Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 1 OCTOBER 1889

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LEGISLATIVE COUNCIL.

Tuesday, 1 *October*, 1889.

Message from the Governor—assent to Bill.—Messages from the Legislative Assembly—Supreme Court Bill—Church of England (diocese of Brisbane) Property Bill.—Defamation Bill—committee—re-committal.—Drew Pension Bill—second reading—Crown Lands Acts, 1884 to 1886, Amendment Bill—committee.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

MESSAGE FROM THE GOVERNOR.

ASSENT TO BILL.

The PRESIDENT announced the receipt of a message from the Governor, conveying his Excellency's assent, on behalf of Her Majesty, to the Day Dawn Freehold Gold-mining Company, Limited, Bill.

MESSAGES FROM THE LEGISLATIVE ASSEMBLY.

SUPREME COURT BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding, for the concurrence of the Council, a Bill to amend the Supreme Court Acts of 1867 and 1874.

The MINISTER OF JUSTICE (Hon. A. J. Thynne) moved that the Bill be now read a first time.

Question put and passed.

The MINISTER OF JUSTICE said: Hon. gentlemen,—I move that the second reading of the Bill stand an Order of the Day for to-morrow.

The HON. T. L. MURRAY-PRIOR said: Hon. gentlemen,—I object to the Bill being read a second time to-morrow. I think we ought to have more time to consider the measure before it is read a second time.

The MINISTER OF JUSTICE said: Hon. gentlemen,—With the permission of the House I wish to give my reason for having the second reading put on the paper for to-morrow. We have on the paper a large number of Bills, and it may be at times very convenient to have the paper in such a condition that we shall be able to proceed without unnecessary delay. With regard to this Bill, there are certain reasons—which I propose to explain fully on the second reading—which make it a matter of urgency, and on that ground I ask to have it put on the paper for to-morrow. I will explain fully to hon. gentlemen later on the reasons why certain portions of the Bill are matters of urgency.

The HON. T. MACDONALD-PATERSON said: Hon. gentlemen,—I am glad of the opportunity the Hon. Mr. Murray-Prior has given me to say a word or two as to what has almost become, recently, a practice—namely, moving that the second reading of a Bill shall stand an Order of the Day for the day following that on which it is introduced. This is a Bill to amend the Supreme Court Acts of 1867 and 1874, and the reasons given by the Minister of Justice for allowing the second reading to be taken to-morrow—namely, that he will explain certain matters in connection with the Bill, are likewise reasons why hon. gentlemen should have sufficient time to form their own views in regard to the measure. It is the A B C of the Standing Orders, and also of Parliamentary usage, that the principles of a Bill should be debated on the second reading, matters of detail being, very properly, dealt with in committee. I have not read a single sentence of this Bill, and it is not fair to expect hon. gentlemen to debate the second reading at twenty-four hours' notice. In fact, we have not twenty-four hours in which to consider the Bill, because out of that time we have to take rest and attend to other engagements. I appreciate the object of the Minister of Justice in wishing to take the second reading as early as possible; but he is in a far different position from other hon. gentlemen. He has had the Bill before his mind's eye since its inception up to the present moment, but I apprehend that not one other hon. gentleman has read the Bill. Indeed, I consider it a disadvantage to read a Bill of any kind—except, perhaps, when it is introduced into another Chamber—until it comes to this House. I shall not be prepared to say a word about this Bill to-morrow, and I suppose there are many other hon. gentlemen who will not have time to study the measure before then; and under the circumstances, I beg to move that the second reading of the Bill stand an Order of the Day for Thursday next.

The MINISTER OF JUSTICE said: Hon. gentlemen,—I think, in matters of this kind, when the representative of the Government in this House puts a measure forward as a matter of importance, and indicates that there are circumstances connected with it which justify him in stating that it is a matter of urgency, it places him in rather an awkward position when arrangements for bringing that Bill under consideration are thrown out of gear. It is a matter of urgent importance that a certain portion of this Bill shall become law as quickly as possible. I hesitate, even now, to explain fully the reason, although if it were fully known I believe that hon. gentlemen would not only agree to taking the second reading to-morrow, but would be willing to proceed with it almost at

once. I am not able, however, to fully explain the reasons at present, though I think that holding the Bill over till next week may be productive of serious consequences. I have not had an opportunity of explaining to hon. gentlemen in private my reasons for taking this course, but I think I may reasonably ask the House in this matter to place confidence in what I have stated, and in view of what I have said I trust hon. gentlemen will not accept the amendment. If, when the second reading of the Bill comes on to-morrow, it appears to hon. gentlemen that my anxiety to press the matter through is not justified, it will be in the power of hon. gentlemen to delay the second reading until next week, if they choose to take that course. I am quite content, as I have always been, to carry out the wishes of the House with regard to measures introduced by me.

