

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved its committal.

Agreed to.

Bill passed through Committee *sub silentio*, and reported.

#### FACTORS BILL, 1878.

THE ATTORNEY GENERAL (Hon. H. H. Hocking), in moving the second reading of this Bill said its object was to remove some doubts which had arisen with respect to the true meaning of certain provisions of the Factors Acts now in operation, and otherwise to amend those Acts, for the better security of persons buying or making advances on goods, or documents of title to goods, in the usual and ordinary course of mercantile business. The principal object of those Acts was to enable a person in *bonâ fide* possession of a document of title to goods to make a valid transfer of it, and to otherwise act with respect to it as if he were to all intents and purposes the owner of the goods. The object of the present Bill was to somewhat extend that principle. As the law at present stood, if a person entrusted another, as his agent, with a dock warrant or a warehouse receipt, or any such instrument evidencing title to goods, so long as the person so entrusted was authorised to dispose thereof on behalf of the owner of the goods he was legally empowered to make a valid transfer of the document of title, or otherwise to act with regard to it as if he were the owner of the goods to which it related. A difficulty however arose in cases where a revocation of an agency was made, and the quondam agent still retained possession of the document of title, by means of which he might impose upon the credulity of innocent persons. The second clause of the Bill was intended to meet this difficulty. It provided that no revocation of authority shall have force, so as to prejudice the title of any other person who may make advances upon the faith or the security of a document of title, unless due notice of the revocation shall have been given to the person so advancing. The other sections of the Bill went on the same principle. He might add that it was not proposed to make the Bill retrospective in its operation.

Motion for second reading agreed to. Bill passed through Committee, without amendment or discussion.

The House adjourned at a quarter to one o'clock, p.m.

### LEGISLATIVE COUNCIL,

Wednesday, 12th June, 1878.

Transfer of Convicts—Imperial Grant-in-aid of Magistracy and Police—Expenses of Survey, ship Hastings—Point of Order: Confirmation of Expenditure Bill—Contingent Remainders Bill: second reading; in committee—Partition Bill, 1878: second reading; in committee—Marginal notes of Bills—Adjournment.

THE SPEAKER took the Chair at 7 o'clock, p.m.

PRAYERS.

#### TRANSFER OF CONVICTS.

In reply to MR. BROWN, THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said that negotiations had been entered into, but no arrangements concluded, with the Imperial Government in reference to the transfer to this Colony of the convicts. The terms of the proposal which had been made by the Imperial authorities were such as in His Excellency's opinion he could not, in the interests of the Colony, accept, and he had pointed this out to the Secretary of State. Pending further correspondence, His Excellency did not think it was likely he would be able to submit any definite proposition on the subject to the House this Session.

#### IMPERIAL GRANT-IN-AID.

MR. BROWN asked whether the decision of the Imperial Government in reference to the grant to this Colony towards expenditure on account of Magistracy and Police (communicated to the House by message last Session) was final; or, whether a change in the con-

stitution of the Government of the Colony would involve its reconsideration.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said a Despatch would be laid on the Table furnishing all the information which His Excellency possessed on the subject.

#### SHIP "HASTINGS."

In reply to MR. SHENTON, THE ATTORNEY GENERAL (Hon. H. H. Hocking) said the expenses of the survey on the ship *Hastings*, ordered by the Resident Magistrate at Fremantle last year, and which amounted to £18 15s., had been paid in August last, and charged under the head of "Miscellaneous Services."

