Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 9 OCTOBER 1889

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LEGISLATIVE COUNCIL.

Wednesday, 9 *October*, 1889.

Woongarra Branch Railway.—Cairns Railway Extension.—Day Dawn Freehold Company's Railway.—Messages from the Legislative Assembly—Granville and Burnett Bridges Bill—Ann Street Presbyterian Church Bill—Local Government Acts Amendment Bill—Companies Act Amendment Bill.—Supreme Court Bill—committee.—Adjournment.

The PRESIDENT took the chair at 4 o'clock.

WOONGARRA BRANCH RAILWAY.

The MINISTER OF JUSTICE (Hon. A. J. Thynne) moved—

1. That the plan, section, and book of reference of the proposed Woongarra branch railway, from South Bundaberg to Burnett Heads, in length 9 miles 60 chains, as received by message from the Legislative Assembly on the 2nd instant, be referred to a select committee, in pursuance of the 111th Standing Order.

2. That such committee consist of the following members—namely, Mr. Moreton, Mr. Gregory, Mr. Pettigrew, Mr. Thorneloe Smith, and the mover.

Question put and passed.

CAIRNS RAILWAY EXTENSION.

The MINISTER OF JUSTICE moved—

1. That the plan, section, and book of reference of the proposed extension of the Cairns Railway (Supplementary Section 3) from Bibhoora, 42 miles, to Granite Creek, 47 miles 30 chains, in length 5 miles 30 chains, as received by message from the Legislative Assembly on the 2nd instant, be referred to a select committee, in pursuance of the 111th Standing Order.

2. That such committee consist of the following members—namely, Mr. Moreton, Mr. Gregory, Mr. Pettigrew, Mr. Thorneloe Smith, and the mover.

Question put and passed.

DAY DAWN FREEHOLD COMPANY'S RAILWAY.

The MINISTER OF JUSTICE moved—

1. That the plan, section, and book of reference of the proposed branch railway line at Charters Towers for the Day Dawn Freehold Gold-mining Company, Limited, commencing at 0 miles 31 chains 75 links on the branch line of the Day Dawn Block and Wyndham Gold-mining Company, Limited, in length 23 chains 30 links, as received by message from the Legislative Assembly on the 2nd instant, be referred to a select committee, in pursuance of the 111th Standing Order.

2. That such committee consist of the following members—namely, Mr. Moreton, Mr. Gregory, Mr. Pettigrew, Mr. Thorneloe Smith, and the mover.

Question put and passed.

MESSAGES FROM THE LEGISLATIVE ASSEMBLY.

GRANVILLE AND BURNETT BRIDGES BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding, for the concurrence of the Council, a Bill to authorise and provide for the erection and maintenance of public bridges across the Mary River at Maryborough, and Burnett River at Bundaberg.

On the motion of the MINISTER OF JUSTICE, the Bill was read a first time, and the second reading made an Order of the Day for Tuesday next.

ANN STREET PRESBYTERIAN CHURCH BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, forwarding, for the concurrence of the Council, a Bill to vest in new trustees the lands comprised in deeds of grant Nos. 2847, 2848, and 2849, being allotments 8, 9, 10, and 11 of section 26, parish of North Brisbane, and to enable the trustees for the time being thereof to sell, mortgage, or lease the same, and for other purposes.

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.

LOCAL GOVERNMENT ACTS AMENDMENT BILL.

The PRESIDENT announced the receipt of a message from the Legislative Assembly, returning this Bill, with the amendments indicated by the accompanying schedule, in which amendments the Legislative Assembly requested the concurrence of the Legislative Council.

On the motion of the MINISTER OF JUSTICE, the consideration of the Legislative Assembly's message in committee was made an Order of the Day for Tuesday next.

COMPANIES ACT AMENDMENT BILL.

The PRESIDENT announced the receipt of the following message from the Legislative Assembly :—

"The Legislative Assembly having had under consideration the Legislative Council's message, of date 24th September last, relative to the Companies Act Amendment Bill—

"Disagree to the Legislative Council's amendment, upon their amendment in clause 18 (clause 17 as now printed)—Because it is desirable for the protection of the public that any change in the capital of the company should appear on the memorandum of association.

"Agree to the Legislative Council's amendment upon their amendment in clause 22 (clause 23, line 27, as now printed).

"Agree to the Legislative Council's amendment upon their amendment in clause 23 (clause 24 as now printed).

"Agree to the Legislative Council's amendments in the new clause following clause 22 (clause 25 as now printed).

"Insist on the transposition of clauses 23, 24, and 25 (clauses 18, 20, and 21, as now printed), and on their amendment in clause 25 (clause 21 as now printed)—Because the clauses refer to the same matter, and as transposed by the Legislative Assembly, are in the same order as in the Imperial Act from which they are adapted. The amendment of clause 21 is necessary, to prevent conflict with clause 51 (clause 44 as now printed).

"Insist on their amendment in clause 28 (clause 29 as now printed)—Because intending shareholders, and persons dealing with the company, are more likely to obtain full information through the statement made in memorandum of association.

"Insist on their amendment in clause 30 (clause 31 as now printed)—Because it is dangerous to allow registration of transfer without the signature of the transferee.

"Insist on their amendments in clause 43 (clause 36 as now printed)—Because this Act only deals with companies under the Companies Act of 1863.

