in this colony. And why? Because there are certain rules of procedure in this colony relating to persons who may be artied and admitted as solicitors, and until those are altered that Order in Council will not be passed. A friend of mine, a gentleman practising in Rockhampton, went home and tried hard to be admitted as a solicitor of the Supreme Court of Judicature, and he was refused on that very ground. I have no objection to any solicitor who is practising in any neighbouring colony coming here, as long as, when I go to that neighbouring colony, I can be admitted on the same terms. If English solicitors come here and are allowed to be admitted, we ought to be allowed to be admitted there. I hope that if this Bill does go into committee provision will be made to prevent English solicitors coming here and being admitted, unless we are entitled to go there and be admitted. It would be a very good thing if the 25th clause, authorising solicitors and justices of the peace to take affidavits, was passed; some provision of that kind is very necessary in country districts. There is another subject which I do not think this Bill touches upon, and that is the necessity there is for the Government to appoint proper persons to carry out the decisions of the Supreme Court in the distant parts of the colony. If you get a verdict and want to issue an execution, you cannot do so for perhaps three or four months, because there is no officer of the sheriff in those parts.

The HON. SIR S. W. GRIFFITH: That is the fault of the Government; the law is right enough.

Mr. REES R. JONES: Several instances have come to my knowledge where practically executions could not be put in force unless you sent a man 300 or 400 miles; and that means ruination; you might as well leave it alone. Several provisions of the Bill will have my approval, but the matter requires far greater consideration than we shall be able to give it during the remainder of this session; and I strongly counsel the hon. member for Burrum to undertake not to carry the Bill further than the second reading.

Mr. ISAMBERT said: Mr. Speaker,—The hon. member for Burrum would have done himself greater credit in his attempt at law reform, and would have been more successful, if he had started with a Bill having for its object the establishment of courts of conciliation, so that all cases would first have to go through the door of common sense before being allowed to seek legal redress. For instance, if all candidates for litigation had first to face each other in the presence of sensible men, who would talk common sense to them, I believe that at least 50 per cent. of the cases that now go to the court would be settled by common sense. The administration of justice costs the colony about £150,000 per annum, including the police magistrates, and yet if a man seeks redress in

our law courts he has to pay heavily through the nose for it. Another idea, which is not my own but was suggested to me by a barrister, is that members of Parliament should be admitted as barristers of the Supreme Court. If that were done there are very few hon. members who would attempt to go before their honours the judges to plead, because the great majority have not the necessary qualifications; but there are a few hon. members who possess very high qualifications. For instance, if I had a mining case coming before the Supreme Court, I would just as soon entrust it to the care of the Minister for Mines and Works as to any barrister. If there were any points of law, he could resort to a solicitor for advice. Then if I had a case involving commercial points I would just as soon put it into the hands of the hon. member for Toowoong, as into the hands of any barrister; and in the same way I would allow the hon. member for Ipswich, Mr. Barlow, to advocate any case involving banking business. That would break down this awful authority of the judges. I know that many barristers would sometimes let out upon the judges, but they dare not, as it would be as much as their standing was worth; but if members of Parliament could act as barristers, the judicial authority would diminish considerably. In future law reform, I think we should take cognisance of this point, as it would be a step in the right direction. However, if the hon. member for Burrum does not think proper to include my suggestions in the Bill, I shall still give him my hearty support in what he has attempted as a beginning. If he is successful in his efforts, I hope he will persevere in the matter of legal reform until redress can be obtained more cheaply. At present he who wins loses, and he who loses loses double. Is that justice? I call it gross injustice. There is a legend which states that in ancient Egypt justice was dispensed gratis to the people; but here the State has to pay through the nose to obtain justice, and any citizen seeking it has to pay for it. This should not be in a civilised country. It is not even the man with the strongest cause who wins, but the man with the longest purse. The hon. member for Burrum may be sure that in any legal reform he will have my hearty support.

Question put and passed.

Mr. POWERS said: Mr. Speaker,—I beg to move that the committal of the Bill stand an Order of the Day for Friday, 20th September. By that date hon. members will have had an opportunity of seeing the District Courts Act Amendment Bill, and will know what parts of this Bill may be proceeded with.

Question put and passed.

UNION TRUSTEE COMPANY OF AUSTRALIA, LIMITED, BILL.

SECOND READING.

Mr. REES R. JONES said: Mr. Speaker,—In moving the second reading of this Bill, it is only necessary for me to say that the Bill is upon the same lines, and is almost identical with similar Bills which have passed this House. There is nothing for me to point out except as to the constitution of the company. The company is a very powerful one, which is incorporated in the colony of Victoria, and has also been registered in Queensland in the office of the Registrar of Joint Stock Companies as a British company, under the provisions of the British Companies Act of 1886. The following evidence was obtained by the select committee with regard to the capital of the company:—

“By the Chairman: Do you know how many shareholders are resident in the colony of Queensland? Ninety-six shareholders.”

