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THE PARLIAMENT.

HOUSE OF ASSEMBLY.

(Continued from page 3.)

LAW REFORM BILL.

Mr. WOOD said he wished to make the amount on which the right of appeal could be granted £30, for the retention of £100 limit, but would shut out poor working men from enjoying a privilege which might be of great value to them. There were a good many people who would sacrifice all their money for the sake of obtaining justice in a legal action. He asked the committee to fix the amount at £30, and he hoped the Attorney-General would agree to his reasonable amendment.

Sir JOHN DOWNER objected to the laymen of the House leaving the whole discussion to the legal members. He would not support the amendment because he thought the present law was sufficient. They had had an opinion from Mr. O'Malley about something which happened in Texas. That did not matter much because the House had not a very intimate acquaintance with that country, and probably Mr. O'Malley knew less about it. Mr. Miller had given a scrappy account of a certain case. Mr. Miller did not know what the case was about, where it was heard, or, in fact, anything about it but heresay. He knew the name of the litigant, and that seemed to be about all he knew of it. When a member got up and talked about an abuse of the law he should at least make himself acquainted with the circumstances and not give vague generalisations. The House was seriously asked to alter the law on such grounds by the hon. member for Stanley and the hon. member for Texas—he begged pardon, the hon. member for Encounter Bay. Many members were led away by the specious title "law reform," and would vote for anything brought in under that name. There were only about half a dozen cases of appeals during the last 12 months.

The ATTORNEY-GENERAL—That is not a fact. It is a pity the hon. member does not make himself acquainted with the facts. There were nine in 1897.

Sir JOHN DOWNER was speaking in round terms. (The Attorney-General—"You were 50 per cent. wrong.") If there were even nine where was all the injustice that was being done? Mr. Peake, if he got the appeal to the Local Court of Adelaide, would not save expence and would not get as good law as the Supreme Court. He agreed with Mr. Glynn that the present law was working well and should be retained.

Mr. MILLER said Sir John Downer found fault with the laymen for not debating the Bill, and all the time he was speaking to an amendment moved by a layman and criticising another layman. As to the case that had been referred to he gave far more particulars than Sir John had stated, and also told the committee that the man concerned had informed him that the winning of the case cost him more than the amount concerned. He had sat on the bench at Redhill and saw men there fighting cases which would have been better dealt with if they were limited to the local courts. He had no faith in appeals, and thought the local courts were well able to deal with the cases.

Mr. O'MALLEY said he knew a good deal more about Texas than Sir John Downer, and he would not stand any more of the insults which had been levelled at him, particularly from a shrivelled political deformity like the hon. member. Forty thousand Sir John Downers would not frighten him. Because he was the leader of the repressive party Sir John must not think he could hurl insults at hon. members. Sir John stood up like an owl in a Texas tree and hooted. He would let Sir John Downer know that the member for Encounter Bay would not tremble under the august frown of 40,000 Sir John Downers. He was in Texas in 1884, and stumped the country in the interest of J. G. Blaine. He had just as big crowds to hear him as Sir John Downer ever had. Forty Sir John Downers would not put him out of his place. If the hon. member was not satisfied with that let him step outside and he could settle the dispute there. He would not stand these sneers and insults from men merely because they had titles in front of their names.

The CHAIRMAN—I must ask the hon. member to confine himself to the question before the Committee.

Mr. O'MALLEY—That sort of talk was not worthy of a knight. It was more worthy of a gutter sparrow.

The CHAIRMAN—I must ask the hon. member to withdraw that expression.

Mr. O'MALLEY would withdraw it, but would leave the "sparrow."

The CHAIRMAN—That is not respectful to the Chairman.

Mr. O'MALLEY said he would withdraw the sparrow on condition that it had no effect on Sir John Downer.

The CHAIRMAN—I must ask that it be withdrawn unreservedly.