"And do not insist on the other amendments with which the Legislative Council disagree."

On the motion of the MINISTER OF JUSTICE, the consideration of the Legislative Assembly's message was made an Order of the Day for Tuesday next.

SUPREME COURT BILL.

COMMITTEE.

On the motion of the MINISTER OF JUSTICE, the President left the chair, and the House went into committee to consider the Bill.

Preamble postponed.

Clauses 1 and 2 passed as printed.

On clause 3—"Interpretation"—

The HON. B. B. MORETON asked what was the Southern boundary of the Northern district.

The MINISTER OF JUSTICE said he could not give the information from memory. It was somewhere to the south of Bowen.

The HON. T. MACDONALD-PATERSON said he thought he could furnish the information. The boundary commenced at Cape Palmerston, and then took a westerly, north-westerly, and south-westerly direction till it reached a distance of 150 miles from the coast. It then followed the parallel of latitude due west to the South Australian border. The part of the colony north of that line was commonly known as the Northern section of the territory of Queensland; and the boundary was fixed many years ago as the Southern boundary of the territory which some of the inhabitants of the North considered would eventually be erected into a separate colony.

Clause put and passed.

Clause 4—"Repeal"—passed as printed.

On clause 5, as follows :—

"In section thirty-nine of the Supreme Court Act of 1867 the words 'the Governor in Council' shall be substituted for the words 'the judge or judges for the time being of the said court,' and the provision contained in that section prohibiting the creation of any new office in the court unless the judge or judges thereof shall certify by writing under his or their hand or hands to the Governor that such new office is necessary is hereby repealed."

The HON. P. MACPHERSON said he stated yesterday the reasons why he intended to vote against the clause. He said it was uncalled for; it was an attack on the dignity and privileges of the judges, and entirely unwarrantable. He should listen to any further remarks in favour of the clause by the Minister of Justice, and then he would be able to reply to them.

The MINISTER OF JUSTICE said the hon. gentleman had stated his intention of opposing the clause on the grounds that it was uncalled for, that it was an attack on the privileges of the judges, and utterly unwarrantable. He regretted very much that terms of that character should be introduced by any hon. member into the discussion of such a question. He endeavoured yesterday to give reasons why the Government thought the clause should pass. He did not express any desire to make an attack on the privileges of the judges, nor was there anything in what he said yesterday to justify the Hon. Mr. Macpherson in using such expressions. He appealed to hon. members whether what he said yesterday was not

said in the most studiedly moderate tone that could be adopted on any question of importance. He must ask hon. members to remove from their minds any questions of the character which his hon. friend endeavoured to introduce into the discussion. The object of the clause, and the two subsequent clauses, was to remove an administrative difficulty which had arisen, and which, if not removed, must lead to a great deal of difficulty in the future. As he stated yesterday, he had consulted the Chief Justice before the appointment was made, and it was an immense relief to him to have ascertained the feelings of the judges on the question under consideration. The judges themselves, in their judgment on the question of the taxing officer, which arose afterwards, stated that there was no question but that such an appointment was necessary, and that, probably, if required to make the usual certificate, they would have done so. He intended now to put the position of the matter before the Committee as fully as he could. Yesterday he read some of the reports of the auditors on the Supreme Court Office, showing a state of things which had been going on at least since 1884. The matter was not referred to in the report of the Auditor-General for the present year. It was not until certain information came to his knowledge that he asked the Auditor-General for information. He hesitated yesterday to read Mr. Peterson's report on account of its length, but he thought it was his duty now, as he had read the other reports, to read Mr. Peterson's report also. It was as follows:—

"Maryborough, 1st June, 1889.

"An inspector cannot be in the Supreme Court, Brisbane, many days without noticing the very large amount of money which is diverted from the revenue by affidavits being taken 'after hours,' and that, too, in the case of affidavits sworn in respect of something that has to be filed. Take bills of sale. The solicitor or his clerk brings them at 4 o'clock The Deputy Registrar takes the affidavit (varying from 5s. 6d. to 12s. 6d.) and marks it 'sworn after hours,' and keeps the bill of sale till next morning, when he files it, and the revenue gets 2s. 6d. for the filing. There are no affidavits of any kind sworn before either the Registrar or the Deputy Registrar in office hours, for the simple reason that they will not take them.

"The Deputy Registrar actually complained to me, as a hardship, that Mr. Newman, the Curator in Intestacy, brought his necessary affidavits in office hours, and insisted on the fee (5s. 6d.) being affixed in stamps.

"Any afternoon you can see solicitors' clerks hanging about the lobbies of the offices, waiting till 4 o'clock, so as to be able to pay the officer instead of the revenue.

"One inspector discovered and reported to you that, from the hours marked on the documents, the Deputy Registrar was taking affidavits between 1 and 2 o'clock, which he called the 'lunch hour,' and held to be 'after office hours.' This was, it is stated, discontinued; but I did not go into matters so closely as that, as the present state of affairs is so well known.

"The salaries drawn by the Registrar and Deputy Registrar are, I believe, exceeded by the fees they get (at all events I am pretty certain that is the case with the Deputy Registrar). This, of course, includes affixing the seals of court to copies of documents after hours. Fee for doing anything after 1 o'clock in vacation, etc., etc., etc., but the affidavits (many of which are lengthy, and with many appendices) are the largest item.