#### POINT OF ORDER—CONFIRMATION OF EXPENDITURE BILL.

MR. CAREY: With the leave of the House, I beg to draw attention of hon. members to the appointment of a Select Committee on the Bill to Confirm the Over-expenditure for the past year, and to move a resolution thereon. I would in the first place draw the attention of the House to Standing Order No. 19, which provides that "matters connected with finance shall be discussed only in a Committee of the whole House," from which I infer that it was not competent for the House, in contravention of that rule, to refer the over-expenditure Bill to a Select Committee, as undoubtedly that was a "matter connected with finance." But, in addition to that, I am prepared with other authorities in support of that view. I find in "Bramwell," page 40, that the Standing Orders of the House of Commons state—"That this House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a Committee of the whole House," which is, in effect, the same as our own Standing Order. Again, I find in "Bramwell," p.p. 62-3-4, (as to the manner of proceeding on money bills), that, so far back as the year 1667, a resolution of the House of Commons was adopted to the effect "That if any motion be made in the House for any public aid or charge upon the people, the consideration and debate ought not presently to be entered

upon, but adjourned," and that then it ought to be referred to a Committee of the whole House. "This resolution," Bramwell goes on to say, "though not a Standing Order, is declaratory of a rule of the House, which has, particularly of late years, been very strictly adhered to." Referring to "Hatsell's Precedents of the House of Commons," I find in p. 169, vol. iii., the following resolution dated 29th March, 1707,—which was repeated 29th November, 1710: "Resolved that this House will not proceed upon petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a Committee of the whole House; and that the same be declared a Standing Order of the House." This resolution, hon. members will notice, is identically the same as the House of Commons' Order now in force, as already quoted from "Bramwell." Again, in page 176, Hatsell says: "It is the duty of the House when imposing burthens on their fellow subjects, to give every opportunity for free and frequent discussion. It is upon this principle that, so far back as 1667, the House laid it down for a rule 'That no motion or appropriation for any aid or charge upon the people, should be presently entered upon'—that by this means due and sufficient notice of the subject should be given, and that the members should not be surprised into a vote, but might come prepared to suggest every argument which the importance of the question may demand." Another part of the same Order says: "That such propositions shall receive their first discussion in a Committee of the whole House is no less wise than prudent. There every member may speak as often as he finds necessary, and is not confined in delivering his opinion by those rules which are to be observed when speaking in the House, and which in matters of account and computation would be extremely inconvenient. For these reasons, the resolution of the 18th February, 1667, has been, particularly of late years, very strictly adhered to. And it appears to be one of those rules which, as it has its foundation in prudence, and an attention to the ease of the people, ought to be in all instances inviolably observed." I have a great many other authorities to cite, but I have not been able to discover

a single instance where a money bill has been referred by the House of Commons to a Select Committee. When the point was decided against me the other evening, and the Bill to Confirm the over-expenditure was referred to a Select Committee, I had not then studied the authorities I have now quoted, though I was then under the impression that the course adopted was not in accordance with parliamentary practice. I will now, with leave, move "That this being a matter of finance which can only be discussed in a Committee of the whole, the order appointing the Select Committee be rescinded."

MR. BROWN: I rise to second the motion of the hon. member for Vasse. It is very plain in my opinion that our proceedings with respect to referring the Confirmation of Expenditure Bill to a Select Committee was not in accordance with the Standing Orders of this House, and consequently I assume Your Honor will rule that the course adopted was out of order, and that therefore the resolution must be rescinded. There can be no question on that point. The hon. member for Vasse says he was confident he was right on this point the other evening; but the Point of Order was never raised on that occasion. It was, however, shown that the opinion of the House was decidedly in favor of referring the Bill to a Select Committee. The House never regarded the question—I certainly never regarded the question—as one of parliamentary practice, or as a Point of Order; what I had in my mind was the fact that year after year the same course had been pursued with reference to the Confirmation of Expenditure Bill, thereby establishing a precedence—a precedence, however, in direct contravention of Standing Order, No. 19. In proposing to follow the same course of procedure this year, there was no intention on the part of the House, in any way, to shelve the question involved by referring the Bill to a Select Committee, who, in due course, would have reported to the House, and whose report would be considered in a Committee of the whole Council, as provided in the Standing Order referred to. I do not know whether I shall—I have been asked to do so—adopt the step which I once contemplated adopting, namely, move the suspension