Mr. O'MALLEY said he would withdraw the words unreservedly. He did not wish to be dirrespectful to the Chair. Would Sir John Downer put up £50 for the hospital with him and forfeit it if he could produce evidence from Texas of the cases he had mentioned? There was a challenge from the honorable member and he would bring the cases from Texas by wire next day. He did not like any man to stand up and sneeringly and insultingly cast reflections on a man's respectability. For nine months he suffered martyrdom because a judge of the Supreme Court went out of his way to insult him. By the Lord Harry he would after that properly treat any man who insulted him in future, physically or otherwise. If he was not able to do so he would go out of the country. He would stand no more insults.

The CHAIRMAN — Will the honorable member confine himself to the question now before the House?

Mr. O'MALLEY said he would take the matter up at once and discuss it for an hour. From that out he wanted to give notice that whoever they were who attacked him they must stand prepared to meet him. He would say no more about it. No more insults were to be offered to him either by knights or anyone else. The higher the position the greater the shame.

The CHAIRMAN—Will the hon. member proceed with the question?

Mr. O'MALLEY — What clause is it? Clause 33—No appeal. Well, I appeal from the chair to hon. members. It is a question whether Sir John Downer can continue to insult me.

The CHAIRMAN—The hon. member must not discuss that.

Mr. O'MALLEY said he was discussing it from a retrospective standpoint. He was opposed to so many appeals because a man with a purse could engage Sir John Downer to slang-wang unfortunate men that were poor, but thank God he was able to meet him financially. When he entered the House the cry was that he had no stake in the country. He could now buy and pay for most of the men who slandered him. A poor man might win a case, but the rich man secured a legal man whom he hired by the year and took the poor man from court to court until he was exhausted and agreed to a compromise. Take Mr. O'Connor, of Beechworth. Sir John Downer might wire to him to-morrow. He had a suit against the Bank of New South Wales, and after appeal after appeal he was taken to the Privy Council, who said he should have sued for detention and not retention. Mr. O'Connor was a carriage manufacturer at Beechworth, Victoria, and his fortune was exhausted. There was one case in Australia. He was going to support the Attorney-General on this and right through the Bill if Mr. Kingston did justice and did not play into the hands of his enemies. No man should love his enemies. He should love his friends and give his enemies justice.

Mr. HUTCHISON said Sir John Downer had referred slightingly to the knowledge of honorable members, and had said that they did what the Attorney-General asked them. Instead of speaking in such a gentle way he should have given them some particulars. A good many of them had been in their places all through, and if the honorable member had been in his place he would have found that they had not always done as the Attorney-General asked them. He could not follow Mr. Peake because the cases he referred to were very few indeed. If members had a special knowledge of the Bill they should assist each other.

Sir JOHN DOWNER said honorable members asked for more details and concluded their speeches by saying they would support the Attorney-General. He would not say anything about the mad speech from Mr. O'Malley. If the honorable member had been in the House when he (Sir John Downer) was speaking, he would not have said a word. Mr. O'Malley must have been inflamed by some private report of it which had been given to him. He had made a speech which honorable members regretted, and which he himself would regret.

Mr. GLYNN said that where the appeal was on the evidence the Supreme Court very seldom disturbed the decision, and where the question of law was involved this section might prevent justice being done. If £50 instead of £100 was accepted he would support it.

Mr. PEAKE said that as there was no chance of carrying his amendment he would withdraw it.

Leave was granted, and the amendment was withdrawn.

The ATTORNEY-GENERAL moved to strike out "one hundred" with the view of inserting "fifty." Carried.

Mr. WOOD moved to insert "thirty." The amendment was negatived on the following division:—

AYES, 10—Sir John Downer, Messrs. Coneybeer, Copley, Duncan, Gilbert, Glynn, Hague, Roberts, Solomon, and Wood (teller).

