Queensland

Parliamentary Debates
[Hansard]

Legislative Council

FRIDAY, 14 OCTOBER 1921

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LEGISLATIVE COUNCIL.

FRIDAY, 14 OCTOBER, 1921.

The PRESIDING CHAIRMAN (Hon. T. Nevitt) took the chair at 4.30 p.m.

CONTRACTORS' AND WORKMENS' LIEN ACT AMENDMENT BILL.

FIRST READING.

On the motion of the SECRETARY FOR MINES (Hon. A. J. Jones), this Bill, received by message from the Assembly, was read a first time.

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

CITY OF SOUTH BRISBANE LOAN ACTS AMENDMENT BILL.

FIRST READING.

On the motion of the SECRETARY FOR MINES, this Bill, received by message from the Assembly, was read a first time.

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

GOVERNMENT INSCRIBED STOCK ACT AMENDMENT BILL.

FIRST READING.

On the motion of the SECRETARY FOR MINES, this Bill, received by message from the Assembly, was read a first time.

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

PAPER.

The following paper was laid on the table and ordered to be printed:—

Report of the Department of Public Lands for 1919-20.

REGULATION OF SUGAR CANE PRICES ACTS AMENDMENT BILL.

SECOND READING.

The SECRETARY FOR MINES: I desire to move the second reading of a Bill to amend the Regulation of Sugar Cane Prices Acts, 1915 to 1917, in certain particulars, and I wish to point out to hon. gentlemen that the Bill passed through all its stages in the Legislative Assembly in the short space of twenty minutes.

Hon. A. G. C. HAWTHORN: Under the "gag"?

The SECRETARY FOR MINES: Not under the "gag." The hon. gentleman should read "Hansard." That proves that the Bill meets with the general approval of members in the Assembly and especially with the approval of hon. members representing sugar-cane districts. Therefore, I do not anticipate the Council will take very long in passing this very important and non-contentious Bill.

Hon. A. G. C. HAWTHORN: I suppose you will tell us something of its contents.

The SECRETARY FOR MINES: The hon. gentleman has been harping about that for some days past. I explain every Bill that enters this Chamber. For the past five years I have done that, very often at great length, and if the hon. gentleman looks up the records of "Hansard" he will see that for four years I have occupied more space in "Hansard" than any other hon. gentleman in this Chamber. I explained the various measures, and I can tell him that I am anxious to get this Bill through.

Hon. A. G. C. HAWTHORN: To rush it through.

The SECRETARY FOR MINES: I do not attempt to rush Bills through. There is no need to make a second reading speech on this particular Bill for the reason that it is essentially a Committee one, and in Committee I am prepared to give information on every clause as it comes up for consideration. However, I propose briefly to outline the Bill, and to inform hon. gentlemen that this Bill is the result of a conference, held in pursuance of the sugar agreement, consisting of six representatives of the Australian Sugar Producers' Association, six representatives of the United Cane Growers' Association, and the chairman of the Central Board, who also was chairman of the conference. The Bill only includes amendments passed at that conference, and, therefore, is actually a result of the conference.

Hon. P. J. LEAHY: There is nothing put in by the Government?

The SECRETARY FOR MINES: Of course, it is a Government measure.

Hon. P. J. LEAHY: Were the amendments sent in from the conference approved by the Government?

The SECRETARY FOR MINES: The hon. gentleman should know that, according to the agreement between the Commonwealth and the State Government, if any amendment is moved in this or the other Chamber and accepted by the Government, that was not approved by the conference and the committee appointed by the conference, it would give the Federal Government an opportunity of repudiating the agreement. Although it is a Government measure, practically fathered by this Government, it is essentially a Bill resulting from that conference, consisting of representatives of those engaged in the sugar industry, and I think that that is a very good principle.

Hon. A. G. C. HAWTHORN: Can you tell us what the results of the conference were?

The SECRETARY FOR MINES: Does the hon. gentleman want me to give the whole of the resolutions of the conference?

Hon. A. G. C. HAWTHORN: That would probably give us more information than you would in a week.

The SECRETARY FOR MINES: The hon. gentleman knows that they have been tabled, although I could, certainly, if I wished to weary hon. gentlemen, give the minutes of the conference and all the resolutions.

Hon. A. G. C. HAWTHORN: Just give us roughly what is there.

The SECRETARY FOR MINES: I suggest that that had better be done in committee. I am willing to debate the Bill with the hon. gentleman if he has such a thorough grasp of the sugar industry along with all other matters that come up in this Chamber.

Hon. A. G. C. HAWTHORN: You have not told us what the Bill is about.

Hon. A. J. Jones.]

The SECRETARY FOR MINES: I have just stated it is a result of a conference. The Bill contains no provision which has not been maturely considered by the conference, and by the committee appointed by that conference; and, as I have already pointed out, if we accepted any amendment, it would have the effect I have suggested. The main alteration in the Bill is in clause 17, which amends section 15 of the present Act. It is one of the main principles of the Bill.

Hon. P. J. LEAHY: Does this Bill meet with the approval of the Federal Government?

The SECRETARY FOR MINES: Certainly. The Bill is based on the agreement and the result of that conference, which was called in pursuance of the agreement. We do not want to do anything that will jeopardise the agreement. Therefore, I say it would be absolutely improper even to accept an amendment—although we cannot ignore the right and privileges of Parliament. I want the hon. gentleman to understand that the Bill is based on the resolutions of the conference, representing those engaged in the industry, and the chairman of the Central Board, and we must admit that they may claim to have a very good knowledge of that particular industry. Clause 17 amends section 15 of the Act by extending the period for which an agreement may be made between millowners and canegrowers from twelve months to three years or more, provided the Central Cane Prices Board approves of the agreement, and the agreement must be signed by 85 per cent. of the growers, who represent 66 per cent. of the cane supplied to the mill. That is the main feature.

Another clause I may explain briefly is clause 15, which makes the power of the Government quite definite and clear. At the present time the Government have the power to take and work a mill and any appurtenance, such as a tramway. A certain case before the court will be known to hon. gentlemen. We still have that power. This Bill makes it quite clear that the Government may take and work the tramways, as well as take and work the whole of the mill and the tramways. Clause 15 makes that perfectly clear. The Government have no desire to run a private mill or take a mill and run it if the millowner is doing his duty. The Government have no desire to run any other mill than their own.

Under this Bill a mill may make application in the previous year for exemption from crushing. For instance, a mill may make application in September, 1922, under this Bill, not to crush in the year 1923. The Bill is a series of amendments of the original Act, and, as I stated, can be explained clause by clause if hon. gentlemen so desire. The Bill, I believe, will have the effect of assisting to promote the interests of the sugar-growers, a policy which has always been followed by the present Government. We have always been careful to give greater encouragement to an industry which is essentially tropical, and, therefore, essentially a Queensland industry. The Government, I say, have done all in their power to promote the interests of the sugar industry; but we find that new legislation, however good it may appear in the first instance, needs to be amended from time to time. I hope hon. gentlemen will be content with my brief explanation. I hope the Bill may have a speedy passage in this Chamber, so that we may get on with some other business. I dare any hon. member opposite to oppose this Bill, because, if he did, he would be opposing something of great benefit to the growers of sugar-cane in this State. I have much pleasure in moving—

"That the Bill be now read a second time."

[5 p.m.]

HON. A. G. C. HAWTHORN: I do not think it is likely that any hon. member on this side will oppose the Bill, but it seems to me that even in his explanation the Minister has not given us quite the facts. He says clause 12 is an amendment to enable the Government to take over the tramways as well as the mill. So far as I can see, clause 12—9c in the Act—provides for payments of witnesses' expenses. It seems to me that the clause which he pointed out is not applicable to tramways at all.

Hon. E. W. H. FOWLES: He meant clause 15, which amended the original section 12.

The SECRETARY FOR MINES: Section 12 of the old Act, and clause 15 of this Bill. I may have said the opposite inadvertently.

HON. A. G. C. HAWTHORN: I suppose that is one of the sections which gives the right to the Crown to take over the tramways as well as the mill. We all know that mills without tramways are absolutely useless. It seems to me that that clause 17 is a good one. It provides that an agreement may be entered into for a term of three years. At the present, I understand that a millowner or grower can only enter into a contract or agreement for one year.

The SECRETARY FOR MINES: That is so.

HON. A. G. C. HAWTHORN: That clause certainly should have a reassuring effect, but what will have a most reassuring effect on the sugar industry is stability and the knowledge that contracts entered into by the growers with the employees will be held to and kept by them. That is one of the weak spots in the sugar industry at the present moment—insecurity of labour—and I hope in future we shall have less of this. As far as I can see, the Bill will have the effect, as the Minister says, of expanding the industry and giving growers more confidence in the future. The fact that the amendments have been agreed to by all the growers throughout Queensland, and are going to get the acceptance of the Federal Government, should be sufficient assurance for the passing of the Bill by this Chamber. The fact also that the members in the Assembly who represent the sugar districts have not seen fit to criticise or alter the Bill should also be reassuring. I assure the Minister that we are prepared to do anything to assist the sugar industry. We recognise that next to the pastoral industry it is the most important industry in Queensland. It is an industry capable of tremendous expansion. At present we are not even growing enough sugar for Australia; if we only do that and make it certain that there will be sufficient sugar grown in Queensland to meet the demands of Australia it will be a great thing for this State. It will assist no doubt to fill up the empty spaces of the North. There is a tremendous amount of sugar land there at present not being cultivated. Not only would that have the effect of giving security and finding employment but also of settling men on the land.

The SECRETARY FOR MINES: This Bill will encourage the expansion of the mills.

HON. A. G. C. HAWTHORN: I have no doubt it will, because the more land that is put under cultivation the bigger the business

of the mills will be. Unfortunately, at the present time, it seems to me that the Australian worker and the settler are not the men who are getting the benefit of it. From what I understand, Italians and others are doing far better.

HON. P. J. LEAHY: They are good citizens.

HON. A. G. C. HAWTHORN: I quite agree with you, but I would much rather see Australians there than Italians. I have no objection to Italians; in fact, I have no objection to anyone who is prepared to work and make use of the land. I am sure everybody will be pleased to see the sugar industry extended, because it means increased work and increased revenue for the whole of Queensland. I shall have very great pleasure in supporting the Bill, and if the Minister has any further information he can give it in Committee.

HON. E. W. FOWLES: There are only two points I would like to draw attention to. It is to be hoped that this Bill, being an amending Bill, has made the original measure water-tight, so that the Government will not be involved in expensive law-suits in the sugar industry. The Government had to pay out some very large amounts in costs for verdicts given against them.

The SECRETARY FOR MINES: The case is still sub judice.

HON. E. W. H. FOWLES: Probably I am not referring to that case, I will refer to it later on. It was due to the fact that possibly the Bills in another place were rushed through in twenty minutes.

The SECRETARY FOR MINES: No, no!

HON. E. W. H. FOWLES: It is very easy to rush through their Bills in another place in twenty minutes, and then find out that there are loopholes in the Bills, and the Treasurer has to pay the costs of lawsuits. In order to show that the Government is not out of the wood yet, I would refer to the Auditor-General's report, pages 56 and 57. Incidentally, I might say that one is glad to say that all the assessments made under the Sugar Cane Prices Acts Amendment Bill have, with the exception of two mills, been paid. I understand—I am open to correction—that the assessment is something about £11,000, and that that has been paid with the exception of two mills; but I would like to draw attention to this: the outstandings on 30th June last totalled £3,701, and as the companies concerned will not admit their liability under the Cane Prices Board Act, which we are amending this afternoon, the matter has been placed in the hands of the Crown Law Department. Now, we do not wish to legislate in regard to any case that is before the courts. We do not wish to legislate in regard to any litigation that is sub judice, but we hope, now the Government have got the opportunity of amending the Bill, and have brought in quite a large sheet of amendments, that they will give this Council a chance of fully considering this measure so that any possible loopholes for litigation may be eliminated. The Treasurer at present cannot afford fancy lawsuits, and evidently two more are pending against the Government at the present time on account of the hasty way in which the Bill—I do not say in which it was drafted—was passed through Parliament. It would be just as well if there was more discussion in Parliament on such Bills and less discussion outside, so that hon. members in another place, as well as in this place, may be free to express their opinions and the Treasurer be saved thousands of pounds.