of that Standing Order, with a view to refer the Bill to a Select Committee. I am aware that, as a rule, we are bound in our proceedings by the Standing Orders of the House, still, we may, in accordance with parliamentary practice, rescind, or rather suspend, these orders for special purposes, if found to clash with the desire of the House for the time being. I am aware that there are strong reasons why we should be exceedingly careful in setting aside these Standing Orders, and, in deference to that feeling, I have no intention myself to move the suspension of the particular Standing Order in question. Nevertheless, should any other hon. member conceive it would be expedient to adopt that course, I should be prepared to support him, in view of the marked expression of feeling on the part of the House the other evening in favor of referring the Bill, in the first instance, to a Select Committee, and also in view of the fact that the same course had been adopted on previous occasions, and, further, to show that it was not such a very extraordinary thing after all that the House should, for a particular purpose, suspend its Standing Orders. I would refer hon. members to *May* on this point. It is there remarked, with reference to the practice and proceedings of Parliament, that although "both Houses have agreed, at various times, to Standing Orders for the permanent guidance and order of their proceedings," still they "occasionally fall into desuetude, and are regarded as practically obsolete." I submit that the proceedings of this House, in reference to our Standing Order, No. 19, have been such that, practically, the rule referred to has fallen into desuetude, and may be regarded as obsolete—whether wisely so, or not, I am not going to say. I think, myself it is well that the question should have been raised by the hon. member for Vasse, and I further think his researches will have a salutary effect, because there can be no doubt it is highly desirable that, as far as possible, we should abide by our Standing Orders, and conduct our proceedings in strict accordance with parliamentary practice. For this reason I support the motion that the order appointing a Select Committee be rescinded. I assume that, whether the

House will affirm this motion, or not, His Honor the Speaker will rule that the order must be discharged, inasmuch as it is not in accordance with the practice laid down in our Standing Orders.

THE ATTORNEY GENERAL (Hon. H.-H. Hocking): I should like to say a few words on the technical question raised by the hon. member for Vasse, as to whether the appointment of this Select Committee was really out of order. So far as I can see, the hon. member has brought forward no proof at all to lead us to that conclusion. As to the Standing Order referred to, no doubt if our proceedings should be determined to be contrary to the letter and spirit of that order, there will be no alternative but to rescind the resolution referring the Bill to a Select Committee, for I think we should be very cautious and chary in suspending our Standing Orders. Of course, the only object which the House has in view is that the matters of expenditure referred to in the Bill should be thoroughly investigated, and if the Standing Order in question stood in the way of a proper investigation being made he would be inclined to set it aside altogether. But I would call the attention of the House to the wording of it—"matters connected with finance shall be discussed only in a Committee of the whole Council," the object in view being to enable members to thoroughly investigate such matters, because, in a Committee of the whole House the restriction upon speaking more than once is altogether removed. But I do not see that the order precludes us at all from referring a bill dealing with a question of finance to a Select Committee, before it is considered in a Committee of the whole. The object of referring any bill to Select Committees is that the Committee may institute inquiries, and report the result of their investigations to the House, their report being subsequently considered—if dealing with a question of finance—in a Committee of the whole Council, as distinguished from the ordinary sittings of the House, when the Speaker is in the Chair, and when a member is not entitled to speak more than once. I cannot see that the Standing Order referred to, precludes the House in any way from referring the Bill to a Select Committee; it merely pro-