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“And how many shares in the company do they hold? 6,850 paid up to £1 per share. Every shareholder of the Australasian Natives Company which endeavoured to get a Bill last session is a shareholder in the Union Company; but the value of the shares when I attended the committee before was 4s. paid up. The number of shares has diminished by 25, and the number of shareholders remain the same. The shares are now paid up to £1 in consequence of the amalgamation.”

It is proposed that £20,000 shall be deposited in the name of the Colonial Treasurer, and the interests of the public are amply provided for by the various provisions of the Bill. I move that the Bill be now read a second time.

The HON. SIR S. W. GRIFFITH said: Mr. Speaker,—I do not know what action the Government intend to take, but I shall oppose the second reading, and oppose the Bill altogether. I entirely approve of trustee companies under proper safeguards, but the principle of our courts has always been that trustees must be within the jurisdiction of the Supreme Court. When the court appoints trustees of a will it does not appoint a man in England to be the trustee of a will in Queensland, nor would a court anywhere else in Australia appoint a person in Queensland to be a trustee there. The proposal in this Bill is that a company registered out of Queensland, over which the Supreme Court of Queensland has no jurisdiction whatever, may be at the option of anyone, appointed a trustee. And what protection is to be given to the beneficiaries? None. Suppose anything goes wrong, they can go down to Victoria! Our own children or widows can go to Victoria and ask for justice there! No doubt the courts of Victoria will do justice; but do we want our beneficiaries here to go abroad to get justice? I will not say the company cannot be wound up in Queensland. That is a matter on which everybody knows the law in theory but not in fact. It is a subject that was very fully discussed at the Colonial Conference held two years ago in London, as hon. members will find if they read the discussion that took place on that subject. I said then that it was a subject on which the law is uncertain, but I was told I was wrong, and that English law is certain on all points, only people don't always know what it is. No doubt the court in Queensland would assume jurisdiction to wind up the company; but what would be the good of that. They could only deal with any property the company had in Queensland; and that, according to the proposal of the Bill, would be £20,000 in a bank, deposited in the name of the Treasurer. They would have borrowed that money from some bank here, probably the bank in which it was deposited; so that would amount to nothing, and that would be the only security. It is proposed to allow a company, over which the court will have no jurisdiction, to get possession of the property of widows and children here. Hon. members who were here last year when a Bill was passed authorising a local company to carry on this business will remember the great alterations that were made in the Bill in committee, and that we were very careful to stipulate that there should be real and substantial security, which would be always available for the benefit of the beneficiaries of the trust estates administered. But under this Bill there is no security whatever. They even object to give the security insisted on in the other case—namely, that a certain sum of money should be paid up in cash, and the greater part invested in Queensland Government securities. The proposal contained in this Bill is quite different from what was insisted upon in the other. Instead of paying up £25,000 and investing £20,000 in Government securities, it is proposed that they should deposit £20,000 in the name of the Treasurer. We know how that is done in the

case of contracts. When a contractor tendering for a work has to deposit £2,000 he goes to the bank and borrows that £2,000, and deposits the money to the credit of the Colonial Treasurer, to whom he sends the deposit slip. He incurs no liability whatever—he owes the bank £2,000, and the bank owes him £2,000. That is the way in railway contracts; and that is what is proposed here. There is a nominal deposit account in the name of the Colonial Treasurer, counterbalanced by an overdraft of precisely the same amount.

The MINISTER FOR RAILWAYS: Will the overdraft be in the name of the Treasurer, too?

The HON. SIR S. W. GRIFFITH: No. It will be in the name of the company. And in the event of the company being wound up, there will be nothing to get at except that £20,000, against which there will be a debt of £20,000 due to the bank. That debt will be a charge against the company. I am certain this House will never allow any of these companies to work without real substantial security—at any rate, I hope not. The House would not do so last year, when the present head of the Government expressed as strong opinions on the subject as I did. But even if the proposal as to the security were altered so as to make it similar to that contained in the Bill passed last year, there is still the difficulty that the company is not subject to the jurisdiction of the court. It is said that it is registered under the British Companies Act of 1886; but that does not give the court here any further hold, except to the extent that in the event of winding up the company they can get hold of any land owned here by the company. But the company will not have any land here; therefore that is a farce. What is really proposed is to allow a foreign company, over which the court has no practical jurisdiction, to get possession of the assets belonging to beneficiaries in this colony. I think the Bill ought not to pass, and we may just as well dispose of it on the second reading. I am sorry the Premier is not here, because I know that he shares my opinion.