HON. P. J. LEAHY: There is one aspect of the question that has been entirely overlooked. That is in regard to the prospects of the sugar industry in the future. We know that the present agreement, under which the present prices are fixed, has a limited time to run. I understand that no arrangement has so far been made for a renewal of that agreement. It is highly improbable that the present price of sugar will be maintained under that agreement. We know that there is a strong agitation in the Southern States—partly from the jam makers and partly from the consumers—for cheaper sugar. It is quite possible that that may have an effect, and that the price to be fixed for sugar will be considerably lower than at present. It seems to me also that if the present considerations of labour and Arbitration Court awards continue there is a grave danger that it will be impossible to produce sugar at a profit. I would like to know whether that aspect of the question has been considered by the Government? The Minister has told us that the sugar industry is a great industry. I am glad to know that the Minister and the Hon. Mr. Hawthorn agree in that regard. They do not always agree. I do not wish to say anything against the sugar industry, but I wish to point out that we can make any industry a so-called great industry if we subsidise it. On the other hand, the grazing industry, the general farming industry, and the dairying industry are industries that exist without any protection whatever. Such industries are capable of existing and being developed after having survived the competition in the markets of the world, and are of more permanent value to this country than the sugar industry or any industry which has to be protected by heavy import duties. We know why we pay those duties—we believe in a white Australia, and we must be prepared to pay the price. What we have to consider is that if the new sugar agreement does not make provision for a sufficient price, if the labour conditions now existing continue as at present, the sugar industry may be ruined.

Hon. W. J. DUNSTAN: You are speaking about the 1923 season?

HON. P. J. LEAHY: I am. The general impression is that there will be a fall in the price of sugar.

Question put and passed.

COMMITTEE.

(*Hon. L. McDonald, Temporary Chairman, in the chair.*)

Clauses 1 to 3 put and passed.

Clause 4—"*Amendment of section 5*"—

HON. A. G. C. HAWTHORN asked what the words "over seven per centum" meant.

The SECRETARY FOR MINES: The old Act dealt with cane of over 7 per cent. The clause made it quite clear that it would deal with cane 7 per cent. and over.

Clause put and passed.

Clauses 5 to 22, both inclusive, put and passed.

Clause 23—"*Cane testers*"—

HON. A. G. C. HAWTHORN: He would like the Minister to explain why the words "check chemists" were struck out, and the

words "cane testers" inserted in their place. He understood that the check chemists were to be qualified chemists, and he would like to know whether the cane testers in every case would be chemists.

The SECRETARY FOR MINES: The words "check chemists" were cut out of the Bill and the words "cane testers" inserted in lieu thereof at the instance of the Australian Chemists' Institute. It did not reduce the power of the testers in any way.

Hon. E. W. H. FOWLES: Will that affect the award?

The SECRETARY FOR MINES: No.

Clause put and passed.

Clauses 24 and 25 put and passed.

The Council resumed. The TEMPORARY CHAIRMAN reported the Bill, without amendment. The report was adopted.

The third reading of the Bill was made an Order of the Day for Tuesday next.

JUDGES' RETIREMENT BILL.

SECOND READING—RESUMPTION OF DEBATE.

Hon. E. W. H. FOWLES: When the Government failed to form a quorum at ten minutes past 10 last night, I was referring to the various measures which have been passed in the different States in Australia with regard to the tenure of judges. It is interesting to note that in New South Wales, Victoria, South Australia, West Australia—in fact, in every State—they have passed legislation right from the earliest days and have found it quite unnecessary to pass much amending legislation, but whatever statutes have been passed in that connection, the tenure of judges has been made a life tenure, removable upon petition of the two Houses of Parliament. In New South Wales, I understand, the position recently has been altered, but if we go across the water to the United States we find that even there they saw the wisdom of safeguarding their Supreme Court. Article iii., section 1 of the Constitution of the United States of America provides—

> "The judicial power of the United States shall be vested in one Supreme Court and in such superior courts as the Congress may from time to time ordain and establish. The judges both of the Supreme Court and of the superior courts hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

Thereby safeguarding the judiciary of the United States. And, further, to secure the independence of the judges in that Republic, section 260 of the Judiciary Code of the United States of America of 1911 provides that the Federal Judiciary are co-ordinate with the President and Congress, and cannot, without a revolution, be deprived of a single right by the President or Congress. And then in the express words of that section provision is made that any judge appointed during good behaviour may resign after ten years, if he has attained the age of seventy years, and his salary remains payable in full for life. They have gone to this limit: that they say the tenure is for life, during good behaviour and capacity, and if at any time after ten years' service he wishes to resign he may resign, and if he does resign his salary continues just the same as if he was in the judicial office. That is the example that is set us by the greatest Republic in the Western Hemisphere.

Hon. J. F. DONOVAN: Suppose he does not resign?

Hon. E. W. H. FOWLES: He holds office during good behaviour. He is given the option of resigning after ten years' service. The bench in the United States right from Chief Justice Marshall down to the present time, has had some of the most eminent jurists in the world's history. This Bill in its present form will really degrade, to a certain extent, the judicial bench of our State, and will certainly weaken the people's esteem for the judge's voice as an expression of the law. The Bill before us not only disturbs the very great principle of security of tenure of judges, but actually——

[5.30 p.m.]

Hon. R. BEDFORD: Is another repudiation Act?

Hon. E. W. H. FOWLES: The hon. gentleman is telling the truth on this occasion. Parliament or His Majesty, by commission, appoints judges to see that the people keep their contract, but this Bill is breaking the contract with the judges, who are appointed to see that other people keep faith with their contracts. The Bill proposes to treat our own contract as a scrap of paper. To come down to actual facts, we must see how this Bill operates.

Hon. R. BEDFORD: Hon. members of this Council may be as much over seventy years of age as they like.

Hon. E. W. H. FOWLES: Yes. Why did your Government appoint the Hon. Mr Lennon as President when he was over seventy years of age?

Hon. R. BEDFORD: He does not look it so much as some of the judges look ninety, or talk like it either.

Hon. E. W. H. FOWLES: The Bill must be looked at as regards incidence. In its present form it would affect the tenure of the five present Supreme Court judges of Queensland—Sir Pope Cooper (Chief Justice), Mr. Justice Real, Mr. Justice Chubb, Mr. Justice Shand, and Mr. Justice Lukin. All of these judges were appointed for life by the State of Queensland. They gave up lucrative practices—I understand in one case it approached £5,000 a year—in order to accept the position of Supreme Court judge.

Hon. R. BEDFORD: Was that real money?

Hon. E. W. H. FOWLES: That was Mr. Justice Real's money. They accepted a Supreme Court judgeship of £2,000 a year under certain conditions, and deliberately gave up £5,000 a year to accept £2,000. This condition was a vital and essential part of their engagement. The State made that contract with its eyes open, and the judges accepted that contract. The judges did not ask for the conditions to be laid down. Parliament laid them down, and offered them to the judges, and the judges accepted them. The judges have kept faith with their part of the contract.

Hon. R. BEDFORD: They can be removed by both Houses of Parliament.

Hon. E. W. H. FOWLES: The hon. gentleman is hardly accurate. They can be

removed by an address from both Houses of Parliament to His Majesty.

Hon. R. BEDFORD: What is a Bill but an address.

Hon. P. J. LEAHY: No; that is not the same thing at all.

HON. E. W. H. FOWLES: The hon. gentleman knows he is hardly accurate in making that statement. I understand what the hon. gentleman would like to say. The judges have kept faith with their part of the contract. Parliament, on the other hand, proposes to break faith—to go back on the statutory word of this State, to throw ordinary morality to the wind, and to set an example of dishonesty to the citizens of this State by breaking a contract. No ordinary decent business man would be considered to be an honest man unless he kept faith with his contract. Some people judge everything by money standards; others have other standards. The question is whether Parliament can upset contracts solemnly made. But this was briefly discussed yesterday, and we saw then that Parliament can pass any law it pleases. It is only a question of morality as to whether the law should be changed; but, if contracts are broken, the question is whether the conscience of the people will stand for it. No Parliament which openly and flagrantly breaks contracts can wash its hands clean any more than Pilate could. It could not be called a democratic Parliament; it is an enemy to the community; and the community, with such an example before it, can only take their own course. Contrast the equivocal provisions of this Bill with the honesty of the Bill introduced in 1914. The then Government introduced a District Court Bill, retiring District Court judges at seventy years of age. They had no particular tenure. I do not think they even had pensions under their Act, although I know Mr. Justice Noel got £500 a year. One clause reads, "Every judge appointed after the passing of this Act." But this Bill practically says to the judges, "No matter what the contract we made with you, we are going to alter it without your consent, and we are going to force you to accept terms which were not in our original contract with you." Surely everybody can see, if every hon. member in this Council cannot see, that that is a pernicious principle.

The SECRETARY FOR MINES: Was there no power of removal?

HON. E. W. H. FOWLES: Yes; if they were inefficient or not satisfactory otherwise. Even if a judge is appointed for life, there is a way of removing him. The Constitution Act of 1867, under, I think, section 16, provides that power. And it is only reasonable to think that if a judge received a hint from the community that he was no longer acceptable to the people, surely he would not occupy his position one moment longer than possible.

Hon. W. H. DEMAINE: They hang on like limpets to a rock.

HON. E. W. H. FOWLES: The confidence of the public is really the fountain of the judiciary, and if it is felt that a man is not fit, on account of physical infirmity or mental incapacity, he would be soon removed by public opinion.

Hon. H. C. JONES: What did Mr. Warren say in the other Chamber?

Hon. P. J. LEAHY: Is he an authority?

HON. E. W. H. FOWLES: I do not wish to speak at any great length, because I understand other hon. members wish to speak on the matter; but I may as well, before sitting down, refer to the question of whether there should be a fixed age for the retirement of judges. I quote this from de Tocqueville—

> "The intervention of the courts of justice in the sphere of Government only impedes the management of public business, while the intervention of Government in the administration of justice depraves citizens, and turns them at the same time both into revolutionists and slaves."

That is confirmed by the bitter and blood-red experience of French and British history. Despite any protestation which may be made by hon. gentlemen in this Chamber——

Hon. R. BEDFORD: You do not think Government should have anything to do with the appointment of judges?

HON. E. W. H. FOWLES: The words which I have just read are as true to-day as they were when they were first written, and they will be just as true in the future. The hon. gentleman knows that.

Hon. R. BEDFORD: But you discount them.

HON. E. W. H. FOWLES: If the judges, under this Bill, are to have no pension rights—at the present time the Supreme Court judges have pensions——

Hon. R. BEDFORD: The Federal judges have no pension.

The SECRETARY FOR MINES: The existing judges will receive their pension.