"Of course it is impossible to have a proper state of feeling between the two officers in adjacent rooms, into either of which the solicitor can take a two guinea affidavit 'after hours.'

(Signed) "J. A. PETERSON,
"Senior Inspector.

"There are no other officers in the service who have been noticed by me to be doing the same thing."

That report, with those he read yesterday, completed the report of the Auditor-General on the subject of the diversion of fees, which he considered ought to have been paid into the revenue, into the pockets of the officers of the Supreme Court. That was a matter of the greatest importance, and a matter which no Minister with a due sense of his responsibility or self-respect would permit to continue in any department under his management. And that was not the only evil to be dealt with in the Supreme Court Office. He would just describe something which, according to the information in his possession, was probably of frequent occurrence. A clerk had business from a solicitor's office to discharge in the Supreme Court Office that might include the taxation of a small bill of costs. The Registrar and Deputy Registrar looked upon it as a hardship if any affidavits were filed which were not sworn before themselves, and the clerk, having his deponent waiting ready, took him to the nearest commissioner for affidavits who could be obtained. The affidavit was brought in and laid before the taxing officer who would observe that it was sworn before somebody else. He challenged his hon. friends, who had opportunities of knowing, to deny that the bulk of solicitors' clerks in Brisbane knew that unless those affidavits were sworn before the officer with whom they had to do business, they would be hindered in their business. That impression was very strong, so strong as to justify what Mr. Peterson points out, that the lobbies of the Supreme Court are crowded with clerks waiting for 4 o'clock in order to swear affidavits before the Registrar or Deputy Registrar.

The HON. P. MACPHERSON asked what that was to do with the judges?

The MINISTER OF JUSTICE said he would point that out as he proceeded. The matters he had referred to would have to be considered by Parliament and by the Government, and a remedy would have to be provided. His hon. friend had read a judgment of the court, which showed that neither Parliament nor the Executive would be allowed to ask a question of, or call for reports from, any officer of the Supreme Court. In fact, Parliament would have no control over that department at all, and how was it to be expected that Parliament could bring forward any satisfactory measure of reform? If there was to be any responsibility upon the Minister in charge of the department, there must be a corresponding amount of power, and management, and control over the administrative functions of the office. Without that control matters would have to go on as they had in the past. It was a public and disgraceful scandal that such things were allowed to continue. It was a scandal that the officers of the Supreme Court should be allowed to receive from solicitors or their clients payment for work which it was their official duty to perform. But they had received those payments and would continue to do so. It was a practice that had obtained for many years, and he knew that as soon as hon. members knew how that system operated they would wish it to be discontinued. The Registrar of the Supreme Court was a man for whom he had the highest respect, and that officer had been working under a system for which he was not responsible; he had inherited that system, and under the circumstances he was as impartial as could be expected. He was in a false position. It had been asked what had all that to do with the clause? That was a very pertinent question, no doubt, and the answer was that if the Parliament, or the country, wished to impose upon the Government the duty of correcting evils or abuses of that character, the Government must be vested with a sufficient amount of control to enable them to do so. It had been held recently that the judges had power to refuse permission to anyone to go into the Supreme Court Offices to obtain information

or make inquiries, and an order from the Legislative Assembly had been refused, and no doubt that judgment will, if necessary, be confirmed. That is one reason that the power of regulating the staff of the Supreme Court should be vested in the Executive Government, who are responsible to Parliament for the administration of the department. If that responsibility were removed, he would ask where was it to be placed? The Supreme Court Office was a considerable revenue-collecting office, and was it to be left in the hands of irresponsible persons? The judges were not responsible with respect to the administration of the office.

The HON. B. B. MORETON: Thank goodness, they are not.