NOES, 25—Messrs. Archibald, Batchelor, Blacker, Brooker, Butler, Carpenter, Cook, Cummins, Dumas, Foster, Giles, Holder, Hourigan, Hutchison, Jenkins, McGillivray, MacLachlan, Miller, Moody, O'Loughlin, O'Malley, Poynton, Price, Randell, and Kingston, (teller).

Majority of 15 for the Noes.

PAIRS — Ayes, Messrs. Caldwell and Griffiths; Noes, Messrs. Burgoyne and Hooper.

The ATTORNEY-GENERAL moved to insert "fifty."

Mr. WOOD said he was sorry his amendment had been lost. If he had not moved it the Attorney-General might have supported the alteration. The Attorney-General had not given any more reason for fixing the limit at £50 than at £30. He would, however, support the amendment.

Carried, and the clause as amended passed.

Clause 33. Passed.

Clause 34. Certiorari.

Mr. PRICE said in clause 36 it was provided that popular language should be employed. He would therefore like to see the marginal note made clearer.

The ATTORNEY-GENERAL said he would be happy to substitute "removal" for "certiorari."

Sir JOHN DOWNER said certiorari was the only term by which the particular process was known. However, the marginal note would not be part of the Act. He wished, however, to point out that a case might arise in a district where democracy was not much considered in which the magistrate was an ill-paid official, and in which the justices were, of necessity, taken out of a class interested in the decision of the case. Yet, under this clause, they were going to restrict the power of removal to the Supreme Court, and practically prevent its being tried there. Was it an expedient thing to increase the jurisdiction of such courts, certainly not presided over by the highest class of men, from £500 to £2,000, and at the same time take away from the protection that obtained at present enabling removal to a higher court where it might be necessary. The judges of the Supreme Court were not likely to exercise the power except in the face of great necessity, and surely with the increased jurisdiction such a clause as this should not be carried.

The ATTORNEY-GENERAL said unless they were careful in preventing unnecessary removals of cases from the Local Court to the Supreme Court the jurisdiction of the Local Court would be a farce, sham, and delusion. He remembered the case of a sailor who got a verdict of £300 or £400 damages, but owing to an application for removal to the Supreme Court, which was previously made as a mere excuse for gaining time, the defendant was able to get away and the plaintiff did not get a shilling of the damages awarded him for the injury he had sustained. He remembered, too, a case was tried in the Local Court, Port Adelaide, in respect of which a removal was applied for, but in this case the plaintiff had support and he was enabled to get his verdict, although not as speedily and at as small a cost as would otherwise would have been the case. Sir John Downer had urged against the clause misconduct and incapacity on the parts of the courts. (Sir John Downer —"You are wilfully misrepresenting me.") The hon. member for Barossa was guilty of abominable rudeness, absolute discourtesy, and wilful misstatement, and although he did not sympathise with extravagant remarks the criticism to which he was subjected by the hon. member for Encounter Bay had been greatly provoked. The idea of Sir John Downer accusing him of wilfully misrepresenting him. The hon. member could not get up in his place without speaking in a manner unworthy of him. There was nothing in Sir John Downer's present position or past history which justified him lecturing hon. members in the way he did. To say that he had wilfully misrepresented him was a disgrace to the hon. member and to the party of which he was the head. The clause simply provided in its first portion that there should not be a change of venue merely on the ground that difficult points of law are involved unless by consent. Where the case was taken on to the Supreme Court on the wish of one of the suitors the clause provided that the appellant should pay for the luxury.

Mr. GLYNN feared this was rather a storm in a teapot, for there had only been one writ of certiorari last year, none the year before, and not more than two in any year since 1892. The last part of the clause was the practice now, although not the law. He approved of the first part of the clause, as he had a prejudice against these writs, which involved an expensive procedure.