HON. E. W. H. FOWLES: I say if the judges have no pension rights under this Bill they will be at a disadvantage as compared with judges under the original Act, which provided that, after fifteen years' service, they might retire on a pension of half their salary. The pension rates in New South Wales are on a sliding scale. I think after about five years they receive a certain amount, and when they retire they receive a certain proportion for every year over the time they have served. Under this Bill no Supreme Court judge in future will receive any pension. That is contrary to American and British custom, and it is contrary, also, to Australian custom.

Hon. R. BEDFORD: Except in the case of the Federal judges.

HON. E. W. H. FOWLES: The fact that they will have no pension rights will not be an incentive to a £5,000 per year man, such as Mr. Justice Real was, to go upon the judicial bench of Queensland. This Bill takes no account of the necessity for getting the best men for the judiciary. What inducement is it for any man to accept a judgeship when he knows that his term is insecure, his salary is alterable, and there will be no pension when he is cashiered by the Government. As a matter of fact, the judge's position should carry a pension with it, if only for the reason that a judge is not supposed to engage in any ordinary business enterprise or trade while on the bench. He is not supposed to

be even a shareholder of a company, because, if he were a shareholder of a company that had a case in the court, its interests might be jeopardised. On one occasion that ideal was carried so far by a judge of our own bench that he refused to sit on a case in which water rates were under discussion.

Hon. R. BEDFORD: He was too noble and too pure.

HON. E. W. H. FOWLES: Evidently, the present Government has no desire to maintain either the ability or prestige of the present Supreme Court, and I would say that, not many years ago, the Supreme Court bench of Queensland held a very enviable position throughout the Commonwealth. That reputation has certainly not been dimmed by more recent appointments. We come now to the question of fixing an arbitrary age. I am quite in favour of fixing the age for the retirement of judges.

Hon. P. J. LEAHY: In future appointments.

HON. E. W. H. FOWLES: Measuring the advantages and the disadvantages, one comes to the conclusion that, on the whole, it would be better to have fixed a retiring age for judges; but with this proviso—that when he comes to that age he shall be required, if the public interests demand it, to continue in that office if he is requested to do so by an impartial and a non-political committee or body. I do not believe in a life tenure for judges.

Hon. P. J. LEAHY: I do.

HON. E. W. H. FOWLES: I think we are moving forward a bit in that direction.

Hon. R. BEDFORD: What is this impartial committee you are asking for?

HON. E. W. H. FOWLES: You must have a judge on it, probably you would take the Chief Justice; but if he were implicated in the matter he would take the senior puisne judge. They could then appoint a senior member of the bar council, and if there was a law association, the president of that association. Then, also, the Attorney-General, and you could appoint any two gentlemen outside of outstanding merit. That non-political and impartial committee could look into the whole circumstances of the case and then make a recommendation as to whether a judge, at the age of seventy years, was bright and alert, an asset to the community, and should be retained by the Government.

Hon. R. BEDFORD: We should be in heaven with an impartial committee.

HON. E. W. H. FOWLES: The hon. gentleman is not aware of what is going on in the world. I am ready for every point in this matter. I have a report of a committee appointed in 1912-1913. It sat in Great Britain in 1913. The war broke off their consultations, but it recently resumed its sittings. That committee consisted of Lord St. Aldwyn, Lord Goschen, Sir Charles Darling, Charles Henry, Edwin Cornwall, R. B. D. Acland, Cecil Coward, Herbert Craig, C. H. Morton, George Roberts, and Samuel Roberts. They were a committee of business men, and they sat and called evidence from all parts of the United Kingdom.

Hon. J. S. HANLON: For what purpose?

HON. E. W. H. FOWLES: For the purpose of deciding whether there should be a life tenure for judges, or an age should be fixed for their retirement. Probably hon. gentlemen would ask what evidence was given before that committee. As a matter of fact, there were many witnesses, including judges. Among the witnesses called were Viscount Haldane, who was then Lord Chancellor; Earl Loreburn, Ex-Lord Chancellor; Lord Sumner, Lord of Appeal; Viscount Alverstone, formerly Lord Chief Justice; Sir Henry Cozens Hardy, Master of the Rolls. All these judges are very elderly judges, as a matter of fact, whose names, however, are the brightest stars in the legal world in Great Britain. In addition to those judges was a vast number of witnesses representing different professions and different occupations. Then there were seven King's Counsellors, six barristers-at-law, ten solicitors, representatives of the chambers of commerce and of London and Newcastle, and about a dozen other witnesses, including members of Parliament.

Hon. J. F. DONOVAN: I am surprised at that. You said there were seven K.C.'s there.

HON. E. W. H. FOWLES: Yes. No wonder it was an excellent report. They decided in favour of a fixed age retirement. It was a majority decision. They fixed the age at seventy-two years. But they added a rider to it, and with that decision of the majority I beg to concur. The rider was that if an impartial and non-political committee found that any one of these judges was so well serving the community that his retirement would be a distinct loss to the nation, that committee, if it liked, could take the initiative in the matter of asking the Government to retain the services of that judge, and the Government could act upon it.

Hon. R. BEDFORD: All the best wire-pullers would, of course, be retained.

HON. E. W. H. FOWLES: No; as a matter of fact, most judges in England like to retire at seventy-two. We might well admit that the fixing of an arbitrary age for the retirement of judges does not secure capacity in the bench. Some men are very much alive at eighty, and some men have their judgments gone to pieces at sixty. As a matter of fact, a good deal depends upon physical health, upon the natural care which a judge may take of himself, and a good deal depends on his constitution. Some judges at eighty are young men, alive, and in touch with affairs and can give some lucid and convincing judgments, so that seventy-two or sixty-five or any age is purely arbitrary; only seventy-two has been taken as being a fair age and that committee acts as a sort of safety valve, at any rate, and if a judge is an ornament to the bench at seventy-two he can be continued in office. If you fix the age of retirement you do not hurt any man's feelings, and you have a very convenient and impartial way of saying a judge must retire. In fact, you need not say it, as the judge would retire automatically at the age of seventy-two. That is a much better way than pursuing a judge with a Bill like this, when the same judge, I am sorry to say, happens to be in very ill health.

The SECRETARY FOR MINES: This Bill is a better way than is provided at present—that is, on a resolution of both Houses.

HON. E. W. H. FOWLES: A resolution of both Houses was part of the contract. This Bill is not part of the contract.

Hon. R. BEDFORD: Seventy years of age is a good enough time for a man to get out.

HON. E. W. H. FOWLES: It is a wonderful thing if that is so, that it was never thought of when the judges, or any one of them, reached the age of seventy years. One of the judges of the Land Court is well over seventy-five, and yet he is not mentioned in this Bill. Take the case of the Hon. President of this Chamber. William Lennon, as Deputy Governor, appointed William Lennon to be a member of this Chamber. That showed he had very good capacity. William Lennon also, when he became a member of this Council, found himself appointed by William Lennon to be President of this Council. That showed capacity surely, and I suppose the Hon. President—whom we are all glad to see in his position and in good health and strength—can lay credit to himself of having passed his seventy-fourth year: and yet he is appointed by a Government who think that judges ought to be thrown on the scrap heap when they reach seventy years of age.

Hon. R. BEDFORD: The functions of a judge and those of a Governor are quite different. The functions of a Governor are nothing more than that of a rubber stamp.

HON. E. W. H. FOWLES: That is the hon. gentleman's unfavourable opinion with regard to it. Our present Governor, I suppose, is the most hard-worked man in the community, and he is probably the very antithesis of a rubber stamp, at all events. He probably works twice as hard as the hon. gentleman. However, fixing the age of retirement at seventy or seventy-two years does not ensure capacity in the discharge of judicial functions, and the real safety valve lies in the discretionary powers given under the present Act of Parliament or in the discretionary powers that would lie in an impartial committee if such a suggestion were accepted by the Government. Of course, it might well be said there are strong arguments in favour of seventy. Public servants may be retired at sixty-five, or they may be kept on for a few years longer, and some of them have been retired before they reached sixty years of age—most valuable public servants also, and it is a pity the State has not the advantage of their services. We have stipendiary and other magistrates who retire at sixty-five, or they may be kept on. The leading banks and insurance companies very often call upon their officials to retire at a certain age under certain conditions, and I suppose most men, including perhaps some hon. gentlemen in this Chamber, will find themselves ready for retirement when they reach seventy, and not quite fit for pugilistic encounters in this Chamber at all events. There are arguments against retiring men at seventy, and arguments may be found in this Chamber. Without throwing bouquets at anybody, I suppose hon. gentlemen in this Council generally listen when the Hon. Mr. Thynne addresses it. Probably he has one of the most acute minds in Queensland at the present time. As a matter of fact, he very seldom contributes to the debates without having something to say. The experience on the other side of the world, and the experience in the 100 years of Australian history, has shown, especially on the bench as well as in the ecclesiastic service, that some of the finest work in the world has been done by men—divines and judges—well over the age of seventy. At the present time on the British bench, the lords of appeal in ordinary include Lord Shaw, who is probably one of the most respected men in Great Britain. He is seventy-one years of age. Lord Atkinson, for instance, a most renowned judge, is seventy-nine years of age at the present time; and the greatest living authority on patent law is Lord Moulton, who is seventy-seven. Lord Dunedin is seventy-four. Lord Sumner sixty-two. Then in the Court of Appeal we have Lord Sterndale, Master of the Rolls. He was appointed to that high position only two years ago. He was appointed to that position at seventy years of age. Then Sir Eldon Bankes is sixty-seven. If we come to the King's Bench judges, we find that Mr. Justice Darling is seventy-one years of age, Mr. Justice Bray is seventy-nine years of age, and Lord Coleridge is seventy years of age. There have been judges in the last fifty years in British history in the full vigour of their faculties—men of the world, men of affairs, statesmen, publicists, jurists, and judges in the full vigour of their faculties—between seventy and eighty, and doing excellent service to the State, and under this Bill, if they were in Queensland at the present time, they would be simply cashiered. Hon. gentlemen will recall to mind that some of the finest brains in the world to-day, and some of the men guiding its destinies, are well over seventy years of age. General Foch is seventy this year. The French Prime Minister is no less than eighty years of age, and he is guiding the destinies of that great nation. Lord Halsbury is ninety-eight years of age, and feeling very well, thank you. Lord Millman, of South Africa, at the present time is seventy years of age. Admiral Togo is seventy-four years of age—the Nelson of Japan. Admiral Von Tirpitz is seventy-two. Lord Balfour, one of the most philosophical minds living at the present time, is seventy-three. Lord Finlay was appointed Lord Chancellor at seventy-four. The Earl of Rosebery is seventy-four. And if we go across to America, where they are supposed to scrap everybody at forty——

Hon. G. H. THOMPSON: The working class only are scrapped at forty.

HON. E. W. H. FOWLES: Elihu Root, I suppose, belongs to the workers. He is a very industrious man, and he is seventy-seven at the present time. Look anywhere you like, and you will find that some of [7.30 p.m.] the greatest men in the world are well over seventy. And the people of Queensland, as well as ourselves, may well ask, why should the State be deprived of the services of judges while serving their country faithfully, conscientiously, and without the slightest complaint from any part of Queensland? Not one charge of negligence or of inefficiency has been alleged against any one of those judges, and yet this Bill comes along and says to the judges, "Go; in defiance of our contract, go."

Hon. R. BEDFORD: You know that one judge at present can be attacked on various grounds.

