Queensland

Parliamentary Debates
[Hansard]

Legislative Council

TUESDAY, 31 OCTOBER 1899

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LEGISLATIVE COUNCIL.

TUESDAY, 31 OCTOBER, 1899.

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

PAPERS.

The following papers, laid on the table, were ordered to be printed:—

Despatch transmitting Order in Council respecting withdrawal of Montenegro from the International Copyright Convention.

Order in Council applying the provisions of the British Probates Act, 1898, to Western Australia.

LEGITIMATION BILL.

SECOND READING.

* HON. P. MACPHERSON: The Bill which I have now the honour to submit for your consideration on the occasion of its second reading is one which I venture to hope will meet with your approbation, because its provisions I believe to be reasonable, just, and humane. It is a Bill to legalise legitimation on registration. Under it any child born out of wedlock whose parents afterwards marry is held to be legitimised by the marriage on the birth being registered in the manner prescribed. For the purposes of legitimation the registrar must register the birth when applied to by any person who makes a declaration that he is the father, and that at the time of the birth there was no legal impediment to his marriage with the mother, and also showing the date of the birth of the child. To this declaration must be annexed a certified copy of the certificate of the marriage of himself and the mother. The registration, therefore, is the final act or test or evidence of the legitimation. Legitimation by subsequent marriage has been admitted by the laws of nearly all the Christian nations of Europe for many centuries. It has been approved both by the civil and the canon laws. It has been approved by those laws as being conducive to morality, and as a shield or protection to the innocent. It prevails at present in France, in Spain and Portugal, in Germany, in Holland, and in other Christian nations of Europe. It is also in force in Jersey, Guernsey, St. Lucia, Trinidad, Demerara, Berbice, the Cape of Good Hope, Ceylon, and Mauritius. It prevails in Lower Canada as well as in the Sates of Vermont, Maryland, Virginia, Idaho, Alabama, Mississippi, Louisiana, Kentucky, Missouri, Montana, Illinois, Ohio, and, I believe, Massachusetts. Coming nearer to ourselves it is in force in Scotland and the Isle of Man, but it is not recognised in England or Ireland. Since the end of 1894 it has been the law of New Zealand, and last year it became the law of South Australia. The present Bill is drawn on the lines of the New Zealand Act, with certain alterations not affecting the principle of the Act, but putting it perhaps into more correct language, for which I have been indebted to His Honour the Chief Justice. Having made these preliminary observations, I will proceed shortly to examine the provisions of the Bill. The first two clauses are purely formal. The third provides for the legitimation of illegitimate children or registration after marriage of the parents. The effect of this provision, after the registration of the child in the manner prescribed by the Act, will be such as to confer upon the child all the rights of a child born in wedlock. Those rights are parental protection, the right to bear the parents' name, and the right to hold and acquire property by descent. An illegitimate child is in rather a peculiar position in this respect. He is not entitled by law to the name either of his mother or to that of his reputed father, nor can he take property by the mere description of child of his putative parent until he has in some way acquired the reputation of standing in that relation to him. So with respect to the acquisition of property by right of blood he is in a different position from others, for he can neither himself be heir to anyone, nor have any heir except one who is the issue of his own body, because being the son of none he has no ancestors from whom inheritable blood can be derived, and no collateral relations. And upon the same principle he cannot claim any share of personal estate as next of kin to a party dying intestate; and if he himself die intestate, and without wife or lawful issue, the Crown is entitled to the beneficial administration of the personal estate. A case came under my own observation within the last month or two in reference to the estate of a gentleman whom we all know, where a lady, who was the eldest born of a family related to him who was not legitimate has lost a considerable fortune through no fault of her own. The 4th clause is simply a corollary to the 3rd, and provides that—

> The issue of any such legitimated child who has died or may hereafter die before the marriage of his or her parents shall take, by operation of the law, the same real and personal property which would have accrued to such issue if the parent had been born in wedlock.

