

Queensland



Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 22 AUGUST 1906

Electronic reproduction of original hardcopy

vernment relating to the foreclosure of mortgages upon sugar properties held in connection with central sugar mills?

2. Will the hon. member afford this Chamber any information in his possession on the subject?

The SECRETARY FOR PUBLIC INSTRUCTION (Hon. A. H. Barlow) replied—

As the matter is practically *sub judice*, it is not considered expedient to comply with this request.

HON. W. V. BROWN: With the permission of the House, I would ask a further question on this subject. When will the Government be prepared to afford this information? It is a very important subject.

The SECRETARY FOR PUBLIC INSTRUCTION: I will bring the matter immediately under the notice of the Treasurer. I cannot, of my own motion, say when the return will be granted.

HON. G. W. GRAY: I am very much surprised to hear the reply given by the Minister in connection with this matter. It is one of vital importance. It is well known that the Treasurer is closing down on the industry.

The PRESIDENT: Order! I would remind the hon. gentleman that there is no question before the House.

CENTRAL SUGAR-MILLS—PRICE PAID FOR CANE.

HON. G. W. GRAY asked the representative of the Government—

What is the highest, the lowest, and the average price paid to farmers this season for cane purchased at each of the central mills—namely, Moreton, Nerang, Mount Bauple, Gin Gin, and Proserpine?

The SECRETARY FOR PUBLIC INSTRUCTION: I hope the Hon. Mr. Brown and the Hon. Mr. Gray will understand that I am simply conveying the information which has been furnished to me. The answer to this question is—

The collection of this information will require some time. I will, if possible, have the figures ready on Tuesday next, the 25th instant.

CHARTERS TOWERS WATER BOARD BILL.

FIRST READING.

On the motion of the SECRETARY FOR PUBLIC INSTRUCTION, this Bill, received from the Legislative Assembly, was read a first time, and its second reading made an Order of the Day for Tuesday next.

LEGISLATIVE COUNCIL.

WEDNESDAY, 22 AUGUST, 1906.

The PRESIDENT (Hon. Arthur Morgan) took the chair at half-past 3 o'clock.

PAPER.

The following paper, laid on the table, was ordered to be printed:—Report of the Public Service Board for the year 1905.

QUESTIONS.

CENTRAL SUGAR-MILLS—FORECLOSURE OF MORTGAGES.

HON. W. V. BROWN asked the representative of the Government—

1. Will he be good enough to lay upon the table of the Chamber any papers in the possession of the Go-

[*Mr. J. Leahy.*

LEAVE OF ABSENCE.

Hon. A. RAFF.

HON. A. NORTON, in moving—

That leave of absence for the remainder of the session be granted to the Hon. A. Raff—

said: I may explain that the leave of absence is asked for on account of the hon. gentleman's very serious illness, which has followed after a very great domestic affliction.

Question put and passed.

SUCCESSION BILL.

FIRST READING.

HON. P. MACPHERSON presented a Bill to amend the law as to the distribution of the estates of married women dying intestate; and moved that it be read a first time.

Question put and passed.

The second reading of the Bill was made an Order of the Day for Wednesday next.

NATIVE ANIMALS PROTECTION BILL.

THIRD READING.

On the motion of the SECRETARY FOR PUBLIC INSTRUCTION, this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Assembly for their concurrence, by message in the usual form.

INDUSTRIAL AND REFORMATORY SCHOOLS BILL.

THIRD READING.

On the motion of the SECRETARY FOR PUBLIC INSTRUCTION, this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Assembly for their concurrence, by message in the usual form.

ANCIENT LIGHTS DECLARATORY BILL.

THIRD READING.

On the motion of the HON. M. JENSEN, this Bill was read a third time, passed, and ordered to be transmitted to the Legislative Assembly for their concurrence, by message in the usual form.

MATRIMONIAL CAUSES JURISDICTION ACT AMENDMENT BILL.

SECOND READING.

* HON. M. JENSEN: This Bill, the second reading of which passed without division in another place, is not intended to be a general or comprehensive measure of divorce; its sole object is to remove an anomaly. Under the existing law the husband may obtain a divorce from his wife by reason of her adultery only, whereas she cannot obtain a divorce from him unless, in addition to adultery, she proves either desertion for two years, or cruelty; and this cruelty must be something more than an isolated act—it must be something in the nature of a series of acts of cruelty or persistent cruelty. The present State law has always appeared to me to be a gross injustice and a relic of barbarism.

HON. P. MACPHERSON: Oh, oh!

