Queensland

Parliamentary Debates
[Hansard]

Legislative Assembly

WEDNESDAY, 27 SEPTEMBER 1899

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WEDNESDAY, 27 SEPTEMBER, 1899.

The SPEAKER took the chair at half-past 3 o'clock.

ESTIMATES FOR 1899-1900.

The SPEAKER (Hon. A. Morgan, *Warwick*) announced the receipt of a message from His Excellency the Governor, forwarding the Estimates for 1899-1900.

Ordered to be printed, and referred to Committee of Supply.

PAPERS.

The following papers, laid on the table, were ordered to be printed :—

Copies of all papers relating to the appointment of Mr. W. H. Nisbet as Chief Mechanical Engineer for the Queensland Railways.

Report of the Government Resident at Thursday Island for the year 1898.

Schedule to the Estimates for 1899-1900.

QUESTIONS.

TRANSVAAL TROUBLES.

Mr. DAWSON (*Charters Towers*) asked the Premier—

1. Is it his intention to obtain the sanction of Parliament before sending a contingent of troops to the Transvaal in the event of war between Great Britain and the Transvaal Republic?

2. Will the expenses of sending, maintaining, and returning such contingent of troops be borne by the Queensland Government?

3. If so, what is the estimated cost of such contingent of troops?

The PREMIER (Hon. J. R. Dickson, *Bulimba*) replied—

1. Yes.

2. I am unable to state how the expenses will be borne until I have received certain information on the subject for which application has been made to the Imperial authorities.

3. No accurate estimate can be given until the receipt of the information referred to in the preceding answer and of the report of Major-General Gunter, which will be based upon the recommendations of the Commandants of the several colonies, who are to meet in Melbourne on Friday to consider a scheme whereby a united Australian military contingent could be organised for service in South Africa.

LIEUTENANT-GOVERNOR OF BRITISH NEW GUINEA.

Mr. DAWSON (*Charters Towers*) asked the Premier—

Were the Premiers of the contributing colonies consulted regarding the appointment of Mr. G. R. Le Hunte, as Lieutenant-Governor of British New Guinea, prior to his appointment?

The PREMIER replied—

The usual procedure in connection with the appointment of the Lieutenant-Governor of British New Guinea was followed in the case of the appointment of Mr. Le Hunte to the office in question.

Mr. DAWSON (*Charters Towers*): I asked you if the Premiers were consulted in the matter.

DEPUTATION *re* WESTERN TRAIN SERVICE.

Mr. BELL (*Dalby*) asked the Secretary for Railways—

When is the deputation, consisting of Messrs. Bell, Hood, Mackintosh, and Moore, MM.L.A., and Mr. Charles Williams, which waited on the Secretary for Railways on 10th June, 1899, for the purpose of pointing out the desirability of improving the Western train service, likely to receive an answer to their representations?

The SECRETARY FOR RAILWAYS (Hon. J. Murray, *Normanby*): I have to express my regret that the answer to the deputation the hon. member refers to was not handed to him some time ago. I was under the impression that it had been. However, this is the reply—

As there is now a train from Brisbane to Roma on Mondays, Tuesdays, Thursdays, and Fridays, and between Toowoomba and Roma daily, and a train from Roma to Brisbane daily, it is considered that the traffic requirements of the Dalby and Western districts are fully met, and that any increase in expenditure in providing any additional service is not at present warranted.

REWARD, AYRSHIRE DOWNS ARSON CASE.

Mr. McDONALD (*Flinders*) asked the Premier—

1. What was the total reward offered and paid by the Government for the conviction of the persons who were supposed to have burnt the Ayrshire Downs woolshed in 1894?

2. What are the names of the persons who received a share of the reward, and what proportion to each?

The PREMIER replied—

1. £1,000 offered; £900 paid.

2. It is obviously inexpedient in the public interest to give this information.

MEMBERS on the Government side: Hear, hear!

Mr. DAWSON (*Charters Towers*): Ah, ah! likewise Oh, oh!

THIRD READINGS.

SUPREME COURT ACTS AMENDMENT BILL—REGISTRATION OF DEEDS ACT AMENDMENT BILL.

These Bills were read a third time, passed, and ordered to be transmitted to the Council for their concurrence.

IMPORTATION OF OPIUM.