The 5th clause prevents any retrospective action. It provides that nothing in the Act shall affect any estate, right, or interest in any real or personal property to which any person has become, or may become, entitled, either mediately or immediately in possession, or expectancy by virtue of any disposition made before the passing of the Act. This is only a fair and just provision to insert in a Bill of this sort, where there is such a change in the law. The 6th clause places a limit on legitimation by declaring that nothing in the Act shall have the effect of legitimating any child if at the time of the birth of the child there existed any legal impediment to the intermarriage of the parents of the child. This is in harmony with the 331st section of the Code Napoleon, which provides that children born out of wedlock, other than the offspring of adulterous or incestuous intercourse, may be legitimated by the marriage of their father and mother. The 7th clause of the Bill contains the *modus operandi* of legitimation. It provides that when any man who claims to be the father of any illegitimate child, whose mother he has married since the birth of the child, produces to a registrar a statutory declaration in the form set out in the schedule, it shall be the duty of the registrar to register the child, whether dead or alive, as the lawful issue of the man and his wife. If the child has been previously registered as illegitimate, the registrar shall also make in the register a note of the entry made under this Act; and if he has not in his possession the register containing the entry of illegitimacy he shall intimate to the Registrar-General the fact of the new entry having been made. That provision, I think, is plain enough. Then the schedule to the Act contains the form of declaration. So much, hon. gentlemen, for the provisions of the Bill. As the law now stands in this colony, any child born at any instant of time before marriage is illegitimate; any child born at any instant of time after marriage is legitimate. There may be, and there frequently are, under the same roof, children of the same flesh and blood, enjoying the same parental care and the objects of common parental affection, who do not possess the same civil rights. Such an anomaly, to call it by no harsher name,

seems to me to be abhorrent to humanity. I say that it is contrary to the law of God, I say it is contrary to the law of eternal justice, I say that it is contrary to the law of common humanity. The illegitimate bears a name by courtesy; he is addressed by it often with a sneer; he goes through the world as it were under false colours, and under false pretences; his putative father, as the law calls him, may load him with affection, and may endow him with his wealth; he may clothe him with fine linen, but he cannot clothe him with his name. I am almost tempted to vary a little the words of Shylock when addressing a Christian. "Hath not a bastard eyes? Hath not a bastard hands, organs, dimensions, senses, affections, passions? fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a legitimate is? If you prick him does he not bleed? If you tickle him does he not laugh? If you poison him does he not die?" Why should not a man be permitted to assume the responsibilities of paternity to his own flesh and blood? Surely in doing so he is strengthening the State! Why should he not be allowed to do justice to the innocent and unoffending, for whose existence he is responsible? Why should he not be allowed to make the manly avowal and acknowledgment which this Bill legalises? Surely it is the highest privilege of the legislature to encourage the attainment of such objects as these! Hon. gentlemen, the wisest and most experienced legislators have, in the glamour of enthusiasm, lent their sanction to laws and projects which have proved as ephemeral as the occasions which have evoked them, but the Bill which I propose for your consideration rests on no false or meretricious sentiment. The leading principle of it has sunk deep into the heart and conscience of christendom. Wherever it has taken root no desire or attempt has ever been made to overthrow or destroy it, nor will ever such an attempt be made until society is dissolved. I ask you, hon. gentlemen, in the interests of morality, in the name of justice which is immutable, in the name of mercy which seasons justice, and in the sacred name of religion, to pass this Bill. In so doing you will have the reward of an approving conscience, and will have earned the undying gratitude of the country. Hon. gentlemen, I beg to move the second reading of the Bill.

HONOURABLE MEMBERS: Hear, hear!

The POSTMASTER-GENERAL (Hon. W. H. Wilson): I may say that I am quite in accord with the Bill, and I think it is a proposed law which we might very well enact. It is one that will certainly be a valuable addition to the statute-book, and will, I believe, have all the beneficial effects which the Hon. Mr. Macpherson has pointed out. As he has said, it is already the law in a great many places, including New Zealand, and though the Australian colonies have not taken up the subject yet, that is no reason why we should not do so. I have therefore very great pleasure in supporting the second reading of the Bill.

HONOURABLE MEMBERS: Hear, hear!

HON. B. D. MOREHEAD: I do not think the effect of the Bill will be very beneficial; I think it will have a directly contrary effect. I believe that if this measure becomes law it will lead to, at any rate, a very changed state of affairs compared with that prevailing at present. It will permit men living in a state of concubinage, and leading what up to the present has been considered fairly immoral lives; they will do so, perhaps, by persuading the unfortunate women whom they have got into their toils that under a measure such as this they can at any time legitimise the children born to them. This is a most imminent danger, and a danger that I do not think has been alluded to or dealt with by the hon. gentleman, to whom I give every credit for introducing the Bill, in the full belief that it will prove a beneficial measure. It is a point that I think he has missed. I think that instead of having a moralising effect it will have a demoralising effect. I do not wish to enter into details, but I will say that the measure if passed will probably be conducive to great evil, and I can see that it will lead to no possible good. The fact of its existing in other places is no proof of its being absolutely right. I maintain that what we ought to do is to try and preserve as far as we can the chastity of our women; that we should not pass any measure which will allow any looseness that we can possibly prevent to become the portion of the weaker vessel. I look upon this, if it is passed, as a most dangerous measure, and in the cause of morality I raise my voice against it; the hon. gentleman, on the other hand, adopts the cause of morality probably as his reason for the measure. I say there are two sides to this question, and it is a very serious matter indeed that such a radical change in the existing system should be brought about. I do not think it will tend to the chastity of women in any way; I think it will have an exactly opposite effect. Holding those views, and not desiring further to dilate upon this matter, which is not a very pleasant one to discuss, even though I stand alone, if a division is called, I shall vote against the second reading of this Bill.