HON. E. W. H. FOWLES: To which judge does the hon. gentleman refer? If there is any judge like that, surely there are other ways of inducing him to retire rather than by a Bill which will bring disgrace on Parliament? The Bill is bad and good, just like the hen's egg which the curate had—bad and good in parts. The good parts of the Bill, which I think will commend themselves, are those which relate to the fixing of a retiring age. In the sixty-two years of our history we have not had a retiring age for

judges. If you measure its advantages against its disadvantages, it is my opinion that the advantages outweigh the disadvantages, and it might be better to incorporate a retiring age in our statute, and we might fairly adopt in toto the decision of that very expert committee which sat upon this matter, and which gave a minority as well as a majority report and, instead of rushing into inexpert legislation such as this, produce a Bill governing the judiciary, which would give a lead to Australia. The bad point in the Bill is that there are no pensions fixed. We want to get the best men on the bench.

Hon. R. BEDFORD: We will get the best kind of political accidents that judges have always been.

HON. E. W. H. FOWLES: Supposing at the age of sixty-nine a judge who had to retire at seventy met with some reversal of fortune——

Hon. W. J. DUNSTAN: Such as some of the men imported in the early days.

HON. E. W. H. FOWLES: And he should find himself at that age leaving the bench with scarcely anything to live on, probably the temptation that would come to that judge might be too much for him. But if he knew that when he retired at seventy he would have a pension, he would be able to go on with his work quite impartially, not taking advantage of any lucrative offers made to him during the last year of his judgeship.

Hon. R. BEDFORD: You said the judges were such fine men that they voluntarily gave up £5,000 a year?

HON. E. W. H. FOWLES: Under the old contract. There is a dignity about a judgeship. I am dealing with the principles of the Bill, which sweeps away pensions for judges, and I consider it a good thing, when a judge comes to the end of his judicial life, that he should not be cast upon the mercy of the State.

Hon. H. G. MCPHAIL: What about the poor man who is breaking stones on the road for thirty years?

HON. E. W. H. FOWLES: This provision is not in keeping with the Government's policy, which includes old age pensions, police superannuation, general public service superannuation, and such schemes, all of which enable or compel public servants to make provision for their latter years.

The SECRETARY FOR MINES: There is a big difference between the salaries.

HON. E. W. H. FOWLES: The difference in salary does not matter much. I am dealing with principles.

Hon. H. G. MCPHAIL: A man who gets such a large salary should be able to save something.

HON. E. W. H. FOWLES: Generally, when a man's income goes up, his expenditure goes up correspondingly. When a man is earning £200 a year he spends £210; when he is earning £1,000 he spends £1,020. The large salaries of archbishops and bishops are not spent wholly on themselves. Positions have to be maintained in some way or another. Every private citizen has not the public Treasury behind him, and if he makes losses he cannot debit them to the consolidated revenue. If the Bill were to apply to future judges only that would be fair enough. A judge would accept the contract with his eyes open; but this Bill seeks to break existing contracts. I do not think, when hon. gentlemen consider this Bill thoroughly, that they will vote for the whole Bill. The Bill certainly fixes a retiring age for future judges. Now, as to whether a judge should have a pension. We must remember that we debar him from practising, and say to him, "You must give the whole of your time to the administration of justice."

Hon. E. J. HANSON: At a high salary.

HON. E. W. H. FOWLES: At a salary which is very much less than that which he, perhaps, has been receiving as a practitioner. In England, King's Counsellors get as much as £40,000 a year. One is getting £70,000 a year, and another, a junior man, too, £25,000 a year at the bar; and they are asked to accept £6,500 a year—I think that is the amount of an English judge's salary. I understand Sir Edward Carson gave up about £40,000 a year to accept a judgeship. He gave up a quarter of his income to go on the bench. The salary of the Supreme Court judges of New South Wales is £2,500.

Hon. R. BEDFORD: Is that fixed by Arbitration Court?

HON. E. W. H. FOWLES: I do not know whether the salaries of hon. gentlemen in another place were fixed by Arbitration Court. If a judge is going to litigate on cases running into £100,000 we must not cut down his salary to an absurdity. I hope hon. gentlemen opposite do not stand for the sweating of judges.

Hon. R. BEDFORD: They give up so much for a judgeship and are repaid by prestige and social status.

HON. E. W. H. FOWLES: Their tenure is secure.

Hon. R. BEDFORD: It is secured during the ordinary mean period of their usefulness.

HON. E. W. H. FOWLES: Who is to judge of their usefulness? Suppose we take a consensus of opinion as to the hon. gentleman's usefulness.

Hon. R. BEDFORD: Of course, you would not understand.

HON. E. W. H. FOWLES: If it were not contrary to the Standing Orders, I would say it is a Bill which is related to several other Bills foreshadowed, and it is almost impossible to refer in full to this Bill without referring to sister Bills which will come on for discussion next week. The two bad principles in this Bill referred to, in regard to which I hope the Hon. the Minister will accept suggestions or amendments, are those which I have mentioned. I would strongly urge following the provisions of a corresponding Bill passed by the New Zealand Legislature, which we may regard as a model measure and which will ensure impartial administration of justice. There the judges are appointed for life and are absolutely free from political control. I have pointed out that a previous Government dealt with the retirement of judges in a very different way, and it is rather extraordinary that this Government, which it is generally considered is in its dying hours, should rush through this Bill in a session which lasts from August to October and incorporate two such principles as I have mentioned, one of which is debatable—that referring to pensions—and the other is repudiatory, relating to the retirement of the judges in contravention of a pledged agreement between the State and the judges.

HON. A. J. THYNNE: I have not heard very much of this debate, so, perhaps, I may in some measure repeat what other hon. gentlemen have said. I think I may say that, personally, in approaching the Bill, I have, I suppose, the longest experience of any legal practitioner in this State. It is forty-eight years this month since I was admitted to practise as a solicitor of the Supreme Court of Queensland. I think hon. gentlemen know that during that time I have had a busy legal practice and have had the opportunity of studying and seeing the working of our courts and legal institutions very intimately. One of the first things necessary in connection with our tribunals is that they should be in the position in which they are likely to possess the confidence of all the people in the State. I think that the ideas behind this Bill are based very much on inattention to the history of our Supreme Court tribunal. There has been no greater fight by the people of Great Britain in securing their own liberties; and in order that Supreme Court and High Court judges should be made independent of political influence or any other influence, it was necessary that they should have an assured life appointment so long as they were well behaved, and an assured income to put them beyond anxiety, or temptation from litigants. I go back all these years in the history of Queensland and I can recall not one instance in which there has been any semblance of accusation against the independence or fair-mindedness of Supreme Court judges. Our judges are regarded as men worthy of the position of Supreme Court judges and their views are treated with respect by the High Court of Australia. A judge when appointed has to make a great change in his life. He has to be continually on his guard socially or otherwise with people who are likely to be litigants before him. A judge has almost to become an isolated person socially and publicly and live quite a different life from the one that he had been living before he became a judge.

Hon. J. S. HANLON: That is the ideal, but does that actually happen.

Hon. P. J. LEAHY: In the majority of cases.

HON. A. J. THYNNE: I would like to know how many of our judges belong even to a social club. They did so as barristers, but most of them withdrew from membership on being appointed judges in order to keep themselves absolutely clear of being brought into too friendly contact with others in a way which might, perhaps, affect their judgment later on when any of those people in those clubs or associations came before them. The care which I know has been shown by our judges in that respect is beyond all praise, and I know they have lived very largely retired lives, away from the associations under which they had been working, in order to keep themselves clear and free of imputation of unfairness. I heard the Hon. Mr. Fowles speak of some of the judges appointed in Great Britain—judges who had made great sacrifices of income in order to take their judgeships. Our judges have made sacrifices, too. I venture to say that some of the judges have had their incomes reduced by 60 or 70 per cent. when they accepted the position of judge, but you may say that the incomes which they made before were excessive. It is the high quality of their work the people are prepared to pay for, and do pay for, and the work which barristers had to do in those days was extremely hard work, a great strain on the physical health of the individual, and a great amount of self-denial was needed in order to keep them up to the capacity of doing their work at the bar. One of the things established in that old struggle in England was that judges should be appointed for life. Here it is proposed to break that arrangement, which was contained in the commissions issued to the judges. Instead of having life appointments, they are to be put off at the age of seventy. I recognise, with all my experience and practice, that the ability of our judges in handling questions before them is greater than we find in any member of the bar or legal profession. I regard the work of the judges with the profoundest respect. I am sure that some of the judges here are equal to any work that comes before them, even though some of them may be past the age limit.

Hon. J. S. HANLON: The appeals to the Privy Council of late years do not suggest that.

HON. A. J. THYNNE: Suggest what?

Hon. R. BEDFORD: Their very high ability. Freedom from political bias.

HON. A. J. THYNNE: Let me say that the Privy Council judgments have been open to question throughout the legal profession of the world.

Hon. R. BEDFORD: The High Court of Australia, too.

HON. A. J. THYNNE: So it might be, but that does not follow. You have difficult questions raised, and men will take different views according to their judgments. That is one of the uncertainties of the law. That is one of the things we legal people would be delighted if we could get rid of. I think that this Bill will only accentuate that difficulty. I think that this Bill is a bad one, because it adds another instance to the unfortunate record which Queensland has got of breaking its contracts. What is there to prevent the accusation being made that this change has been made for political purposes? To-day—I am going to speak from another point of view—owing to the impressions gained in other parts of the world, Queensland is unable to establish her credit in the British money market. The same thing will apply when it is realised that a blow has been struck at the independence of our Supreme Court and at the independence of our judges, and, in order to make that blow, an injustice has been done and a contract broken. Then, I would like to say the hopefulness of restoring the confidence in Queensland public affairs is very remote indeed. To-day we all know we are striving to seek the money we require outside the British Empire. That is repugnant to British principles.

Hon. J. S. HANLON: The British Government itself borrowed money in America.

HON. A. J. THYNNE: That was a matter of war requirements for the time being, but they are paying it back, and I hope that they will pay it back and be quite independent before very long. But I regret to say that even a small State like Queensland is acting in a way which tends towards endangering the interests of the whole Empire and may remove some of the interests which they have in our welfare, and people

may think it does not matter whether we belong to the Empire or not. I think that one of the necessities of Australia to-day is that she should be backed by our Empire to the very fullest extent.

Hon. R. BEDFORD: And make an alliance with America.

HON. A. J. THYNNE: Yes, if they will make it. I think that this Bill will have a bad effect financially upon the future of the State.

Hon. W. J. DUNSTAN: New South Wales passed similar legislation, and floated a loan which was fully subscribed.

The PRESIDING CHAIRMAN: The hon. gentleman has expressed a wish that he shall be heard in silence. He does not too frequently occupy the time of the Council. Interjections at all times are objectionable, and every hon. gentleman, particularly when he expresses a wish to be heard in silence, and is not accustomed to interject himself, should be heard in silence.

HON. A. J. THYNNE: The idea behind this Bill is, perhaps, a rather difficult one to express; but the old idea holds good that sane people are presumed to [3 p.m.] understand the consequences of their actions. The consequence of the action in connection with this Bill will be the destruction of confidence in the Supreme Court. I am not going too far when I say there is a strong presumption that the purpose of the Bill is to break confidence in the Supreme Court. The three legal Bills introduced by the Government are such that, when adopted—if they are to be adopted—they will have the effect of lowering the Supreme Court; lowering its power and weakening confidence in it, both of litigants and the general public, and doing serious harm to this country. When these vacancies are declared by this Bill, I believe it is intended that the District Court judges shall be appointed. The idea of replacing our present distinguished Supreme Court judges by District Court judges is a very regrettable one. I do not wish to say anything derogatory in the slightest degree of any of the District Court judges. I believe they are doing their duty fearlessly and well, but the experience which they have had since they have been on the District Court bench is almost a disqualification for the higher functions of a Supreme Court judge. A District Court judge has very limited jurisdiction in civil matters, and the class of case that comes before him is in no way to be compared with the complicated and difficult class of cases which a Supreme Court judge has to deal with; and the duties of a District Court judge, by his absence from the bar and by his want of experience, almost unfit him for the higher duty. It is proposed to remove distinguished judges and to put in their places judges who, without any disrespect to them, are not really qualified for the position. It is going to lower the whole standard of administration of justice, and it is not going to help litigants very much. I would urge very strongly that this measure should not be proceeded with, and I am urging this, not in the interests of my profession, not even in the interests of judges alone, but I urge it mostly in the interests of the general public of the State, who stand to lose one of their strongholds of justice by the removal of the present judges and the appointment of inferior judges to the higher positions. I use that word "inferior," because they belong to an inferior court.