On the motion of Mr. BROWNE (*Croydon*), it was resolved—

That there be laid on the table of the House, a return showing,—

1. The amount of opium landed, and on which duty has been paid, in the different ports of Queensland, from 1st January, 1898, till 30th June, 1899.

2. The amount of duty paid on opium during such period in each port respectively.

HARBOUR BOARDS ACT OF 1892 AMENDMENT BILL.

FIRST READING.

The House, in committee, having on the motion of the TREASURER (Hon. R. Philp, *Townsville*), affirmed the desirableness of introducing this Bill, it was read a first time, and the second reading made an Order of the Day for to-morrow.

PERSONAL EXPLANATION.

CORRECTION IN "VOTES AND PROCEEDINGS."

Mr. McDONALD (*Flinders*): I desire to make a personal explanation and a correction. I notice in "Votes and Proceedings," on the question of order raised by me last night, that it is stated there that—

Mr. McDonald raised a point of order that the proposed new clause was not covered by the recommendation of the Crown.

That was not the point of order I raised at all. I have a proof of *Hansard* in my hand, and it will be found there that—

Mr. McDONALD (*Flinders*) rose to a point of order. He did not believe that even the last amendment which had been carried was within the order of leave, and he would not be a bit surprised if to-morrow the Speaker, when the matter came before him, ruled that it was out of order.

The point of order I raised was not as to whether the new clause was not covered by the recommendation of the Crown, but whether the amendment was within the order of leave. I desire to make this correction.

LOCAL WORKS LOANS ACTS AMENDMENT BILL.

CONSIDERATION.

The TREASURER (Hon. R. Philp, *Townsville*): I move that the Bill, as amended, be now taken into consideration.

Mr. McDONALD (*Flinders*): Mr. Speaker,—When this Bill was going through committee a certain amendment was inserted, and without going into the matter any further, I would like to ask your opinion as to whether the amendment is within the order of leave, and whether it is in order in being in the Bill as it stands at present. I do not want any debate on the matter. I merely desire to ask your opinion on the point of order.

The SPEAKER: The hon. member asks my ruling as to whether the amendment inserted in the Bill is within the order of leave. In my opinion it is. There is, however, another question involved—the point as to the relevancy of the clause—which may also be considered. That question ought to have been raised when the clause was offered for consideration in committee. If that course was taken, it is to be assumed that the clause was ruled to be in order, or that the contrary ruling was disagreed to. In the one event, it is necessary to remind the House that there is no appeal from the decision of the Chairman of Committees to the Speaker; and, in the other, I have only to say that in the present circumstances I do not feel warranted in interfering with the decision of the Committee. The occasion, however, seems to offer justification for a reminder that, unless in the manner prescribed—that is, by instruction—there should during the consideration of a Bill in committee be no departure from the principle affirmed when the measure passed its second reading. The view that, leave having been given and a Bill introduced to amend a particular provision of a general law, clauses may be introduced in committee amending any section of such law, is, in my opinion, a mistaken one, and one that ought not to be encouraged. The adoption of a comprehensive title in the case of a Bill intended to have a limited scope, has a tendency to encourage amendments the strict relevancy of which is at least open to question. I do not feel called upon to give a ruling in the present instance, since the matter is one with which the House is competent, and has now the opportunity, to deal.

Mr. DAWSON (*Charters Towers*): I think in view of the statement or ruling you have just given relating to this matter, that it is a fair thing to ask the Treasurer whether he will not have the Bill recommitted.

MEMBERS of the Opposition: Hear, hear!

Mr. DAWSON: I think it is hardly a fair thing to go on with the Bill after the statement made by you, Sir, and I strongly urge the necessity of recommitting the Bill. I also take this opportunity—I believe I am in order in doing so—as you have drawn the attention of hon. members to certain matters, as a reminder, I too may draw the attention of hon. members as a reminder, that when an hon. member is going to move an amendment—particularly an hon. member who was once the Speaker of this House, who is supposed to do everything strictly in order, because he knows the practice of the House, having occupied the position of Speaker of this House for some time—the rule is that when an hon. member objects to anything in a Bill, he indicates on the second reading that he is going to move an amendment in a certain direction, so as to give hon. members timely warning.

The SPEAKER: The hon. member is not in order in discussing what occurred in committee.

Mr. DAWSON: If you will pardon me, Sir, I am not discussing what occurred [4 p.m.] in committee; I am referring to what did not occur when you were in the chair.