The MINISTER OF JUSTICE said he heartily agreed with that expression, and hoped there would be no attempt ever made to hold the judges, either directly or indirectly, responsible for the acts of officers of the Supreme Court Office as regarded the administration of the department. That was the very thing he wished to see avoided. The responsibility of the management of that office must be vested somewhere, and if the doors of the office were to be closed to any requests for information in respect to the administration of the work, the natural result was that all responsibility was removed from the Executive. It was not contended that the judges should be held responsible; the Executive were the natural and proper persons to hold responsible, and if they had not the power—and the judges said they had not—they were placed in a very anomalous position, which would not tend to the benefit of the public service. The whole system of payment by fees, and the eagerness and haste with which these fees were pursued by the different officers in the Supreme Court Offices who were authorised under the rules of court to receive them, were things of such a painful nature and unpleasant character that he should regret more than anyone that the responsibility of dealing with them should be thrown upon the judges. He wished to state that the responsibility must rest somewhere, and the clause was intended to provide for the matter. There was a further question which he had alluded to in conversation with hon. gentlemen, and which would necessitate his referring again to the judgment that had been quoted from. The judges ruled that the appointment of a clerk or taxing officer to discharge the duties which were defined by different Acts or rules of court was the creation of an office. That was practically abolishing the distinction between the appointment of an officer to discharge duties, and the creation of his office. He was in a position to inform the Committee that, at the present time, there was not one officer of the Supreme Court whose appointment to his present position was preceded by a certificate such as that referred to in the 39th clause of the Supreme Court Act. He had looked very carefully at the judgment of the Supreme Court, and could not see where there was any distinction to be drawn between the position of the clerk, Mr. Baines, who was appointed to do that duty of taxing, and any other clerk or officer in the Supreme Court Office. He knew that, even during the time he had been administering the department, officers had been appointed and promoted, and a very distinguished predecessor of his in the department said that he was utterly ignorant, during his period of office, of the extent of the provisions regarding certificates. So far as he had been able to ascertain, there was only one instance in the history of the colony in which that certificate had been given. The appointments of the officers to the Supreme Court offices now had not been preceded by certificates, as required by the 39th section of the Supreme Court Act. It was only right, considering that the clause was being opposed, that he should state those matters. He knew that they would be disputed, and that his information would be questioned. Still he would retain his opinion that the rule which their honours had applied to the taxing officer was quite as applicable to every one of the other officers in the Supreme Court Office. If that view were correct, then the appointments of the officers of the Supreme Court were as invalid as that of the taxing officer had been declared to be. Their acts would be equally invalid, and the whole of the administration and legal proceedings of the colony for a very considerable period back would be thrown open to doubt and uncertainty. That was the feeling which led him to urge upon his colleagues the introduction of those two clauses. He wished to avoid any uncertainty as to the want of security, which might be produced by any question of that nature being raised. That was also the reason why last week he wished the second reading of the Bill to be discussed as quickly as possible. He had now stated some reasons why those clauses had been introduced into the Bill, and he trusted that hon. gentlemen would give calm and impartial consideration to the question, and not be misled by any impression that this action of the Government had been brought about by any desire to "clip the wings" of the judges as the Hon. Mr. Forrest had said. If the hon. gentleman thought that the Government had been actuated by a desire to clip the wings of the judges, they had attempted it in a very small matter—a mere matter of the administration of the office, and one which in no respect did clip their wings, except that it gave the Government the power to cleanse the office of the impurities which he believed existed in it. The judges ought not to be mixed up in a matter of that kind, and they ought not to be held responsible for it. They ought to be left free from any imputation as to being the protectors of evil systems. If hon. gentlemen would look at the constitutional view of the matter, they would see that under the 39th section of the Supreme Court Act the judges would be put in a position which would be burdensome to themselves, and one in which they ought not to be placed in. He did not see what objection there could be to Parliament removing words which were, no doubt, introduced at a time when sinecures abounded; at a time when it was a feasible thing to obtain an appointment and draw a salary and get someone else to do the work. In times like the present, when there was close attention given by both Houses of Parliament to the proceedings of the Government departments, and when salaries and appointments were very economically administered, the necessity for those provisions had disappeared. They were an anachronism—portions of an Act which ought to disappear, and with which would disappear the evils which he had, to some extent, explained.

The HON. W. FORREST said as a rule he listened with a great deal of pleasure to the Minister of Justice, whether he agreed with him or not. But to-day he had listened with more than surprise. He had referred to the herring being drawn across the trail, but if ever there was a herring drawn across a trail it was the speech just delivered by that hon. gentleman, and before he sat down he should prove to the satisfaction of the Committee that the hon. gentleman either did not know the law he was trying to repeal, or he was not trying to give very good advice to the Committee. Before he proceeded to that he could take the speech of the hon. gentlemen in sequence so far as he could

remember it. The hon. gentleman had occupied more than half the time by referring to certain officers who, according to him, misappropriated the funds. He wished hon. gentlemen would read the clause they were asked to pass, and try and discover what it had to do with those officers, who were not affected by it in any shape or form. The Registrar was particularly referred to yesterday. It appeared that that officer took fees after office hours, and kept them, in contravention of the Act. In the first place it was not in contravention of the Act, because the Act simply stated that no officer should take fees during office hours, but should pay them into the general revenue. That was not a breach of the law; but if it had been going on as long as the hon. gentleman had said, it was the very greatest censure that could possibly be passed upon the administration of the office of which the hon. gentleman was now the political head. The Government had ample powers to prevent that sort of thing, and he would show how before he had finished. In no way did the matter affect the judges; and not even in the most indirect way did it bear upon the clause before them. It would be imagined by any stranger coming into the Chamber that they were discussing a clause that had for its object the regulating of certain officers who drew fees in the Supreme Court. They were discussing clause 5 of a Bill to amend the Supreme Court Acts of 1867 and 1874, and it had nothing to do with the fees received by the Registrar, or any other officer in that court, or with the management or control of that court. The Minister of Justice had made a pathetic appeal to the Committee, and said certain things were now wrong, and unless certain powers were vested in the hands of the Government, how were those wrongs to be rectified? There was not a single word in the clause, or in the two clauses following it, which would tend to rectify those matters. The Government had that power in their own hands at present if they only chose to exercise it. The Government had appointed a taxing officer; they might have consulted the judges; but they had not obtained the authority of the judges in writing as provided by the Act. When the matter came before the judges they said the appointment was illegal, contrary to the law of the land, and that the Government had asked them to perform an illegal act. He thought the judges were perfectly right. If the Government of the day were to be allowed to go to the judges and say, "You do so and so," when it was contrary to the law of the land, or if the judges were to be coerced—either by the consideration of future legislation that would take place if they did not agree, or by any other means—to depart from the law, no man in the colony would be safe. The Government had made a mistake in the first instance, and they ought to admit the fact and remedy it. It was not denied, in fact it had been admitted, that a taxing officer was necessary. The Chief Justice had said that. But supposing a few persons were in business together; in discussing the conduct of that business, one partner might say to another: "I think we ought to appoint an assistant manager"; and another would answer, "Yes; I think we require some assistance of that sort"; then one partner would not be justified in engaging a man who might be objectionable and incompetent without further consultation with his partners. Would not the others be justified in complaining? The Minister of Justice had informed them that nearly all the other appointments in the Supreme Court Offices had been made in a similar manner, and if the one that had been objected to was not valid, the others were not valid. Then he said that it was not the creation of a new office at all, and therefore the sanction of the judges in writing was not at all necessary. Well, if it was not the creation of a new office it did not require to be validated. Either the Government had committed an illegal act which was to be validated, or they had not done so, and there was no validation required nor any legislation. Which side was the hon. gentleman going to take up? He had already stated that if those fees had been misappropriated, as said by the Minister of Justice, the Government had ample powers to prevent that without any further legislation. The 39th clause of the Supreme Court Act of 1867 provided for the appointment of a master in equity, a prothonotary, and a registrar, and those officers were to be appointed by the Governor in Council. Then the clause went on to say—