vides that the report of such Committee, dealing, as it would be, with "matters connected with finance," can be discussed only in a Committee of the whole Council, in order that the details of a question or bill may have more minute examination than they would when the Speaker is in the Chair, and the facilities for speaking are restricted. That, I think, is the interpretation to be put on this Standing Order. I would draw the attention of the House to another of our Standing Orders (No. 1), which says "that in all cases not hereinafter provided for, resort shall be had to the rules, forms, and usages of Parliament, which shall be followed so far as the same are applicable to the proceedings of this Council." Now I find on reference to *May* (p. 549) that so long ago as the year 1707 a Standing Order was made in the House of Commons to this effect: "That this House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing any sum of money owing to the Crown, but in a Committee of the whole House." I apprehend that is applicable to our proceedings, in so far as it does not clash with our Standing Orders. But I do not see that in any way it precludes us from referring any bill to a Select Committee; it simply provides the House shall not "proceed" with money bills except in Committee of the whole. The House does not "proceed" with a bill while it is under consideration of a Select Committee; on the contrary, the House then suspends its "proceedings," with regard to the bill, while it is being dealt with by the Select Committee to whom it may have been referred. I think the Point of Order raised is one of some importance, and I almost doubt whether it would be well to conclude the discussion upon it this evening. For my own part, I confess I have not read much about the question raised, but I have listened to what the hon. member for Vasse has cited, and I have considered the Standing Order referred to, and also the Standing Order of the House of Commons which I have just read; and, so far as I can see, I do not at all concur in the opinion of the hon. member, which I think should be challenged. I shall oppose the hon. gentleman's motion.

MR. CAREY: I am somewhat surprised that the hon. member for Geraldton—such a stickler for parliamentary practice—should raise such a question as a departure from the rules of the House of Commons, and of the rules of this House; still more so, that he should raise the question of the suspension of the Standing Orders. With regard to the Attorney General's remarks, about the 19th Standing Order, I think that so long as it remains in force, we are bound to abide by it; and there it is plainly laid down "that matters of finance shall be discussed only in a Committee of the whole House." That is clear enough to my mind.

THE SPEAKER: I must say I cannot but feel otherwise than in accord with the opinion expressed by the hon. member for Vasse. I take our "Standing Orders" for my guidance, and so long as I find those orders applicable to any question that may arise as to our proceedings, I care very little for parliamentary practice. Of course in all cases not provided for in our "Standing Orders," we must be guided by the rules, forms, and usages of Parliament, which must be followed so far as the same are applicable to our proceedings. But where a Standing Order defines the course to be pursued, I shall always be disposed to adhere to it, and even to give it precedence over parliamentary usage elsewhere. It seems very strange to me—and I am perfectly willing to take my share of the responsibility—that the course heretofore adopted by the House in referring the over-expenditure Bill to a Select Committee has not been challenged before now. I find that so far back as 1872 or 1873, the House adopted this practice. Now, however, that my attention has been called to the Standing Order, which provides that "all matters connected with finance shall be discussed only in a Committee of the whole Council,"—and which, I may say, is, in my opinion, in accordance with parliamentary practice—it is clear enough to my mind that the House was in error in referring the Bill to a Select Committee. Had any hon. member moved the suspension of the Standing Order referred to, with a view to enable the House to refer the measure to a Select Committee, I think it would have been my duty to

have pointed out how dangerous and inexpedient was the practice of suspending the Standing Orders of the House. It is a rule closely observed in the House of Commons that, except in cases of urgent and pressing necessity, no motion should be made to dispense with any Sessional or Standing Order of the House, unless for the purpose of passing a Bill through more than one stage in a day.

On the motion of MR. S. H. PARKER, seconded by MR. SHENTON (and with the concurrence of THE SPEAKER), the further consideration of the Point of Order raised by the hon. member for Vasse was adjourned until Friday.

#### CONTINGENT REMAINDERS BILL, 1878.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved the second reading of a Bill to amend the law as to Contingent Remainders—a most interesting subject, and one in which he was sure every member in that House would take a lively interest. It was a Bill of one clause only, and, as such, must commend itself to the favorable consideration of hon. members. Without entering into technicalities, he might say the measure was an adoption of a recent Imperial Act (40 and 41 Vic.), and recited the cases in which contingent remainders shall be deemed capable of taking effect.

The Bill was read a second time, and passed through Committee, without discussion or amendment.