Mr. SOLOMON did not see why the Attorney-General should get so heated while dealing with such a Bill as this. There had not been a word uttered reflecting on the conduct of the special magistrates. It had been stated with reason that the stipendiary magistrates are not trained lawyers, and that to extend the jurisdiction to £2,000 was going too far. There had not been a suggestion of misconduct against them. The clause meant that although the amount involved had been increased to £2,000 in cases tried in the Local Courts, the appeal to the Supreme Court still remained. The best way would be to try the cases straight off in the Supreme Court.

Mr. MILLER regretted that Sir John Downer, for whom he had the highest respect, had suggested misconduct on the part of the stipendiary magistrates. (Sir John—"I did not.") Sir John had certainly done so, and had also drawn attention to the fact that the democracy was endangered.

Sir JOHN DOWNER said he made no reflection on the stipendiaries, whom he did not say were corrupt. What he did say was that in scattered and more remote districts the magistrates were more poorly paid, and that in cases of importance they would have to sit with justices, who, if necessary, would be selected from a class of persons who would be interested parties on the one side or the other. Was there any reflection on stipendiary magistrates there? The Attorney-General, with the bluff he employed on occasions of this sort when it suited him, insinuated that he charged the magistrates with corruption. That was a wilful misrepresentation of what he said. With reference to the clause, surely they must leave something to the discretion of the judges, and if these eternal attacks were to be made on the judges of the Supreme Court it would be better to do away with them altogether. Let them go back to primitive times and say that skilled decisions were not necessary. The only justification of the clause was that the power given to the judges had been abused, and that this must be rectified. A case might involve nominally less than £500 in itself, but it might really involve an estate worth £500,000. In a matter like this might they not trust that their highest court would not remove to itself any case which should be left to the lower court?

The ATTORNEY-GENERAL said it was intended that Parliament should say in which cases appeals were to be allowed, and also that it should not be in the power of one suitor to haul another to the Supreme Court unless he was willing to pay for the luxury of more litigation. Was this to be a matter to be controlled wholly by the judges, or were they to put into an Act the principle that if a man wilfully dragged another needlessly into a higher court he should not do it at the expense of another litigant? He thought the time had come for Parliament to exert its authority.

The clause was passed.

Clauses 35 and 36 passed.

Clause 37. Procedure.

Mr. WOOD moved to strike out the word "really" in the second line. He did not think it was necessary.

Mr. SOLOMON asked if the courts did not at present endeavor to "ascertain all matters in difference," "hear all material evidence," or "pronounce judgment without unnecessary delay?" Were all these matters neglected now? He did not think so, and he did not think the clause was necessary at all. It was a slur on the court, inasmuch as by inference it said that the courts did not now do their duty. He feared there was a considerable amount of danger in saying that cases should be tried on the substantial merits of the case without regard to technicalities or questions of form, practice, or procedure. Were they also to do away with precedents? He would endeavor to strike out the clause even if he stood alone.

Mr. GLYNN said the Local Courts Act of 1861 contained words similar to these:—"According to equity and good conscience and the substantial merits of the case." In the new Act of 1886 they were designedly left out. He had something to do with the drafting of the new Act, and he saw the special magistrates, who recommended that the words should be left out. Lord Bramwell had stated that owing to the uncertainty of the law 75 per cent. of the cases that went into lawyers' offices never went beyond them. If they made the law uncertain as was now proposed they would increase rather than lessen litigation.

Sir JOHN DOWNER said he spoke with great diffidence, because he was talking amongst a lot of men who understood his profession better than he did himself, and yet he was abused. This clause simply stated what was the law now. (The Attorney-General—"Then why object to it?") He thought the provision was perfectly innocuous. The clause simply repeated as law reform what was the law now.

The ATTORNEY-GENERAL said no slur on the courts was intended. It was simply laid down that the substantial merits of a case should prevail over practice, form, and procedure. This was a principle which had been insisted on in connection with Courts of Disputed Returns. There could be no objection to the embodiment of the clause in this measure.

Mr. SOLOMON thought the very wording of the clause inferentially put it that it had not been the practice of the courts to do what was therein provided. If so, where was the necessity for the clause?