* HON. W. FORREST: I think there is a mistake in the title of this Bill; to my mind it ought to be called a Bill to legalise and encourage immorality. The hon. gentleman who introduced the Bill—and I give him every credit for good intentions—has appealed very strongly to our sentiment. He mentioned different places where the proposed law is in existence, and then he told us that it was in the interests of morality. If he wanted to prove that it was in the interests of morality he should have shown, as I suppose he could have done, how many illegitimate children there were in those places prior to the passing of this law, and how many afterwards. The Hon. Mr. Morehead has struck the key-note of my objection to the Bill, and has given very good reasons why it should not be passed. A reason why this Bill has been proposed was half explained by the Hon. Mr. Macpherson, and I would say something more in the same direction; but I will not refer to it more particularly at present, because I wish to make more investigation into a matter before going fully into it here. Like the Hon. Mr. Morehead, I certainly will not support the second reading of the Bill.

* HON. A. H. BARLOW: I congratulate the mover of this Bill on his eloquent
4 p.m.] speech, which appeals to our feelings; but it appears to me that this is another of those measures loosening the bonds of society, which is the trend of modern legislation. I fancy that most modern legislation moves in that direction. I waited until some senior members of the Council had expressed their views on the measure before giving utterance to my opinions. I might have less objection to this Bill if it had not a retrospective effect; but seeing that it has a retrospective operation I think it may have the effect of prejudicing the interests of legitimate children. Outside the claims of morality, which at present seem to occupy a secondary position in the world, a father can now do all in the way of money and property for his illegitimate children by bequest that he can do under this measure. I do not see why the 6th clause should be inserted in the Bill.

If the unfortunate illegitimate child is to be considered under this Bill—and I pity the illegitimate child; it is not his fault that he is born under a certain set of circumstances, and has to a certain extent to suffer in order that society may be kept together. I say I do not see why under those circumstances the 6th clause should deny legitimacy to a child to the marriage of whose parents legal impediments existed at the time of the birth of such child. If this Bill is to be passed in the interest of parents—in which case they should suffer—there might be some reason for such a provision, but if it is to be passed in the interest of illegitimate children, why should some of those children be disqualified under clause 6? I should, as I have intimated, have less objection to this measure if it was merely to affect children born after passing of the Bill, but the fact that it is to have a retrospective effect is to my mind a great bar to the measure. For that reason, and on other grounds, I feel it to be my duty, not merely from a feeling of toryism or fossilism, or any such feeling, but because I believe that the bonds of society are kept together by means which this measure will tend to loosen—on those grounds I feel it to be my bounden duty to vote against the Bill.

* HON. W. ALLAN: I thoroughly agree with every word that has fallen from the Hon. Mr. Macpherson in moving the second reading of this Bill. The Hon. Mr. Barlow made a remark to the effect that it tended, as all legislation now did, to the modernising of legislation.

HON. A. H. BARLOW: No; the loosening of the bonds of morality.

HON. W. ALLAN: "Modernising," I think, was the word used. This measure is very far from modernising legislation. This law has been in force for a great many centuries in the country from which I come—Scotland—and I know that it has done a large amount of good there. The Postmaster-General must have missed what the Hon. Mr. Macpherson remarked when he said that we were taking the initiative in Australia in this matter, because New Zealand and South Australia have passed such a law.

The POSTMASTER-GENERAL: I was not aware that this law was in force in South Australia.

HON. W. ALLAN: It is in force in that colony. But in any case I do not think it is necessary, because legislation is modern, for us to infer that it may be demoralising in any way. I have known instances where a similar law in Scotland has acted most admirably, and I have also known, as I dare say other people have known, instances where children have suffered great disabilities in places where such a law was not in force. In Scotland, France, and Germany, if a man has children by a woman, and he afterwards marries her, and has other children, all those children are on an equal footing; but in England if a man has children by a woman, and subsequently marries her, and has other children by her, and he dies intestate, what happens? The children who were born before marriage are left absolutely penniless, and the younger children come in for all his property. In Scotland a man who marries a woman after he has children by her legitimises those children, and they take their proper places in society, and are not looked down upon and slandered as they would be under other circumstances. I do not agree with the Hon. Mr. Barlow that the Bill should not be made retrospective. The fact that it is retrospective is, to my mind, one of the great beauties of the measure. If we pass this Bill many persons will be placed in a very different position from that which they now occupy, and they will have cause for many a long day to thank the Hon. Mr Macpherson and the members of this House for putting them in that position. I think the Bill is an admirable one, and will give it all the support I possibly can.

