Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 8 OCTOBER 1889

LEGISLATIVE COUNCIL.

Tuesday, 8 *October*, 1889.

Drew Pension Bill—third reading.—Crown Lands Acts Amendment Bill—third reading.—Rockhampton Gas Company Bill—third reading.—Warwick Gas Company Bill—third reading.—Supreme Court Bill—second reading.—Church of England (Diocese of Brisbane) Property Bill—second reading.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

DREW PENSION BILL.

THIRD READING.

On the motion of the MINISTER OF JUSTICE (Hon. A. J. Thynne), this Bill was read a third time, passed, and ordered to be returned to the Legislative Assembly, by message in the usual form.

CROWN LANDS ACTS AMENDMENT BILL.

THIRD READING.

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

ROCKHAMPTON GAS COMPANY BILL.

THIRD READING.

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

WARWICK GAS COMPANY BILL.

THIRD READING.

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

SUPREME COURT BILL.

SECOND READING.

The MINISTER OF JUSTICE said: Hon. gentlemen,—In rising to move the second reading of this Bill I will shortly explain the circumstances which have arisen to render it necessary. The Bill may be divided into two parts, one dealing with the necessity for providing further judicial assistance for the Northern part of the colony, and the other dealing with the question of appointments to offices under the Supreme Court. With regard to the appointment of a second judge in the North, I think there can be very little doubt that it is necessary to make some such appointment. It is very difficult for people who live in the North to get their litigation disposed of speedily and at reasonable expense, so long as they are not able to have their cases disposed of in the North, but are obliged to get their business transacted, for the most part, in Brisbane. It may appear strange at first sight that it should be necessary for people to have recourse to the courts in Brisbane while there is a Supreme Court in the North, but when hon. members recollect that during the greater portion of the year the Northern Judge is absent from his headquarters, either on his long circuit or during vacation time, it will be seen that it is simply impossible for litigants in the North to confine themselves to the conveniences offered in the North alone. As a matter of fact, the bulk of the cases of any importance are assigned to the Supreme Court in Brisbane, and I need hardly say that this course gives rise to very great and unnecessary expense to litigants in the North. The scheme now proposed is to appoint a second judge, and to put the court in the North on pretty much the same footing as the Supreme Court of Queensland was in the early days, when it consisted of two judges. There must be always one judge within reach of the larger centres of population, available for the discharge of those important matters that come up to be decided before a judge in chambers, and there will be more time available and more opportunities for holding circuit courts in the different districts, and, at the same time, business can be transacted in the North with much less delay and expense than at present. I do not think I need say anything further for the purpose of showing that judicial assistance is required in the North. The Government, having considered this matter very carefully, have come to the conclusion that it is desirable to introduce a measure making provision for this very necessary change. The Bill, so far as it deals with this question, repeals the Act 41 Vic. No. 17, and also a portion of the Supreme Court Act of 1874; but the provisions which are repealed are re-enacted in a different form, with the necessary alterations. The 8th section increases the number of judges of the Supreme Court to five, two of whom, by the 9th section, will be styled Northern judges, and power is given under the last named section to transfer a Northern judge, with his own consent, to the Supreme Court at Brisbane. The 10th section is a clause providing for the construction of Acts referring to the senior puisne judge. In the event of the office of Chief Justice being vacant, or during the absence of the Chief Justice, the senior puisne judge is the judge who takes his place for the time being, and it may happen that the senior puisne judge is one of the Northern judges, but it would be a very serious inconvenience to make it necessary that he should come to Brisbane to temporarily discharge the duties of the Chief Justice during his absence. It would unhinge the whole of the arrangements of the Northern court, and the Bill provides that the judge who is to perform the functions of the Chief Justice during his absence or during the vacation of his office is to be the senior puisne judge who is not a Northern judge. The 11th section provides—

> "The former Northern judge, and the judge appointed in pursuance of this Act, and any future judge appointed by the style or designation of a Northern judge, are and shall be Northern judges respectively, and shall have the jurisdiction, powers, and authority hereinafter provided."

The 12th section provides for their jurisdiction. They are to exercise the powers and authority of the court, as conferred by the principal Acts, except jurisdiction on appeal from a decision of a judge of the Supreme Court, whether a Northern judge or not. A difficult question arises in connection with appeals from the decisions of the Northern judges, but I think hon. members will see that this Bill makes provision for cases in which a difference of opinion may arise. The 13th section provides—

> "If at any time upon the hearing of an appeal from a decision of the Northern court, the Supreme Court is holden before two judges only, and the judges are divided in opinion as to the decision to be given on any point, then if the Northern judges were not divided in opinion on that point the decision appealed from shall be affirmed."

I need only point out what would be the effect of the absence of this provision. Two judges in the North agreeing upon a certain point of law give their judgment accordingly. If an appeal is entered against that decision, which appeal is heard by the court in Brisbane, it may happen, as it frequently does now, that the appeal is heard before two judges. In ordinary cases coming before two judges in Brisbane, if there is a difference of opinion on the part of the

