

"Advertiser"  
10th Nov. 1898.

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11th Nov. 1898.  
Law Reform.

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The ATTORNEY-GENERAL asked Mr. Wood to withdraw the clause, which was not necessary.

The clause was negatived.  
NEW CLAUSE—ARTICLED CLERKS.  
Mr. ARCHIBALD moved the following new clause:—"No application for admission as a solicitor shall be refused on the ground that the candidate has during service under articles earned money in any other capacity than as an articled clerk."

The ATTORNEY-GENERAL accepted the clause, which was carried.  
New clause. Trust moneys.

Mr. ARCHIBALD moved the following new clause to follow clause 12:—"Solicitors shall keep all moneys received on account of and not immediately payable to their clients in a trust account or accounts lodged in the Savings Bank of South Australia, or in any other incorporated bank carrying on business in the Province, and proclaimed in accordance with 'The Trustees Act, 1893,' as a bank in which deposits may be made by trustees." He said this was a reasonable clause, which was in the interests of the profession as well as the public, and he asked the Government to agree to it.

The ATTORNEY-GENERAL asked Mr. Archibald to withdraw the clause, which was going beyond what was necessary. There was no penalty for non-compliance, and the thing would not work. If they did put in a penalty it would be an unwarrantable interference with private business. They had gone far enough already in protecting the client.

Mr. ARCHIBALD said his amendment was in the interest of the legal profession and would prevent drifting into difficulties as to trust accounts.

Mr. ROBERTS said the fate of the clause was almost certain. As the Attorney-General had pointed out there were no penalties, and the clause would not be operative. It would be no protection to the client as intended, but merely shifted the responsibility. He would respectfully suggest that Mr. Archibald should withdraw the clause.

Mr. ARCHIBALD would respectfully suggest that Mr. Roberts did not know what he was talking about. Mr. Roberts thought he knew as much as the Supreme Court, but he did not. However he was young and might learn.

Mr. HUTCHISON sympathised with Mr. Archibald, but his clause did not provide any means of letting the clients know that their money was safe.

Mr. WOOD believed there was a lot of good in the clause, but it needed amending to make it workable.

The clause was declared negatived, and Mr. ARCHIBALD called for a division, which resulted as follows:—

Ayes, 6—Messrs. Batchelor, Coneybeer, Hourigan, O'Malley, Price, and Archibald (teller).

Noes, 20—Messrs. Blacker, Brooker, Butler, Carpenter, Copley, Cummins, Dumas, Glynn, Holder, Hutchison, Jenkins, Miller, Mosdy, O'Loughlin, Poynton, Randell, Roberts, Solomon, Wood, and Kingston (teller).

Majority of 14 for the Noes.

New clause. Collection of fees.

Mr. ARCHIBALD moved to insert the following new clause:—"No person except the bailiff shall be entitled under the 'Local Courts Act, 1886,' schedule K, to receive in any case, in a Local Court of limited jurisdiction, fees for service of document." Under the present Act summonses were served by scallywag lawyers, who went round collecting debts. In the old country he had never seen the irregularities which existed in South Australia, and the Local Courts here should be placed on all fours with the County Courts in England.

The ATTORNEY-GENERAL agreed a good deal with the principle for which the hon. member was contending. A practice had grown up which was undesirable, and the Government would agree to the clause if it were moved in this form:—"No person except a bailiff or his assistant shall be entitled under the Local Courts Act, schedules I and K, to receive in any case in a court of limited jurisdiction any bailiffs' fees for services."

Mr. ARCHIBALD said he would move the clause in the form the Attorney-General suggested.

Mr. GLYNN saw no harm in the clause, which might well be adopted.

Mr. ROBERTS thought Mr. Archibald's object would be frustrated under the clause as suggested by the Attorney-General, which let in bailiffs' assistants. The hon. member should have adhered to his clause in its original form.

Mr. ARCHIBALD disagreed with Mr. Roberts.

The ATTORNEY-GENERAL said the bailiffs' assistant must be appointed by the Attorney-General or the bailiff himself.

The clause was carried, the preamble and title were agreed to, and the Bill was reported. On the motion that the consideration of the report be made an order of the day for to-day.

Mr. ROBERTS said unless the Bill were carried through its remaining stages at once the effect of sitting six additional hours would be lost. Members who had sensibly gone home to sleep would come back refreshed to fight the measure.

The ATTORNEY-GENERAL said he had not the necessary numbers to suspend the standing orders. He thanked members who had assisted in keeping a House for the purpose of carrying the Bill so far.

The motion was carried.

PAPERS.

The following papers were laid on the table:—By the COMMISSIONER of PUBLIC WORKS—By command—Report from the Engineer-in-Chief on supplying Gawler with water from Happy Valley. Pursuant to statute—Railways Commissioner's report for the quarter ended September 30, 1898.

ADJOURNMENT.

At 4.35 a.m. the House adjourned till 2 p.m. the same day.