HON. W. F. TAYLOR: I merely wish to state that I am in thorough accord with this Bill. I think it is exceedingly hard that a child should suffer disabilities of this nature on account of the deliberate, or probably hasty, act of its parents. Two young people may in a hasty moment commit an act, the result of which is a child, and under the present law that child would be illegitimate all the days of its life. It is very hard that children should have to suffer that disability, and it is very hard that parents who may love their children dearly should not be allowed to legitimise them so that they may take their proper place in society, and be entitled to everything that a child born in wedlock is entitled to. I cannot understand any opposition to a Bill of this sort, and it appears to me that such opposition cannot have been fully considered. Why should a child labour all its lifetime under the disabilities I have referred to? And why should parents not have the power to atone for and remove as far as possible the evils of illegitimacy under which their children suffer? This Bill will give parents an opportunity of atoning for the disabilities inflicted upon illegitimate children, and instead of encouraging immorality it will in my opinion have the contrary effect, because it will induce people to marry, and legitimise their children. I have very much pleasure in supporting the Bill.

HON. A. NORTON: I must say I can scarcely regret that a certain amount of opposition is shown to this Bill. I believe that all good Bills are really improved by opposition, because whatever opposition there is has the effect of bringing a certain amount of criticism to bear upon the proposal brought forward. When I read the Bill in the first instance I thought we were by much indebted to the Hon. Mr. Macpherson for having brought it forward, and I think so still, but at the same time I recognise that there is one danger in connection with it. I do not go quite so far as the Hon. Mr. Morehead, who thinks that the effect of the measure will be that a man who has got a woman in his power will continue to keep her in a condition of disgrace, on the ground that they may be married some time, and legitimise their children. I do not think that is altogether a danger. The only danger I see in connection with it is that young people may very easily be led away when they know that if they marry afterwards they can legitimise their children. But still what we have to consider is, will the effect which will be produced by the passing of a measure of this kind be likely to be worse than the effect of the present law? Is the present law so good that we are bound to support it because it is the present law? Should we support it because we are afraid that the morality of the people will suffer by passing a measure of this kind? Whatever defects the Bill may have in the opinion of those who are opposed to it, I would suggest that they should consider it from this point of view that the legitimacy of children is not one of those cases where the sins of the parents descend upon their children. It is a case where those who are innocent are punished for the faults of their parents, and it is not a law of nature that they should be so punished. It is a law deliberately passed and imposed upon them by the legislature of the country. That, to my mind, is the injustice of the present law. Why should children who are innocent be punished? It is not their fault that they are born illegitimate. They are to be pitied, more perhaps than we know how to express our pity for them; their life in many instances, not all, is one where they

cannot help feeling that there is a slur upon their character; they are made to feel sometimes that there is a slur upon their name, and because there is a slur upon their name, which they have not brought about, that has really the effect of a slur upon their character. I really think that if we pass this Bill its effect will be better than the effect of the present law, because those who are innocent in the matter will be relieved from penalties which are now imposed upon them. For my part I intend to support the Bill. At the same time I thought that I should say what I have said, because I do not wish it to be supposed that I go blindfold into the matter, and support the Bill because it is a good one without seeing what its effects are likely to be. As to the suggestion made by the Hon. Mr. Barlow, I cannot agree with him that the Bill should not be retrospective, because if we acknowledge that it is right that children who are born out of marriage in the future should be legitimised, I do not see why children who have been born out of marriage in the past should not also be legitimised. Of course the hon. gentleman has in view the idea that legitimate children may suffer by such a procedure, but I do not see why one child born out of wedlock and another born in wedlock should be treated differently, when we come to deal with property belonging to the parents.

Hon. A. H. BARLOW: They have a vested right.

HON. A. NORTON: One has a vested right, and the other has a vested wrong, and the sooner we remedy the vested wrong the better. I shall very gladly support the Bill.

HON. J. T. SMITH: I very much approve of the action which has been taken by the Hon. Mr. Macpherson in bringing this Bill before the House, and I think he deserves every credit for having taken an independent course in this matter. I am perfectly sure that society generally will be benefited by having one of these shameful idiosyncracies erased from the statute-book; and those who may be legitimised under this Bill will have cause to thank the hon. gentleman, as they will probably be able to fill important positions in society which perhaps they could not have filled under other circumstances. The slur and stain which attach to them often prevent them from occupying positions which they deserve and which they are capable of satisfactorily filling. Therefore I am very much disposed to support the Bill. I think it should have been passed long ago. At any rate, now that it has come it will have my cordial support.

