"The Advertiser" 9th Nov. 1898.

The amendment was negatived and the clause was declared carried. Mr. SOLOMON called for a division, which resulted as follows:—

AYES, 27—Messrs. Archibald, Batchelor, Blacker, Brooker, Butler, Caldwell, Carpenter, Cock, Coneybeer, Cummins, Dumas, Foster, Holder, Hourigan, Hutchison, Jenkins, McGillivray, Miller, Moody, O'Loughlin, O'Malley, Peake, Poynton, Price, Randell, Roberts, and Kingston (teller).

NOES, 7—Messrs. Copley, Duncan, Glynn, Hague, Handyside, Wood, and Solomon (teller).

Majority of 20 for the Ayes.

Clauses 38 to 43 passed as printed.

Clause 44. Assessment cases.

Mr. WOOD thought if this clause was a good one its principle might be made to apply to all cases. A judge of the Supreme Court with two assessors appointed by each party should settle cases without appeal and without lawyers. This would do away with the lawyers who were a parasitic body. He had a clause dealing with the subject.

The clause passed as printed.

Clause 45. Exclusion of solicitors.

Sir JOHN DOWNER said the clause was a perfect piece of Crown tyranny. Under the clause when the Crown wanted land for any purpose no solicitor "as such" could appear or conduct any proceedings before the court. Such a tribunal would be a hole-and-corner business and be a return to an antiquated and tyrannical mode of procedure. The Crown would have its skilled assessor and the subject would have to depend on the casual arbitrator, who would not be as skilled as the Government assessor, who would be an experienced lawyer. The subject would have no proper opportunity of protesting against the taking of his land by the Crown. This was not a mischievous interference with the liberty of the subject, as was alleged. There were some matters purely of assessment in which the assistance of a solicitor was no more required than that of a doctor. At present when lawyers were called in cases of this kind endless waste of time and expense was involved, with a great development of technicalities which only complicated matters. According to the clause a judge of the Supreme Court could obtain the help of assessors, who would be experienced men, and after evidence had been given and they had been consulted he gave a judgment which was founded on expert evidence and sound common sense. To suggest that one man would do all the work for the Crown in this connection in all parts of the colony was absurd, for local knowledge was greatly to be relied upon, and local men would be employed. In 1893 when they formed the Tenants' Relief Board they shut out the lawyers, and this had prevented any litigation arising.

Mr. COPLEY said in spite of the examinations which lawyers had to pass now several unqualified men still practised. The Attorney-General in truckling to th party that kept him in power would now preven a man, who by his own exertions made a hom for himself, from obtaining the best legal ad vice that was possible in the community. H objected personally to being deprived of hi right to engage whom he pleased. He kne of the case of a poor man who owned a piec of land at Happy Valley, and in the di posal of it to the Government the assess went against him. If this man had not be allowed to engage a good lawyer to plead him before the Supreme Court he would have got justice. This clause would place Crown in a better position than its subje The substance of the splendid judgments the famous Malcolm land cases was that t judges considered the Crown should always on the side of leniency. (The Attorn General—"Were you not in the Ministry tl was responsible for the Malcolm lands b ness?") He objected to the Premier throwi out that now by interjection. Action in tl matter was taken by a previous Governme and no one knew better than the Premier t one Government could not straight away pudiate what another Government had do (The Attorney-General—"Your colleague the defendant, and he could have sett the case before it went as far as it did.") He co not have withdrawn it from the jurisdiction the court. (The Attorney-General—" could have given way.") The suit was co menced by a previous Government. He sp for landowners, not land lessees, who w always crying out. It made his blood boil think that men like Mr. Miller, who rep sented a land-owning district, should calm follow the Attorney-General in this matte depriving the men whom he and others repr sented of the right to engage the best lega advice.

Mr. MILLER said this clause was in the interests of the people on the land and not of the lawyers. He also knew of a case at Happy Valley where a man claimed £3,000 for his block. The Government offered him £1,300, but on contesting it he received £1,500. The lawyer's costs on the side of the Government, however, mounted up to no less than £900, more than half the value of the land. If the court that heard this man's case had been formed in accordance with the Attorney-General's suggestion the man would have got justice. The cases would have been infinitely better decided if a court like the one proposed had been constituted.

Mr. PRICE would support the clause. He had studied the subject, and he found that the proposed procedure had been very successful in Denmark. He expected to see the time when it would be adopted in nearly all cases, and when commercial courts would settle disputes by arbitration as in Manchester and other places in England.

The ATTORNEY-GENERAL said Mr. Copley's remarks seemed to indicate that he thought the Malcolm cases should never have been fought. If that was so it was Mr. Copley's duty when he was a member of the late Government to have prevented them from being carried on. There was no more necessity for a Government to accept the inheritance of a lawsuit than to take the policy of their predecessors. If it had not been for the Government, of which Mr. Copley was a member, the Malcolm lawsuit would never have been fought, and to assume this indignation ill became him in the circumstances. Why his colleague, the then Commissioner of Crown Lands, was the defendant until a nominal defendant was named. (Mr. Solomon—"Who fought the action on the petition of right?") He (the Attorney-General) did, and though he bowed to the decision of the court he did not think that the interpretation placed on the words "public utility" was ever intended by Parliament.