HON. M. JENSEN: Our Divorce Act dates from the year 1865; and the year 1865, if I may be allowed to say so, was the "dark ages" of women's rights. At that time the Married Women's Property Act had not been passed, and a wife was not allowed at that time even to give a receipt for her own earnings. I believe we owe the existence of the present law to the fact that women had not votes. Of course, if they had had, I do not suppose for one moment that this unjust discrimination would have appeared on the statute-books. I contend for this measure on the ground that it will uphold morality and not be antagonistic to it. It is useless to say that there are a large number of divorce cases. The divorce cases do not prove the immorality; the immorality exists in any event, and the divorce cases are merely the remedy. There is no penalty on the husband at the present time, unless it be publicity; the husband knows he can offend with impunity and without fear of punishment. If his wife is in a position to obtain a divorce from him, this measure is likely, in some cases, at any rate, to act as a deterrent, and in that way is, I contend, a support for morality. If it is said to have a contrary effect, I would like to appeal to the testimony of Lord President Hannen—not the present judge of the Divorce Court, but one who was a judge a few years back. Of course, the wife may obtain a judicial separation from

her husband, but not a dissolution of marriage. Lord President Hannen, on that point, says this—

The sentence of judicial separation is open to serious objection, and it would be better that whatever shall justify a court in authorising married persons to live separate should lead to a dissolution of marriage if required. I have no apprehension that this extension of the law of divorce would cause greater immorality. That depends on the habits and characters of the nation. There is no greater immorality in Scotland amongst married people than in England, though the grounds of dissolution of marriage have always been more extensive in the first-named country.

I appeal to this judge as an expert whose experience must be infinitely better than the experience of any one of us. At the present time the duty is cast upon the judge of inquiring into the question whether there is connivance, condonation, or collusion. He has done that in the past on his own account, and if this Bill passes he will continue to do it, and it would be with a keener scrutiny than is exercised at the present time. Moreover, hon. members will know that divorce is really not absolute in the first instance; there is a period of three months allowed to give the Attorney-General an opportunity of intervening to prevent the decree from being made absolute, should information be given to him that material evidence has been withheld, or that the parties are working in collusion. Even if hon. members advance the objection of collusion, my contention is that, weighing the advantages against the disadvantages, the advantages immeasurably outweigh the disadvantages. Suppose a woman has a husband who is an adulterer, a drunkard, and a vagabond; would we say to her, "Because at some future time somewhere—we do not know where—and when—we do not know when—there may be an opportunity for collusion, therefore you are to be tied for ever to this drunkard." Is this just? And if collusion is an objection, it is an objection at the present time, and for that reason the State has cast upon the judge the duty of inquiring into the question of collusion. It may be said that this is a facility for divorce. True, it is a facility, but my contention is that it is a much-needed facility, and if it is a facility for divorce it is an obstacle in the way of adultery. Moreover, the cases in which the wife will seek a divorce will be fewer than the cases in which the husband seeks it. The husband in nearly every instance is the breadwinner, and this is a strong deterrent to any divorce proceedings by the wife. The fear of the future of herself and her children will, notwithstanding the passage of this Bill, prevent her in many cases from making an application for a divorce. I have much pleasure in moving the second reading of the Bill.

* HON. P. MACPHERSON: I do not see the slightest necessity for this Bill, speaking for myself, and I intend to oppose it.

[4 p.m.] The Bill seeks to amend an Act which is adapted in part from the English Act of 1857, and the framers of that Act, who were some of the acutest minds of England, had, or imagined they had, very good grounds for discriminating between the adultery of the wife and the adultery of the husband, and for treating the adultery of the wife as very much more serious than that of the husband, and we all know that in nineteen cases out of twenty the adultery of the wife is far more serious.

HON. W. F. TAYLOR: Why?

HON. P. MACPHERSON: From the effects of the adultery of the wife. There is no doubt that this Bill, if passed, will make the obtaining of divorce, to use a common expression, "as easy as falling off a log." If a husband and wife get tired of each other, all that the

Hon. P. Macpherson.]

husband has got to do is to indicate to his wife what his amatory intentions are. He need not do it in a conniving way; he can give an indication of what his intentions are, she can have him watched, and the result is divorce. Divorce vitally affects the family; the family is the foundation of the State, and the States comprise the Commonwealth. It is within the jurisdiction of the Commonwealth to legislate on the subject of divorce. It is absolutely necessary now that they should do so. The divorce laws that we have in the various States are different one from the other, and the element which is sought to be imposed by this Bill would make them more different still. This will be the first State in Australia having a law such as this if this Bill passes.