The HON. W. GRAHAM said: Hon. gentlemen,—I think the last few words of the Minister of Justice seem to invite a debate to-morrow by persons who have not been able to make themselves thoroughly acquainted with the Bill, but who will then have an opportunity of hearing what he has to say. He seems to think he will be able to give us sufficient reasons for discussing the second reading then, but I very much doubt it, and I think that bringing the Bill on to-morrow will waste a lot of time. Another reason he gave for moving that the second reading stand an Order of the Day for to-morrow is, that he desires it to be put on the paper; but if the amendment is carried it will still be put on the paper, and I am of opinion that, instead of taking the second reading on Thursday, it ought to be taken on Tuesday. I think that will be quite early enough for the second reading. There is no doubt that the Minister of Justice has a thorough knowledge of the Bill, but to an ordinary lay intellect I have no doubt it will be an extremely hard nut to crack. If the Hon. Mr. Macdonald-Paterson had moved that the second reading stand an Order of the Day for Tuesday next, I would have supported that amendment.

The HON. T. MACDONALD-PATERSON said: Hon. gentlemen,—With the permission of the House I will alter my amendment by substituting the word "Tuesday" for the word "Thursday."

The HON. B. B. MORETON said: Hon. gentlemen,—The Minister of Justice has indicated that, if hon. gentlemen wish, the debate on the second reading can be adjourned to-morrow until hon. members are prepared to discuss the measure; but I do not think the Bill will go through any quicker in that way than by making the second reading an Order of the Day for this day week and having no adjournment of the debate. I believe that the provisions contained in the Bill might very well have been brought forward in two measures, one dealing with the matters of urgency to which the Minister of Justice has referred, and the other dealing with the other matters contained in the Bill. If that had been done the matters of urgency would have been passed at once, and the others could have received full consideration later on. I trust that the hon. gentleman will allow the second reading to stand an Order of the Day for Tuesday next.

The HON. P. MACPHERSON said: Hon. gentlemen,—I must ask the Minister of Justice to favourably consider the amendment. Whilst fully recognising the truth of everything he has said, as regards the urgency of one part of the Bill, I cannot disguise from myself the fact that the remainder of the Bill relates to matters of extreme importance. I have not yet had an opportunity of reading the Bill. It has taken some considerable time to discuss elsewhere, and I think that some reasonable time should be accorded to us for considering the measure, because it is far better to come to the discussion with a knowledge of the details, which will not be the case if the second reading is taken to-morrow. For my part, I am always most anxious to accelerate business, but I do object to be hurried.

Amendment, by leave, amended.

Question—That the second reading of the Bill stand an Order of the Day for Tuesday next—put and passed.

CHURCH OF ENGLAND (DIOCESE OF BRISBANE) PROPERTY BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly forwarding, for the concurrence of the Council, a Bill to define the trusts upon which certain lands of the Church of England in Queensland are and shall be held by the corporation of the Synod of the Diocese of Brisbane, and to amend the Fortitude Valley Parsonage Land Sale Act of 1877.

On the motion of the HON. P. MACPHERSON, the Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

DEFAMATION BILL.

COMMITTEE.

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

On clause 43, as follows:—

"Whenever any person is convicted, either in an action or prosecution, of publishing any defamatory matter by means of printing, the plaintiff or prosecutor in whose favour judgment is given may under his writ of execution levy the damages, penalty, and costs out of any property of the defendant in like manner as in ordinary civil actions, and also out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials, or any part thereof, were used in printing such defamatory matter, to whomsoever the same may belong at the time of the levy."

The HON. P. MACPHERSON said that during the discussion on the second reading of the Bill he listened with a great deal of interest to the able arguments of the Minister of Justice on the one side, and the Hon. Mr. Brentnall on the other, in reference to the clause. It was for the Committee to decide whether the clause should be passed or not.

The MINISTER OF JUSTICE said that, to his knowledge, the provision contained in the clause had been the means by which a person who had been slandered, and had recovered a verdict, was enabled afterwards to insist on payment of the amount of the verdict, and had it not been that a similar law to that was in force at the time, the successful plaintiff would have been unable to recover one farthing. It had been suggested that the clause should be omitted, but he thought he was correct in saying that if clause 43 was omitted, and the Bill passed into law, the remedy of the plaintiff for the recovery of the amount of his verdict would disappear. When speaking on the second reading of the Bill, he pointed out that it would be quite feasible now, and would become the practice, to start newspapers without any printing plant belonging to the proprietors of the newspaper. They would contract for the printing to be done, and there would be no responsibility with respect to the type, while the printer would be relieved from the duty of seeing that the matter issued was not of a libellous character. He thought that was a very grave

alteration to make, and he trusted the Com mittee would not make that alteration without carefully considering what its effect might be.