Mr. GLYNN said that the assessments in cases under the Lands Clauses Consolidation Act would come under the operation of this clause, and questions of construction under the Act would have to be decided by this lay tribunal.

The ATTORNEY-GENERAL—Do you call a judge a lay tribunal?

Mr. GLYNN asked if the Simms case was a proper one to be heard by this tribunal?

The ATTORNEY-GENERAL said that was a pending case and he did not care to express an opinion on it.

Mr. GLYNN said the Attorney-General was merely wriggling to get out of a tight corner. Was it intended that the tribunal should decide on the construction of the Act? (The Attorney-General—"Yes.") Then it was ridiculous. Farmers might be better qualified to decide as to the value of land than lawyers, but they would not be able to give a decision as to the construction of an Act of Parliament. The assessor really was a litigant sitting on the bench instead of practising at the bar. If the operation of the clause was confined to assessing the value of the land, and if the interpretation of the meaning of the Act was left to the judges, he would not object so much, however, but if not he must oppose the clause.

Mr. SOLOMON agreed that this was a departure that should not be made. He was in doubt who would decide the cases—the judge or a majority of the members of the court. (The Attorney-General—"The judge.") Then why have the assessors at all if the judge was to rule as to the decision? It was an absurdity. Many cases might arise, too, in which a gross injustice might be done to a party before the court through his not having the advantage of skilled assistance in the conduct of his case. All men were not able to speak in court—many farmers could not put half a dozen intelligible sentences together while speaking in public, and a great injustice might be done to half-educated or uneducated men. They could not only not employ counsel, but could not get a friend to speak for them. First of all the Bill deprived a man of fair and reasonable assistance, then it appointed a single judge to try the case, and finally it would not give the litigant a right of appeal. The Government would be represented by a nominal defendant, who would be a skilled officer, and might know more about the matter than any lawyer, while the poor unfortunate suitor might not be able to put a case in any shape. The thing was too scandalous and too barefaced, and he would call for a division to have the votes of members recorded.

Mr. WOOD would support the clause if it established a fair system of arbitration, but it was too one-sided. It was all on the side of the Crown, and the other party would be crushed by might rather than right. In nine cases out of ten the judge was in favor of the Government that appointed him.

Sir JOHN DOWNER said he wanted to speak on this clause, and that would be the last he would say on the Bill in committee, because he realised the absolute hopelessness of endeavoring to persuade honorable members on this subject, although they said they were open to conviction. He was much impressed with the speech of Mr. Glynn and the reference to the Simms' case. Would it have been wise to have had such a case decided by a judge and two assessors without solicitors? The Attorney-General would bear him out in stating that the English bench did not consider themselves bound by any decision that had been arrived at without argument. Under this Bill a judge would be bound to arrive at a conclusion involving many thousands of pounds without the litigant having adequate protection. He appealed to the House to pause before they took the step the Attorney-General asked them to.

The ATTORNEY-GENERAL said if the arguments against this clause were carried to a logical conclusion they meant that on all questions it was impossible for anybody to speak intelligently except members of the charmed circle to which Sir John Downer and he belonged. Take a judge in whom every confidence was reposed, give him the assistance of a couple of experts, and they would provide all that was necessary. It was a reflection on the judges to say that they could not come to a proper decision in such cases without the assistance of lawyers.

Mr. SOLOMON said there was nothing in the Bill to say that a man should not conduct his own case. If that were so then the Crown would be represented by a skilled man and the other side would be placed at a great disadvantage.

Mr. HUTCHISON said the lawyers opposing the Bill were fighting so that they would not be excluded from these cases. They would be deprived of some of their best plums by this clause. How members could support lawyers having anything to do with these arbitration cases he could not understand.

Mr. BATCHELOR said this was a question deserving of every consideration. In all cases under the Land Clauses Consolidation Act and the Succession Duties Act the Government had gone down. That only proved however, that the other side had been better represented by lawyers. He did not like delay and miscarriage of justice, but he thought a strong case had been made out in favor of the retention of lawyers. If this proposed procedure were necessary in these cases why not in other cases?

[The House was still sitting when we went to press.]

"The Advertiser" 10th Nov. 1898.

LAW REFORM BILL.

Consideration of the committee's report.

Major CASTINE moved that the Bill be recommitted for the purpose of reconsidering clauses 28, 44, and 45.

Mr. HOMBURG said the Bill as amended had only been on hon. members' files for a few minutes, and he would like some opportunity of looking into it. (The Attorney-General—"Move the adjournment.")

On the motion of Mr. HOMBURG the debate was adjourned till next day.

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CONTINUATION OF SITTING.

LAW REFORM BILL.

Clause 45. Exclusion of solicitors.