HON. M. JENSEN: New Zealand has it.

HON. P. MACPHERSON: In Australia; I was referring to the Commonwealth. Therefore it is exceedingly advantageous that the Commonwealth should pass a law applicable in itself to all the States, in order to decide many questions, particularly that of domicile. If the Council in its wisdom passes the second reading of this Bill, I shall move amendments which may not be strictly within the scope of the Bill, because the Bill has been carefully limited to one particular thing—extending its operation to matters of extreme hardship, both as regards the husband and wife—of greater hardship than even this question of adultery; but I trust that the House will not pass the Bill. I say it has not been asked for; we have got on well enough without it, and we can go on a little longer until the matter is taken in hand by the Commonwealth.

HON. G. W. GRAY: I intend to support the Hon. Mr. Macpherson in the position he has taken up in connection with this Bill. There is no such Act in any of the other States, and I fail to see why Queensland should be the first to move in amending the Divorce Act, which at present is a scandal to all the States in Australia, with the exception of Queensland, where I think it is availed of less than any of the other States?

HON. P. MACPHERSON: The grounds are less in number.

HON. G. W. GRAY: The grounds are less in number, as the hon. gentleman says. This Bill is really, to my mind, to offer additional facilities, and I might almost say to permit the dissolution of the marriage tie in a greater degree than is afforded by the present Act. Why we should come forward with this Bill I am at a loss to conceive. If it is a measure that is required, by all means let the Federal Government take the responsibility. We do not want a measure in this State to do anything to promote divorce to a larger degree than we have at the present time. Of that, I think there can be only one opinion. I think the gentleman in charge of the Bill, if he did not say so, inferentially he did, that it was a Bill to offer additional facilities for undoing the marriage tie. He put it in a way, of course, that such a position might be taken up, and that he himself held that it would offer facilities to increase the scandal that is going on in the other States. Originally America was the one country quoted from time to time about the facilities and the easy way in which a separation could be obtained. You had only to do so-and-so, and the marriage tie was undone for all time. The hon. gentleman in charge of the Bill said that the wife could get judicial separation. Why is it not left at that? Why should we offer facilities? We know that it is doing so, and I do not think the hon. gentleman has given any solid reason why this amendment of the Divorce Act has been brought in here. It has not been asked for, and why should Queensland be the first? I think it reflects very much on this

Chamber to be to-day discussing a measure of this sort; it is a reflection on the gentleman who originally brought it in in another place, and what moved him to do so I am at a loss to understand. I told him that when it came up here, I should do my best to oppose the second reading, and that is the position I am going to take up to-day. I trust we shall have a majority for throwing the Bill out.

HON. W. F. TAYLOR: I really do not see why fish of one and flesh of the other should be made in cases of divorce. If a divorce is granted on the ground of adultery by a woman, I do not see why it should not be so in the case of a man. I think the law as it now exists is very unfair. We have heard of cases where men have been guilty of adultery, but the wife has no remedy except she can prove cruelty or desertion. Although the man may have behaved in the cruellest manner possible and become an adulterer, yet that condition of things is not sufficient according to the present law to warrant a woman suing for a divorce. Unless there are some very good grounds for it, I do not see why this state of things should be continued. I do not see why, because other places have not moved in this matter, we should wait for them to teach us the way to do what we consider right. I think we are perfectly justified in amending our law on our own responsibility, without waiting for others to take the lead in the matter. As far as this matter is concerned, I feel inclined to vote for the Bill. I think it is simply an act of justice. Of course there may be cases of hardship under it—cases in which a woman, wanting to get rid of her husband, may trump up a charge against him. I should like to know from some legal member of the House whether, in such a case, the husband would be liable to pay all the legal expenses.

AN HONOURABLE MEMBER: Unless she has separate property—no.

HON. W. F. TAYLOR: But there are so many cases in which an unfortunate woman has no property, and who may have to submit to all sorts of indignities without any redress whatever. Lots of cases have happened where a man has kept his wife and family decently enough, and at the same time has had one or two other families with other women. In more than one such case I have been the *fidus Achates*. Why should a wife be tied for life to a man in such a case as that? In her own case, if she commits one act of adultery, the husband is entitled to a divorce. The Hon. Mr. Macpherson says there are reasons why an act on the part of a man is more heinous than on the part of a woman. I should like to know what those reasons are; the hon. gentleman did not tell us. The sin appears to me to be just as great in the one case as in the other, and there should not be the slightest difference made between them.