judges, the opinion of the Chief Justice prevails. In the case of an appeal from the combined judgment of two judges in the North, one of the puisne judges in Brisbane might hold the same opinion as the Northern judges, making three judges with the same decision on the point of law. Yet it would be possible for the Chief Justice to override the decision of the three other judges. That is a state of things which would be very extraordinary, and the 13th section makes provision for that. The 14th section provides that one of the Northern judges may be appointed for the purpose of acting as judge ordinary in matrimonial cases in the Northern district, thus avoiding the necessity of bringing all the divorce cases before the Supreme Court in Brisbane. The 15th section provides for the establishment of the court at Townsville, instead of Bowen, where it is held at the present time. The proposal to remove the court from Bowen is one that has given rise to a great deal of discussion, but I think, considering the small population settled at Bowen, and the large population settled at Townsville, which is at the present time the principal commercial centre of the North, it will be seen that the most convenient place for the people of the North to have the court at is Townsville. It is to be regretted that it should have been necessary to introduce a Bill taking away from Bowen the privilege of being the Supreme Court town of the North, but I am afraid the balance of evidence is in favour of the removal of the court to Townsville. The 16th section gives the Governor in Council power from time to time to appoint the necessary officers for carrying on the work of the court. The 17th section provides for the transfer of necessary work from the Supreme Court in Brisbane to the Northern court, or from the Northern court to the Brisbane court, in such manner as may be prescribed by the rules of the court. The 18th section is one which provides for the necessary alteration in the existing Acts, caused by the word "Townsville" being substituted for "Bowen," so as to facilitate their application to the establishment of the court at Townsville. The 18th section is one which is of some importance. At the present time, under the Supreme Court Act, there are in many centres of population in the colony gentlemen appointed as commissioners of the Supreme Court for the purpose of issuing writs and other processes. These are generally issued by the commissioner, who is usually the police magistrate in the place, and they are for the most part made returnable at Brisbane. So that we have a peculiar state of affairs. A writ may be issued at Charters Towers, and although there is a Supreme Court office at Bowen, very much nearer than Brisbane, plaintiffs by making writs returnable at Brisbane may compel defendants in the North to employ solicitors or agents in Brisbane, instead of being able to dispose of their business in their own district. It is proposed by this section that all writs issued by commissioners within the Northern district shall be returnable at the Northern Supreme Court. There is a proviso to the clause that—

"No petition for adjudication of insolvency against any debtor whose usual residence is not within the Northern district shall be made returnable elsewhere than at Brisbane."

The object of that is to avoid the inconvenience which may accrue from people filing their petitions in the Northern court for the purpose of causing inconvenience by obstructing creditors who may probably reside in the Southern part of the colony. It will also prevent people generally residing in the South filing their petitions in the North and putting their Southern creditors to a great amount of inconvenience and expense. The 28th section gives power to another judge to act for a Northern judge. The 21st section provides for the establishment of rules of court, and I do not think it requires very much explanation; and clause 22 is only a formal one. So far, I have dealt with this Bill so far as it relates to the Supreme Court of the North. Now, section 5 contains a proposed amendment to section 39 of the Supreme Court Act of 1867. That section reads shortly as follows—I shall not repeat the whole of it, but only certain important parts. The clause describes the qualifications of the officers, and then says—

"And the said court shall also have a prothonotary and registrar, and such and so many other officers as to the judge or judges for the time being of the said court shall appear to be necessary for the administration of justice and the due execution of all the powers and authorities of the said court."

And then the clause proceeds—

"And the appointment of every such person to any such office as is hereinbefore expressly named shall be made by the Governor in Council, and shall be by commission in Her Majesty's name, and under the great seal of the colony, and every such officer shall hold his appointment during ability and good behaviour."

Hon. gentlemen will observe that that part of the section applies only to those officers whose names are specially mentioned. The clause proceeds—

"It shall be lawful for the Governor, with the advice aforesaid, to remove any such officer for inability or misbehaviour, and all persons who may be appointed to any other office in the said court than those hereinbefore particularly enumerated shall be so appointed by the Governor of the said colony with the advice aforesaid."

Thus placing the appointment of the officers other than those specially mentioned on the same footing as other officers in the Civil Service. Then the clause says—

"And no new office shall be created in the said court unless the judge or judges thereof shall certify by writing under his or their hand or hands to the said Governor that such new office is necessary."

The question has arisen recently, and no doubt hon gentlemen are already familiar with it, in regard to the appointment of Mr. Baines as taxing officer. One of the objects which the present Government has been desirous of attaining has been that of making reforms in legal prodecure. It is a very difficult subject to attack; it is one that is beset with many pitfalls and dangers, and one must expect to meet with difficulties and opposition in dealing with it. In a judgment that was delivered upon the appointment of this taxing officer, which judgment I will refer to later on, the judges of the Supreme Court have brought in an entirely different subject, one which at first sight would appear to have little or no connection with the point at issue, and that was in relation to a return ordered by the Legislative Assembly of this colony. Hon. gentlemen are aware that considerable attention has been devoted within the last few months in the colony to the question of the reform of legal procedure, and it is also known that statements have been made in respect to the amounts of solicitors' bills, and counsels' fees, and the other expenses of litigation. The only course for any House of Parliament to pursue when questions of this kind are brought up, and no immediate information can be given, is to make an inquiry into the matter and ascertain the figures, so as to find out whether the complaints made are justified or not. The Legislative Assembly presented an address to His Excellency the Governor asking for a return as to certain details in connection with bills of costs in defended actions in the Supreme Court during the last three years. That address was sent to me in the usual official course, and from the Crown Law Offices the usual official instructions were sent to