The HON. F. T. BRENTNALL said that, as a matter of fact, at the present time there were several newspapers printed in Brisbane under contracts with printers, the proprietors of the newspapers having no printing plant. The printer who printed the newspaper was not supposed to read all the matter; which was supposed to come to him from the editor and proprietor of the paper in a form in which he could mechanically print and publish it. Under the clause the proprietor of the types, printing presses, and mechanical appliances, would be held responsible for any defamatory matter that might be published; and the man who ought to be actually and directly responsible—the man who read the matter, and deliberately permitted it to be printed—would go scot-free. Would it, for instance, be perfectly fair in the case of the publication of a libel by one of the local weekly journals, that such a firm as Watson, Ferguson, and Co., or Gordon and Gotch, or Warwick and Sapsford, should be held liable for the publication of defamatory matter, when really they never knew that defamatory matter was going into the paper at all? Under a contract, the matter went to the printers, ready for the press, they put it on the machine and printed it. The editor was responsible, and he was not upon the printers' staff, or in their establishment. He simply provided the matter, and it was printed under contract. It would not be quite fair that the printer should be held liable to have his plant levied upon, without having been sued. In such a case as that he had referred to, the proprietor of a newspaper could be sued and mulcted in damages; but not having sufficient money or property wherewith to pay the amount of the damages, persons who were no parties to the defamation except by the mechanical process of printing, might have the whole of their working plant suddenly seized and sold, and their business entirely ruined. That would be the effect of the clause. The proprietors of the machinery would not have been sued, or have had an opportunity to make any defence, or show cause why they should not be called upon to suffer for the wrong-doing of other persons. He was expressing the views that were held by many of the master printers in the city, who would regard the clause as inflicting a very great hardship upon them. At the time of the levy being made, the type might have got into the hands of persons who were not at all connected with it at the time the defamatory matter was published. Was it fair that property that was in no way involved in the business from which the defamation emanated, should be liable to be ruined? A person who was not living within 500 miles of the spot at the time the libel or defamation was printed, might purchase the printing plant, and be in entire unconsciousness that there was any such penalty hanging over his head. On those grounds he thought the clause was objectionable. He was not able to argue the matter from the standpoint of a lawyer, but was simply speaking from the standpoint of a man of business. Several of the contracts he had described were in existence in the city at present, and it would become questionable whether, in the case of a man who had no capital, those who had the capital and the working plant would be justified in assisting him to bring out his newspaper under such a penalty as that contained in the clause. On a former occasion reference had been made to another very important point, and that was, that if the plant and material of a printer were liable to be seized, his credit might be very considerably depreciated. That was a matter that business men would look at, and upon those and other grounds he hoped the clause would be eliminated from the Bill. He did not think that innocent persons should be involved in the punitive consequences of either malice or inadvertence on the part of other people.

The MINISTER OF JUSTICE said the Bill contained some serious provisions in regard to criminal prosecutions, and hon. gentlemen would have to estimate for themselves the practical value of the penal clauses of the Bill in regard to libels. In how many instances had libels been published, and prosecutions taken place, and no convictions obtained? Hon. gentlemen would know that criminal prosecutions for libel did not find much favour with juries of the general public.

The HON. W. GRAHAM said that there was no doubt that the clause might be hard on the owners of type, who had no control over what was being printed. But they should protect themselves; and if they had to do that, perhaps they would be more careful as to whom they lent their type. No doubt there existed newspapers in Brisbane which were brought out in the manner described by the Hon. Mr. Brentnall, and there were two or three that they could easily do without. The owner of the type could well make some provision to satisfy himself that the person to whom he lent the type was solvent, and that he would in all probability remain solvent. In certain cases, the proprietors of the paper might enter into some bond to insure the type against such action. If the clause were struck out it would be utterly useless for any man to obtain a verdict.

The HON. W. FORREST said the remarks which had just been made opened up a new phase of the matter. A man of straw might start a paper and get it printed by some other person, or a company, The proprietor might not be very particular in the comments he made in references to people, or to things in general, and might publish the most outrageous slanders without there being any means of reaching him. The only way to protect the public was to hold some sort of security over the printer. Newspapers had a great deal of influence for good or for evil; but he failed to see that their privileges should be extended too far. There should be a means of reaching them that they could not evade, and the only way was to hold the printer responsible.

The HON. A. C. GREGORY said there was another phase of the question that had not been touched upon. They had been dealing with the fact that the type actually used in printing would be liable to be seized, no matter whether it belonged to the person owning the paper or to some person from whom he hired it. As the clause stood, a merchant might import a large quantity of type, a certain quantity of which he might lend for the printing of a paper, or three or four papers, and he might still have a large quantity in stock. If one of those papers published a libel, not only the type which had been used in printing that paper could be seized, but all that the owner had hired out to other papers. That would show to what an enormous extent the clause would go. It would practically shake the faith of every importer of type, and it would be a heavy tax upon all publications which could not afford to import their own type. The wording of the clause was too extensive.