HON. J. T. ANNEAR: The hon. gentleman in charge of this Bill said it passed its second reading in another place without a division. Hon. members will see from that how very little consideration was given to it in the Legislative Assembly. It, therefore, becomes the duty of this Chamber to give the measure that most careful consideration which I maintain it deserves.

HON. F. T. BRETNALL: Women have a vote now.

HON. J. T. ANNEAR: We ought to pay careful attention to the weighty words of the Hon. Mr. Macpherson, when he said that the law of divorce is different in all the States, and should be made uniform, and that this should be the work of the Commonwealth Parliament. I am of the same opinion. We are now federated, and we should have one uniform law applicable to the whole of the Commonwealth. This Bill

[*Hon. P. Macpherson.*]

if passed, should be called a Bill to make divorce more easy. There is another contention, and I hope the Minister will take notice of it. We often hear it said of a Bill introduced by a private member, that its importance is such that it ought to have been introduced by the Government. This very important Bill was introduced by a private member in another place.

THE SECRETARY FOR PUBLIC INSTRUCTION: We have nothing to do with another place.

HON. J. T. ANNEAR: The hon. gentleman is a member of the Cabinet, and he ought to know.

THE SECRETARY FOR PUBLIC INSTRUCTION: Constitutionally we do not know what goes on in another place.

HON. J. T. ANNEAR: I maintain that this Bill should have been introduced by the Government. I maintain also that divorce at the present time is quite easy enough.

HON. M. JENSEN: For the husband.

HON. J. T. ANNEAR: And for the wife. Anybody who has read the newspapers of the different States will have noticed three or four cases during the last few months where a divorce has been granted, and where, after the lapse of a very short time, the divorced persons have married each other again. The whole thing is not so serious as some people think. I consider this Bill is of such importance that, if a division is called for, I shall be compelled to vote against its second reading.

HON. A. GIBSON: I am with the Hon. Dr. Taylor when he says that what is good for the man is good for the woman; but there are questions surrounding this Bill which make it very difficult for me to fall in with the idea. The scope is so wide. I have been wondering, since this Bill was before us, what the essence of the 1864 Act was. I have tried to get it, but have not been able to do so; but I notice that the object of the Act of 1875 and the amending Act of 1897 is to reduce the responsibility of the married life. In this one, that is carried a stage further. The question, to my mind, is not so much of the man as the woman. The Hon. Mr. Annear has stated that a woman has got a divorce, and in a very short time afterwards has taken to her bosom another man.

HON. J. T. ANNEAR: I said the same man.

HON. A. GIBSON: What effect will the easy dissolution of marriage have upon the family life? That is the point. I know respectable homes where there is great suffering, and the children have to blush for the iniquities of the parents. We have only to look at the records of the divorce courts. Only a short time ago we read a case of what was supposed to be a respectable man and what was equally supposed to be a respectable woman, and the children were dragged in to give evidence one against the other. When I read those reports I felt ashamed of my country people that such scandals should exist in our time. In that particular case a child was cross-examined by the father's counsel as to the probability of a statement the mother made respecting the conduct of those people in their home life. If we widen this breach by making divorce easier, we shall bring more and more of our Queensland children into open contempt. I am not looking so much at the people who cannot agree together, as at the home life that is taking place there. The Hon. Mr. Jensen mentioned drunkenness. There is nothing perhaps that I would give a woman separation for more readily than drunkenness. I know it is horrid for any respectable, goodliving woman to live alongside a man who is more a brute than a human being; and I should not object to see them compelled to live apart. It has been said that this Bill went through another place without discussion. The public are coming to the impression

that in the socialistic life which is coming you will be able to take another man's wife if you choose, and she may go with another man; and so we are going to make this matter easy—putting in the thin end of the wedge to drive home what the people are crying for to-day—that you may take any man's wife or any man's daughter. I think something should be done to protect women against such blackguardism as we see so much of in our community. Unless I get better information than I have before me, I feel that I must vote against the second reading of this Bill.

HON. P. MURPHY: I have given some consideration to this Bill, and the question I asked myself was: If this Bill becomes law, will it be of any benefit to the women themselves? After giving the question all the consideration I was capable of, I came to the conclusion that it would not—that it would be a detriment to her. I am of the opinion that you cannot equalise the position of a man and a woman in the divorce court. There are reasons for that, some of which have already been touched upon. I am with those hon. members who oppose this Bill on the ground that it will have a tendency to loosen the marriage tie. The Hon. Mr. Gibson seems to think that that is a part of the socialistic idea, and that this Bill is a step in that direction. I would remind the hon. gentleman that this Bill does not come from the socialistic camp at all, but from the opposite camp. It emanates from a source that is very strongly opposed to the ideals of socialism. The gentleman who was responsible for this measure in another place is the head of an organisation that has for its object the crushing out of all socialism in this State. My principal reason for opposing the Bill is that it will not be a good thing for women even if it becomes law.