the Registrar of the Supreme Court to prepare the return. On the receipt of those instructions by the Registrar of the Supreme Court, it was stated that the judges claimed the right of refusing, if they thought proper, to make any return of the nature asked by the Legislative Assembly. And they claimed that their permission ought to be obtained before the return could be prepared. When this information was communicated to me, I felt that it was a very serious matter, and I considered it very carefully. I came to the conclusion—possibly I was wrong, I leave that for other people to judge—that the Registrar of the Supreme Court and his officers are liable to be ordered to make returns of the nature of that asked for at any time either House of Parliament or the Executive chooses to demand them. Those are Government officers, so far as the administrative work of the department is concerned, and no claim has been made that I am aware of, and I hope never will be made from either Parliament or from the Executive, to interfere with those officers of the court in connection with their judicial functions. But in all other respects they are as much officers of the Government as any other officers in the colony at the present time. On consideration I felt that I was not at liberty to make a request which would be practically surrendering the rights of the Houses of Parliament and of the Executive also; and I directed that the Registrar should carry out the instructions given to him by myself, as the channel of communication from His Excellency the Governor and the Legislative Assembly. I mention this matter, hon. gentlemen, because it has been referred to; and, in fact, the greater portion of the judgment delivered by the judges in the recent case is occupied with a discussion upon this particular question. The judges distinctly claimed in this judgment—and I take it that the report given by the Press is a correct one—that—

"The Government have functions, and we do not interfere with them. When the legislature expresses its will in the form of an Act of Parliament we dutifully and loyally give effect to it. But we will resist any of those decisions of the State if either shall have violated or overstepped its authority. No one branch of the legislature has any authority over the Supreme Court, and the Executive has no authority over the officers of the court."

By this judgment a very serious question is raised as between the positions and powers of the judges or the officers of the court and the powers of Parliament, and I think there can be very little doubt that the statement so prominently made here by his Honour the Chief Justice in delivering judgment, is one that cannot be received by either House of Parliament as correct, as to the relative positions of the Parliament, the Executive, and the officers of the Supreme Court. I have just read one sentence from the judgment of His Honour the Chief Justice; but I will not weary you by reading the whole of this judgment, which is a very long one. I think, however, that it is due to myself to make one statement in connection with it. Any hon. gentleman reading this judgment would come to the conclusion—and I know that many people in Brisbane have come to the same conclusion—that before this taxing officer was appointed there was no communication whatever between myself or any other member of the Government, and any of the judges—that, in fact, the Executive had acted inconsiderately and hastily, without referring to or ascertaining the views of the judges in regard to the appointment of a taxing officer. Now, hon. gentlemen, I think it is due to myself, and due to my colleagues also, to state that the appointment was not made, or even recommended to my colleagues until I had ascertained from the judges that they agreed with the view I held, that a taxing officer should be appointed. His Honour the Chief Justice states—

"It was the duty of the officers of the Crown before making the appointment to have come to the judges."

I went to the judges, and in a previous part of the report His Honour the Chief Justice is reported to have said—

"We are all agreed upon the advisableness of appointing a taxing officer, but the objection is that this man has been thrust into the office amongst the records without the judges being consulted."

And later on—

"Nothing, however, was known to the judges until this Bill was brought up, which had been taxed by him, and was brought before Mr. Justice Harding for review. I believe the first intimation I had of the appointment was in some way from a rumour outside."

Then again—

"The Minister of Justice, who was apparently clearly aware of the condition of the law, must have known that the judges should have been consulted. I do not suppose his action was an intentional evasion of the authority of the court in this matter. It is not necessary to say it was: it was probably inadvertent."

I only repeat, hon. gentlemen, that I had recommended this appointment before it was made, and their honours the judges agreed with the view that I held, that a taxing officer was necessary in the offices of the Supreme Court. I will not go very fully into the question of getting a certificate before the appointment. The judges hold that by making this appointment, a new office has been created. For the present, hon. gentlemen, that is the position of the Supreme Court, and it may be necessary, to reverse that decision, to appeal to another constitutional authority. I will not weary the House by discussing that; but the impression upon which the Government acted was that the new offices which the 39th clause of the Supreme Court Act applied to were new offices of the class of registrar, prothonotary, master in equity, and others of that nature. It was intended that this appointment should be one of a clerk to assist the Registrar in relieving him of a very heavy item in his duties; but their honours the judges regarded the appointment of that officer as practically the creation of a new office. I say it with all respect, but it appears to me that they have strained the provisions of that section of the Act I have referred to, by declaring that the appointment of this officer should be regarded as the creation of his office. I do not think, hon. gentlemen, you would listen to me if I attempted to argue to you that when the Chief Commissioner of Railways was appointed by the present Government it was by his appointment that the office was created. We would all come to the conclusion that the office was created by the Railways Act, which detailed the duties which he was to perform. Now, it is a peculiar circumstance that under the Judicature Act and the rules in force under it, which have the force of law, there are taxing officers provided for, and their functions are detailed and defined; and I have held up to the present that when an Act of Parliament or a regulation defines the duties to be performed by some officer, who is to be appointed, that that regulation is the thing that creates the office, and that the appointment of the officer subsequently is not the creation of the office. However, the judges hold to the contrary, and they have declared that all the acts of the taxing officer shall be declared invalid. Now, the question of the administration of the Supreme Court office is one that has given me a great deal more difficulty than any other that I have had to deal with during the time I have had the honour of holding my present position. The officers of that department have inherited a system that has been pursued for many years. It is a system which I do not think

would be permitted to exist in any other department of the Public Service, and it cannot be allowed in this any longer. It was not until lately that I realised fully the condition of affairs in this department, and I think I am right in informing the House now of some circumstances that have led me to recommend to my colleagues that we should insist upon some substantial and rapid change in the administration of the Supreme Court offices. On the 30th May last I addressed the following memorandum to the Auditor-General:—

"*Memorandum for the Auditor-General.*

"It has been stated to me that a large and undue proportion of the affidavits sworn before commissioners for affidavits in the receipt of salaries in this department have been sworn out of office hours, whereby the prescribed fees have been payable to those officers for their own use instead of to the public revenue. I will be glad to know whether your officers have in the course of their audit inspections observed whether there is any substantial foundation for this statement.