The ATTORNEY-GENERAL said he believed in the principle of arbitration, but the Government only sought to apply it here to cases where the ordinary solicitor knows little or nothing about the question in dispute which was the value of land. It was only an extension of the principle of nautical assessors in Courts of Marine Enquiry.

Mr. GLYNN did not think a local valuator would have the same influence with the court as Mr. Botting, the Government valuator. He would point out that the equity side of the court was the expensive side, and that such cases were not touched by this Bill.

Mr. SOLOMON said the Premier had not made it clear whether the parties themselves could appear in the cases dealt with by these clauses. He believed the word "assessment" would cover the assessment of the probate duties themselves as well as the land in question. Would the plaintiff be permitted to conduct his case, or would he have to leave the calling of evidence, &c., to his assessor?

The ATTORNEY-GENERAL said the judge had simply to hold the scales of justice between the two assessors. The court could regulate its proceedings in any way it thought fit, and there was no need for anyone apart from the court to conduct the case.

Mr. WOOD said if the assessors could delay the proceedings by calling evidence there would be no gain to litigants as regarded cheapness.

Mr. MOODY said this was an important clause, with which he did not feel quite satisfied. The clause would give the Government expert a big advantage over the outsider. He would like to insert an amendment by which a client would be permitted to have his solicitor present to advise him. (The Attorney-General—"He would have that power under the clause.")

Mr. SOLOMON asked if the plaintiff would have the right to be present to put his case before the court, to give evidence, and to address the tribunal in respect to the preservation of his just rights?

Mr. BATCHELOR said the judge had the supreme control of the arbitration court. The Government would have regular assessors, who would get big fees. While they got rid of the lawyers in arbitration cases they would get assessors who would demand large sums for their services. Was it not likely that a lawyer would throw up his profession and become an assessor?

Mr. PEAKE said it might even be advisable for the Crown to have a solicitor in attendance to advise them in cases in which they were interested. In their attempt to remedy one evil they might bring into existence another equally as bad. This would have the effect of making the Crown unjust to the individual. He would vote against the clause.

The ATTORNEY-GENERAL said at present time and money were wasted in the assessment of properties. These matters could be better dealt with by skilled men.

Mr. SOLOMON said the Attorney-General should be respectful to the House and answer his questions. What was the position of a plaintiff in this tribunal? Would he be allowed to defend his just rights? He asked whether the nominal defendant appointed by the Government or the man concerned would be allowed to address the court?

The ATTORNEY-GENERAL said the proceedings of the court would be confined to the taking of evidence. There was no opening of the case or addressing the court, and it would be monstrous to allow it, because if they did a skilled man could be employed by the Government against possibly an ignorant landowner.

Sir JOHN DOWNER said all the antagonism shown now at the bar would take place between the assessors on the bench, one of whom — the Government representative — would be skilled while the other would not, and the unfortunate judge would sit between them. This was the Attorney-General's notion of justice in most difficult and intricate cases. Why should they not have this new rule which the Attorney-General had found out applied to everybody and all law dispensed in the same way? The Crown had the power and the money, and would undoubtedly rule in most cases. He hoped the clause would be ignominiously rejected.

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

AYES, 24—Messrs. Archibald, Batchelor, Blacker, Brooker, Butler, Carpenter, Cock, Coneybeer, Cummins, Dumas, Foster, Holder, Hourigan, Hutchison, Jenkins, Miller, Moody, O'Loughlin, O'Malley, Poynton, Price, Randell, Roberts, and Kingston (teller).

NOES, 8—Sir John Downer, Messrs. Copley, Duncan, Glynn, Hague, Peake, Wood, and (Solomon (teller).

Majority of 16 for the Ayes.

PAIRS—Ayes, Messrs. McGillivray, Burgoyne, and Hooper; Noes, Messrs. Gilbert, Griffiths, and Darling.

Clause 46. Passed.

Clause 47. Unsatisfied judgment, means, and ability to pay.

Mr. GLYNN moved to add to the clause—"No order shall be made on an unsatisfied judgment against a party except in respect of his income over £2 a week."

Mr. SOLOMON thought it would be a good time to tackle the question of imprisonment for debt. This was supposed to be abolished, but men could even now be sent to gaol—not for debt, but for the same thing, neglecting to pay a debt when ordered by the court.

Mr. GLYNN—Put it after my amendment. (Mr. Solomon—"I will do so.")

The amendment was carried.

Mr. SOLOMON asked for the assistance of Mr. Glynn in framing the amendment he desired.

Mr. GLYNN thought it would be better to let the matter pass here, because it would mean an excision from all the Acts, and the whole system would have to be abolished. There was no way of enforcing an unsatisfied judgment but imprisonment.

Mr. PRICE said the order should be made against the estate and not against the person. Many people were brought up who had nothing at all and could not possibly pay.

Mr. BATCHELOR said there were many glaring injustices done under the present system. He knew of a man who appealed against a wrongful dismissal, and because he was not able to pay the costs he had to go