The SECRETARY FOR PUBLIC LANDS: A fine distinction.

Mr. DAWSON: It is a different matter altogether. There is a difference between the Speaker sitting in the chair and Mr. Grimes sitting as Chairman of Committees. It has been our rule that when an hon. member is going to object to anything in a Bill that he should indicate that objection on the second reading, while the Speaker is in the chair, and he is further called upon by the customs of this House to see that his amendment is printed and circulated, so that hon. members may know what particular amendment he intends to move. In this particular case neither one thing nor the other was done. I simply draw attention to the fact as a reminder of the ordinary course followed out in order that hon. members may really know what they have to face when a Bill goes into committee.

The TREASURER: Of course I am opposed to this clause being in the Bill.

Mr. FITZGERALD: You ought to recommit the Bill.

The TREASURER: What would be the result when the Committee was two to one against me?

Mr. McDONALD: They cannot do anything that is wrong.

The TREASURER: It is too late now.

Mr. GLASSEY: Let the Bill go through.

Mr. JACKSON: The Speaker does not say it is wrong.

Mr. KIDSTON: You can get the same result in a right way.

Mr. DAWSON: A wrong way is a bad precedent.

The TREASURER: I beg to withdraw my motion.

HONOURABLE MEMBERS: Hear, hear!

The SPEAKER: Is it the pleasure of the House that the motion be withdrawn?

Several HONOURABLE MEMBERS: No, no!

Mr. TURLEY (*Brisbane South*): Mr. Speaker,—Seeing that in the opinion you have given the amendment was accepted by the Committee, though it was distinctly out of order and contrary to all precedent in this Chamber, it seems to me that it would be wrong if we were to adopt legislation on that score. When the Treasurer moved the motion that the Bill be taken into consideration, he had probably no idea that any exception was to be taken to the action of the Committee yesterday; and it seems to me that it is hardly fair for hon. members to object to the motion being withdrawn so that the matter may be recommitted and carried through in a right manner.

HONOURABLE MEMBERS: Hear, hear!

Mr. TURLEY: With that object I intend to move, as an amendment to the motion of the Treasurer, that clause 6 of this Bill be not agreed to. It seems to me that it is for the protection of the minority of members of this House that we have certain Standing Orders and certain precedents to guide us. As pointed out by the leader of the Opposition, the hon. member for Herbert, who moved the amendment to this Bill in committee, being acquainted with the Standing Orders and the procedure of this House, and having himself on previous occasions given decisions or rulings from the chair to the effect that any amendment, even though it may

be in the order of leave, still if it was outside the principle contained in the Bill at the time the second reading was agreed to by the House, no other principle could be adopted in committee, unless it was through an instruction having been given to the Committee when the Speaker was moved out of the chair for the House to go into committee. If that procedure is followed, it comes within the right of the House and within the Standing Orders to add any principle outside the principle that may be contained in the Bill at the time of the second reading. I remember that in 1895 when new clauses were moved amending the Railway Bill that was under consideration at that time, the result was that, though they were accepted by the Committee, the Chairman of Committees took exception to the new clauses as moved at that time, and brought under the notice of the Speaker the fact that exception was taken, with the result that it was moved in this House that the clauses be not agreed to, for the reason that members thought it was better to uphold the dignity of the Chairman and to maintain the Standing Orders, and not to depart from the precedents laid down previously. It was agreed to by large majorities that those new clauses should not be agreed to, even though it was recognised by the Government that in some instances the new clauses were really necessary and were an improvement on the Bill. It was considered not wise to depart from the procedure and precedents laid down, and I think it is better for the House to follow that procedure at the present time. We know perfectly well that the exception was not taken when the House was in committee on the new clause admitted into the Bill, but the objection was taken on another clause which was on exactly the same lines, and the result is——

The SPEAKER: The hon. member is not in order in referring to what took place in committee.

Mr. TURLEY: Quite right, Mr. Speaker. The only thing I wanted to show was that the objection having been taken—and seeing that we have your opinion that the new clause in the Bill is not strictly in order because it was outside the question of principle as submitted to this House on the second reading—I think it is better that we should adopt the amendment I move—namely, that the new clause 6 be omitted.