Mr. POWERS said: Mr. Speaker,—Though there is a great deal in the arguments used by the leader of the Opposition, I do not think he has looked through the Bill very closely. The 24th clause says that the capital of the company shall be and remain divided into shares of £2 10s., and the number of shares shall not be reduced to less than 40,000. That provides for a capital of at least £100,000. That is the constitution of the company.

The HON. SIR S. W. GRIFFITH: But they are in Victoria. If they were here, it would be all right.

Mr. POWERS: The clause goes on to say that no more than £1 10s. per share shall be called up, except in the event of, and for the purpose of, the winding-up of the company. As far as the security under section 8 is concerned, what was demanded from the company before the Bill passed last session was that the deposit of £20,000 should be invested as provided for here, either in debentures or by paying the amount into a bank. If it is advisable to say that the amount shall be invested in debentures, that may be done in committee, but when other Bills based on the same lines have been passed, I do not think this measure should be thrown out on the second reading. If it does not contain all the safeguards it ought to contain, I think we shall be justified in seeing that those safeguards are inserted before it goes through committee. But the idea of saying that, simply because the Bill relates to a foreign company, it should be thrown out is absurd. I say the company being a foreign company we ought to take further safeguards.

The HON. SIR S. W. GRIFFITH: What further safeguards?

Mr. POWERS: By providing that a larger amount be deposited, because that is the safeguard I look to in every Bill of the kind. I do not look to the called or uncalled capital to the extent that I do the £20,000 deposit. I also look to the fact that there are other companies to compete with this. Because a man says he shall be appointed an executor, it does not follow that he will be made an executor. Any beggar in Queensland can be made an executor, but it is the testator who has to appoint him under the will; and if a company did not give evidence of *bona fides*, no one would appoint them as executors. Here we have a deposit of £20,000 as security, and that may be ordered to be increased by the Committee. Being a foreign company, I do not say that it should not be increased; but I really can see no reason why we should not go into committee for the purpose of seeing that the company shall give proper safeguards. I think hon. members would like to express their opinions on the Bill, which is on the same lines as one previously passed, except that it deals with a foreign company; and that being so, I quite admit that we should have further safeguards, but I do not think it is a reason why we should, in this summary way, throw out the Bill on the second reading.

The POSTMASTER-GENERAL (Hon. J. Donaldson) said: Mr. Speaker,—I have some delicacy in speaking on this Bill, because I happen to be one of the directors of the company, and am interested in it. I am not going into the merits or demerits of the Bill, but I do trust that the hon. the leader of the Opposition will not press for throwing it out on the second reading.

The HON. SIR S. W. GRIFFITH: I shall in a thin House like this, unless you adjourn the debate.

The POSTMASTER-GENERAL: Many hon. members wish to express their opinion on it, and we can enable them to do so by allowing the Bill to go into committee. If the defects of the Bill are such that they cannot be remedied in committee, let it be defeated in committee. I hope the hon. gentleman will not press his objection, because if the second reading of the Bill is not passed to-night it may not be got through this session. This is a very thin House.

The HON. SIR S. W. GRIFFITH: Adjourn then.

The POSTMASTER-GENERAL: If that is done, the Bill will probably not be got through.

The HON. SIR S. W. GRIFFITH: I am bound to vote against the second reading.

The POSTMASTER-GENERAL: Well, it will only lead to retaliation in the future, if advantage is taken of a thin House in dealing with Bills of this kind. It is most unfair. If I was in charge of the Bill I would accept the suggestion of the hon. gentleman, and adjourn it. I am not in charge of it, and as I have said already I have great delicacy in speaking on the subject, as I have upon any subject in which I am interested. I do not think the slightest harm can arise from allowing the Bill to go into committee. If its defects cannot be remedied, then let it be defeated. I have looked at the business paper and cannot see any probability of getting the Bill through if the second reading is not passed to-night. For that reason I hope the hon. gentleman will allow the second reading to pass. I do not ask that he should withhold his opinions in committee, whatever they may be—whether they assume the form of amendments, the rejection of clauses, or anything else, because we shall then have a fair House to decide the question.

The Hon. Sir S. W. GRIFFITH: The second reading affirms the principle.

The POSTMASTER-GENERAL: With the exception of one objection the principle of the Bill has already been affirmed in other Bills which have passed through the House.

The Hon. Sir S. W. GRIFFITH: The chief objection is that it is a foreign company.

The POSTMASTER-GENERAL: I know what the objection is perfectly well, but there may be some alteration made to get over that. I do not care if the Bill is lost.