The SECRETARY FOR MINES: There is a time when the vacancies must occur.

HON. A. J. THYNNE: Then the vacancies can be filled by qualified men who have had actual experience in the conduct of cases of big importance, who have had more practice in the dissection of evidence, who have had great experience in dealing with juries, and all the other functions with which a barrister has to be proficient, just as the other judges had who have been appointed to the Supreme Court bench. To appoint judges who are not qualified for the position is going to injure the court and the status of the judges. The interference with the life appointment is going to exclude from the bench the most capable men for the position. One of the attractions of the position is that they should be provided by law with a fair pension when their health breaks down and they are not equal to continue their work. That is one of the attractions. Why deprive them of it? Take the three judges away from the Supreme Court bench and you at once incur a pension liability of £3,500 a year. You take three District Court judges, with a salary of £1,000 a year each, and you make them Supreme Court judges, which means another £3,000 a year added on to the expenses, that is £6,500 a year for the carrying out of this experiment. That is a waste of money, especially as the judges who it is supposed are to be appointed will have to undergo a period of apprenticeship to the higher duties. The other portions of this Bill dealing with the appointment of future judges raises another point. I do not believe in making appointments to be determined at a particular age, because very often men at the bar and men on the bench do not attain their full maturity and ripe experience before they are seventy. They continue improving, as most of our judges have done; and it is a great mistake to limit the age to seventy years. That will have the effect of limiting the selection which might be made, and would thereby lower the status and standard of the court. I hope this Bill will not be passed by the Council.

HON. A. G. C. HAWTHORN: In discussing a Bill of this kind one cannot avoid a certain amount of reiteration of what has already been said. The most objectionable feature of the Bill is the fact that it proposes to repudiate a contract. Whatever the Government or the Minister may say, there is no doubt about it there is repudiation in this Bill. Here we have a contract made with a number of men that they shall become Supreme Court judges under our Constitution Act of 1867, and that they shall hold those offices during life time, subject to the condition that they may be removed on an address by both Houses of Parliament, presumably on the ground of misconduct.

The SECRETARY FOR MINES: There is repudiation more or less in every Bill.

HON. A. G. C. HAWTHORN: And there is a great deal more repudiation in this Bill than in many of the Bills we have had before us. One would have thought that the Government, by this time, would have had a sufficient lesson from the results of their former repudiatory legislation to have prevented them bringing in repudiation such as this in a case where it is absolutely

unnecessary. They are not going to make any money out of this, as they did by the Land Acts Amendment Bill, but they are going to lose money by it, as the Hon. Mr. Thynne has pointed out. It is very difficult to know the reason why this Bill is brought in.

Hon. R. BEDFORD: To secure efficiency of the Supreme Court bench.

HON. A. G. C. HAWTHORN: It will not have that effect. It will lessen the efficiency of the Supreme Court bench. The gentleman who it is rumoured is going to be the future Chief Justice—I do not think anyone will contend that he is the man that the present Chief Justice is, or equal to the men who are being removed. I quite endorse what the Hon. Mr. Thynne said—that these judges are still fully capable of carrying out their duties. Mr. Justice Real appeared before the bar of the other House and fought his own case, and there was not a member in the Assembly who said that Judge Real was incapable. In fact, the only legal member on the Government side said he was quite satisfied that Judge Real was still capable of carrying out his duties. Further than that, Mr. Justice Real intimated that if he were put off the bench he would go back to the bar.

The SECRETARY FOR MINES: You are not suggesting that this is a personal matter? It is reform.

HON. A. G. C. HAWTHORN: It is a political matter, pure and simple. The Government have been very careful about the appointment of the new Chief Justice. They even went to the trouble of trying to get him put on the Supreme Court bench for life, but the Privy Council said he is only to hold a position on the Supreme Court bench during the term for which he was appointed to the Arbitration Court, and it cost the Government £4,500 to find that out. We see, also, that two District Court judges—who, as the Hon. Mr. Thynne said, are not equal, in their legal status, to the Supreme Court judges—are going to be put on the Supreme Court bench. But the chief objectionable feature in the Bill is the repudiation of a contract. These men have got a contract—a statutory obligation entered into by the Government of Queensland on their appointment that they shall be there for life, and shall not be removed except by an address of both Houses of Parliament.

The SECRETARY FOR MINES: Is that not a more harsh way than the present way?

HON. A. G. C. HAWTHORN: It is the legal way. It is part of their contract, and the Government should have carried that out. The judges would not have objected to that, because they would know that in the ordinary way both Houses of Parliament would not pass such a resolution unless they felt that it was absolutely necessary. That is the weak spot in this Bill, and I would suggest to the Government that they pause before they actually put this Bill into force. It will be carried, because we know they have a majority in both Houses, and they can do what they like at the present time. As has been pointed out, it is a strange thing for a dying Government to bring forward a Bill of this description, containing repudiatory provisions. Then we have, in addition to that, the question whether the future working of the Supreme Court is going to give the people confidence in that court. If you remove the confidence of the people in law and justice, as has been said very plainly and rightly, you will remove the linch-pin of law and order. A very serious thing that is indeed. The roots of our present judicial position go back to the time of the Stuarts, when they had judges whom they removed as they liked, so that, if a judge did not carry out the King's behests, he was put out. But that brought about such a terrible condition of affairs in England that the Act of Settlement of 1701 was brought in, whereby it was decided that judges should hold office as long as they carried out their duties faithfully. They could be removed by resolution of both Houses of Parliament. That system is in force in Australia, and in England, and in the United States of America, and it has proved most acceptable by giving the people confidence in the judiciary, and any departure from that practice would result in irremediable loss and injustice to the people generally.

(*Debate interrupted by message from Deputy Governor.*)

APPROPRIATION BILL, No. 2.

ASSENT.

The PRESIDING CHAIRMAN announced the receipt from the Deputy Governor of a message, conveying his Excellency's assent to this Bill.

JUDGES' RETIREMENT BILL.

SECOND READING—RESUMPTION OF DEBATE.

HON. A. G. C. HAWTHORN: As has been very well said in a letter which I saw in the Press lately, such Bills as this will sap the independence of the courts, will cover them with suspicion instead of with the respect they at present enjoy, and the judges will become the instruments of unscrupulous politicians; and, as a result, they may be deflated—to use a term which the Government has coined—as the Government think fit, if they refuse to carry out the behests of the politicians. It will give the Executive full control over the judiciary. This, no doubt, is a most dangerous position and will destroy that sense of confidence in the courts which is so essential to justice. I think there would be no objection to that portion of the Bill which provides for retirement of judges in future at seventy. Those judges would take office with the full knowledge that they are going to be retrenched at seventy without pension, and that would be their contract. But there would be still this: That still further alterations might be made whereby that age might be reduced to sixty-five, or even to sixty years, and that would leave a certain amount of insecurity in the minds of those who take on the judgeship in future. We would not then get the best kind of judges, because barristers of standing, who can make more than £2,000 a year, would not be likely to take up a judgeship without a pension. There is no inducement for him to do so, because his position would be liable to be attacked by the Government in power. We want to make the position attractive, and secure against removal, so that barristers of the best standing would take it up. I cannot see one tittle of advantage in this Bill. We have had no intimation from the Minister or the Government that anybody has asked for the Bill. The public have not asked for it, nor the legal profession. There is no complaint that the judges are unfitted to carry out their duties. On the contrary, we find they have

the confidence of the general public, and we can only come to the conclusion that there must be some political move behind it. These Bills have given rise to considerable unrest amongst the public, who see that the Government have possession of the legislature and now they are endeavouring to get possession of the judiciary, and nobody feels that they can have any confidence in the Government as constituted. The only thing we can look forward to is that the present Government will be put out and that an incoming Government will repeal these repudiatory measures, and put Queensland into such a position that it will regain its lost credit and move ahead as it should do. One hon. gentleman opposite remarked that verdicts of some of our judges were frequently reversed in the Privy Council, but there is not much in that statement. I may point out that the decisions of judges are mere matters of opinion. Some years ago there was a case brought by a firm in the Mediterranean against the Bank of England. That case went from court to court, and before it was finished it was dealt with by over sixty judges. Eventually, I think the bank won; but, when the number of judges was totted up, it was found there were about thirty-three on one side and about thirty-four on the other. That was a remarkable thing for a case of that magnitude, and it showed the difference of opinion among judges. On the whole, this Bill is badly advised. If the Government had any regard for the credit of Queensland they would withdraw the Bill, or certainly its objectionable features, the repudiating of contracts and the belittling of the Supreme Court judges. But I suppose it is of no use trying to induce the Government to do that. They have made up their minds to put the judges out no matter what the result may be. It is only another instance of the Government's repudiatory actions. We have been damaged sufficiently already by the present Government, and this Act will be another mark against the credit of Queensland.

HON. A. H. PARNELL: Before the Bill goes through I would like to say a few words, because it is a Bill I am very sorry to see brought forward. There is only one objection I have to it—that is, to the retirement of the judges at seventy when they have a life tenure. The whole trend of the Bill is to injure the credit of Queensland, and this Bill will not be acceptable to the community at large. The judges are very able men, and when they accepted these positions they were earning very large salaries at the bar. If you want to command the best men you must make the position attractive. Even though some of our present judges are over seventy they are capable of carrying out their duties creditably and they are an ornament to the bench also. If the Government is not going to adopt that principle right throughout the public service there must be something behind it. There is nothing to be gained by it, as pointed out by previous speakers.

Hon. W. H. DEMAINE: Then, why speak?

HON. A. H. PARNELL: I have a perfect right to speak.

Hon. W. H. DEMAINE: Wearisome repetition.

HON. A. H. PARNELL: Perhaps if the hon. gentleman listens he may hear something new.

Hon. W. H. DEMAINE: I am afraid we will not get that from you.

HON. A. H. PARNELL: Nor from the other side either. During the last few days Bills have been passed through in great haste. One was introduced by the Minister in four and a-half minutes, another in seven minutes. This evening he was more considerate and gave us fifteen minutes. Hon. members on the other side do not appear to want to say anything upon the Bill.

Hon. W. H. DEMAINE: You gave us it in the neck when you were in the majority.

HON. A. H. PARNELL: You got very fair play. Now, regarding police magistrates—I think they should have a power equal to the judges, and that they should only be removed on a motion of the two Houses [8.30 p.m.] I have only to go back to 1893, when one of the leading judges was brought to book by a Cabinet Minister, and it seems as though the time has come when Queensland should make a protest at the way some of the Bills are brought before us now, and the way in which they are put before us; and we have a perfect right, I think, to have the Bills fully explained to us, considering they have to be put through in one day. Such a Bill as this is not a credit to Queensland. We know it will be passed, but I want to say it will damage the credit of Queensland. It will be bad in the eyes of people outside, and we shall lose three of the ablest men that ever sat on the bench.

HON. P. J. LEAHY: I beg to move the adjournment of the debate.