THE SECRETARY FOR PUBLIC INSTRUCTION: I was sitting in the gallery of the Legislative Assembly when this Bill was passed. It was proposed by a strong conservative member; it was supported by every member in the House; it had the strong support of the Government; and as far as anything I can say or do may influence votes in this House, I trust hon. members will pass this measure. All through this debate there has been a confusion of ideas. It is not a question of whether divorce is right or whether it is wrong, whether it should be easy or whether it should be difficult. It is a question whether the contract between the two parties to a marriage should be an even contract—not whether the offence of the wife should end in her disgrace and the dissolution of the tie which bound her to her husband, but whether similar misconduct on the part of the husband is to lead to his receiving his merited punishment. I do not think there is ever a greater slander uttered than that what may be called the working classes or the labouring classes, or whatever you may choose to call them, are lax in their morality, or that they desire to loosen the marriage tie. If I want to look for scandal, and so on, I would not look in the homes of the poor. I do not say where else I would, but I certainly think that, taken as a whole, the morality of the working classes, who are supposed to be so anxious to do away with marriage and to reduce society to chaos—to break up the family, and, having broken up the family, to break up the State—is greatly maligned, and that the wicked slanders we so often hear about them are neither more nor less than cowardly and unworthy. It is not there you find instances of what I may call glaring sin. The idea of the difference between a man and a woman in this matter arose greatly, I think, in the feudal times under the law of inheritance. They wanted to make certain of

Hon. A. H. Barlow.]

the authenticity of the heirs. The adultery of a woman bastardised the issue of the marriage, whereas the sin of a man bastardised the issue of somebody else. I cannot for the life of me see—putting aside the question whether, as to divorce in general, it is right or whether it is wrong, on which I express no opinion—I cannot see why this difference should be made between the two cases. We have admitted women to the full privileges of citizenship, and I think it is only a fair thing that she should have the same privileges that a man has. What are we to say to a case of this kind, that has come under my own notice, where an abandoned blackguard has taken his concubine and forced her into the very house with his own wife? He has never done anything legally cruel.

Hon. P. MACPHERSON: That would be cruelty.

The SECRETARY FOR PUBLIC INSTRUCTION: The hon. gentleman says that would be cruelty, and I am bound to accept his dictum because he is a lawyer, although I have very great doubts about it. Cases which have occurred of the most shameless adultery on the part of the man, but not coupled with cruelty or the baser offences that are mentioned in our statutes, have outraged the feelings of a wife, and made her life one continual martyrdom; and if we wait until the Commonwealth does something we shall wait a very long time. It is a favourite argument that we should do nothing until the Commonwealth does something. If the law is wrong, we ought to right it at once. I have no personal feeling in this matter at all; but I sincerely believe that this measure is acceptable to the great body of people in this country, and that it was called for. Though it is introduced by an opponent of my own, that is nothing to me, and I hope the House will reconsider the matter, and that they will allow the Bill to go through the second reading. At any rate, whatever amendments may be introduced by the hon. gentleman who has taken the lead in opposing it, I hope the measure will be allowed to go through the second reading, and see if something cannot be done to pass it into law.

Hon. E. J. STEVENS: This is one of those measures which hon. gentlemen approach with a certain amount of delicacy if they are not in accord with the gist of the Bill. That is the position in which I find myself at the present moment. At the first glance, it appeared to me that the Bill should be supported, because what was fair to one was fair to another, and any question of fairness always appeals to me very powerfully; but I think this is not a case which you could judge from that point of view. The Minister has rather endeavoured to lead hon. members away from the real effect of the Bill, which is what we have to consider—not only the Bill itself, but the effect it will have. It is generally conceded by those who are in favour of the Bill that it will lead to a very great increase of divorce cases. It has been stated that it is no greater fault for a woman to sin than a man, or for a man than a woman, and looking at it from that point of view, perhaps the statement is correct; but the effect is different. The effect of a woman going wrong is very much greater on the family—on the children. If we admit that these offences are noticed more or less, and are talked about, then it reaches the ears of the family, and the effect on the children growing up cannot be but bad. The wife's life is passed very much more at home amongst her children than that of the husband. The children have greater opportunities of seeing if they go wrong, and without stating the case too broadly, they gradually become demoralised. That is the reason why in effect it is a greater sin for the wife to commit adultery than for the husband. On the other point—that divorce will be made

easier—I think that should carry a certain amount of weight, too. In other countries—America, for instance—divorce gradually has been made so easy that now a residence of a very short time in one of the States is sufficient plea to procure a divorce. This may become the thin end of the wedge if the Bill becomes law, and may lead to such a position as that. A good deal has been made of the fact that this Bill passed without a dissentient voice in another place; but that should not appeal to us too much. I won't go so far as to say that they are always influenced by what may be the opinions of their constituents, but it is a fact which cannot be denied that women have a vote now, and women naturally would be more in favour of a man who supported this Bill, other things being equal, than they would for a man who voted against it.