Mr. STEWART: I do not profess to be an authority upon procedure, but I certainly cannot agree with the hon. gentleman who last spoke that we should be entirely guided by precedent. I think what ought to guide hon. members in their deliberations is common sense. I think it would be of much more consequence to us to manage the business of the country in a way we find convenient than to be slavishly bound by precedents that have been laid down by people who are perhaps dead and gone. The hon. gentleman in addressing the House said that admitting that the amendments upon a particular Bill to which he referred were improvements, yet hon. members, in their respect for precedents had upheld the decision of the Speaker. I may say that I have no respect for precedents; it does not matter to me what the people who lived 100 or fifty, or twenty years ago did; what concerns me entirely is what is the right thing for us to do to-day. Applying that standard to this Bill what do we find? We find that this is a Bill to amend the Local Works Loans Acts. The Local Works Loans Acts are before us for amendment.

HONOURABLE MEMBERS: Hear, hear!

Mr. STEWART: That Bill deals with one particular amendment. Now, it appears to me that it ought to be within the province of the House, and it is within the province of the House, to amend the particular Act in any other direction that the House desires. Are we to have a separate Bill brought in upon each occasion when it is thought desirable to frame an amendment upon a particular Act? Is that the way to conduct the ordinary business of life? If I have got a house and desire to make alterations to that house, would it not be wiser, if I had the means, to make all the alterations at the same time? Would I make one alteration this week and another next week? I do not think that any man out of a lunatic asylum would think of conducting his business upon such a principle. Yet, hon. members come forward and ask the first Assembly in the country to conduct the business of the country in this fashion. I, for one, protest. I think that when a Bill is before this House for amendment it is quite right that every member should propose an amendment and carry it if he is able. I cannot agree with the assertion that the power of the House is limited, or ought to be limited, in this particular.

Mr. GROOM (*Drayton and Toowoomba*): I should not like the remarks that have fallen from the hon. member who has just sat down to go unchallenged. I think precedents are of the highest consequence, and that we should observe precedents which have been set us by the first Parliament of the world. Not only in this Parliament, but in other Parliaments, the precedents of the House of Commons have guided deliberations from time immemorial. When we are in doubt as to our own Standing Orders, it is to the Standing Orders of the House of Commons that we refer to guide us in coming to a right conclusion. It was well said by a member who was speaking just now that the Standing Orders were passed for the protection of the minority. No doubt they were. They were passed principally to protect the minority against what has been called "the tyranny of the majority." I think—and I commend the decision you have given, Mr. Speaker—that you have shown a slight leaning towards the minority on the clause we discussed last night. I cannot think that the hon. member who has just sat down would, on more calm consideration, wish to establish what I think would be a very bad precedent indeed—the principle that we should ignore the precedents of an older Chamber than our own, through whose struggles were maintained the freedom of Parliament, the freedom of speech, and the freedom of the Press on all occasions. I think that if the hon. member will look back to history he will see that the freedom of the Press was secured after a fortnight's debate by a minority—a minority, however, backed up by public opinion outside. The House should bear this in mind—that almost every session we are creating precedents for ourselves, and it is of the highest consequence that those we do establish should be of a character which will conform, not only to our own Standng Orders, but to the Standing Orders of that great Chamber that we appeal to when we are in doubt as to the reading of our own. I am not going to say anything with regard to this particular matter now. I voted against the amendment last night; I also spoke against it. I thought it was entirely irrelevant to the question, and if it had not been sprung upon us so suddenly, I should have quoted from Mr. Speaker Brand's decisions to amply prove that that clause ought not to have been allowed to be considered at all. If the decisions of the great Speakers of the House of Commons with regard to this question of irrelevancy in debates are carefully taken into consideration, they will prevent a great many mistakes. I am afraid a mistake is going to be made now, the danger of which we may not be able to estimate now, but probably will be able to estimate when another great and important

measure comes before us. I ask the House now to carefully consider, and not establish a precedent which it may have occasion hereafter to deeply regret.