On resuming after the refreshment hour there was not a quorum present, and the bells had to be rung to make up a House. Mr. and Mrs. Sidney Webb were again present, while Mr. J. C. Wason, a leading member of the New Zealand Opposition, was also in the House, in company with Mr. C. B. Winter, the recently-arrived manager of the Bank of Australasia. Mr. Homburg continued his appeal for the recommitment of the Law Reform Bill, and he was followed by Mr. Glynn on the same side. The Attorney-General declined to take the Bill into committee again unnecessarily, although he had no desire to hurry it through. "Not when you sit till 5 a.m.?" asked Sir John Downer, and Mr. Kingston replied that he ought to have done that before. In response to a wager of £5 6s. from Mr. Homburg that he could not properly fill in certain forms in respect to the Succession Duties Act, Mr. Kingston said, the nearest form of argument is a bet, and he counselled Mr. Homburg to desist from idle repetitions of foolish challenges. Sir John Downer said if the monstrosity of this shameless Bill is agreed to by the House there will be no possible future for a lawyer. "Why," ventured Mr. Archibald, "a lawyer would sell his mother for sixpence." The Bill, continued Sir John, not taking any notice of the remark, is bad in every particular, but its worst feature is the exclusion of solicitors from assessment cases under the clauses referred to by Mr. Homburg. Mr. Batchelor objected that Mr. Homburg did not stay to fight the Bill during the late sitting, but went home to bed. "How do you know where he went?" asked Mr. Solomon, and the House laughed gleefully, while Mr. Homburg interjected, in hurt tones, "Well, that is just where I did go." Finally Mr. Batchelor expressed the opinion that no substantial good will arise from the Bill. Messrs. Hague, Giles, and Caldwell pressed for a recommitment, which was opposed by Mr. Peake. Then Mr. Solomon had a tilt at "the fraud in the name of law reform," and hinted that on the third reading some long speeches will be delivered. Asked whether he passed any examination before practising as a lawyer in Port Darwin, Mr. Solomon replied that he won more cases by keeping his mouth shut than by opening it. At this declaration there was a storm of cheers, and Mr. Kingston said, "Why don't you try that now?" The hint, however, was not taken. Once more the bells had to be rung to obtain a quorum, and then Mr. Hutchison put in a few minutes in support of the measure. Some of the best members of the profession in Adelaide, he said, might have been lost to it had they been forced to pass an examination. Mr. Foster, at 10.38 p.m. clapped on the closure, and the motion for recommitment was defeated by 23 votes to 10, the third reading being fixed for Wednesday. This gives less opportunities for stonewalling than if it had been set down for Tuesday, as Government business on the former day is not called on until 7.30 p.m. The third reading of Mr. Handyside's Vermin Bill was fixed for Tuesday, and at 10.15 p.m. the House adjourned.

The absentees of the day were Messrs. Griffiths and Shannon.

It looks as if the whole of Thursday's work in the Assembly will be wasted, for the Council, it is stated, are determined to reject Law Reform on the lines of Mr. Kingston's Bill, while just at present there is supposed to be a majority of one vote in the Upper Chamber against the Barossa Irrigation Scheme. However, on the latter subject the friends of the undertaking, which has been so heartily endorsed by the Assembly, have great hopes.

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LAW REFORM BILL.

Consideration of the committee's report.  
Mr. HOMBURG said Mr. Castine had asked for the recommitment of clauses 23, 44, and 45. (Mr. Castine—"I shall only take clause 23.") He would move that clauses 23, 46, and 47 be also recommitment, and that the committee should consider the following new clause:—"In any action in the Local Court whenever the defendant pays money into court which the plaintiff does not accept in satisfaction of his claim the action shall proceed, and the costs shall be taxed and paid as if the claim were for the difference between the amount originally claimed and that paid into court." He desired clause 23 to be amended by striking out "on any ground whatever" and by the substitution of other words. He did not object to the clause as far as technical objections or any unimportant statements in the information were concerned, but where the right of appeal would demonstrate that a conviction had been erroneously made on a bad information, an information for "false pretences" for instance, when according to the law the offence did not come under that heading, then the appeal should be allowed. The clause, with the inclusion of the word "on any ground whatever," made it easy for the magistrate, easy for the police, and easy for the prosecution. He also wanted to appeal to the committee to excise clauses 46 and 47, which he had already objected to.

At 6.30 p.m. the sitting was suspended till 7.30 p.m.

On resuming, Mr. HOMBURG said he considered sections 46 and 47 unfair, and he would like to address a fuller House.

The bells having been rung and a quorum made up.