HON. E. J. STEVENS: It is an unpleasant thing to have to speak against a measure which is brought forward in the supposed interests of morality, but this is a measure of such serious moment that I think it ought to be very carefully considered indeed. I give hon. gentlemen who have spoken credit for having considered it. I have thought it over very seriously since I received a copy of the Bill. I acknowledge that there are some disabilities attaching to those who have been born out of wedlock, though not to the same extent that has been said by some hon. members, because if a man has it in him there is hardly any position which he cannot reach, even if he has had the misfortune to be illegitimate. So far as the father's worldly goods are concerned, that may always be dealt with by will, and experience goes to prove that such has been the case. Where the father has had any feeling of regard for his illegitimate offspring he has taken good care to provide for them. I cannot see where this Bill has been brought forward in the interests of morality, except in the one point raised by the Hon. Dr. Taylor—that is, a man living with a woman, not married, having children, and desiring to legitimise them afterwards. I grant that is a strong point, but we have to look at the point raised by the Hon. Mr. Morehead, and that is the effect this measure will have in the future upon marriage. There is hardly a case connected with this matter brought into the courts in which the woman has not said, and generally proved, that she was seduced under the promise of marriage, and I feel sure if the Bill becomes law there will be a largely increased number of those cases. It is very easy to imagine that one of the arguments used by a man who attempts to seduce a young girl would be that, in the event of there being issue, as soon as he was in the position to do so he would make her his wife. That would be a very powerful argument in many cases.

Hon. W. ALLAN: It is said now.

HON. E. J. STEVENS: That argument will be more often used in the future. It will be used by anyone who wants to seduce an unfortunate female. I freely admit that it is a very hard case for those who are unfortunate enough to be illegitimate, but I think the evil that would accrue would be very much greater if this Bill became law. I give the hon. gentleman who introduced the Bill credit for the best intentions. I believe he is thoroughly sincere in his belief and statements. I know him to be a large-hearted man, and probably many instances of hardship have come under his notice that have led him to introduce the measure. I regret to have to oppose him, but I feel sure that a great deal of harm would be done under this Bill.

Question—That the Bill be now read a second time—put; and the Council divided:—

CONTENTS, 12.

Hons. W. H. Wilson, A. Norton, J. T. Smith, W. Allan, P. Macpherson, J. Cowlishaw, H. C. Wood, F. H. Hart, J. McMaster, W. F. Taylor, F. T. Brentnall, and J. Webber.

NOT-CONTENTS, 4.

Hons. B. D. Morehead, W. Forrest, E. J. Stevens, and A. H. Barlow.

Resolved in the affirmative.

CRIMINAL CODE BILL.

SECOND READING.

The POSTMASTER-GENERAL: I beg to move that this Order of the Day stand an Order of the Day for Tuesday next. I may say that as to-day was proclaimed a holiday, and as the proclamation has been rescinded, a little confusion has been caused. I promised some hon. gentlemen that, under the circumstances, the Bill would not be taken until next Tuesday. I do not think that can do any very great harm, because it will give hon. gentlemen some further time to consider it.

Question put and passed.

ABORIGINALS PROTECTION AND RESTRICTION OF THE SALE OF OPIUM BILL.

RESUMPTION OF COMMITTEE.

[4·30 p.m.] Question stated—That after clause 9, the following new clause be added:—

Section fourteen of the principal Act is amended by the omission of the words "or suffers or permits an aboriginal or a female half-caste to be in or upon any house or premises in his occupation or under his control."

HON. J. WEBBER said there had evidently been some mistake, because he knew nothing about the printed amendment which had been handed round. The amendment read out by the Chairman was the amendment he wished to be introduced into the Bill, but it had not been circulated, and he wished to make a short explanation in this connection. Clause 14 of the original Act reads—

Any person who, except under the provisions of any Act or regulations thereunder in force in Queensland, employs an aboriginal or a female half-caste, otherwise

than in accordance with the provisions of this Act or the regulations, or suffers or permits an aboriginal or a female half-caste to be in or upon any house or premises in his occupation or under his control, shall be guilty of an offence against this Act, and shall be liable, on conviction, to a penalty not exceeding £50, and not less than £10, or to imprisonment for any term not exceeding six months.