The HON. SIR A. H. PALMER said he sincerely hoped the Committee would think differently from the hon. member who had just spoken. The people who lent type to people who were likely to indulge in libels should be left to take care of themselves. The Committee was not bound to look after them, and take care of

their property for them, if they chose to rush into speculations without judging what purpose the type might be put to. It was a very necessary clause, and if the Committee did away with it, they would find it utterly impossible to punish not only the man who printed the libel, but the man who wrote it. Nobody would be responsible if the clause were struck out. In regard to the papers the Hon. F. T. Brentnall alluded to, which were written by one party and printed by another, he hoped the effect of the clause would be to stop some of them, as they were a disgrace to the country. Most of their so-called "society" papers were run in that way. He believed the type used in printing them was owned by other persons, and the clause would compel respectable persons who owned type to show greater carefulness. It was no excuse for them to say that they published libellous paragraphs innocently, because they did not read them first. They would have to keep somebody to read them. He sincerely hoped the clause would be retained. What would a person say to a man who brought him a gun and said it was loaded, and asked him to fire it? Would it not be his business to see whether that gun was loaded? If he said it was only loaded with powder, would it not be the person's business to find out whether there was any ball or shot in it, and see what mischief would be done by firing it? The cases were analogous. When a libel was published, the man who wrote it, and the man who printed it, were each liable equally, and he did not see what remedy could be obtained in nine cases out of ten unless the type was made responsible.

The MINISTER OF JUSTICE said the 13th clause of the present Defamation Act said :—

"Whenever any person shall be convicted either in a civil or criminal proceeding of printing or publishing a defamatory article, the plaintiff or prosecutor in whose favour judgment shall have been given, shall be at liberty, under his writ of execution, to levy the costs, damages, penalty, and expenses named therein out of the whole of the types, presses, or printing material whatsoever, belonging to the person whose types, presses, or printing materials, or any part thereof, may have been used in printing such defamatory article, as well as out of the property of the defendant on the record."

The bulk, therefore, of the clause 43 of the present Bill, was in the existing Act. But there was one slight alteration. In one case in this colony a verdict was recovered for damages for libel. The defendant himself was the owner of the printing press, or, rather, it belonged to a limited company, and before the execution was put in, the limited company had gone into liquidation. According to that clause, the right to levy did not extend to the plant which belonged to the owner of the newspaper; it only extended to the levying of an execution against the type which had been at the time of the printing, the property of some other person than the publisher of the newspaper. The whole of that Defamation Act was repealed.

The HON. T. MACDONALD-PATERSON said he regretted he had not had an opportunity of giving more attention to the matter. But from what he had heard he had come to the conclusion that it would be unwise to dissever the publisher from the printer, and allow the latter to escape scot-free. He had a dim recollection from his past reading that it had always been held to be a high privilege to be a licensed printer, and that was why the imprint had always been insisted upon by the law in respect to periodicals, etc., so that it could be seen who were the printers and who were the publishers. It occurred to him that that responsibility had in no wise decreased in these modern times, or, if anything, it had increased; and when he saw how easy it was for an ill-disposed person to write an article from a place 500 miles away, and have it printed and distributed, he could not see that the printer was less responsible than the publishers. It was only the other day they had a discussion as to a deposit being necessary in the case of a permanent executors trustee fund, which was to be intrusted with what he might term the routine business of deceased persons. Shakespeare said, "Who steals my purse, steals trash," etc, and if they asked the country to pass a law restricting trustees and executors companies, who merely dealt with what Shakespeare referred to as "trash," and with what did not concern character at all, they should ask a larger deposit before they allowed any person to become a printer. When he considered the number of trashy newspapers that were published in the colony, before any person should be licensed to start a newspaper, at least £1,000 should be deposited with the Treasurer, to guarantee that the character of the paper should be up to a certain standard. Something like *bona fides* should be shown, at any rate. Taking all things into consideration, he thought the clause should be left as it stood.

The HON. F. T. BRENTNALL said he had tried to state the case from the point of view of the interested parties—namely, the printers, as apart from the proprietors of newspapers. He was not the special advocate of anybody, nor did he wish to urge the interests of any class of individuals against the judgment of the Committee. But, as he had stated, hardships would arise in either case. As the clause stood, hardships might arise in respect to the printers, and were it eliminated, there might be hardship in the other direction. In regard to a remark made by the Hon. Mr. Forrest, the man who published defamatory matter, although he might not be the owner of the type or the printing press, was by the Bill to be made liable to a severe penalty. The other day they had passed the following clause :—

"Any person who unlawfully publishes any defamatory matter is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any period not exceeding twelve months, and to be fined in any sum not exceeding five hundred pounds."

So that such an individual would not be quite free from penalty, although he might not have property upon which a levy could be made. He was not prepared to urge the views he had expressed any further; but there was considerable force in the argument he had used in favour of the clause being eliminated.

The HON. W. D. BOX said when he first saw the Bill he thought he would do his utmost to have the clause eliminated; but the debate he had heard, and the statement of the Minister of Justice that the greater part of the clause was contained in the existing law, seemed to show that the clause had better be retained in the Bill. It seemed to be very severe upon the printer; but he did not think it would interfere unjustly with his business, or make it impossible for him to give security over his type, a sort of thing which might be necessary for a man beginning in his business. He thought the clause should be left in the Bill, and he would vote for its retention.

Clause put and passed.

The remaining clauses of the Bill, and the schedule and the preamble, were passed as printed.

On the motion of the HON. P. MACPHERSON, the House resumed, and the CHAIRMAN reported the Bill with amendments.

RE-COMMITTAL.

On the motion of the HON. P. MACPHERSON, the President left the chair, and the House went into committee to reconsider clause 25.