"A. J. THYNNE,

"Minister of Justice."

The following reply was received a few days later, on the 4th June:—

"SIR,

"I have the honour to acknowledge the receipt of your memorandum to me of the 30th ultimo, respecting the proportion of affidavits sworn before commissioners for affidavits in receipt of salaries in your department, during and after office hours respectively.

"In compliance with your request, I beg to enclose herewith extracts from reports of audit inspectors, who have from time to time examined the Supreme Court accounts, and who have reported upon the subject.

"As Mr. Peterson, the inspector who last audited the Department of Justice, did not refer to the matter, I, upon receipt of your memorandum, directed him by wire to now make a special report for your information, and I enclose copy of my telegram to him, and of his reply, this morning received by me.

"I feel it right to remark, with reference to the foregoing, that the reports of the several inspectors, of which extracts are now submitted to you, were perused by the Minister at the head of the Department of Justice at the time they were severally written.

"I have the honour to be, sir,

"Your obedient servant,

"W. L. G. DREW,

"Auditor-General."

This is Mr. Robertson's report:—

"*Mr. W. H. Robertson's Report, dated 15th July*, 1885.

"The Rules of Court provide that any salaried officer of the department, who may be a commissioner for taking affidavits, shall, on taking any such affidavit during ordinary office hours, cause that the fee to be affixed in stamps. Out of a considerable number of affidavits sworn before the Registrar, I found only *one* on which the stamps were affixed, the remainder were marked 'sworn after hours.' In all cases in liquidation business, a clerk of the Supreme Court is required to make affidavit that he has posted the necessary notices to persons interested. These have been, without exception, sworn before Mr. Bell after hours."

"*Mr. R. H. Mills's Report, dated 13th November*, 1886.

"Fees for swearing affidavits.—Very few of these fees come into the hands of the Government; they are either taken by commissioners outside the Supreme Court Office, or by the Supreme Court officers after office hours."

"*Mr. J. D. Williams's Report, dated 24th November*, 1887.

"Fees for swearing affidavits.—The fees on affidavits of postage in liquidation cases made by one of the clerks in the Registrar's office, and the fees on affidavits under the Succession Duties Act made by the Curator of Intestate Estates go into revenue. The fees on other affidavits, with a few exceptions, are taken by Supreme Court officers 'after hours,' and by other commissioners.

"In a few instances of bills of sale, and liens on crops, the affidavits relating to which were made before the Deputy Registrar, the fees have been paid up. The hour of registration of the documents indicated that they had been sworn during office hours, and there being nothing to show to the contrary, I thought the fees should go to revenue.

"Some of the affidavits on liens on crops referred to, appear to have been made during lunch time, say between 1 and 2 p.m., and the Deputy Registrar seems to have been under the impression that he was entitled to consider that part of the day as 'after hours.'"

"*Mr. Herbert Farley's Report, dated 15th August*, 1888.

"Fees for swearing affidavits.—Very few of these fees come into the hands of the Government. The Registrar and Deputy Registrar take the fees for all affidavits sworn after office hours, and the following officers within the building retain the fee, whether the affidavit is sworn during office hours or not:—Judges' Associates (3), Sheriff, Under Sheriff, Curator of Intestate Estates, Registrar District Court."

Then there is a telegram from the Auditor-General to Mr. J. A. Peterson, Senior Audit Inspector, and after that comes that officer's reply. Mr. Peterson's report is a long one; but I think I have given sufficient to show that the system in the Supreme Court Office is and has been radically wrong. If the Government are responsible for the administration of the affairs of the Supreme Court in matters of this kind, it is absolutely necessary that the Government should have complete control, without question, with regard to the management of the officers, and the mode in which they should transact the business of the office. The Government have no intention or desire to interfere with the judicial functions of the judges—that would be an impropriety which would be resented by any Parliament—but in matters affecting the administration of the Supreme Court Office affecting the public revenue, the Executive must necessarily have full and complete control over the business of the court; otherwise they will not be able to remedy abuses, of which the one I have just indicated is simply an example. I do not blame the present officers of the Supreme Court in any way. They have inherited the system, and have been taught by the practice of their predecessors that they have a right to take fees; and so long as the present system is allowed, the abuses will continue. That is one of the subjects that led me to see the necessity of appointing a taxing officer. The time occupied by the Registrar in taxing costs has been so great that I have had great difficulty in making appointments with him for the transaction of business; in fact, I have seen his diary full for every half-hour up to a period ten days ahead. It was, therefore, obvious that the Registrar should be relieved of some of the work which involved so much time and labour; and their honours the judges indicated that they thoroughly agreed with the proposition that a taxing officer should be appointed, and the Government accordingly made the appointment. If a slip has been made by the Government as regards the peculiar construction placed on the Supreme Court Act by the judges, I think this is the proper mode of remedying the error and validating all the acts the taxing officer has performed since his appointment. I have detained the House rather long on this subject, but it is a matter of such importance that I thought a little time might properly be devoted to it. Clauses 5 and 6 are not limited to the question of the taxing officer. We had last year a Bill to validate the acts of one of the judges; we have now to make provision with regard to the acts of the taxing officer, and we ought to go in for validation wholesale. There are obvious reasons why the section should be made to apply generally, instead of being limited to the appointment recently made. I may say that the taxing officer has disposed of nearly eighty bills of costs, and only one of the parties was so dissatisfied as to make application to the judges; therefore, I can see no reason to be dissatisfied with the work he has done. I trust that the explanation I have given will be favourably received, and

that the measure will meet with the approval of hon. members. I move that the Bill be now read a second time.