And the new clause he wished to have inserted would leave out the words "or suffers or permits an aboriginal or a female half-caste to be in or upon any house or premises in his occupation or under his control." He took it that the Act had been passed in order to benefit the blackfellows of this colony. Everyone knew that the race was dying out, and as he was one of those who had had a life-long experience with blacks, he felt a great interest in them, and he wished to prolong there existence as long as possible. Of course, everyone knew they had to go, before a higher race. But he maintained that this clause, instead of helping to assist or replenish the blacks, would act quite the other way. If a mob of blacks, or any number, in their walks about, came to a station, as they often did, they could not be permitted to be on any premises under the control of anyone there in any way. That must operate in every way against the blacks. They were not allowed to be fed or housed. It might be argued that this law was a dead letter, but what was the use of dead-letter law? It would be much better to make the law workable, so that if there was any breach the law could be enforced. It had been said that the present law was workable, but he maintained that it was not, because under it a man might be fined not less than £10 and perhaps £50, or six months' imprisonment, for feeding a few blacks. He, therefore, held that, in the interests of the blacks, this clause should be put right, and it could not be better done than by adopting the clause he had proposed. He thought it covered the whole ground, and hon. members who had had a long bush experience would bear out what he had stated.

HON. W. ALLAN: He had hoped that the Hon. Mr. Webber would have brought his amendment up in proper form, so that hon. members would be able to see whether it would conflict in any way with any other parts of the Bill. But he had done nothing of that sort. What appeared before hon. members now was not adequate, and could not be put into operation. If this amendment were put in as it stood, anyone who had had any experience of the blacks in the bush would call it idiotic.

Hon. W. FORREST: The hon. member has explained that that is not his amendment, and that there has been some mistake.

HON. W. ALLAN: At any rate, that was the amendment they had before the House.

Hon. J. WEBBER: That is wrong; it is a mistake. I don't recognise that amendment at all.

* HON. W. ALLAN: The hon. gentleman had evidently not put his amendment properly before the House. It should have been printed and placed before the House in the ordinary course. The adjournment had been made to see whether the omission of those words from clause 14 of the original Act would interfere with other portions of the Act, but as that had not been done they were exactly in the same position as when the adjournment was made. The best course would be to further adjourn the consideration of the matter. When the matter was previously under discussion the argument was—and it held good at the present—that under clause 14 of the original Act a policeman or any other person who had a grudge against an owner, or manager, or overseer of a station could lay a complaint against such person for feeding or harbouring some old blacks, whom he might have known for twenty years. For putting them in the kitchen or on the veranda, he would be brought up, and the police magistrate would have no option but to fine him at least £10, and he might inflict a fine of £50, or in default six months' imprisonment. Since the matter had been before the House last he had been making inquiries, and he had been informed by Mr. Webb, the general inspector of the Bank of Australasia, that in some part of the Central district this section had been enforced against a manager, and, in consequence, other managers did not feel themselves in a position to feed or harbour the blacks. He had had blacks about his own stations, and many of them were utterly decrepit. Some blacks had worked on stations for the owners and their fathers and grandfathers.

Hon. B. D. MOREHEAD: Worn-out servants.

HON. W. ALLAN: Yes; and under the Act any person who fed them would be liable to the fines he had mentioned. He was in accord with the spirit of the clause if it did not interfere with any other part of the Bill.

* HON. W. FORREST was in accord with what the hon. member had just said about the blacks, but he pointed out that the House did not adjourn to give Mr. Webber time to have another amendment drafted. It was done to please the Postmaster-General. The Hon. Mr. Webber had disowned the printed amendment, and he wished to omit the words mentioned from the original Act, because they made the Act to a large extent unworkable. The matter was attracting a good deal more attention outside the House than in it, and, as the Hon. Mr. Allan had said, the poor old people would not be allowed to come near a house at all. He hoped the Postmaster-General would see his way to accept the amendment without further argument.

The POSTMASTER-GENERAL: The Hon. Mr. Forrest seemed very fond of always trying to attach blame to him.

Hon. W. FORREST: I did not blame you at all. I stated a fact.

The POSTMASTER-GENERAL: It was not his fault that the amendment had been drafted in the form in which it appeared on the printed sheet. He had sent the papers to the Parliamentary Draftsman, who must have slightly misconceived what the Hon. Mr. Webber wanted. He was taken aback himself, because he thought it was exactly what the hon. gentleman wanted, and it was not until he had a conversation with the Hon. Mr. Webber that afternoon that he found it was not. He would be very glad if the Hon. Mr. Forrest would not so frequently attempt to attach blame to him when no blame could be so attached. It was necessary to say that, because that was the second or third time it had occurred. Seeing the amendment as drafted did not meet the Hon. Mr. Webber's views, he was quite prepared to allow the matter to be postponed, in order that the real amendment might be placed before Mr. Woolcock. If the hon. gentleman wished, he would move that the Chairman leave the chair, report progress, and ask leave to sit again.

HON. W. FORREST desired to say that he had stated, in reply to something the Hon. Mr. Allan had said, that it was not at the Hon. Mr. Webber's instigation that they had previously adjourned, but that they had adjourned at the request of the Postmaster-General. Then the Postmaster-General got up, and said that he had made an attack on him. He had merely stated a fact. An amendment had been circulated in the name of the Hon. Mr. Webber, which that hon. gentleman denied having anything to do with. It had been explained in a way; but he was not making any attack on the Postmaster-General.