"And every such officer shall hold his appointment during ability and good behaviour, but 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."

Then came the point that had led to the legislation of to-day:—

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

In the present case, a new office had been created. The Chief Justice said he believed it was necessary; but the Government made the appointment without getting any certificate in writing from the judges. Now he came to another important point. The Minister of Justice had endeavoured to induce hon. members to believe that unless the clause were passed very serious consequences would ensue. The hon. gentleman had stated that there were other officers who had been illegally appointed, and in order to find out how far that statement was correct he (Hon. Mr. Forrest) had made inquiries from headquarters, and he found that there was no such state of affairs in existence. The only other new office irregularly created was that of the deputy registrar, who was appointed without the necessary certificate having been obtained. But the mistake was found out and remedied soon afterwards. There was no defect in the appointment of any other officer.

The MINISTER OF JUSTICE: Where did you get that information?

The HON. W. FORREST said he got the information from headquarters. Even if the other appointments were not legal, the effect of the Bill would not be to legalise them, because it was only intended to legalise the act of the Government with regard to one officer. The whole matter was in a nutshell. The Government asked the judges to perform an illegal action. The judges very properly refused to perform that action. Then the Government got angry, and introduced the proposed legislation. He trusted that the Committee would not agree to the provisions contained in the clauses to which he had taken exception.

The HON. T. MACDONALD-PATERSON said he had listened with great pleasure to the speech delivered by the Minister of Justice. He had also carefully read the speeches delivered on the Bill yesterday afternoon by that hon. gentleman and by the Hon. Mr. Macpherson, in which there was considerable merit. But to-day he was greatly disappointed to find the Minister of Justice raising a cloud of dust to blind the eyes of hon. members as to the contents of the Bill. What all his allegations as to abuses, corruption, malpractices, and disgraceful scandals had to do with the subject

matter of the Bill he was utterly at a loss to conceive. The measure in no way touched upon them; and he could not understand why those observations were made. Though he had intended to be in his private office on urgent business at the present hour, he had made such arrangements as enabled him to remain a little longer; and he was very glad to have heard part of the remarks that fell from the Hon. W. Forrest. The Minister of Justice said it was undesirable that the responsibility with regard to performance of duty on the part of the officers of the court should rest on the judges; but he did not think that doctrine would commend itself to the common sense of hon. members. He thought that the past history of the judiciary in the colony showed that it was most desirable not to interfere with the prerogative of the judges in respect to the approval of the appointment of officers of the court. Let them compare the position of the judges with the position of the Governor in Council. They knew that Governments were of a transitory character, and that, on the other hand, the judges were more permanent in their offices. They did not know who might be Minister of Justice to-day or Attorney-General to-morrow. And the Minister of Justice or the Attorney-General might be the very man who, by virtue of his fitness for Ministerial office, might be partially if not quite incapable of finding the most suitable man in the profession to fill an office such as the one under discussion. On the other hand, the judges were more or less in contact with every member of the profession; and they carefully observed the character and fitness of members of the profession to manage the business brought before them, whether in chambers or in open court. They could tell, for instance, whether a barrister was properly, efficiently, and intelligently instructed by a solicitor; and that brought him to what he considered was the best part, in one respect, of the quotation made by the Hon. Mr. Macpherson from the judgment delivered by the Chief Justice in a certain case. It was so much to the point that, with the permission of the Committee, he would now read the portion of that quotation relating to the office of taxing-master:—

"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."

The judges were undoubtedly in a better and safer position to know who should be appointed as officers of the court than the Executive of the day, and the balance of argument was in favour of leaving the law in that respect as it stood now. The Minister of Justice had brought forward no matters of history to warrant any interference with the privileges that appertained to the judges of the Supreme Court. He had mentioned some trouble in connection with the appointment of a certain gentleman—sometimes called a clerk and at other times a taxing officer—but why should that tempest in a teapot bring about a special provision dealing with what was unquestionably a privilege worthy of being retained in the hands of the judges of the Supreme Court. Of course the judges could not be held responsible for every act performed by the officers of the court, any more than a bank manager could see that no clerk in the establishment under his control ever committed a theft or a fraud; still it was a wise thing that the responsibility of the approval of the officer should remain with the judges. He was not one to cavil for unnecessary privileges; but the present proposal seemed to be a puerile attack based upon something less than a puerile subject, and backed up by matters that had no reference whatever to the question. They were told about the impression that existed amongst practitioners that their clerks could not get their work through unless they held their affidavits and other documents over till after office hours.