The SECRETARY FOR PUBLIC INSTRUCTION: Then they will vote for sweeping away this House.

Hon. P. MACPHERSON: Let them do it; they are talking about it. But it will last our time.

Hon. E. J. STEVENS: I note that the hon. gentleman has been in favour of that himself, but in spite of that the House still exists. The women of the country owe a great deal to this House. Many measures which have been passed by men who have been simply seeking the votes of their constituents have been rejected by this Chamber. That reminds me of the statement that socialists are probably inclined to regard marriage ties to be less sacred than others. I do not believe that at all. I do not believe that one section of the community is more likely to go astray than the others. You will find immorality in all quarters of society, and all our legislation won't alter human nature; but my main contention is this: that the effect of the sin of adultery in a family is far more disastrous when committed by the mother than when committed by the father.

Hon. W. V. BROWN: I have very great respect for the opinions of the gentleman who drew this Bill, and also the opinions of the member who introduced it. These gentlemen, I presume, in the course of an extensive legal practice, have had facts brought to their knowledge which would justify legislation of this kind. On the other side, we have the opinion of the Hon. Mr. Macpherson, which leads one to suppose that legislation of this sort is rather ill-advised. My personal feeling is that I would like to do anything possible to make the status of women equal to the status of men, and I think the feeling of every hon. member in this Chamber would be to do what is just and right for women, and to consider them in every possible way; but while admitting that, I think it is quite patent that the women of this State have never yet shown a disposition to encourage legislation of this sort.

Hon. P. MACPHERSON: Hear, hear!

Hon. W. V. BROWN: I have seen no movement on the part of any organisation of women in Queensland to demand a reform of this kind, and that is a very important reason why we should hesitate. It is generally considered amongst the members of this Chamber that when some legislation is introduced which contains a serious innovation—something which is going to alter the position of society to some extent—that legislation should be deferred until the community have had an opportunity of expressing an opinion. I contend, in this case, there has been no decided opinion expressed whatever. There may have been one or two articles in the daily papers, but, beyond that, we have had no expression of opinion of the people on the subject. I do not mean to say that it will not be found advisable later on, but I think we

[*Hon. A. H. Barlow.*]

might very well postpone the matter for a session, at any rate. There is also another very important reason for opposing the Bill. When the Commonwealth Constitution was framed, it was distinctly stated and agreed to by the majority of the people of Australia that all the laws of divorce should rest with the Commonwealth, and I scarcely think it is within our province to interfere with legislation of the kind. I think the Commonwealth, in due time, will take this matter up, and we will have what is very much required—a universal law, as far as the six States of the Commonwealth are concerned. It is a pity if we commence by passing legislation which will make our law different from that of the other States. For the reasons I have named, I feel compelled to vote against the measure.

HON. A. NORTON: I do not like this discussion to take place without saying a word on the subject, because I believe this is one of the most important Bills, from a social point of view, that could be introduced into any Parliament. The subject is not new to me; I have heard it discussed on both sides on very many occasions. I have heard arguments that I agree with and disagree with from both sides, and, because of that, I think it is desirable that whatever is done should be done with the very fullest consideration. I am disposed to vote for the second reading, because if we get into committee I believe that arguments on both sides will be adduced that have not so far been offered, and the fullest discussion should take place on the legal points; but I believe, also, that the Federal Parliament is the body which ought to deal with it. If the second reading is negatived without a full discussion, we have not much ground to suggest to the Federal Parliament that the feeling here is in favour of this matter being brought forward by them. We ought, in the debate on the second reading, or in committee, to be able to speak in such a manner that the members of the Federal Parliament will see—notwithstanding the second reading has been passed in the other House without division—that the members of this House, at any rate, have given the subject their full consideration in all its details, especially in those which are most important for women and children. We are told it has not been asked for, and that it is doubtful whether it will be good for the women themselves. I believe in some respects it will be very bad for the women themselves; but it has been brought under my notice recently, on more than one occasion, by a number of people—by some men, and also by women who represent a number of women—that they are very anxious to see a measure of this kind passed into law. The whole of the circumstances should be considered and brought under the notice of the federal members in such a way as to impress them strongly. There is one thing I cannot help thinking. If the desire existed on the part of women of this State, or any other State, to prevent the adultery which is said to be going on on the part of husbands chiefly—I am quite sure there is a good deal on both sides, but the men are blamed for a great deal of it, probably because they do not seem to suffer the same consequences which women do—if there was a very earnest desire on the part of the bulk of the women of this or any other country, they would show their feeling more pointedly than they do in those cases in which men are received into the best circles of society and treated as though they were the best men amongst them, although it is commonly believed that they are not good men at all. I have heard of notorious cases of that kind, and because of that it would be just as well to impress upon women themselves that they must take a more active part not only in inducing members of Parliament to take up their