The HON. P. MACPHERSON said: Hon. gentlemen,—I may perhaps trespass on your attention more than a few moments before this Bill is read a second time. I cannot do otherwise than express my approbation of so much of the Bill as provides additional judicial strength to meet the growing necessities of the North, but there are some clauses in the Bill that I disagree with most heartily—namely, the 5th, 6th, and 7th clauses. I consider that those clauses amount to an attack on the dignity and the privileges of the judges, and that this abridgement of the powers of the judges will not tend to the public benefit or the advancement of justice. The clauses have been introduced in consequence of a decision of the Supreme Court declaring the appointment of a certain officer to be illegal, because the certificate of the judges that the appointment was necessary was not first obtained. Parliament is now asked to punish them for an omission made by somebody else. I do not say that the omission was a very heinous one, but the judges cannot be blamed for holding that the appointment was illegal. I will read an extract from what His Honour the Chief Justice said in delivering the judgment of the full court in the case of Byrnes *v.* James and others:—

"Now, to come to the individual matter, and in what I say it must be distinctly understood that I throw no reflection whatever on the gentleman who has been appointed to this office. I may know him, though I am not aware of the fact; really I do not know him. No reflection is cast upon him; he may exercise the duties of this office with perfect ability, honesty, and fidelity. That may be allowed; but, at least, I may say here that, to fill that office, a man of superior attainments is required. It is a very important office; we have only to look at the duties which are discharged by the officer filling it to see how important it is, and to see what his office really is. He has placed before him bills of costs in every form of procedure in this court. He has two duties in connection with those bills; first, he is to see that no unnecessary proceedings have been taken; he is a judge of that, subject to the review of the judges. Then he has also to see that the charges for the proceedings taken are not excessive. So important has the business of this court become and so great, that he passes bills through his hands involving expenditure by persons in the community amounting to many thousands of pounds a year. He may be subject through his duties to improper influence being brought to bear upon him. He must have a wide range of knowledge of the practice of the law. His character must be of the highest; it should be as that of one of the judges himself; he should not be above corruption only, but beyond the suspicion of corruption, and he should be selected with a view to all these qualifications, and I would add my opinion, that, to keep him in that position, he should be a man paid an ample salary. This is an important appointment—an appointment of very great importance—when we regard it in the interests of the people who come into this court as suitors. Mention of a salary of £400 has been made. In these days, no man from whom we would require the qualifications I described would be likely to take this appointment without great remuneration; I should hardly imagine a man possessing the attainments I have described, would be found to accept the office at so low a rate of remuneration as the amount mentioned in the letter of the Minister of Justice. We, at least, would expect that he would have given proof of his attainments, by having found his way on the roll of the court as a solicitor or barrister.

"Then the legislature having required that the recommendation or approval of the judges of the creation of this office should precede the appointment, it was the duty of the officers of the Crown, before they had made such an appointment, to have come to the judges. With regard to the necessity of such appointment in the present state of the business of the court, we are agreed, and the judges would have given every possible help, as far as their sanction was required, for the creation of this new office.

"We hold that as this was a separation from the office of registrar, as it was a new office, the recommendation or approval of the judges should have preceded the creation of the new office. Now, nothing was known to the judges of the creation of this office, until a bill of costs came before my brother Harding in Chambers. I believe the first intimation to us of this appointment was by rumour outside; but the first official knowledge I had of it was the information from my brother Harding, that a bill had been submitted to him for review of the taxation by this gentleman.

"So long as the law is in the condition it is in, we are resolved to maintain it in its integrity, and see that there is no intrusion upon the tribunal, to which the country has committed the administration of justice, by persons who have no authority by law to intrude themselves within our offices."

Those remarks were made by the Chief Justice in delivering judgment in the case to which my hon. friend the Minister of Justice has alluded; and simply because the judges in exercising their judicial functions have delivered that judgment, we are asked to deprive them of the right of giving these certificates in the future. In fact, we are asked to punish them for having delivered that judgment. I do not see where the logic comes in. I think it is an interference on the part of the legislature with the judiciary. I can only say, without following my hon. friend into that part of his argument which referred to the interference of the judges with the staff of the Supreme Court—which I do not think has anything to do with the present question—I can only say that I consider this proposed amendment of the law to be uncalled for, to be unjust, to be ungenerous, and almost to appear vindictive. And I consider that in using those expressions I am going no further than the occasion warrants. Allusion has been made by the Minister of Justice—I do not know for what reason—to the practice of taking affidavits after office hours. Why does the practice exist? For the simple reason that the officers of the department, from the Registrar to the office boy, are grossly underpaid. The smallness of the salaries in the Registrar's office have been a standing disgrace to every Government. I do not know of any other colony in Australia where an officer discharging the duties of Registrar of the Supreme Court has such small remuneration; and no one knows that better than my hon. friend.

The MINISTER OF JUSTICE: Hear, hear!