The MINISTER OF JUSTICE: I said there was an impression amongst the clerks—not amongst the practitioners.

The HON. T. MACDONALD-PATERSON said he was glad to have given the hon. gentleman an opportunity of making the correction, because another hon. member besides himself thought he had stated that practitioners were under that impression. All he could say was that he had never heard of it before. The hon. gentleman knew that the time was when all the fees were pocketed by the officers of the court. He held that it was a positive benefit not only to practitioners, but also to clients, that the officers of the court should be accessible after office hours. The Minister of Justice himself had said that it was a common thing for the Registrar to have appointments for a week and ten days ahead. It did not pay clients to wait so long as that; and it did not suit ladies particularly to be kept hanging about the court; so that it was a great convenience to be able to make an appointment for half-past 4 or 5 o'clock, and have the work done promptly and paid for. As to whether the officer should have the fees or not, he would not deal with that question. There were many other matters mentioned by the Minister of Justice on which he should like to say a few words; but they were not cognate to the measure at all. It was alleged that it was intended to reform the procedure of the court; but there was no provision of the kind in the Bill. The provisions contained in the 5th, 6th, and 7th sections constituted an attempt to alter a wise provision of the existing law—that the judges should approve of all new officers. They had not been told of other officers who had been illegally appointed, and they had not been told that what the Minister of Justice termed a system of corruption, abuse, and maladministration, had ever been complained of before. The whole thing had arisen quite recently over a very simple matter. The judges said that if a law was made they would obey it. If the Minister of Justice desired to remedy certain abuses in the matter of fees, let him make a law, and the judges would see it obeyed. But not a scintilla of fact or argument had been adduced to justify the proposal to shear

the judges of a small part of their privileges. All that had been shown was that there had been a little friction, some inconvenience, some correspondence, and a little warmth of feeling—perhaps more on one side than the other—and hon. members were asked, forsooth, to solemnly legislate to provide something that would not prevent the same sort of thing arising again, on perhaps more trivial subjects. He therefore trusted that the Committee would consider well before they did anything to lessen that great respect and devotion which all colonists should have for that section of the constitution known as the judiciary of the country.

The HON. W. FORREST said that the Civil Service Act, passed during the present year, contained the following provision:—

"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."

Let hon. members imagine the Government of the day making an appointment without getting that certificate. That was entirely analogous to the present position of affairs. They were asked to amend clause 39 of the Supreme Court Act. According to the Civil Service Act that they had recently passed, no new appointment was to be made except upon the request of the permanent head of the department to the Minister, and then only upon the certificate of the board that such an appointment was required. Then they came to the question: Suppose the Government of the day wished to make an appointment, as had been done in the case that had been before them, without obeying the law, and obtaining that certificate, would they be granted an indemnity for breaking the law? He hoped the Committee would not lose sight of the fact that the new appointment could not be made legally unless the judges certified in writing that it was required; but a certificate in writing had never been granted in that case. The question was simply whether they should agree with the illegal action which the Government had taken, or whether they should stand by the judges in endeavouring to uphold the law of the land?

The MINISTER OF JUSTICE said they had heard a great deal about "throwing dust in the eyes of the Committee," and "drawing a herring across the trail." Certainly he did not consciously attempt to do anything of the kind; but somebody had succeeded in throwing dust into the eyes of some hon. gentlemen, at any rate. His friend, the Hon. Mr. Macdonald-Paterson, had favoured them with a very lucid discussion upon the subject, one which if argued upon correct premises would have been very striking. That hon. gentleman had taken a position in the discussion which was so inconsistent with that which was taken by hon. gentlemen behind him (Minister of Justice) that he really did not know which argument he was to contend with. The hon. gentleman claimed that the judges should have the power of the selection of the persons to be appointed to those offices.

The HON. T. MACDONALD-PATERSON: Approval.

The MINISTER OF JUSTICE said he heard some hon. gentleman behind him approving of that proposition. If that was so, a construction was being put upon a section of the Supreme Court Act which it had never received before. There had been a new interpretation placed upon that judgment, and it was time that that misapprehension was removed. He did not wish to set his opinion against that of the judges of the Supreme Court; but he thought hon. gentlemen, looking at the matter from a common-sense point of view, would see nothing in the Supreme Court Act, or any part of it, which gave the judges power to appoint any officers. There were certain officers the appointment of whom was given as a matter of course to the judges; but they were limited to those who were in personal attendance upon them. Their associates were, in a measure, their private secretaries, and were supposed to be in private attendance upon them at the sittings of the different courts. The judges also had the nomination of their tipstaffs; but up to the present there had never been any claim made by or on behalf of the judges that they should have the selection or approval of the individuals appointed to the different offices of the Supreme Court. That approval would cast upon the judges a duty that should not be allowed to fall upon their shoulders, and that was the responsibility for the personal actions of the officer whom they had recommended. If the judges were to be charged with any responsibility as to the action of the officers in the Supreme Court, they would be at once removed from their position of impartiality. They should not be interested in the progress or proper conduct of any officer. Those officers should be put there for the judges to criticise, and if the judges were placed in the position of having to recommend those officers, they would be in a position in which they should not be allowed to rest.