On clause 25, as follows :—

"Any person who unlawfully publishes any defamatory matter knowing it to be false is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any term not exceeding two years, with or without hard labour, and to be fined in the discretion of the court."

The HON. P. MACPHERSON said he had an amendment to propose, with the view of making the clause harmonise with the subsequent clauses. He moved the omission of the words "the discretion of the court," with the view of inserting the words "any sum not exceeding five hundred pounds."

The HON. W. FORREST said he thought the clause would be better as it stood, because the punishment was for the publication of defamatory matter by a person knowing it to be false. A man who knowingly published defamatory matter ought to be punished to any reasonable extent the court might think proper. In some cases the court might consider that a man would be sufficiently punished by a fine of £10 or £20; but, in other cases, a fine of £500 and imprisonment for two years might not be sufficient, and he thought it better to leave the amount of the fine to the discretion of the judges, who might safely be trusted.

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

The HON. W. FORREST moved that the amendment be amended by substituting the words "one thousand" for the words "five hundred."

The HON. P. MACPHERSON said he hoped the hon. gentleman would withdraw his amendment. An amendment had already been made in clause 26 by which a fine of £500 was imposed for a slander against a member of Parliament, no matter how wilful or atrocious, and surely that amount would be sufficient under the present clause. He considered that two years' deprivation of liberty and a fine of £500 ample punishment for any libel, however atrocious it might be.

Question—That the words "five hundred" stand part of the amendment—put and passed.

Original amendment agreed to; and clause, as amended, put and passed.

The House resumed, and the CHAIRMAN reported the Bill with a further amendment.

The report was adopted, and the third reading of the Bill was made an Order of the Day for to-morrow.

DREW PENSION BILL.

SECOND READING.

The MINISTER OF JUSTICE said: Hon. gentlemen,—This is a Bill to make special provision with respect to the retiring allowance of Mr. Drew, in the event of his being appointed to the office of chairman of the Civil Service Board. The salary provided under the Civil Service Act for the chairman of the board is £1,000 per annum. At the time the Bill was under the consideration of Parliament, the Government did not give any consideration to the question as to any of the individuals that would be appointed as members of the board, but after the Bill became law it became necessary for the Government to look round with the view of fixing on the best qualified officer obtainable for the position of chairman, because the Civil Service Act introduces a very important change in the management of the Public Service of the colony, and the success of the operation of the Act will depend a good deal on its administration. The Government came to the conclusion that the one man available who was best qualified for the position was Mr. Drew. His long experience in the service, the great interest he has always taken in matters of this character, and the great interest he took in the calculations and questions affecting the Civil Service Bill, all indicate his eminent qualifications for the position of chairman of the board. Mr. Drew, however, is the Auditor-General, and occupies a position of high responsibility with an income equivalent to that provided for the chairman of the Civil Service Board under the Civil Service Act. The initiation of the Civil Service Board is a work of considerable labour, requiring the best energies and the sustained effort of the gentleman who undertakes the duties of chairman, and Mr. Drew is not prepared to undertake those duties unless it is made worth his while to give up his present office for the purpose. Mr. Drew will be prepared to undertake and enter heartily into the administration of the Civil Service under the terms mentioned in this Bill—namely, that he shall receive, in addition to his salary as chairman, a certain portion—something less than half—of the retiring allowance to which he would now be entitled were he to retire from the Public Service. He would be entitled to an allowance of £564 a year if he were to retire from the service now. In calculating the advantage or disadvantage of making this proposed arrangement, it is quite evident that if Mr. Drew were to avail himself of his right to retire from the service, the country would be paying £564 a year to him and £1,000 a year to some other occupant of his office; and the Government thought it was well worth while to arrange that Mr. Drew should receive, in addition to his salary, a portion, not exceeding £250, of the retiring allowance which he is now entitled to claim under the Auditor-General's Pension Act of 1887 on retirement from the Civil Service. The one object the Government have in view in making the proposed arrangement is to get the best man available for the work; and I think hon. gentlemen will recognise the fact that in making the selection we have put aside all party, political, or other considerations, except that of appointing the individual who may with the greatest confidence be trusted with the important duties to be performed by the chairman of the Civil Service Board. I therefore move that the Bill be now read a second time.

Question put and passed.

The committal of the Bill was made an Order of the Day for Thursday next.

CROWN LANDS ACTS, 1884 TO 1886, AMENDMENT BILL

COMMITTEE.

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

On subsection 1 of clause 3, as follows :—

"The principal Act is hereby amended as follows:—

"Applications to the Governor in Council under section twenty shall be made within ninety days after the decision of the board."

The HON. W. FORREST said that last Thursday, when the 3rd clause was under consideration, he took exception to the first subsection; and, as there were not many hon. gentlemen present on that occasion, he might be excused for repeating his reasons for objecting to the

subsection. [The section in the principal Act which it was proposed to amend by that subsection was the 20th, as follows:—

"Upon the application of any person aggrieved by the decision of the board, the Governor in Council may remit the matter to the board for reconsideration.