Mr. DAWSON (*Charters Towers*): I intend to support the motion moved by the hon. member for Brisbane South, Mr. Turley. I take the opportunity of noticing the supreme audacity of the hon. member for Drayton and Toowoomba in daring to quote Speaker Brand to the Queensland Parliament, when we have an ex-Speaker present in this House in the person of the hon. member for Herbert. He ought to know that to make such a comparison is odious. I am very sorry, indeed, that the motion proposed by the hon. member who is in charge of the Bill was not accepted by the House. I think it would have been a graceful act on the part of hon. members to have allowed him to have adopted his own mode of procedure. As far as hon. members on this side are concerned, we were willing to allow him to do so; but that has not been done, and evidently we have to fight the issue out now. I may say, at the outset, that I am quite in accord with the hon. member for Rockhampton North when he says we should not be slavish followers of precedents, and it is because I do not think we should slavishly follow precedents that I am going to support the proposal of the hon. member for Brisbane South. It is very evident that last night a mistake was made—that an amendment was allowed to creep into the Bill, which, if I thoroughly understand the opinion expressed by the Speaker this afternoon, was not strictly within the Standing Orders; but he declines to interfere in any way because the objection to that irrelevant matter was not taken at the proper time. All precedents say that if you do not take the objection at the proper time you must submit to the mistake, and that if hon. members do not take the objections at the proper time in order to enforce the interference of Mr. Speaker, he cannot interfere in the matter after. We recognise that a mistake has been made, and we should take advantage of the first opportunity that offers to remedy it. I should like to remind hon. members that there are several things to be considered in this matter. While not slavishly following precedents, and taking what my friend the hon. member for Rockhampton North calls a common-sense view of business, there is something else to be considered. We ought to interpret our Standing Orders and rules of procedure in a common-sense way. Where we can with safety trust them we should do so; where we cannot do so with safety, we should not. But, at the same time, we must fully recognise this fact —that there must be some final authority. There must be something to guide hon. members of this House; there must be something to bind Mr. Speaker and the Chairman of Committees when we are debating matters here. If the Standing Orders are not to be taken into consideration by you, Sir, or by the Chairman of Committees, then what is the use of Standing Orders at all? We ought to take them away to the depôt and set fire to them—destroy them altogether, and let us be ruled by the majority for the time being in the House on every question as it arises. As one sitting on this side of the House—as one representing a minority in this House of Assembly—I look to the strict enforcement of the Standing Orders as a protection for the minority in this House.

MEMBERS of the Opposition: Hear, hear!

Mr. DAWSON: And if the Standing Orders are not to be strictly observed by the one in authority, be he Mr. Speaker or the Chairman of Committees, then the minority is going to have a very bad time of it—if every question is to be decided by the majority who happen to be present in the House at the particular time a discussion or a division is going on.

Mr. FISHER: And it is worse for the country, too.

Mr. DAWSON: And much worse for the country. I certainly strongly urge upon hon. members, whether they are in favour of clause 6 or not, to very carefully consider the position in which the minority will be placed if this is allowed to go at the present stage. The motion is merely moved as a protest against the non-enforcement of the Standing Orders. I quite admit that I believe the objection is taken at the wrong time, but it is not too late to remedy the wrong, and I hope that every hon. member who is going to give a vote on this matter will not give his vote purely on clause 6—whether he believes in the extension of time to forty years or not—but because he believes in the enforcement of the Standing Orders for the protection of the minority.

Mr. FISHER (*Gympie*): I would like to ask, as a point of order, for the guidance of hon. members, whether, in the event of the motion of the hon. member for South Brisbane being defeated, the motion of the Treasurer will succeed and the Bill be re-committed? If there is a division, we can then remedy the matter.

Mr. DAWSON: The Treasurer was not allowed to withdraw his motion; the hon. member for Herbert objected.

The SPEAKER: The only question before the House now is the motion of the hon. member for South Brisbane—"That clause 6 be omitted."

The TREASURER: The House objected to my motion being withdrawn, and I was not therefore able to move the re-committal of the Bill.

The SPEAKER: The Treasurer agreed to the Bill being re-committed, but the House would not assent to that course being taken.