The HON. SIR A. H. PALMER: They never claimed the right to approve.

The MINISTER OF JUSTICE said he thanked the President for the reminder. It had been contended by the Hon. Mr. Macdonald-Paterson, who no doubt had carefully studied the judgment, that it was the prerogative of the judges that they should have the approval of the officers of the court. The greater part of the hon. gentleman's speech was confined to the argument that the judges of the Supreme Court were the proper persons to judge as to who would be the fittest candidates for the appointments, and that they were better qualified to do so than the person who holds the position of Minister of Justice for the time being.

The HON. T. MACDONALD-PATERSON: Place the two views in juxtaposition.

The MINISTER OF JUSTICE said the records would show that the argument the hon. gentleman had made use of was the one he had referred to. There were certain portions of that judgment which were capable of the interpretation which the hon. gentleman had put upon them. He was afraid to meet the very strong arguments in favour of removing an impression of that character. The judges should be allowed the utmost freedom to criticise and find fault with the officers. If the judges of the Supreme Court had the nomination of those officers, they were left in that position.

The HON. W. FORREST said the judges had power to recommend officers, not to appoint them.

The MINISTER OF JUSTICE said he had not contended that the judges had power to appoint officers. If he had been under the impression that the judges had at any time power to appoint officers he certainly would not have urged the Governor in Council to make the appointments. He saw by the 39th section of the Supreme Court Act that the appointments were vested in the Governor in Council, but it was true that by that section the number of persons to be employed was a matter in which the judges of the Supreme Court should be

consulted, and in regard to which it was the proper thing to consult them. Another portion of the discussion which he ought to refer to was that his hon. friend had alluded to a high authority, and he had asked him to explain what authority he referred to. Until that hon. gentleman was in a position to quote his authority he did not feel inclined to accept the opinion that he gave. The highest authority that he (the Minister of Justice) knew of was the judges of the colony, and when they gave a decision he submitted to it. The Government had submitted to their decision, and had accepted it. They had accepted the invitation that the judges had practically offered by saying that while the law was in its present state all those appointments should be preceded by a certificate from them, and until that law was changed all appointments of the same character as the one he referred to were invalid. The Government had acted on that suggestion, and had asked that the difficulty should be removed by a slight alteration which they proposed to make. He was glad that the Hon. Mr. Macdonald-Paterson had referred to the matter as a small privilege. The hon. gentleman looked upon it as a small privilege, and he (the Minister of Justice) thought it was not a very great privilege. It was a matter in which there ought to be no feeling of anger or annoyance. He did not feel any, although perhaps some persons might have thought he would have been more likely to have felt annoyed than most other people, but he did not. From the very commencement of the difficulty he did not feel the slightest irritation or annoyance up to the time the debate commenced. He trusted hon. gentlemen would give the matter further consideration. They had heard a great deal from two or three hon. members who had spoken already, but he would like to hear the views of some others. He had overlooked up to the present the reference to the question of the Civil Service Board. A Civil Service Board had been provided for, and their offices, he considered, had been created by the Civil Service Act. He took it that all appointments into the Government service, no matter whether they were in the Supreme Court Office, or elsewhere, would be made on the recommendation of the Civil Service Board. The recommendation of the board would be necessary, as regarded at any rate a great many appointments to the clerical staff in the Supreme Court Office, and that was a matter that was entitled to full and careful consideration.

The HON. W. FORREST said he did not intend to say anything more, but as the Minister of Justice had asked him who his authority was and as he was under no obligation not to give, the name, he would state that authority, and he had not the slightest doubt that it would have some weight with hon. members. He had started with the intention of finding out whether the statement was correct that the other officers had been illegally appointed, and happened, by chance, to meet Sir S. W. Griffith, and put his difficulty to him, explaining what he wanted. That hon gentleman said, "Nonsense; no such thing," and then gave him the information he had given to the House, that the only man who had ever been informally appointed was the Deputy Registrar, and that matter had been afterwards put right. Sir S. W. Griffith had been Premier and Attorney-General, and took great interest in all legal matters, and he was at the very top of the legal profession in Queensland, so that his opinion ought to carry some weight. But that gentleman did not rely altogether upon his own opinion, because he said he had been informed to the same effect by one of the judges, he was not sure which.

The MINISTER OF JUSTICE said he thought the debate had gone sufficiently far, and he proposed to move the Chairman out of the chair. There was one subject which had been referred to, and which he thought it was absolutely necessary on his part to ask the Committee to take into its consideration. He was anxious to get some information as to who was the "highest authority" that the hon. gentleman who had just sat down had referred to, and that gentleman had come forward and intimated that the judges, or one of the judges, had descended from his lofty position and entered into a discussion upon the matter before them.

The HON. W. FORREST said he rose to a point of order. He was not discussing the question as to a judge descending from his high position to discuss the Bill.

The MINISTER OF JUSTICE: That is no point of order.

The HON. W. FORREST said the hon. gentleman was not justified in ascribing to him words that he never used.