The SECRETARY FOR MINES: I rise to oppose the motion. I think it is ridiculous that the Chamber should meet at 4.30 p.m. and the adjournment be moved at 8.30 p.m. This would be an unreasonable hour to adjourn, and I hope the Council will not carry the motion. I oppose it for the reason that members opposite are endeavouring to take the business entirely out of my hands. It is true that the Hon. Mr. Leahy is recognised as the leader of the other side of the Council. He endeavoured to make an arrangement with me about adjourning the debate, but I did not agree to such an adjournment. Had I made an arrangement, I would willingly have abided by it. Last night the hon. gentleman moved the adjournment of the debate, and they were defeated and the debate was continued; but before the Hon. Mr. Fowles had concluded his speech, an hon. gentleman opposite called for a quorum of the Council, and, although six or seven of the hon. gentlemen opposite were present, and we had at least eighteen when a count was taken on this side of the Council, and twenty members constitute a quorum, when the division bell rang we were one short.

Hon. A. G. C. HAWTHORN: You promised to knock off at 10 o'clock.

The SECRETARY FOR MINES: I was assuming that the Hon. Mr. Fowles would finish his speech. In making the arrangement last night with the Hon. Mr. Hall, I assumed that the Council would adjourn after the Hon. Mr. Fowles's speech, and not in the middle of his speech.

Hon. P. J. LEAHY: We always adjourn early on Friday night.

The SECRETARY FOR MINES: I hope hon. gentlemen will be reasonable. Surely the second reading stage of the Bill can be passed to-night. I do not desire to force legislation through this Council. We have

been reasonable, and we have had reasonable discussions. The Hon. Mr. Fowles talked on the Bill for hours, and if hon. gentlemen opposite are annoyed because one of their number occupies so much time, it is hardly my fault.

Hon. P. J. LEAHY: If I got up now it would be 11 o'clock before we finished.

The SECRETARY FOR MINES: I have listened carefully to the debate, and the Hon. Mr. Fowles spoke for hours; and anyone who listened to him will agree it was a very clever compilation, and that he adduced some very interesting arguments and several interesting facts. The Hon. Mr. Thynne spoke on this Bill for less than twenty minutes. It ill becomes me to make a comparison. I do not agree with the arguments he used, but I think from his point of view every member will agree that he said all he could say in twenty minutes. There was more meat in his speech than in the lengthy speeches of hon. gentlemen who intend to talk to-night.

Hon. P. J. LEAHY: You are now making another speech on the Bill.

The SECRETARY FOR MINES: I am not in the habit of making a long speech. I am speaking on the adjournment. I ask you to be reasonable. I have no desire to stonewall this measure or to prevent discussion, but I think it is unreasonable for hon. gentlemen to move the adjournment of the debate at this hour. I am not prepared with the work I have to do in my department daily to go on with any other business.

At 8.40 p.m.,

HON. T. M. HALL said: I beg to call attention to the state of the Chamber.

The SECRETARY FOR MINES: I beg to call your attention, Mr. Presiding Chairman, to the fact that the hon. gentlemen are deliberately walking out of the Chamber. I ask that their names be recorded.

The PRESIDING CHAIRMAN: I find that a quorum is present. The Chamber will proceed with the business.

Question put and negatived.

HON. P. J. LEAHY: I have addressed this Chamber on a good many occasions, and I do not think I have ever addressed it under the difficulties that exist at the present time. I was hoping that the Minister would permit of the adjournment of the Chamber at an early stage in the afternoon because the usual practice is to adjourn early on a Friday, and, not expecting that I would have to speak to-night, I did not go to any trouble in the way of preparing notes; and for this reason it is highly improbable that my arguments will fall in the proper consecutive order as they would if I were able to place them before you under more favourable conditions. It is hardly necessary to say that this is a Bill of the very highest importance. It is one of the greatest changes in the Constitution that probably has been made in this country since it was given responsible Government in 1859. And when a change of this kind is attempted to be made, it is only right to expect that the Government, or the Minister representing it here, should make out a case in favour of the Bill. I ask any hon. gentleman, no matter on which side of the Council he may sit, who listened to the brief speech delivered by the Minister in moving the second reading, could he come to the conclusion that he made out a case in favour of this drastic change in the Constitution? We know that he did not make out a case. It is possible that some kind of a case might have been made out in favour of the Bill.

The SECRETARY FOR MINES: Make out a case against it.

HON. P. J. LEAHY: We do not often hear what takes place in another place and rarely read the debates in that place in "Hansard." We, therefore, have to look to the Minister to give us convincing reasons why this extraordinary change in the Constitution should be agreed to. He failed to give us those reasons and he failed therefore to present his case to the Council. In a court of law—it is not necessary for me to say that I am not a lawyer; but I have been associated with lawyers so much the last few years that I have learnt something about the procedure in a court of law—if a man brought in a case, and only made out a flimsy case as the Minister did, he would instantly be nonsuited, and the defence would not be called upon.

The SECRETARY FOR MINES: There is a difference of opinion on your side. The Hon. Mr. Fowles agreed to a fixed age, and the Hon. Mr. Thynne approved of appointing for life.

HON. P. J. LEAHY: The fact that we disagree on this side is a fresh argument, and fresh proof—if proof were necessary—of the independent character of hon. gentlemen who are opposed to the Government. Does anything of the kind ever take place on the Government side? I have never yet seen an instance where any two hon. gentlemen on the Government side, no matter what their opinions may be, have voted different to what the Government have decided. On this side of the Council we often disagree.

An HONOURABLE MEMBER: You always vote together.

HON. P. J. LEAHY: Not always. Very often during the past few years the Hon. Mr. Hawthorn and other members on this side have been on different sides to myself, and the Minister reminds me that the Hon. Mr. Fowles and the Hon. Mr. Thynne disagreed. I may tell the Minister that I disagree also with something said by the Hon. Mr. Fowles, but these are more or less minor matters. There is no question whatever that on the vital principle of the Bill every member on this side of the Council will stand against it. That is to say, in opposing a breach of contract with the judges we stand together as one man. I go further than that, and say in my judgment, if there were a referendum on this subject—in passing I may say the Government believed in this referendum once, but in recent years they appear to have repudiated it; that is another instance in which they have gone in for repudiation—if a referendum of the people were taken on this Bill the sense of justice of the people would be so outraged that they would reject a Bill of this kind by as great a majority as they gave in favour of the Council in 1917, because, after all, if Labour politicians have not a sense of justice public opinion has that sense of justice. However, we are not allowed to appeal to the people outside, and while they know of the fight we are putting up we know it is hopeless. It is, nevertheless, our duty to speak against a principle which we think is unjust and

which we think casts a stigma on the Parliament of this country. Let us take our Supreme Court and go back to its long and distinguished history, and on the whole I venture to say that the record of that court is of the very highest character. We have had judges in the Supreme Court, including Sir Samuel Griffith and others, who would compare favourably with the judges of any other Australian Supreme Court. Our judges have given every satisfaction. There is no demand that I know of from any section of the community in favour of altering the present system of the appointment of judges. Certainly there is no demand from the lawyers. There is no demand from litigants, and there is no demand from the general public. Why, then, it may be asked, do the Government propose this drastic change? There are rumours—I do not attach a great deal of importance to rumours as a rule, and I do not think I ever made any unfounded charge—but there are rumours that the intention is to displace the present judges with the view of giving some of these appointments to persons who are more in favour of the Government. I do not know whether that is true or whether it is not. Results will show that, but certainly in connection with institutions like the Supreme Court that has given such complete satisfaction, when we find a Government trying to alter the whole system without giving any vital or convincing reason in favour of the alteration we are justified in assuming that there is something below the surface. We assume that in the absence of any vital argument in support of the change.

Hon. H. G. McPHAIL: When there was a vacancy the Labour Government appointed the Hon. Mr. O'Sullivan to the bench.

HON. P. J. LEAHY: I do not think for one moment that members of the Government are fools, whatever I may think of their supporters, and I do not think the members of the Government would do a thing without a motive, though so far there has been no proper motive or reason assigned for the introduction of this Bill.

Hon. R. BEDFORD: Of course we could not have the motive of going in for superior efficiency in the Supreme Court. That could not be the motive, could it?

HON. P. J. LEAHY: I do not think it would be your motive. The Hon. Mr. McPhail said something about the Hon. Mr. O'Sullivan. A Labour Government did not appoint the Hon. Mr. O'Sullivan to the Supreme Court. They appointed him to the District Court.

Hon. H. G. McPHAIL: They appointed an opponent.

HON. P. J. LEAHY: Probably the reason was that there was not a Labour barrister in Queensland qualified for the position, and they could not help themselves. Let us consider the terms upon which these judges took up their position. If anything in this country should be sacred it is the Constitution Act—that Act which is the foundation of this country and the foundation of the liberties that we are enjoying; and in that Act conditions are laid down for the appointment of judges to the Supreme Court, and the conditions regarding their emoluments and what should happen in the event of any incapacity or improper conduct. When these judges, past and present, accepted appointment to the highest court in the land they were perfectly aware of these conditions, and I say that any violation of these conditions is a breach of contract with those judges, because if there are two parties to an agreement and one party has the legal power of evading that agreement without consulting the other, it is still none the less a moral breach of contract. Suppose for the sake of argument that the Hon. Mr. O'Carroll was an ordinary employer and I was an ordinary workman, and there was a contract between us: Does that hon. gentleman mean to say that he or either one of us could break that contract without legal consequences?

Hon. R. J. CARROLL: Such contracts are broken every day.

HON. P. J. LEAHY: No. The only contracts that I know of which are broken every day are Arbitration Court awards. As showing the important position occupied by the judges, and the intention of the framers of the Constitution Act that they should be above political control, we have to remember that the salaries of judges are not included in the Estimates. They are never voted in the ordinary way. The salaries are provided for in the Schedule. All this was done to put the judges above any chance of a political majority; and, further, all this was done, not in the interests of the judges, but in the interests of the people. A judge, after all, although he is a high-class barrister, and apparently above the average, in all other respects is a man. The Hon. Mr. Fowles and some others have gone back into pretty ancient history in regard to this matter, and I do not desire to go into it in detail, but any person who has any knowledge—even an elementary knowledge—of English history knows that there was a time when the judges were the creatures of the Crown. We have heard of the infamous Judge Jeffreys and other judges, who simply did what they thought the Crown desired. They were subservient to the Crown, and it was only after long centuries of agitation on the part of the people that the judges gradually got a life tenure, with salaries quite independent of King or Parliament, which is the position of our judges to-day. That very thing which the democracy of England for generations tried to obtain—the independence of the judges, which is just as important as the jury system, which has been described as the bulwark of British liberty—that very system is the system which the so-called democracy of Queensland is endeavouring to sweep away. I urge again that the judges did not get that position of a life tenure and those fixed salaries for their own benefit, but in order that they should be placed far and away above any political influence, and that they should dispense justice without fear or favour. It is pertinent, perhaps, to inquire whether, when a man reaches the age of seventy years, he has survived his usefulness. I am still a long way from seventy myself, so that I am not making it a personal matter. Let us take a comprehensive survey of the position. I will take a survey of some of the outstanding men of the world. First of all, let us take the world war. Was it the young men who did the greatest work in that war, apart from the actual fighting? There is an old saying that has come down to us, "Old men for counsel and young men for war." That saying is as true to-day as ever it was. It is true that young men fought bravely; but who supplied the directive power behind those

men? It has been said that the supreme factor in the late war was Marshal Foch, who is not a young man; he is not too far short of seventy. Then take the octogenarian Prime Minister of France—M. Clemenceau. He is in full possession of his faculties.