The HON. P. MACPHERSON: I do hope that if those officers are to be deprived of the right of taking affidavits after hours, some compensation will be made by increasing their salaries. As I shall have other opportunities of discussing the measure when it is considered in committee, I shall not weary the House by making any further remarks now.

The HON. B. B. MORETON said: Hon. gentlemen,—I agree with that portion of the Bill which makes provision for increasing the number of judges, but I think something more has been introduced into the Bill than really appertains to the administration of justice in the North. I agree with the Hon. Mr. Macpherson that the 5th, 6th, and 7th clauses have been evidently brought in with the view of taking out of the hands of the judges that which I think they ought to possess—namely, the control of the officers of their court. The Minister of Justice has given us his view of the legal reading of the clause; at the same time there is the reading of the law as laid down by the judges. The hon. gentleman, to emphasise his opinion, stated very distinctly that this system must not be allowed to continue any longer. He evidently is determined to put his foot down as far as he can, and insist on an alteration; but I shall do what I can to oppose any alteration of the law

in the direction of taking from the judges the power they at present possess. As to the question of fees being paid to the Registrar, there may be a great deal more in that matter than a layman like myself knows. But there was an Act passed in 1884—the Public Officers Fees Act—which, I thought, made all fees a portion of the revenue of the colony. The following are the provisions of that Act:—

"All fees which shall hereafter be received by any officer in the Public Service under the authority of any Act of Parliament, rule of court, or regulation made in pursuance of any Act of Parliament for the performance of any duty as such officer, shall hereafter be accounted for by such officer, and paid into the consolidated revenue, and every such officer shall be deemed to be a public accountant in respect thereof.

"This Act does not apply to fees receivable by bailiffs of district courts, or bailiffs of courts of petty sessions, for the performance of their duties as such bailiffs."

I thought that all fees now belonged to the revenue; and I am sorry to hear that fees are still kept by those who receive them. My opinion is that the practice shoud not be allowed to continue; but not being a lawyer, I do not know whether it should continue so far as Mr. Bell is concerned, because he might otherwise be deprived of his legitimate income. I have an idea, however, that his salary was increased on account of the Act being passed to take away the fees. I shall support the second reading of the Bill; but when it is considered in committee I shall join those who will make an attempt to excise the clauses interfering with the powers of the judges.

The HON. W. FORREST said: Hon. gentlemen,—The Minister of Justice has referred to the refusal of the judges to give the other Chamber certain information, and he has also referred to certain officers of the Supreme Court keeping the fees they receive for affidavits made after office hours; but I should like to ask what those matters have to do with the measure. I consider that if information is required from the judges by either Chamber that information ought to be furnished—I am in harmony with the Minister of Justice there. It appears that the judges have refused, but there is not a word here to compel them to give the information. Then why should we discuss that matter? Why not introduce a measure to meet the case? Then, as to the appropriation or misappropriation of fees, there is nothing in the measure about fees. These matters have only been introduced for the purpose of dragging a herring across the trail. If it were not for the 5th, 6th, and 7th clauses, instead of the Bill being called "a Bill to amend the Supreme Court Acts of 1867 and 1874," it might be appropriately called "a Bill to empower the Governor in Council to increase the number of the judges." I agree with the proposal to increase the number of the judges, but I do not agree with the provisions contained in clauses 5, 6, and 7, and I will give my reasons. Hon. gentlemen are pretty well aware of the causes which led to this proposed legislation; but the outside public may not be so well aware of them; and there will be no harm in putting the matter briefly before the House. Some time ago the Government determined to appoint and did appoint a taxing officer. In the Supreme Court Act of 1867 there is a provision which does not permit an appointment of that kind without the certificate of the judges that such an appointment is necessary. But the Government, in contravention of the statute law of the colony, made the appointment without getting the consent of the judges; and when the matter came before the judges they very properly refused to sanction such an illegal proceeding. I maintain that they would not have been doing their duty to the country if they had sanctioned anything of the kind; and it is a most improper thing to attempt by any such legislation as this, to coerce them into doing it. I am prepared to believe that the Minister of Justice spoke to the Chief Justice before the appointment was made, and that the Chief Justice said that such an officer was necessary and would be useful; but the fact of the Chief Justice saying that another office ought to be created, is no excuse for creating that office in any other way than that provided by law. The Government of the day ought to set the example of abiding by the law, instead of breaking the law. If it is necessary to alter the laws that govern the conduct of business in connection with the Supreme Court, the necessity for the alteration should be shown, and a special Bill should be introduced; but at present we are called upon to indemnify the Government for the commission of an illegal act. There is no necessity for legislation in this direction, because there is no doubt that if the Government were to approach the judges properly, the appointment would be sanctioned by them as the law provides. If the same officer were reappointed, he could go through all those cases again as a matter of form, and decide them in the same way; and if another officer were appointed there would be nothing to prevent him from adopting all that has been done by the present officer. The whole thing could be done in half an hour, and there is no necessity for this legislation to legalise what has already been done. I think it is highly improper for the Government to step in and interfere with the judges when they are actually carrying out the law of the land, because it tends to bring the administration of justice into contempt. Have we not legislated all we can to place the judges in an independent position, so that every man will have confidence that they cannot be interfered with by the Government of the day or anyone else, but that they will administer even justice? But it strikes at the foundation of justice if the Government do an illegal action, and attempt to coerce the judges into sanctioning that illegal action. I say that the Government are wrong in this matter, and the best course for them to take is to obey the law. There are many other things I would like to say in connection with this matter, but I shall refrain from doing so till we are considering the Bill in Committee. In the meantime I am opposed to the 5th, 6th, and 7th clauses, and if the Minister of Justice does not see his way to withdraw them I hope they will be negatived. This proposed legislation is antagonistic to our most modern legislation. We have recently passed an Act providing, among other things, for the appointment of a Civil Service Board, and one clause of that Act states that—

"No new appointment shall be made except on the request of the permanent head of a department to the Minister, and then only upon a certificate from the board that such an appointment is required."