The MINISTER OF JUSTICE said the hon. gentleman was rather hasty. He had not stated that that gentleman said that the judges had descended from their high positions. What he meant was that if any judge had expressed an opinion as to the validity of the other appointments in the Supreme Court Office, that judge had descended from his high position, and had entered, in a manner which he thought ought to be deprecated, into a matter which was before Parliament. The hon. gentleman had brought that opinion forward for the purpose of influencing the views of hon. gentlemen in connection with the Bill. He regretted, more than he could express, that such a statement had been made, and after such a statement the discussion ought to be terminated for a time, in order that hon. gentlemen, himself included, might have an opportunity of calmly and quietly considering the new element that had been introduced into the matter. He moved that the Chairman leave the chair, report progress, and ask leave to sit again.

Question put.

The HON. T. MACDONALD-PATERSON said he thought the Minister of Justice had misapprehended what had fallen from the Hon. W. Forrest. He distinctly understood that hon. gentleman to say that the authority he had referred to had added, in giving his opinion to the Hon. W. Forrest, that he believed the judges, or one of them, was of the same opinion as he was. The Hon. W. Forrest had not quoted the opinion of the judge for the purpose of influencing the opinion of the hon. member. That statement was only an adjunct to what had fallen from the lips of the authority that had been mentioned, and it was not fair to give a small phrase like that the character of seriousness in which the Minister of Justice wished them to consider it.

The HON. W. FORREST said that the Minister of Justice asked him for his authority. It would be within the recollection of hon. members that the Minister of Justice said the highest authority in the land was the judges. In making any new appointment, the law distinctly laid down the fact that the judges should recommend such appointment in writing, and then the Minister of Justice expressed his amazement that the judges should make the slightest reference to the fact that they had obeyed the law of the land. He denied that he had said that the judges had descended from their high position; he never said anything of the kind. The Government were trying to legalise what was an illegal action on their part,

and they should not try and bolster up their arguments by such statements as had been made.

The HON. J. C. HEUSSLER said he thought there had been a great deal of misapprehension. He did not understand that the Hon. W. Forrest had used that argument, but that the Minister of Justice had used the argument that one of the judges had descended from his high position. The Minister of Justice did not say that the Hon. W. Forrest said that, but had asserted it himself.

The MINISTER OF JUSTICE said the Hon. W. Forrest evidently felt very much annoyed at what had been said; but he thought the hon. gentleman would, upon consideration, see that there was no occasion whatever for any irritation. What he complained of was that the hon. gentleman was speaking to the question of the validity of the other appointments in the Supreme Court, and he referred to Sir. S. W. Griffith, who told him that, as regarded those appointments, it was nonsense, and that he had it also from the judges, or one of them, that it was nonsense. That was what he complained of —that the judges should beforehand, while a question of this kind was under consideration, descend from their position, and express an opinion in one way or the other before they had heard every argument from either side. The hon. gentleman could only have used that argument for the purpose of influencing hon. members. He had purposely avoided discussing the question at all with the judges, and it was very unfortunate that a judge should have allowed himself to be drawn into the discussion by any member of that Committee. That was a matter that he deplored, and he felt that it added a new feature to the discussion, and one which he certainly was desirous of having a little time to calmly consider.

The HON. W. FORREST said that the Minister of Justice had taken up an extraordinary position. He had said that the highest authority in the matter was the judges. The judges, in recommending the appointment, were obeying the law of the land, and because they said they had obeyed the law of the land, the hon. gentleman stated they had done a most improper thing. The Hon. Sir. S. W. Griffith had never volunteered the slightest information upon the subject until he asked him, and after he had expressed his opinion he added, incidentally, that one of the judges said the appointments were quite regular. Was that an unreasonable thing for a judge to do? The judges said, "We have obeyed the law," and the Minister of Justice said that was a highly improper thing for the judges to say.

The HON. P. MACPHERSON said the Minister of Justice himself had been doing his very best—to use a common expression—"to throw fat in the fire." There was no occasion whatever for his remark about the judges descending from their high position. The judges said that the appointments were not invalid, and there could be no harm in that.

The HON. T. MACDONALD-PATERSON said he would like to say that the Minister of Justice was slightly incorrect in saying that the judges were wrong in entering into a discussion on the matter. Nothing had been said by any hon. member to warrant the hon. gentleman coming to the conclusion that the judges, or a judge, had entered into any discussion in the matter at all.

The HON. SIR A. H. PALMER said he understood the Hon. W. Forrest simply to say that a judge had been asked a question on a subject of fact, and the judge had answered it. He heard the whole of that hon. gentleman's speech, and gathered from it that a judge had been asked whether the appointments were illegal, and the judge had said "No."

The MINISTER OF JUSTICE said he objected that an expression of opinion by a judge should have been quoted in that Committee. He did not think it was a proper thing that a judge should express a preconceived opinion before the matter came before him.

The HON. SIR A. H. PALMER: The judge answered as to a question of fact.

The MINISTER OF JUSTICE said it became a question of law, upon which different people might hold different opinions.

Question put and passed.

The House resumed; the CHAIRMAN reported progress, and the Committee obtained leave to sit again to-morrow.

ADJOURNMENT.

The MINISTER OF JUSTICE said: Hon. gentlemen,—I move that this House do now adjourn.

Question put and passed.

The House adjourned at 6 o'clock.