[9 p.m.] Take some of the other representatives of the different countries in the big councils. They also are old men. My argument is that a man may be seventy and yet be in full possession of his mental faculties, and should not be pole-axed. You can go right back to the dawn of history, and, so far as we have a record, we find that old men have played their part, not only in this country, but in America and England and recently in other countries. Take Lord Halsbury, who has celebrated his ninety-first or his ninety-second birthday, and who edited at that advanced age the laws of England. Come nearer home, to that splendid old veteran of whom we all ought to be proud—Mr. John McMaster, ninety-one years of age, and still in full possession of his mental and physical powers.

HON. R. BEDFORD: Why not talk of the age of a cabbage?

HON. P. J. LEAHY: I think the Hon. Mr. Bedford will live to be a very old man, because only the good die young. I could multiply instances innumerable showing the capacity of old men. I do not say that Mr. McMaster could play tennis at ninety-one; but, old as he is, I think he would be able to hold his own very comfortably with Mr. Bedford. My point is that, while an old man of seventy is not able to undergo the same physical exertion as a younger man, so far as his judgment is concerned, it is just as good as or possibly better than it was when he was twenty years younger. Take another instance. I am sure Mr. Bedford will remember this. I take it the hon. gentleman has read or heard something about the great Lord Bacon. We know the wonderful work that great man produced. He was as high up as he could possibly get. He wrote a number of books which have come down to us. Some historians say that as he grew older his work showed more brightness than that of his younger days. Take our judges here. I suppose as a man gets older he has a larger number of days off each year through minor causes; but, taking our judges, I do not think the public have suffered anything from that fact. I do not think the law has been costly or that the operation of the law has been slow. There have been none of the incidents of the law's delays. Why, then, should we get rid of these men? I remember Lord Byron's reference to the gladiator who was "butchered to make a Roman holiday." Are these judges to be butchered to give positions to other people?

HON. A. G. C. HAWTHORN: Evidently.

HON. P. J. LEAHY: That is the position. I suppose that no body of impartial men could be convinced that there is any justification for removing our judges in so far as capability is concerned. When we find that a system is giving satisfaction and that there is no public complaint, that the wheels of justice are moving quickly and smoothly, why should we disturb that system? The facts I have mentioned should convince any impartial person that we should not have a Bill of this kind. The Act provides that it shall come into operation on a certain date to be fixed by proclamation by the Governor in Council. Why not say that it shall come into operation at some particular time? Why leave the Governor in Council to fix the date? Mark the grave danger in this. The whole tendency of this Bill would be to give the Legislature a pull over the judiciary, and they then might be subject to the whim of the Government, just as in olden times they were subject to the whim of the King. Surely that is not democracy. But I do not think I have the audience I am entitled to. I beg to call attention to the state of the House.

At 9.10 p.m.,

Quorum formed.

HON. P. J. LEAHY: I was commenting on that provision of the Bill which gives the Government power to enforce this measure at any time they like, and I object to that because I think it puts the Government in a position to wield power over the judges, and I say that is a very bad thing in the interests of justice. That, I think, is one of the things that if this Bill reaches the Committee stage might be eliminated with advantage. I desire to refer in a very general way to the measure without taking it clause by clause. We have something here—a section which defines what the judges are. They are also mentioned in another Bill; but, inasmuch as they are mentioned in this Bill I consider I have a right to refer to them, and this is a question, as the Hon. Mr. Thynne pointed out, whether under this particular system we will get the very best judges we should have. My own idea of the appointment of judges is that when a judge retires, whatever vacancies there are, they should be offered by the Government to those men at the bar with the largest practices, other things being equal; that is, to the men who are most highly qualified for the position. And in doing this, regard should not be paid to their political views or social standing. We should remember that the object should be to get the highest class of judges. If we retire judges at seventy years of age in future, and do not give them pensions, is it at all likely that we will get the same high class of judges that we have been fortunate enough to get up to the present time? I am told, of course, that the judges of the High Court have to retire at seventy years of age, and they retire without any pension. So far as their retirement at seventy years of age is concerned, there is no repudiation, because they know when they accepted their commission that that was the condition. The same thing applies to the pension. The argument of hon. gentlemen who favour the Bill is that, because this is the system of the Federal High Court, the same thing should apply here. Though we have some judges on the High Court bench who are the ablest in Australia, all the judges of the High Court are not as able as some of the State judges. One of the reasons for that is that they have no life tenure, and another is that no provision is made for pensions. Some of the ablest barristers would not accept a judgeship under those conditions. We are sometimes told that, as public servants are retired at sixty-five years of age, it will be no injustice to the judges to retire them at seventy. But it must be remembered that, when these people joined the Government service, they quite understood what

the position was, and in their case there is no repudiation. In nearly all the cases, when these judges were appointed, they gave up a lucrative practice and lost money by doing it, and they did it because of certain provisions in the Constitution Act, which they thought would be respected and scrupulously carried out. The Hon. Mr. Fowles said that, provided this seventy years' limit only applied to future judges: but I still have an objec- But I have an objection—I admit that there is no repudiation so long as it applies only to future judges, but I still have an objection, because I do not think you will have the same good class of man, and we may not get the impartiality that is desired. Supposing you agree to the innovation of fixing seventy years as the retiring age. Governments come and go. A judge may be approaching the age of seventy years, and he may think he can bring some influence to bear upon the Government to alter the law by extending his term of tenure. It is only a human thing that a man may be consciously or unconsciously influenced in favour of the Government in the hope that he might get an extension of office. If we have a life tenure that man would be quite independent of the Government. He need neither crave their favour nor fear their frown. We are told that some of the judges are incompetent. There is a way of dealing with such judges. I do not think any of the lawyers—and the Hon. Mr. Thynne and the Hon. Mr. Fowles are included amongst them —will say that any one of them is incompetent; and I would like, at least, to quote a remark by the only lawyer that belongs to the Labour party. He was asked a question: "Is the Hon. Mr. Justice Real competent?" This member replied, "Yes." Here is an admission made by the only member of the Labour party who is a lawyer. If I made such a statement it might be said it was only the result of partiality. But, as that statement comes from the only lawyer of the Labour party, surely it should carry weight. No doubt the same thing can be said of the other judges. Therefore, we must come to the conclusion that, on the grounds of competency, these judges are well able to discharge their duties. But if any one of them is not competent enough to discharge his duties, there is nothing easier for the Government to do than to pass a resolution through both Houses dispensing with his services. There was a time in this House when we had a majority; but to-day the Labour party could remove an incompetent judge in twenty-four hours. Why, then, insist on this Bill? Let us suppose, for the sake of argument, that one of these three judges is not competent: is that a reason why the two others should be sacrificed? Supposing some bandits kidnapped a man and held him to ransom, and they are attacked by friends of that man. Those friends will find that they cannot destroy the bandits without destroying the kidnapped man with them. Would any sensible man suggest that the captured man should be shot with the bandits—that the innocent should be destroyed with the guilty? The same thing applies to the judges. Surely there is some sense of fairness in the minds of hon. gentlemen opposite? I say that a deliberate injustice is being done to these men. The British Government has said to the Queensland Government, virtually, "You have not honoured your bonds." What will the home people think of us? The reputation we have got at the present time is not too good.

The SECRETARY FOR MINES: Do you think this will affect our credit?

HON. P. J. LEAHY: I do. We know perfectly well that the reputation of this country —financially and otherwise—has suffered very much as the result of the actions of this Government. As a result of those actions, we have been forced to do what no other British possession has done. We have been forced to go to America and pay a high rate of interest for a loan, though the Government will not admit it. If, in addition to those actions, we now pass this Bill, what will the people think of us? What will the Americans think of us? When these repudiatory actions were committed a year or two ago we had an independent Supreme Court which gave some protection to the people, but, if the independence of the Supreme Court is damaged, as is proposed under this Bill, and there is more repudiation, I ask: What effect is that going to have on our credit in other countries? And all this for what? If this Government wanted to get rid of the judges, why did they not negotiate with them? Why did they not bring in a Bill to terminate their services and let the salaries go on? There would have been no breach of contract.

The SECRETARY FOR MINES: That is a reflection on the judges—that it is only a matter of money.

HON. P. J. LEAHY: No; you could not then be accused of breach of contract.

Hon. H. G. MCPHAIL: Do you think, if one of these men reached the age of 110 years he should still be on the bench?

HON. P. J. LEAHY: We know that most men do not live to 110 years. I would not expect the hon. gentleman to ask me such a question. We have this provision in clause 3—

> "Every existing judge and every future judge who shall hereafter attain the age of seventy years shall retire from office on the day on which he attains such age;
>
> and thereupon in every such case the office of such judge shall by virtue of this Act become vacant, save for the purpose of completing the trial of any action as next hereinafter provided."

That is a very wide provision. Suppose that a trial is going on, according to this clause, so long as that action lasts, that judge cannot be displaced. I can easily conceive the possibility of the trial of such an action being strung out for six months. There are a whole number of vague things in the Bill, and that is one of them, and it is evidence of the careless way in which the Bill is drawn. Then we have a provision for the filling of vacancies. It says any vacancy shall be filled by the appointment of any duly qualified person. What is a duly qualified person? We know there is in the Bill a provision that a solicitor who has been practising for five years may become a barrister, and a barrister or solicitor may become a judge. Therefore, it is in the power of the Crown to appoint a solicitor to the bench. They may form the opinion that he is a competent person for the

[9.30 p.m.]

position. By way of finishing up, it might be desirable if I very briefly recapitulate the arguments which, under considerable difficulty, I have endeavoured to give against this Bill. They are—

Firstly, I say—and say emphatically—that it is the very essence of repudiation, and that all the verbiage in the world cannot brush aside the repudiation which is in this Bill.

Secondly, I say there is no evidence whatever that all or any of the judges are incompetent. In fact, all the evidence is the other way.

Thirdly, I say this Bill is intended to give, and does give, the Government power over the judiciary, which is a power no Government should possess.

Fourthly, this Bill strikes at the fountain of justice.

Fifthly, I say it is going back upon the result of the successful struggle for the independence of the judiciary which engaged the attention of genuine democrats in England for centuries.

Sixthly, it will destroy the confidence of people in other lands with whom we have dealings, and who, under ordinary conditions, desire to lend us money.

I say it is one of the greatest blots on legislation that I have ever seen submitted to either branch of the Legislature. I have come to the conclusion that all argument is wasted upon hon. gentlemen opposite. I may have convinced the judgment of hon. gentlemen, but I will not influence their votes.

Question put and passed.

COMMITTEE.

(Hon. L. McDonald, Temporary Chairman, in the chair.)

Clauses 1 and 2 put and passed.

Clause 3—"*Retirement of judges*"—

HON. A. G. C. HAWTHORN: This was the most repudiatory Bill that they had ever come across. This clause provided that the existing judges over seventy years of age should retire on the passing of the Bill and on the official proclamation, and he could only characterise it as one of the most rascally provisions introduced in any part of the world.

HON. W. J. RIORDAN rose to a point of Order. Was the hon. gentleman in order in describing it as a "rascally" provision?

The TEMPORARY CHAIRMAN: The hon. gentleman is not in order in using that term, and I must ask him to withdraw.

HON. A. G. C. HAWTHORN: Then he must use a less emphatic term, and he would call it confiscatory and repudiatory. It repudiated the rights of men who had been appointed in all good faith by the Government of Queensland to carry out the most responsible duties of a judge of the Supreme Court. It was going to do Queensland a great deal more harm than even the Land Acts Amendment Act. He was sorry to think that the Government would condescend to carry out a confiscatory clause of that kind, which would injure three men who, during the whole of their lives, had carried out their duties faithfully on the full understanding that they would have the contract which they entered into carried out in its entirety. That contract was being broken by a dishonest Government.