"The board shall thereupon appoint a day for rehearing the matter in open court, and shall proceed to a rehearing thereof accordingly."

Hon. gentlemen would observe that there was no limitation of the period within which any person aggrieved by a decision of the board might bring the matter before the Governor in Council for a rehearing; but by the amendment it was now proposed to limit the time to ninety days, and it was to that limitation that he objected. He thought the framers of the Act of 1884 were animated by a great sense of justice in their proposal with respect to the rehearing, and in many other proposals; and he believed it was intended that, if any person had a grievance, the doors of justice should not be shut against him at any period. He also believed that the present Government were equally animated by a desire to do what was just; but if they carried the subsection now under consideration, they might not have it in their power to do justice in some cases. He gave a case in point last Thursday which he would now repeat. A certain lessee had his run divided, and the board gave their decision. Some time after that decision was given the lessee determined to fence two of his runs. One boundary was between his holding and that of another lessee, and for the purpose of determining where the fence should run, a duly licensed surveyor was employed. There were supposed to be twenty-five square miles of country in the first run to be fenced and twelve square miles in the second run; but it was discovered that there was only sufficient country to give nineteen or twenty square miles to the first run and none at all to the second. Both were included in the leased portion of the run; and if the proposed amendment had then been the law, the lessee would have been shut out from receiving any justice, because he could not have asked for a rehearing within ninety days; but under the law as it now stood he was in a position to obtain justice. He would point out that it was not compulsory on the Governor in Council to grant a rehearing; and, that being the case, ample power was reserved in the hands of the Governor in Council. He had a list of all the cases in which a rehearing had been applied for under the Act of 1884, and the number of cases would show the Committee that there was little reason for amending the law in that respect. Only forty-eight applications for rehearings had been made with respect to all the runs divided under the Act of 1884, and twenty-two of those applications had been refused by the Governor in Council; so that the number of rehearings had been only twenty-six, which was at the rate of about five a year. A good many of those applications were made more than three months after the decision of the board had been given; and if the ninety days' limit had been fixed in the Act of 1884 many of the lessees would have been shut out from obtaining justice. Under the circumstances, he thought the subsection ought to be negatived.

The MINISTER OF JUSTICE said that, from the point of view taken up by the Hon. Mr. Forrest, the proposed amendment was one which might seriously affect the lessee in some instances; but it was from another point of view that the proposed amendment in the law had been introduced. It seemed very absurd that after a court—for the board was really a court—had given its decision, a lessee should be entitled to lie in wait as long as he chose before making his claim for a rehearing of the decision given by the board. In some instances they had waited as long as three years, and they might wait as long as five or ten years if they chose under the present law. The meetings of the Land Board were generally held in the district where the runs were situated, and the Government were represented by the land commissioner and the dividing commissioner. The lessee had the opportunity of bringing forward as many witnesses as he could—men who were intimately acquainted with the country. The Government were put in an unfair position if such a long time was allowed for rehearings. The man upon whom they relied to support their view might have disappeared. They knew that the functions of the dividing commissioners had in many cases ceased, and they were no longer under the control of the Government; so that it amounted to this, that a number of applications might be made at any time. Circumstances might have changed, and a lessee might think he was in a position to gain a great advantage, and he would bring forward his application for a rehearing. The gentleman who had judged between the lessee and the Government might not be available, and the information upon which he made the subdivision of the country might not be able to be reproduced, so that the Government would be practically at the mercy of the lessee. In all cases there ought to be some finality to the decisions of every court or board which was invested with judicial functions; if not, their usefulness and importance would be seriously interfered with. He admitted that the Hon. Mr. Forrest had pointed out a case in which it would perhaps be somewhat difficult to do complete justice if the paragraph were carried. But they might, perhaps, propose such modifications in the clause as would allow rehearings in cases of manifest error on the part of the board, and he would be prepared to accept suggestions in that direction. It was only in cases in which the board had acted in error, that rehearings should be granted after the lapse of long periods of time. It was only right in the interests of the country, and of all concerned, that there should be some finality to the decisions given by the board in matters of that kind.

The HON. W. FORREST said he would like to point out that the Government of the day would not be at such a very great disadvantage as the hon. gentleman wished to make them believe in regard to the evidence obtainable in cases of rehearings. Even if the dividing commissioner was no longer available, they could obtain the evidence of experts, and they would have ample power under the present law to protect themselves, because the Governor in Council could refuse to grant a rehearing if the case was brought forward upon insufficient grounds. Why should the Government try to limit the time and try to shut the doors of justice to anyone who had a good case to bring forward at any time? In ordinary cases, so long as a man took action within a reasonable time after he had discovered a mistake that had been going on for years he could appeal, and he did not see why a lessee should be deprived of the right of going at any time to the Governor in Council and saying, "I have made a discovery; I have a serious grievance, and I ask that it shall be amended." As he had pointed out, if the case was frivolous or vexatious, the Governor in Council could exercise the power he had already exercised in refusing twenty-two out of forty-eight applications. There was another matter which was not generally known. When the Act of 1884 first came into operation, it was held out as an inducement that the dividing commissioner and the lessee should take the most reasonable