The law as it stands at the present time with respect to appointments to the Supreme Court Office is exactly in harmony with that. If there is any new office to be created or new officer to be appointed in addition to those enumerated by the Minister of Justice—the prothonotary, the master in equity, and the registrar—the judges are to notify to the Government in writing that such is necessary, and after that has been done the Government can make the appointment. This harmonises with the legislation that has taken place here. The head of a department has to notify to the Minister that a certain appointment is necessary. But because the Government make a blunder, they want to hark back upon their principles, and take from

the judges the power to recommend appointments. They think they are better acquainted with the business of the court than the judges, and are in just the same position as the directors of a bank would be, if they said to the manager, "We know how to conduct the business of the bank better than you do, and we are going to appoint a new clerk." The cases are analogous, and I do not think it is right to legislate in that way.

Question put and passed.

On the motion of the MINISTER OF JUSTICE, the committal of the Bill was made an Order of the Day for to-morrow.

CHURCH OF ENGLAND (DIOCESE OF BRISBANE) PROPERTY BILL.

SECOND READING.

The HON. P. MACPHERSON said: Hon. gentlemen,—This is 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. It appears that by the articles of an agreement entered into by the Bishop and clergy and laity of the Church of England, at a conference held on the 18th June, 1868, a constitution was determined upon, upon the association of its members, and the establishment of a Synod for the management of its property and affairs. On 2nd November, 1870, the Synod became incorporated under the Religious, Educational, and Charitable Institutions Act, and since its incorporation the Synod has acquired, and still holds, certain lands upon the trust declared in the model deed, dated 7th March, 1871. Mortgages have been executed in regard to some of these lands, and I have a copy of the model deed for the convenience of hon. members who may like to see it; the reading is very light and attractive. It appears to me, upon the very best authority, that these mortgages are invalid, as the model deed contains no power to mortgage, and it is now proposed by the present Bill to validate the securities. It enables the trustees to convey properties vested in them to the Synod, but it in no way interferes with special trusts. For instance, if there is any special trust prohibiting a mortgage, if that property becomes vested in the Synod, that trust remains unaffected. I will now simply refer to some parts of the evidence. Mr. Graham Lloyd Hart, on page 7 of the minutes of evidence, says—

"You are Chancellor of the Diocese of Brisbane? I am.

"You are aware that there is a Bill now before the Legislative Assembly known as the Church of England (Diocese of Brisbane) Property Bill of 1889? I am.

"That Bill has been prepared by you as Chancellor of the Diocese? Yes.

"And its respective clauses have been submitted to the Synod of the Diocese of Brisbane, duly summoned, and approved of by that body? Yes; they have.

"Will you be kind enough to explain the principal object that the petitioners have in view in asking the Assembly to pass this Bill? It will be observed that the clauses of the Bill deal principally with what is termed the 'Model Trust Deed.' First of all, in the early days of the Synod, the constitution, a copy of which I will put in as evidence, was adopted dealing with the affairs of the church: I am speaking, I may say, from hearsay a great deal, but the Rev. Mr. Matthews, who has been a member of the Synod from its inauguration, will speak more definitely. This is a copy of the Constitution [*Document marked as Exhibit A*], and Mr. Matthews will verify it. The committee will observe that the 17th, 21st, and 22nd sections of the Constitution deal with land belonging to the Church; and that the 22nd clause provides that—

"Any trustee in whom any property, real or personal, shall be vested, either solely or jointly with other persons or person, for or on behalf of the Synod, shall hold the same with the powers and subject to the limitations, declarations, and provisions contained in the several clauses of a model trust deed,' etc.

The committee will see that these provisions do not interfere in any way with lands held upon specific trusts or trusts declared by the donors, but simply with lands generally. The model trust deed was subsequently adopted; and I will put in an office copy of that also. [*Document marked as Exhibit B.*] You will see that it deals in detail with the powers to be possessed by the trustee, and that all power to mortgage is omitted. I may say that when I first became chancellor application was made to the Synod to mortgage certain lands, and the question then cropped up as to whether there was power. In my opinion there was not power. I subsequently conferred with counsel on the subject, and that opinion has been confirmed. His Lordship the Bishop of Brisbane, when in England, conferred with the highest legal authorities there, and that opinion of mine was again confirmed. So that we may assume there is no power whatever in the model trust deed to mortgage church lands. Whether it was ever the intention that it should be so, it is so; but I feel pretty sure, from what I heard, that it was not intended. I think I shall be able to satisfy the committee, when his Lordship and Archdeacon Matthews give evidence, that that power is necessary."

Now I will will refer to the evidence of his Lordship Bishop Webber:—

"I think you were advised, my Lord, shortly after my appointment, that there was no power to mortgage given by the model trust deed? It was so.

"Will you say the necessity for the mortgage of any church land has arisen? In the case of Sandgate, for instance?

"Is your Lordship of opinion that a power of that kind is necessary—a necessary power with regard to lands in the various parishes of the diocese? I think it very desirable that the Synod's hands should be free.