The SECRETARY FOR MINES asked if the hon. gentleman would withdraw the term "dishonest Government." It had no application to that clause. It was quite unparliamentary, and should be withdrawn.

The TEMPORARY CHAIRMAN: It is quite clear that the term is offensive, and I would ask the hon. gentleman to withdraw.

HON. A. G. C. HAWTHORN: Under the circumstances, he would bow to the Chairman's ruling, and withdraw.

Clause put and passed.

Clause 4—"*No retiring pension to future judges*"—put and passed.

The Council resumed. The TEMPORARY CHAIRMAN reported the Bill without amendment. The report was adopted.

The third reading was made an Order of the Day for Tuesday next.

LEGISLATIVE ASSEMBLY ACT AMENDMENT BILL.

SECOND READING.

The SECRETARY FOR MINES: I desire to move the second reading of a Bill to make provision for the re-election without poll of members of the Legislative Assembly who resign in order to seek election to the Parliament of the Commonwealth and are nominated for such re-election. I had quite a lengthy speech prepared on this Bill for the information of hon. gentlemen opposite.

HON. A. H. PARNELL: I hope the Minister will deliver it. I would like to hear it.

The SECRETARY FOR MINES: If the hon. gentleman wants all the information I am capable of giving on this Bill, I will gladly give it. This is rather an important Bill. I would like to point out, in moving the second reading, that a resolution was passed at the Premiers' Conference on 31st May, 1920, which provided that the Commonwealth Government be asked to amend their law so as to make it possible for any person whilst remaining a member of the State Parliament to be a candidate for the Federal Parliament, and, failing that, that the States be requested to amend their law so as to effect this purpose in the same way as is done under the Tasmanian law. Really this measure emanates from the Premiers' Conference. Personally, I see no reason why a member of Parliament should not be allowed to contest a Federal seat, especially as a Federal member is allowed to contest a State seat. It is unlikely that a member of the Federal Parliament—which, after all, is the higher Parliament, where they are supposed to deal with broader national questions—would contest a State seat. Nevertheless, he has that privilege, and I think it is a wise provision, and I thoroughly believe in this particular measure for that reason. I think it a wise provision to alter our law and make it possible for any member of the State Parliament to be allowed the privilege of being a candidate without having to sacrifice his seat and having to sacrifice his position as a member of this Parliament in order to become a member of the National and higher Parliament. In my opinion the State Parliament should be the stepping-stone to the higher Parliament. So far as our party—I am speaking of the Labour party—is concerned, it is

only right that members should submit to a plebiscite and be selected in a constitutional way. But members should not be debarred from becoming candidates. Section 70 of the Federal Electoral Act provides that no person can be nominated for the Senate or the House of Representatives if he was within fourteen days a member of a State Parliament. Effect is being given in this State, and has been given in New South Wales and other States, to the resolution carried at the Premiers' Conference. But in Tasmania they have passed an Act which allows a member of the Tasmanian State Parliament to become a candidate, without sacrificing his position as a member of the State Parliament, for the Federal Parliament, only if he contests a seat in Tasmania. The Victorian Act introduced in the Legislative Council, just as this Bill is introduced here, allows a member who is a member of the Victorian Legislative Assembly or the Legislative Council to contest any Federal seat in the Commonwealth. That is the difference between the Victorian Act and the Tasmanian Act. When we federated, our State Parliaments, no doubt, lost the services of some of their best men. The first Commonwealth Parliament was formed largely of members who had experience in the various States as parliamentarians. The Bill I am introducing and desire to see carried is largely on the lines of the Victorian Act. I believe in the principle of the Bill thoroughly, and I hope that this Council will agree to its passage. I think we can put the Bill through the second reading and the Committee stages, after which we may adjourn. I hope the Bill will be carried. I believe it to be a reasonable provision and a just thing to the members of the State Parliament in Queensland, and that probably it will be a benefit eventually to the higher or National Parliament by allowing State members with parliamentary experience to become members of the Federal Parliament. I have very much pleasure in moving the second reading of the Bill.

HON. A. G. C. HAWTHORN: I do not think the principle of this Bill is a good one. Why should a man be allowed, if he has £500 a year in one House, to have a chance of depriving some other man outside, equally capable, of a chance of getting into the Federal Parliament and getting £1,000, and still retain a hold on the £500 he is getting from the State? I do not know what is at the bottom of it. It was probably agreed to by some conference; but the principle, to my mind, is wrong. If a man is sufficiently tired of the electors of Queensland to want to throw up his particular seat, he should stand or fall by it and allow another man who may be more acceptable to stand for his seat in the State Parliament. It seems to me there is a good deal of the dog-in-the-manger business about it. I am surprised to see the Labour party, whose aim always has been, so far as I know, one man one job, supporting it, because this gives a man a hold on two jobs.

The SECRETARY FOR MINES: The Premiers assembled in conference do not agree with your views.

HON. A. G. C. HAWTHORN: Are they infallible? Is there any particular merit in being a Premier? I do not see that that prevents our having our own opinion.

Hon. L. McDONALD: Two National Governments have passed similar measures.

HON. A. G. C. HAWTHORN: I said I am surprised that the Labour Government introduced it. This gives an opportunity to hold on to two jobs. A man ought not to have it both ways. He ought to stand or fall by one or the other. Under this Bill, however, he can say, "I am full of this one; out I go and get another one." I think that is an insult to the electors whom he is proposing to desert. If he can get another job why does he want to hold on to the one he wishes to relinquish? He knows very well that when he goes before the electors again no doubt he will go out. If the Bill is passed, I should think it could be made to apply to the Legislative Council as well as to the Legislative Assembly.

The SECRETARY FOR MINES: We cannot do that.

HON. A. G. C. HAWTHORN: Why not?

The SECRETARY FOR MINES: Because we are not elected.

HON. A. G. C. HAWTHORN: It does not matter. We know if a member leaves here to contest a Federal seat he has no hope of being elected again if he sits on this side of the Council while the present Government is in power; but if he sits on the other side he is sure to come back.

Hon. R. BEDFORD: The King sent for me twice.

HON. A. G. C. HAWTHORN: I think we ought to be given equality of opportunity. It is a very selfish game to apply this only to one branch of the Legislature. Both should have the same opportunity. If the Bill goes through, I think it ought to be amended in that way, so as to give equality of opportunity to both sides, and let members of the Council have the same privilege as members of the Assembly.

HON. A. J. THYNNE: To my mind, no legislation of this kind is necessary. I think the Act passed by the Federal Parliament, which prohibits the election of a member of the State Parliament, is entirely beyond the powers of the Constitution of the Federal Parliament. The constitution lays down who are to be the candidates, and it does not exclude any State members of Parliament. I think the first Parliament contained many members who were members of both Federal and State Parliaments simultaneously. I think the attempt by the Federal Parliament to put an exclusion or disability on any individual in this State, or any State, is not provided for by the Constitution, and is beyond the powers of that Parliament, and it only needs, in my opinion, the matter to be tested to find that the whole of that legislation is unnecessary and improper. I say now that I still hold the same view—that a member of any House of Parliament is entitled, in spite of the Federal Act to the contrary, to sit as a Federal member, notwithstanding he is a member of the State Parliament.

Question put and passed.

COMMITTEE.

(Hon. L. McDonald, Temporary Chairman, in the chair.)

Clause 1 put and passed.

Clause 2—"*Vacancy occurring in Assembly by resignation of member to contest Federal seat*"—

HON. A. G. C. HAWTHORN asked the Hon. the Minister whether he had considered

the question raised by him. He noticed the hon. gentleman had been dicussing the matter with the Minister in charge of the Bill in the other Chamber. He hoped the Minister placed before him the idea of allowing members of the Council to participate in the benefits conferred by the Bill.

The SECRETARY FOR MINES: The hon. gentleman evidently considered that it was possible to have the Bill so framed to allow them to make it permissible for Legislative Councillors to contest a Federal seat. It was done in Victoria, because the Victorian Upper House was an elective Chamber. They could not possibly frame that Bill to include members of the Council in its provisions, for the reason that appointments to that Chamber were entirely in the hands of His Excellency the Governor.

Clause put and passed.

The Council resumed. The TEMPORARY CHAIRMAN reported the Bill without amendment. The report was adopted.

The third reading of the Bill was made an Order of the Day for Tuesday next.

[10 p.m.]

ADJOURNMENT.

The SECRETARY FOR MINES: I beg to move—That the Council do now adjourn. I would recall the fact that hon. gentlemen last night endeavoured to take the business of this Chamber out of my hands. They caused the Council to adjourn by not forming a quorum, and an attempt was made to do the same thing to-night. People who are not conversant with our Standing Orders may be under the impression that a quorum is formed in this Chamber under our Standing Orders; but, according to the Legislative Assembly Act, a quorum in that Chamber consists of sixteen out of seventy-two, while here where we have fifty-nine members it requires twenty to form a quorum. I point that out because, no doubt, we shall have to consider an amendment of the Constitution to bring it more into line with the Legislative Assembly, or hon. gentlemen opposite will need to attend more regularly. Hon. gentlemen on this side of the Council will also have to attend. But hon. gentlemen opposite deliberately walked out of the Chamber and left this side of the Council to form a quorum. I do not think this is right and proper.

Hon. T. M. HALL: Why do you not abolish the Chamber and be done with it?

The SECRETARY FOR MINES: I intend to draw the attention of the Premier to the matter with a view of amending legislation so that a lesser number may form a quorum. I hope that hon. gentlemen will attend on Tuesday, so that the business of the Chamber will be carried out without having to ring the bell for a quorum.

HON. A. G. C. HAWTHORN: The Minister has been giving us a lecture about not assisting him with a quorum. We did that intentionally. The Minister told us that he would knock off at 10 o'clock.

The SECRETARY FOR MINES: But not in the middle of a member's speech.

HON. A. G. C. HAWTHORN: There was no qualification made. He said he would adjourn the Council at 10 o'clock. When 10 o'clock came, we were quite ready to adjourn. We wanted the Minister to do so, and instead of that he went back on his agreement and wanted us to continue. He is even allowing his repudiation tactics to come into an arrangement of that kind. We would not agree to that and walked out of the Chamber. He says he is going to recommend to the Premier to amend the Constitution. He also suggested last week that he would get another half a dozen members appointed. I do not know whether he has gone back on that suggestion. Already he has twenty-three members, quite sufficient to make a quorum. They were appointed for that purpose. That was the reason given to the Governor for the appointment of the last fourteen—that you could not form a quorum when you wanted it. You have thirty-three members and yet we find last night that you had not sufficient to bring the quorum up to twenty. It is the duty of the Government to have the members in attendance.

Hon. T. L. JONES: It has nothing to do with the Government.

HON. A. G. C. HAWTHORN: I say it has. The position is ridiculous for the hon. gentleman to complain about us not forming a quorum and then reporting it to the Premier.

HON. A. H. PARNELL: Whenever the Minister in charge of a Bill required the attendance of members, it has been usually the practice for him to get up at the conclusion of the sitting and ask, as a particular Bill is coming before the Council, if hon. members on the other side would attend and form a quorum. You have done that to-night. I notice when you require the attendance of a quorum you request the attendance of your own members. At any time the Minister asks members on this side of the Council to attend, we shall be perfectly willing to come along and give him a quorum.

Question put and passed.

The Council adjourned at 10.10 p.m.