cause but in defending themselves against what they tell us are hideous acts on the part of many men. They would take up a strong position if they did that, but it is the fashion to look lightly on these things in some society; it is a pity, but there is no doubt it is so. I would like to see the Bill go into committee. I should like to see the amendments which the Hon. Mr. Macpherson proposes to introduce—he has introduced a good deal of practical legislation in this House—and I should like them to be fully discussed by the whole of the hon. members here.

HON. B. FAHEY: I am very pleased to see a Bill of this nature brought in. It is a Bill to extend the scope of the divorce laws, and facilitate, as it were, the dissolution of marriage. I do not think anybody will contend that the divorce laws in this State, or the other States, have had a tendency to improve or purify the social or the moral atmosphere. There has been a whittling away of the marriage tie not only in this country but in every Christian country which will, if much longer continued, do away with it altogether, and in all probability bring about a code regulating an easier access to the sexes. I have no sympathy with the remarks that have fallen from hon. gentlemen opposite—that this Bill should have come from the Commonwealth, or that it should not have been proposed until amendment of the divorce laws had taken place in other States. Surely hon. members will not think for a moment that the intelligence of Queensland is subordinate to that of any other State or the Federal Parliament! We are entitled to make laws for our own State. The law, as it stands at present, extends a license to a husband practically who may have ruined the happiness of more than one home, including his own, and exempts him from the punishment which is justly due to him for the crimes that he has committed against society and the purity of family life. In fact, the present law does more and goes further towards evil, it permits a man to do with impunity and openly what the law punishes in another. The law absolves him from the obligations he is under to his marriage contract which he has entered into seriously and solemnly for life with his wife, and the next moment permits him to enter into a solemn obligation with another woman. The statute law of this State does not look upon that man as a bigamist, but the moral law does, and so does the social code. A law which permits that is, in my estimation, a bad law, a vicious law, a mischievous law, a partial law, and an inconsistent law. It goes further. It permits a husband to allege a certain crime against his wife, as mentioned in the Bill; he brings confirmatory evidence into court and obtains a divorce. The wife, on the other hand, under the same circumstances—I do not mean to say that man's wife, but another—institutes proceedings for a dissolution of marriage with her husband. She proves beyond the shadow of a doubt—up to the hilt, as it were—the immorality of the man, but unless she can prove also that he has ill-treated her amounting to cruelty, and also deserted her, she will not get a divorce. That is an obstacle in the way of the woman which is not placed in the way of the husband; and what we may call cruelty may not be cruelty in the estimation of the law, and what we may consider desertion may not be desertion in the estimation of the law. So far as I am concerned, I view marriage as a sacred contract solemnly entered with a wife for life, and hold that there should be no dissolution of the marriage contract. Marriage means family and home; it is the dwelling-place of happiness; it is the sheet-anchor of every well-thinking man and woman in a Christian country; in fact, I may say, of the world, and any law that destroys

Hon. B. Fahey.]

that aims at the constitution of society as it is at present instituted. The law which this Bill is intended to amend I have no sympathy with. If a Bill were brought in to-morrow to repeal it I would conscientiously and strenuously support it; but as we have the law, and as there is a consensus of opinion in Queensland that that law should remain in our statute-book, I am of opinion that the punishment for the sin should fall equally upon the husband as upon the wife. Women in Queensland will soon be possessed of political influence. I hope their first effort will be directed towards protecting the sanctity of the marriage tie against what I may call the reckless rush for divorce. I shall vote for the second reading of the Bill.