"To deal with its own property? Yes; to deal with its own property, as a matter of public policy.

"Can your Lordship say whether the advice given to you in the colony was confirmed at home? Lord Selborne entirely confirmed the views of the Chancellor of the Diocese in respect to the inability of the Synod to mortgage under the terms of the model trust deed. He further advised me that, in his opinion, it was desirable that the Synod should possess such powers, to be exercised by it under proper safeguards.

"Will you kindly look at clause 4, my Lord—Can you inform the committee how many mortgages have been executed that that clause would render valid? I am unable to say at this moment, not having the list by me.

"Do they cover any large amount, do you know? I am unable to say. I might explain that the policy which I found in vogue was this:—When the land was required to be mortgaged, the Synod conveyed to trustees, and the trustees have done what was really not in the power of the Synod to do or to authorise. Lands have been conveyed to trustees for the purpose, in one or two cases.

"So as to avoid being under the model trust deed? Yes.

"You were President of the Church of England Synod recently? Yes; I was.

"And as President you put the various clauses of this Bill to the Synod as a whole? Yes.

"And you can assure the committee that the Synod as a general body approved of the clauses of the Bill? They were passed *nemine contradicente*.

"You are aware also, from your personal knowledge, that the parishioners of Fortitude Valley offered no objection whatever to the provisions of this Bill as affecting the lands referred to? I believe the Chancellor is in possession of a resolution of the parishioners affirming the desirableness of the Bill as it stands."

Turning now to the part of the Bill which relates to the amendment of the Fortitude Valley Parsonage Land Sale Act, it is provided by the 2nd clause of that Act that the proceeds of the sale should be expended in the erection of a parsonage; but the land has greatly increased in value—has doubled, in fact—and the present value is about £3,500. That is too much to spend on a parsonage, and it is therefore proposed not only to erect a parsonage, but also a schoolhouse in connection with the church, and to furnish it properly, and if there is then any surplus it is to be handed over to the Synod to

be spent as the Bishop in Council may direct, within the parish of Fortitude Valley. That portion of the Bill has been approved by the parishioners. The 2nd clause of the Bill provides that the Synod shall be the trustee for the church, and clause 3 provides that property vested in the corporation under the model trust deed must be held freed from all trusts. Clause 4 declares valid all securities given over land held under the model trust deed, and clause 5 gives power to trustees to convey land to the corporation. Then there is a provision in clause 6 that in the event of the death or absence of a trustee, the Bishop may consent to a transfer. That is a very useful clause, and is taken from the Victorian Church Act. The 7th clause provides that the Registrar of Titles shall make proper transfer in the books of his office, and that is also taken from the Victorian Act. The next clauses provides that property not held upon any express trust, shall be subject to the control of the Synod. The 9th clause refers to the Religious, Educational, and Charitable Institutions Act of 1861, and the 10th clause repeals the 2nd clause of the Fortitude Valley Parsonage Land Sale Act of 1877. The 11th clause applies to the appropriation of the proceeds of the sale. Having briefly stated the objects of the Bill, I beg to move that it be now read a second time.

The HON. F. T. BRENTNALL said: Hon. gentlemen,—I may say that I sympathise with the objects of the Bill. I am inclined to think that the reason why the model trust deed, as it is called, did not give power to mortgage land probably arose from a desire at the time to make that deed consonant with the statute of the colony, which precluded trustees of land granted for public purposes from mortgaging those lands. It is well known to hon. members that numerous Bills have passed through already which have been made necessary by the provisions of that statute, and their objects have been to enable trustees either to sell or to mortgage properties held for public purposes, or land which has been granted by the Crown. Of course trustees of land held for public purposes, whether religious or charitable, like any other holders, can mortgage or sell if they hold the land under the Real Property Act. But if they hold it under our Act dealing with land granted for public purposes, they have no such power, and must seek it by legislation. It is certainly embarrassing in numerous cases for trustees holding land for religious or charitable objects to be unable to raise money for the erection of buildings or the improvement of the property. But without special power from Parliament they cannot do that; if money must be borrowed at all, it must be borrowed upon the personal security of the trustees. I am glad to see that the Synod of the Church of England in this colony are making this move to free their hands in regard to property granted by the Crown, and there is palpable reason why this Bill has become necessary in its second part—so that the Valley congregation may be able to erect a parsonage and schoolhouse, to be used exclusively for religious purposes. The same law applies to philanthropic institutions as to churches, and on that ground, knowing that it will be a great relief, I support this Bill, by which the Synod of the Church of England seeks power to raise money for religious objects. I do not see why all denominations should not be able to do so. So far as the second part of the Bill is concerned, and its application to the trusts in the parish of Fortitude Valley, I think we should be careful to see that the money raised by the sale of the land is spent in that parish, and then no harm can be done by selling the land, which is now unsuitable for the purpose for which it was intended. The land is in one part of the Valley, and the church is in another part, and if the proceeds of the sale of that land can be devoted to the erection of a Sunday school, so much the better, and we should only be doing right in granting relief in such a case. I shall heartily support the second reading of the Bill.

The HON. B. B. MORETON said: Hon. gentlemen,—I beg to move the adjournment of the debate.

Question put and passed, and the resumption of the debate made an Order of the Day for tomorrow.

ADJOURNMENT.

The MINISTER OF JUSTICE: I beg to move the adjournment of the House.

Question put and passed.

The House adjourned at ten minutes to 6 o'clock.