course and discuss the proposed division on the ground, where ideas could be compared. But the dividing commissioners would give the lessees no information in regard to the proposed divisions. He had as much knowledge of those matters as most men; but the Government sprung some evidence upon him when he was not prepared for it, upon one occasion, and they had done that in other cases, and it was very unjust to do a thing like that. In one case the mistake had not been found out for two years, and the lessee found that he had been paying rent for land that never existed, but which was said to be included in the leased portion. The whole secret of the matter was that the Government did not like the disagreeable duty that the Act imposed upon them. If they had the backbone of one hon. gentleman in that Committee, who was once the leader of a Government,—the President—and could say "yes" or "no," there would be no necessity for all that legislation. But the Government liked to go through the world smoothly, and to legislate to remove difficulties. That was why the amendment was proposed; it was not proposed in the interests of the public. A grievous injustice would be done by that legislation. Certain privileges had been granted, and they were now asked to take away the inducements that had been held out to them to accept the Act of 1884. All that was required was that the Government should have some backbone, and no legislation would then be necessary.

The MINISTER OF JUSTICE said he was rather surprised that his hon. friend had suggested that there was a want of backbone in the Government, but the speech of the hon. member had itself been an answer to that charge, when he said that forty-eight people had applied for rehearings, and only twenty-six of those applications had been acceded to.

The HON. T. MACDONALD-PATERSON: They did not all occur during the regimé of the present Government.

The MINISTER OF JUSTICE said he knew rehearings had been refused, and in many instances the Government had put their foot down and said, "We will not allow a rehearing unless there is sufficient reason for it." If there was likely to be a want of backbone on the part of the persons administering the Lands Department, that was a good reason why the power should be taken out of the hands of persons who might be lax in their administration. There should be some reasonable finality as to the time within which rehearings could be applied for. The longer the time allowed the less means the board had of resisting the evidence which might be brought forward, because the sole means from which the board could derive its information might have disappeared. Did the hon. gentleman mean to advocate that years after a decision had been given, when evidence had ceased to be available, that persons should have the power of sending questions for rehearing which had already been decided upon full evidence? It was not a question of want of backbone, but a question of what was most likely to conserve the rights of the public, with justice to the lessee. In every case, where judicial proceedings took place, there should be a reasonable period fixed for applications for rehearings, and no injury could ensue to anyone. If there was any injury at all it would be due to the laxity of the lessee himself. Otherwise, no matter upon what ground the board might have come to their decision, they would be liable to be called upon an unlimited number of times to reconsider their decision. The matter should not be left open to a change in administration, or a change in the policy of the Government of the day. He urged the point upon hon. members as to whether they would leave serious obstacles in the administration of the land laws, or whether those obstacles should be removed. The question now was whether the Committee would accept his proposition to remove those obstacles or not?

The HON. T. MACDONALD-PATERSON said if ever a case had occurred in the matter of legislation, in which certain parties might say, "Save us from our friends," it was emphatically the one that had been brought before them. The Hon. the Minister of Justice had referred to the expression used by the Hon. W. Forrest as to the absence of backbone on the part of the present Ministry. Of course the hon. gentleman did not use the words in a personal sense. He spoke of the necessity for all administrations having sufficient backbone to deal with any applications that might be made under the existing law. The Ministry with which he was associated for something like three years were responsible for the Act of 1884, and that was in no way a squatting Ministry, in the sense that the word had been used in the past. The present Ministry was a squatting Ministry, and they had turned their backs upon the interest which had really enabled them to be in office at present. They turned their backs upon the men who were the backbone of Australia, and he was positively ashamed of their attempt to alter the present law. The Act of 1884 was passed after a great deal of intelligent discussion, to the great advantage of members of both Houses, and it gave what might be considered a sound squatting tenure. The clause they were asked to amend was inserted in that Bill after very much thought, and very careful debate, and it was accepted by the country as a reasonable clause, dealing, as it did, with difficulties that were sure to arise in future in connection with the division of runs. They appointed a Land Board to relieve the Minister for Lands for the time being of the great responsibility which rested with him in regard to the administration of the land laws of the colony, and the clause before them was an attempt to curtail the ability of the Crown lessee to obtain reasonable justice within a reasonable period. If the Minister of Justice had had only one-tenth of the intimate association with the affairs of the squatters that he had possessed for the last thirty years, he would have found that they had not obtained too much out of the country, or out of the Act of 1884. As the Hon. W. Forrest had said, they had obtained a better tenure—they had obtained indefeasible leases—and he was very proud to say that, long before the Act of 1884 was introduced, he had assisted to bring about that feeling in the public mind which had enabled the then Government to deal with the squatters, as one private individual would deal with another, and to give them compensation when any part of the land held under lease by them was resumed for public purposes. They were asked to curtail the number of applications which could be sent in to the Lands Office; that was all. He maintained that there had been too much legislation in the colony within the past few years, and he wished to make that observation generally, as regarded all parties. It was not wise to allow that valuable clause to be interfered with, and he trusted hon. members in that Committee would not permit it to be abrogated. The Act of 1884, up to the present, had not been as unsuccessful as the Minister of Justice would have them to believe. The Governor in Council had ample authority, and he knew very well that that authority was exercised. Clause 20 of the Act of 1884 said:—

"Upon the application of any person aggrieved by a decision of the board the Governor in Council may remit the matter to the board for reconsideration.