HON. M. JENSEN (in reply): Before replying specifically to the objections urged against the Bill, I would like to refer generally to an assumption that seems to run through the minds of some speakers that pernicious results to morality would follow if the Bill became law. Sir Alfred Stephen was a man of great experience in these matters—a man than whom nobody was more highly esteemed in New South Wales. That gentleman, supporting a similar Divorce Bill in the New South Wales Parliament, said—

I do it with a perfect conviction, after a long experience of my own—an experience perhaps greater than that of any around me—that the measure is one which, if passed, will be calculated to promote domestic purity, as well as happiness in the married state, and so benefit the community now and for all time.

And all through his speech are scattered similarly strong remarks. He even appealed to the Deity, saying—

I hope I am not irreverent in saying that I trust in the name of the God of mercy and justice that the Bill will become law.

The Hon. Mr. Macpherson argued that this Bill is not in force anywhere else in the Commonwealth. Exactly the same Bill is not. This Bill was passed in New Zealand in 1898, and in Victoria a wife may obtain a divorce for adultery under certain circumstances.

HON. P. MACPHERSON: No; that provision expired in 1890.

HON. M. JENSEN: The hon. gentleman may be right; but as to the argument that we should wait for Commonwealth legislation, which, he says, will follow in due time, what does it amount to? The Commonwealth Parliament has not legislated yet after several years, and it has to legislate on other matters, such as banking, insurance, and quite a number of measures of general application. Why should we wait any longer to remove this gross injustice—for to me it seems that an unfair discrimination of this kind is a gross injustice. The Hon. Mr. Gray spoke of a judicial separation as being a sufficient remedy for the adultery of the husband. What is the effect of a judicial separation on morality? It seems to me to be the strongest possible inducement to immorality. I ask your support for this Bill in the interests of morality, of the home, and of fair play to the wife. As to the abuses in connection with the divorce laws in America, there divorce can be obtained for the most trumpery reasons, even for incompatibility of temper. This Bill does not propose anything of the kind. Hon. members who are bitterly opposed to divorce generally may vote for this Bill without any charge of inconsistency being made against them. They will be simply making a law applicable to the husband also applicable to the wife.

THE SECRETARY FOR PUBLIC INSTRUCTION: That is the whole question.

HON. M. JENSEN: The Hon. Mr. Gibson referred to divorce court disclosures in the newspapers. Those disclosures simply reveal an

[*Hon. B. Fahey.*

evil which exists, and they can be suppressed; and here I may, perhaps, be allowed to quote a few lines from a conservative of conservatives—Mr. Lecky, the conservative member for Dublin University—who, in his "Liberty and Democracy," refers to the aspect of the question raised by the Hon. Mr. Gibson. He says—

The scenes of shame and vice and domestic wretchedness that are often disclosed in the divorce court are certainly not produced by it, though much misery and wickedness which would otherwise have festered in lifelong secrecy are brought by its action into the light of day. It is, however, true that the exposure of the inmost secrets and of the worst sides of domestic life through the reports of the divorce court is a source of real demoralisation. The respectable portion of the Press fully recognises it, and does its best by very abridged reports to minimise it; but there is a certain section which finds in these reports a kind of literature which is, unhappily, as popular as it is degrading. It is absurd, however, to contend that this evil is unavoidable, for the publicity of divorce proceedings is almost peculiar to England.

And I may add Australia.

It is, I believe, a nearly unmixed evil. Ample guarantees for the observance of justice could be obtained without it; and, in addition to its effect in fomenting and gratifying an appetite for impure scandal, it seriously obstructs the course of justice by searing witnesses from the witness-box.

The Hon. Mr. Brown said there was no agitation on the part of women for this measure. That argument has been answered by the Hon. Mr. Norton. Naturally enough the women who are suffering from the present state of the law do not form deputations and interview the Government; and the others, who are not suffering from the present unfair state of the law, are not likely to discuss so delicate a matter with any man. I trust that hon. members, no matter what their opinions may be, will, at any rate, allow the Bill to go to a second reading.

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

CONTENTS, 6.

Hon. A. H. Barlow	Hon. M. Jensen
" W. H. Campbell	" C. S. McGhie
" B. Fahey	" A. Norton

Teller: Hon. B. Fahey.

NON-CONTENTS, 13.

Hon. J. T. Annear	Hon. F. H. Hart
" W. V. Brown	" P. Macpherson
" A. J. Carter	" E. D. Miles
" F. Clewett	" P. Murphy
" J. Cowlshaw	" E. J. Stevens
" A. Gibson	" L. Thomas
" G. W. Gray	

Teller: Hon. W. V. Brown.

Resolved in the negative.

The Council adjourned at ten minutes past 5 o'clock.