The POSTMASTER-GENERAL: It was not my fault.

HON. W. FORREST: He had not said that it was the hon. gentleman's fault, but he repeated that it was at the hon. gentleman's request that they had adjourned.

The POSTMASTER-GENERAL: Of course, it was on my motion.

HON. J. WEBBER: He did not know that he had to go and see that his amendment was printed and circulated among hon. gentlemen. The first intimation he had received of the amendment as printed was when it had been circulated that morning. He refused to accept the amendment as framed, as it was quite useless. He stuck to his original amendment. Although the new amendment did not appear to be before the Committee, he wished to say a few words about it. It meant nothing at all, as it made it necessary to get a permit from a police magistrate or a protector before they could give travelling blacks a feed. In some instances in the West they would have to go 250 miles for a police magistrate and 1,000 miles for a protector. The thing was ridiculous and of no use at all.

HON. E. J. STEVENS thought it would be only a fair thing, when an amendment was before them when they adjourned, that it should be taken for granted by the proper official that it should be printed and circulated for them.

The POSTMASTER-GENERAL: This was circulated.

HON. E. J. STEVENS was speaking from his own experience. He had not received it, and he supposed that other hon. gentlemen had not.

HON. W. ALLAN did not see much trouble about those amendments. He had had to deal with amendments a great many times in the other House. The Hon. Mr. Webber had plenty of time after he got his papers that morning to go to the draftsman and have it put right, and have it distributed that afternoon. That was the usual course. There was no need to bring in the police magistrate or the protector into that clause. If old blacks went twenty or thirty miles to see their brothers and sisters on another station, they would have to starve. It was absurd to insist on having to get a permit from a police magistrate or a protector.

HON. J. COWLISHAW did not see that there was any great difficulty in the matter. He could not see where the hardship came in in having to get a permit. It would be a simple matter to write to a police magistrate and get a permit to have blacks on a station when they came, so that they might feed them or give them some work.

Hon. W. ALLAN: The Act absolutely says you must get a permit from the police magistrate for each blackboy.

HON. J. COWLISHAW: The question was whether that would not be superseded by the amendment, which would grant a general permit.

HON. A. NORTON: There seemed to be some misunderstanding with regard to the amendment, which had come about partly through the Hon. Mr. Webber not being acquainted with the ways of the Council, and thinking that his amendment would be taken charge of by the Postmaster-General. Of course that might have been done had the Minister understood it, and a little consultation between the two would have set the whole thing right. He quite agreed with the Hon. Mr. Webber with regard to the amendment. The thing was preposterous as it was now. It never would have been passed if those persons who brought the measure forward understood the conditions under which blacks were employed.

Hon. B. D. MOREHEAD: It is a great pity it was not referred to a select committee.

HON. A. NORTON: Of course it was too late now to refer it to a select committee, but if that had been done, men acquainted with the circumstances of the case could have been placed on the committee. It was not merely a question of getting a permit, as the Hon. Mr. Cowlishaw appeared to think. Supposing a man had been employing blacks on a station under a permit, and he wished to send them to the next station, he would have to send the "tucker" with them. His neighbour was not to harbour or feed them, but would have to be most unneighbourly so far as the blacks were concerned. He did not blame the Government for attempting to improve the condition of the aboriginals, but they had gone too far, because they did not know what they were doing, and defeated their own object. The Hon. Mr. Webber had pointed out one direction in which the law was certainly not insufficient, but went too far. The better plan was to postpone the debate, and then the Postmaster-General and the Hon. Mr. Webber could discuss the matter between them.

The POSTMASTER-GENERAL: Get the amendment in proper form.

HON. A. NORTON: If the Hon. Mr. Webber saw the Parliamentary Draftsman, he might get it in the form he wanted, or else he could discuss the matter with the Minister, and between them they could get it drafted. They would then be able to bring the matter forward again. It ought to be done one way or the other. If it was left to the draftsman, and he did not quite understand the matter, there would be the same confusion again.

HON. W. FORREST did not see where the confusion came in. The Hon. Mr. Webber said his amendment was in proper form, and no one had proposed an amendment on that amendment. The printed amendment did not meet the difficulty at all. The original Act had been passed principally to deal with the opium question, but while the other clauses were being enforced, the opium clauses—which were the only useful part of the Act—were a dead letter. That was a highly improper state of affairs. Then an amending Bill was introduced, which made matters worse and said nothing about the opium business.