Mr. HOMBURG said he considered the sections unfair to those dealing with the Government under the Succession Duties Act of 1893 especially. He would subscribe a guinea to any charity if a non-legal member would fill up the form which he held in his hand. He would take a very simple will, which said:—"I leave all my property to my wife, and on her death the whole of my property shall be divided between my children." At the time

of the testator's death he would take it that the wife is aged 40, and the children 10, 15, and 6. He would give the children £500, £500, and five guineas if he filled up the form correctly before the bill is disposed of, and he would make the same offer to the Attorney-General. (The Commissioner of Public Works—"Who is to examine them?") He would leave the officers of the Attorney-General's Department to say if the work was correct. If the Attorney-General would make the law so simple that everyone could fill up this form the whole difficulty would be removed, but as long as we have a complex system of law we must allow trustees who have to fill up such a form to apply for help to those conversant with the subject. Mr. Archibald took a great interest in the Bill, and he would challenge him to fill it up rightly. (The Attorney-General—"Challenges are distinctly opposed to the standing orders, not to speak of the common law.") There were five guineas for any hon. member who would fill it up. (Mr. Grainger—"I will do it.") Correctly? (Mr. Grainger—"Good enough for a judge of the Supreme Court.") If there was a dispute about the will could executors or beneficiaries come down to Adelaide and contend before a judge in order to have the form and the assessment corrected? Widows and orphans had never suffered any injury under the existing system. Under the Income Tax Act the Commissioner of Taxes made an assessment, and at present people living perhaps far away from the city and who disputed the assessment were bothered to explain this and explain that, but in the end the assessment was still maintained. In the majority of instances people would rather pay the tax than have all the bother, and yet the income tax return was a mere nothing compared with this form. All the recent efforts of the Attorney-General were directed to making things easier for the Crown as against the subject. A new regulation stated:—"Whenever, for the purposes of the Succession Duties Act, 1893, or the regulations themselves, it should be necessary to ascertain the net annual value of any real or personal property, or of both of such descriptions of property, if the net annual value of such property shall be fluctuating or uncertain, or in any case in which the Registrar shall be dissatisfied with the annual value placed on such property by the administrator or any person filing any statement or acting under any administration, settlement, or deed of gift, and where any sum or sums of money shall not be directed or required by any will, settlement, or deed of gift to be invested in any particular mode, or modes, or where, in the opinion of the Registrar, any succession shall be of such a nature or so disposed or circumstanced that the net annual value thereof shall not be fairly ascertainable to the satisfaction of the Registrar under the regulations now in force, or where, from the complication of circumstances affecting the value of any succession, the net annual value of any property comprised therein shall not be so ascertainable, the net principal or capital value of such property shall be ascertained, and the net annual value thereof shall be considered to be equal to interest calculated at the rate of £1 per centum per annum on the amount of such net principal or capital value." Another regulation stated—"The net present value of any annuity, or if any interest in property assessable with duty as an annuity, shall be ascertained, for the purposes of the said Act, by calculation according to the tables and rules in the schedule annexed to an Act passed by the Imperial Parliament during the reign of her present Majesty (16 and 17, Victoria, chapter 51) entitled 'The Succession Duty Act 1853.'" To say people who have to make up such forms as these are not to be represented on an assessment was a thing he could not understand. (Mr. Grainger—"How many lawyers could fill that up correctly?") Well not very many without experience. (Mr. Grainger—"Then what is the use of employing the average lawyer?") Most hon. members would not know where to find the English Act, or know how to use it when they found it. (The Attorney-General—"Is it not rather accountants' work?") It was work for a skilled lawyer. (The Attorney-General—"It is for an accountant.") Did the Attorney-General mean that instead of paying 6s. 8d. an hour to a lawyer they should pay £1 1s. per hour to an accountant? The Attorney-General—"Oh, it is cheaper to employ a solicitor than an accountant?") Yes it was. It might not be cheaper to employ a solicitor such as the Attorney-General, but as regarded ordinary lawyers, he only wished they could get half the amount charged by accountants. (The Attorney-General—"Do the solicitors take 6s. 8d. an hour?") Yes, and very frequently they get less on account of the preliminary work they had to do to qualify themselves. It was quite impossible for any layman to get through that work without the assistance of a skilled person. All this might be very easy for the Succession Duties Department, but what injury would result to executors, administrators and others was a totally different matter. The Bill would increase the expense of administration, and no reform was provided for here. He defied anyone to deny what he had said with regard to the forms he had quoted, and it would be a great mistake to pass clauses 46 and 47 unless the Succession Duties Act was simplified. He would give an illustration to show how the Act worked and how complicated it was. Say a man left £4,000 to his children and his property to his wife for her lifetime. After her death the man willed that his children should have it, but in the event of the children not having it it should go to the hospital. According to the law the Crown took £400 duty straight away, and if the amount left were only £1,000 they collared £100. There were so many complications and intricacies connected with the Succession Duties Act that unless some one skilled in the statute were engaged executors and trustees would be at the mercy of the Crown. The Government always had a skilled man at their disposal. There was no one in the city more competent to administer the provisions of the Act than Mr. Johnson, of the Probate and Succession Duties Office, and no wonder, for he was being made conversant from morning till night with every detail of its provisions. In the course of a few years he had qualified himself to become an expert of no inconsiderable ability. In committee he would move the following new clause:—"In any action in the Local Court whenever the defendant pays money into court which the plaintiff does not accept in satisfaction of his claim the action shall proceed, and costs shall be taxed and paid as if the claim were for the difference between the amount originally claimed and that paid into court."