Mr. FOXTON said: Mr. Speaker,—I do not think the hon. gentleman was justified in speaking of retaliation in a matter of this sort. He asks that the Bill may be allowed to go into committee in order that the objections to it may be remedied. But one of the objections is that it relates to a foreign company. It is not possible to remedy that unless the company is wound up in Victoria and re-starts in Queensland. It has been pointed out by the hon. member for Burrum that there is uncalled-up capital to the extent of £40,000 by way of security. That may be a portion of a very good security in Victoria, but it is a very different matter from the point of view taken by those who might have recourse against this company in Queensland. Should the company get into difficulties in Queensland, the creditors in Victoria would certainly have a first claim upon that £40,000 asset, and the Queensland creditors would be thrown back upon such assets as were to be obtained in this colony. As has been pointed out, that is a very chimerical security, to say the least of it. The hon. the leader of the Opposition has pointed out how deposits for tenders are made. The tenderer goes to a bank, obtains an overdraft, and pays the money back in the name of the Colonial Treasurer. What would be the result of that? It may be perfectly true that there is no right of set-off as regards the debt due to the bank, but at all events there would be a proveable debt to the value of the full amount of the security. In this case there would certainly be a proveable debt as against the company if it went into liquidation. Although the bank might not be able to say they had a deposit in the name of the Colonial Treasurer as a set-off against the debt due to them, nevertheless that debt would be a claim against the liquidator. I certainly think the Postmaster-General would have done well if he had advised the hon. gentleman in charge of the Bill to consent to an adjournment. It is a great pity to force debatable matters of this sort through the second reading in a thin House. There are two ways of looking at the question with regard to a thin House. The hon. gentleman stated that the hon. the leader of the Opposition should not take advantage of a thin House to defeat the second reading of the Bill. On the other hand, I say advantage should not be taken of a thin House to endeavour to force the second reading.

The POSTMASTER-GENERAL: It was put down for second reading to-day.

Mr. FOXTON: The argument which the hon. gentleman used against the leader of the Opposition tells with equal force against himself. I think it is a great pity that he did not accept the suggestion of the leader of the Opposition, and, with the consent of the hon. member in charge of the Bill, move the adjournment of the debate. I am quite sure, if it is desired to put the Bill through and it meets with the approval of the majority, no delay will take place on the second reading. There is a great deal in the Bill that has received the sanction of Parliament in regard to other companies. If the House is prepared to accept the

principle that a foreign company is to be admitted to those great privileges on the same terms as are accorded to local companies, then the rest of the Bill may be taken as almost undebatable. If the Bill goes to a division, I shall vote against it.

The MINISTER FOR MINES AND WORKS (Hon. J. M. Macrossan) said: Mr. Speaker,—I do not believe in the Bill as it has been introduced, and I know the head of the Government does not approve of it either; at the same time I do not think that that is a good reason for not letting it go to a second reading. A similar Bill was passed last year containing very obnoxious principles, which were obliterated in committee. I know that the objection to this measure is that the company is a foreign company; but we demanded a certain guarantee from the local company, and we could demand double the amount of guarantee from this foreign company. I hope the time is not distant when the term "foreign company" will have a very different meaning to us. I hope federal courts will decide matters of this kind, and I think we should not regard our fellow colonists down south as foreign, in the same sense as men from over the seas. As to the argument of the hon. member who has just sat down, about not taking a second reading in a small House, he must remember this, that if the Bill is defeated on the second reading it cannot come on again; but in committee we can still throw it out, if we do not approve of it.

Mr. FOXTON: The principle is affirmed on the second reading.

The MINISTER FOR MINES AND WORKS: I have often seen principles affirmed on a second reading, which were not affirmed in committee. That is no argument at all. It might be a logical argument, but it is not a practical argument for this House. The leader of the Opposition was quite wrong in his simile about a contractor giving £1,000 to the Commissioners for Railways, or rather depositing £1,000, and sending the scrip to the Commissioners. The Commissioners have full authority over that £1,000. No one can touch it but them, and it could be taken possession of if default was made. The hon. gentleman made a mistake, which upon second thoughts he will see, so that it was no comparison with any deposit that might be made under this Bill. The deposit we get under this Bill should be debentures, and if necessary, instead of £20,000, it should be £40,000 or £50,000 worth of debentures. I think the Bill should go to a second reading.

Question—That the Bill be now read a second time—put, and the House divided:—

AYES, 17.

Messrs. Macrossan, Black, Smith, Powers, O'Sullivan, Hodgkinson, Palmer, Lissner, Little, Jessop, R. R. Jones, Agnew, Adams, Hamilton, Luya, Callan, and Cowley.

NOES, 12.

Sir S. W. Griffith, Messrs. Glassey, Sayers, McMaster, Smyth, Buckland, Wimbles, Isambert, Drake, Salkeld, Foxton, and Barlow.

Question resolved in the affirmative.

On the motion of Mr. REES R. JONES, the committal of the Bill was made an Order of the Day for Friday, the 27th instant.

ADJOURNMENT.

The MINISTER FOR MINES AND WORKS said: Mr. Speaker,—I beg to move that this House do now adjourn. The business on Monday will be Supply.

Question put and passed.

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