HON. J. T. SMITH said that they were discussing a Bill upon which some amendment had been moved, but the amendment was really an amendment of a measure which was not before the Committee. He asked the Chairman whether it was competent for them to discuss an Act which was not before them. The amendment should be in the direction of the Bill which was before the House. The original Act was not before them.

Hon. W. ALLAN: Oh yes, it is.

The CHAIRMAN: The question before the Committee is an amendment of section 14 of the principal Act. That is the very question which is now being discussed.

HON. J. T. SMITH: That was just what he wanted to know. Was it competent for the Chairman to allow that to be considered when that Bill was before the Committee? The amendment which had been drafted proposed to amend the 14th section of the principal Act, which was not before the Committee.

Hon. W. ALLAN: The whole Bill is an amendment of the Act.

HON. J. T. SMITH: He saw that, but he had a Bill placed in his hands, and after
[5 p.m.] he had looked through it an amendment was brought round to him and he could make neither head nor tail of it, because the amendment they were discussing did not attach itself to the Bill before them at all.

Hon. E. J. STEVENS: That amendment is not fathered.

HON. J. T. SMITH: No, it did not belong to anybody, and he did not think it should be discussed until it was fathered.

HONOURABLE GENTLEMEN: We are not discussing it; we are discussing Mr. Webber's amendment.

HON. J. T. SMITH: The amendment which had been put into his hands was not the Hon. Mr. Webber's amendment, and if he came into the House then without having previously heard the discussion he would be perfectly at sea, and for some time he had been in a bit of a fog as it was. He thought the Chairman would have put them right by saying that this amendment was not before the Committee. He hoped he would be pardoned for saying that he thought matters were not being discussed in a proper business form.

The CHAIRMAN: The hon. gentleman will permit me to endeavour to put him right. If hon. members look at the title of the Bill now under consideration they will find that it is "a Bill to amend the Aboriginals Protection and Restriction of the Sale of Opium Act of 1897, and for other purposes." Anything that comes up in the course of discussion of this Bill which amends that Act naturally brings that Act up for discussion. The proposal now before the Committee is to amend clause 14 of the principal Act by the omission of certain words. If the question be carried in the affirmative it becomes clause 10 of this Bill.

Hon. J. T. SMITH: That is what I wanted to know.

The CHAIRMAN: It is impossible to discuss this addition to the Bill without discussing its relation to the principal Act.

Hon. J. T. SMITH: If you make it clause 10 of this Bill I can understand it.

The CHAIRMAN: If the clause under discussion be carried, it becomes clause 10 of this Bill.

Hon. J. T. SMITH: Thank you. That is what I wanted. It was not mentioned before.

HON. J. COWLISHAW understood that Hon. Mr. Webber disclaimed the amendment now before them?

The CHAIRMAN: The question before the Committee is as I have just stated it, and it is proposed as a new clause to follow clause 9.

HON. E. J. STEVENS: It had been suggested that the Hon. Mr. Webber should consult with the Parliamentary Draftsman to see if his proposed amendment would vitiate the Bill, but the hon. gentleman was satisfied that it did not vitiate the Bill. It would be the part of the Government to prove that the amendment would vitiate the Bill, and there was no occasion for the Hon. Mr. Webber to consult the Parliamentary Draftsman if the Government were not in a position to prove that the amendment would vitiate the Bill.

The POSTMASTER-GENERAL: Now that they knew exactly what the amendment was it could be printed and circulated amongst hon. members, and they could consider it at their next meeting, and they would then be able to say whether it was an amendment which should be passed or not.

HON. W. FORREST pointed out that the amendment had already been printed and circulated amongst members with their parliamentary papers, about four days ago. It was not sprung upon them in any shape or form, and he was amazed at the argument which had taken place. It had already been circulated and thoroughly discussed, and he did not see the need for any further adjournment.

The CHAIRMAN: I may, perhaps, point out that on Tuesday, the 24th of this month, clauses 8 and 9 were passed, and in the journals of this House for that day there is this report—

> New clause proposed—That clause 14 of the principal Act be amended by the omission of the following words:—"Or suffers, or permits an aboriginal or female half-caste to be in or about any house or premises in his occupation or under his control"—(Mr. Webber)—To report progress and ask leave to sit again.

So that it has gone out in print to every hon. gentleman, though not in a separate form, the same as the alternative amendment.

HON. A. NORTON: That was the misleading part of it. The Chairman had pointed out that the amendment had gone out in print. Of course every amendment proposed to the Committee was sent out in the "Minutes of Proceedings," but not as the wrong amendment had been sent out, and so hon. gentlemen were apt to overlook it. Hearing the discussion the other day, he had not bothered any more about it; he thought it was the same amendment which had been separately circulated to-day.

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

The House adjourned at eleven minutes past 5 o'clock until Tuesday next.