"The board shall thereupon appoint a day for rehearing the matter in open court, and shall proceed to a rehearing thereof accordingly."

The previous speaker had given an instance where there were great causes for complaint, and he could quote several cases where there had been serious mistakes made. There was one case in which a very simple mistake was made by the lessee, and that was where the lessee had been shown a plan prepared by the Land Board of the division of a run as recommended by the commissioner. The plan of the proposed division, recommended by the commissioner, resembled the one suggested by the Crown lessee so closely that the lessee said, "Yes; that is my plan; that is what I suggested; I have nothing further to say." That occurred at an informal meeting. But more than ninety days afterwards the owner of the run, who was then some 700 miles away, received a letter from his manager intimating that the decision the board had come to was totally different from the intentions of the lessee, and would be alike detrimental to the interests of the Crown and the leaseholder. An application was made for a rehearing, on the grounds that a mistake had been made, and the most ample testimony was afforded; but the Governor in Council refused a rehearing. Now, when the Governor in Council had that power to object to rehearings, he would ask where was the necessity for limiting the time to ninety days? It was not possible to send a letter to the Hamilton River—some distance to the west of Winton—from Brisbane, or Rockhampton, and receive an answer within ninety days, under ordinary circumstances. A shower of rain, the loss of a horse, or the mailman getting drunk or sick, or a horse bolting into the bush with the mails, which not unfrequently occurred, and such other little difficulties, and possibly accidents, that happened in Australian life, might, at any time, cause the delay of a letter. Strange to say, it always happened that important, and even registered letters occasionally, went astray. But, apart from that, on the broad ground of justice, and upon the grounds of sound public policy, it was shameful to curtail the time to be allowed to a squatter, or grazier, or Crown lessee to apply for redress on account of a wrong committed by the Crown. The Minister of Justice said that those people were constantly quibbling and raising new difficulties, and that a line should be drawn. But why should the weaker party be so dealt with? They were told by the Minister of Justice that the Crown lessees were such adverse people that they were constantly complaining and scheming to "get at" the Crown, and that when all the evidence was lost, they would try and catch the Crown on the hop, so as to obtain a rehearing at a time when they might better their positions. Hon. members would admit that that was a fair deduction to draw from what fell from the Minister of Justice. But they knew very well that the Crown was in a strong position—that in the Lands Department there were pigeon-holes without number, some very dusty ones, and others used every day, and the present amendment was an attempt to allow the pigeon-holes to get more dusty still. The Minister for Lands was to receive no more communications after three months. Everybody in the far West, North-West, and North, was to be shut out after ninety days, and that was a shameful attempt on the part of the Ministry, whose sympathies ought to be with the graziers, for every member was intimately associated with squatting, or had been; and they should have a large heart for the graziers, and interpret the law more liberally on their behalf, and not put such a limitation upon the outside men. Then as to being afraid of losing evidence. The loss of evidence was more likely to take place on the part of the graziers, whose servants and managers disappeared, and whose documents were not likely to be put so safely away and ticketed, as was systematically done in the Lands Department. On the contrary, the evidence of the Crown was more ample and more safe, and they knew well that the graziers would think twice before they fought the Crown upon any question with a fair and reasonable prospect of receiving justice. The Minister of Justice had not explained to them what difficulties had arisen in the working of the law as it stood at present to justify the alteration proposed. The Hon. Mr. Forrest had explained that only forty-eight cases for rehearing had come up since the Act was passed, and that was an infinitesimal portion of the number of runs divided. Seeing that nearly the whole of the expected work had been completed, and that the services of some of the commissioners had been dispensed with in consequence of the diminution of work, he thought the history of the past working of the Act, as quoted by the Hon. Mr. Forrest, was the best argument against the amendment. He trusted that hon. gentlemen would pause before they passed that paragraph, which would not conduce to feelings of goodwill and to the spirit of justice. Furthermore, no good reason had been advanced to show why the law should be altered in the proposed direction.

The MINISTER OF JUSTICE said that as they had reached the usual time for adjourning, he should not attempt to discuss the glowing and imaginative speech they had heard from the hon. gentleman who had just sat down.

The House resumed; the CHAIRMAN reported no progress, and the Committee obtained leave to sit again to-morrow.

ADJOURNMENT.

The MINISTER OF JUSTICE said: Hon. gentlemen,—In moving that the House do now adjourn, I must point out that there are on the paper now a great many Bills, mostly those in which private members are interested, and it is probable that it will be necessary to sit somewhat later to-morrow evening, so as to enable not only public Bills, but private Bills, to advance at least another stage. The first business, other than formal business, to-morrow, will be the Land Bill.

Question put and passed.

The House adjourned at 6 o'clock.