#### PARTITION BILL, 1878.

THE ATTORNEY GENERAL (Hon. H. H. Hocking), in moving the second reading of a Bill to amend the law relating to Partition, said the Bill was one of a technical character, and he need not detain the House by entering into any elaborate exposition of its details. The gist of the Bill lay in the third clause, which empowered the Supreme Court, in a suit for partition, to order a sale instead of a division of the property to which the suit relates, if the Court considered such an order would be more beneficial for the parties interested. The Bill was a transcript of an Imperial Act, which had received the approval of the House of Lords and of the highest legal authorities in England, and he might point out that, for that reason, as well as on account of its technical character,

the measure was one which did not require that critical attention at the hands of the House as if it had been prepared by himself, and involved a principle which had not already received the assent of the Imperial Parliament.

Motion for second reading agreed to.

#### IN COMMITTEE.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) suggested, for the reasons already referred to, that instead of reading the whole of the various clauses of the Bill in succession, the short marginal notes which explained their object should be read.

MR. BROWN said he had no objection to such a course being adopted with respect to the present Bill, for it might as well be Greek or Hebrew, so far as he was concerned; but such a proceeding was contrary to the usual parliamentary practice, and he thought it was very desirable that they should adhere as closely as possible to precedents. He had on former occasions opposed the adoption of the course proposed to be pursued with reference to this Bill, for he did not think it was a wise or safe course to adopt, although no doubt it might be the means of saving a good deal of time.

Marginal notes only read, and Bill agreed to in Committee *sub silentio*.

The House adjourned at half-past eight o'clock, until Friday.

### LEGISLATIVE COUNCIL,

*Friday, 14th June, 1878.*

Crown Agents—Point of Order; Confirmation of Expenditure Bill: resumption of debate—Wines, Beer, and Spirit Sale Act, 1872, Amendment Bill, 1878: second reading; in committee—Real Property Limitation Bill: second reading; in committee—Trespass Act, 1872, Amendment Bill, 1878: further considered in committee—Wild Cattle Nuisance Act, 1871, Amendment Bill, 1878: further considered in committee—Waste Lands Unlawful Occupation Act, 1872, Amendment Bill, 1878: third reading—Vaccination Bill, 1878: re-committed—Perth Drainage Rate Act, 1875, Amendment Bill, 1878: re-committed—Adjournment.

THE SPEAKER took the chair at 7 o'clock, p.m.

PRAYERS.

#### CROWN AGENTS.

MR. S. H. PARKER, in accordance with notice, asked, Whether it is a fact

that it is incumbent upon the Local Government of this Colony to employ the Crown Agents to conduct all business in England relating to this Colony; or whether the Local Government is at liberty to effect purchases without the intervention of the Crown Agents, and to employ ordinary Commission Agents in the conduct and management of business in the Mother Country.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) replied as follows:—It is the practice in Crown Colonies to employ the Crown Agents to send out supplies for the public service, but His Excellency the Governor is not aware of any order of Her Majesty's Secretary of State for the Colonies making it incumbent upon him to do so.

#### POINT OF ORDER: CONFIRMATION OF EXPENDITURE BILL.

MR. S. H. PARKER (who moved the adjournment of the debate on the previous day) said the Point of Order raised by the hon. member for the Vasse was one of considerable interest and importance. As for himself, he had simply voted that the Bill in dispute should be referred to a Select Committee rather than to a Committee of the whole House in order to enable the members of the Committee to go into the details of the Bill, and to obtain every information with reference to the various items of over-expenditure. He had not the least wish or intention to burk the matter, and he was sure the hon. member for Geraldton when he proposed that the Bill should be referred to a Select Committee was actuated solely by a desire to elicit every possible information. His Honor the Speaker had however ruled that the resolution referring the Bill to a Select Committee was out of order, as being in contravention of the standing rules of the House and of parliamentary practice; and he (Mr. Parker) had no desire—and he was sure the House had no desire—to question the Speaker's ruling, but would readily agree to the amendment that the order be rescinded. Nevertheless, he felt sure that His Honor the Speaker would have no objection, if any hon. member doubted the correctness of his ruling, that he should say so; and, so far as he (Mr. Parker) was con-