* Mr. COWLEY (*Herbert*): In speaking to the motion I think I can show very good reasons why clause 6 should not be omitted. The Bill, as brought down, was a Bill to give relief to local authorities which have borrowed money from the Government. The new clause which was inserted, and which it is now proposed to omit, only furthers the objects of the Bill by giving additional relief to local authorities. It does not in any way approach a matter of appropriation, because it only extends the time for repayment, without in any way taking from the Government that which is owing to them. Therefore, as it is a very considerable addition to the relief which is proposed by the Government themselves, I think it is not only a desirable amendment, but one which is strictly relevant, and one which should be supported by the House at the present juncture. The senior member for Charters Towers has stated that I objected to the withdrawal of the motion made by the Treasurer. I objected, with others, because it is not a question necessitating the recommittal of the Bill. If it was a question to add a new clause which could not be added at the present time, then I should have allowed the motion to be withdrawn; but this is a question which the House itself can decide. It is a question whether this clause shall stand part of the Bill, or whether it shall not, and there is abundant precedent in our "Votes and Proceedings" to show that the proper course to follow is to let the House decide the matter. It might go back to the Committee, and the Committee might possibly maintain its amendment, and then the House would be called upon afterwards, in all probability, by the senior member for Charters Towers, or some other hon. member who opposes the clause, to vote upon the question. The proper course on the present occasion is, if the House is of opinion that the new clause

should not be inserted, to omit it now and not recommit the Bill for the purpose. It can be done much better in the House itself than in committee. The junior member for South Brisbane, when moving the omission of the clause, gave as a reason for its omission that you, Sir, had given an opinion on the question. I quite agree with the hon. member for Toowoomba, who is very strong on precedents, and believes that precedents should be followed, and I would refer him to a precedent which occurred in our own House on Tuesday, 10th December, 1895. The Liquor Bill was reported, the same as this Bill is now being reported, and the Speaker then drew attention to certain amendments which had been introduced in the Bill, which, in his opinion, were irrelevant, and he concluded—

> It is now for the House to take what action it thinks proper.

He stated more forcibly than you, Sir, have stated on the present occasion, that in his opinion the amendments were inadmissible, and ought not to be allowed, and then said—

> It is now for the House to take what action it thinks proper.

The Bill was then read a third time.

Mr. DAWSON: What was the name of the Speaker?

Mr. COWLEY: The name of the Speaker is not given, but if the hon. member will look up the "Votes and Proceedings" for 1895 he will find it. (Laughter.) On that occasion the House did not take into consideration the ruling of the Speaker, but simply passed the Bill. On another occasion in the same year—on 17th September, 1895—the then Speaker also gave a ruling that certain amendments which had been introduced in committee were, in his opinion, irrelevant to the context or subject-matter of the Bill, and ought not to be allowed in the Bill. It was then moved that the Speaker's ruling be disagreed to, and that motion was carried and the House affirmed the amendments.

Mr. MCDONALD: When was that?

Mr. COWLEY: 17th September, 1895—page 255 of "Votes and Proceedings." The Speaker concluded his ruling in these words—

> The new clauses inserted in the Bill are well within the order of leave and the title, but are foreign to the context or subject matter of the Bill. I have therefore no hesitation in saying that in my opinion all the new clauses introduced into this Bill were irrelevant and inadmissible.

It was then moved that the Speaker's ruling be disagreed to, and that motion was carried by the House.

Mr. DUNSFORD: Who moved the motion?

Mr. COWLEY: The hon. member for Bulloo, Mr. Leahy. There are, therefore, two precedents formed by this House. In the one case the Speaker gave a definite ruling, and the House affirmed that his ruling was wrong. A few months later the Speaker drew the attention of the House to the practice, and the House took no notice whatever of the matter, and passed the third reading of the Bill. So that, as far as precedents go, there is not the slightest doubt that this House should maintain its precedents, and support the clause, if that is the only reason hon. members have against it.

Mr. SMITH: We should not form bad precedents.

Mr. COWLEY: Bad precedents may be established when no notice is drawn [4·39 p.m.] to them; but when notice is drawn to a question, and the matter is debated, and the House affirms a certain course of practice, then I maintain it is a practice which should be followed. However, on that occasion the matter was quite different from what it is on the present; and I contend that the clause should not be rejected; that it should be retained; that it is a very great improvement on the measure as brought down by the Government: that it is in no way contradictory to the measure; that it is fully within the leave and fully within the scope. The scope of the Bill was to grant a certain amount of relief. It does not remit any indebtedness of local authorities, and for the future it gives them the power to borrow money at a lower rate of interest, and thereby to reduce their annual payments from £7 2s. 7d. to £5 1s. 1d. per cent. The Bill proposed that for tramway purposes money should be borrowed at £7 2s. 7d. per cent. per annum, including redemption. The new clause which has been inserted in the Bill makes the annual repayment £5 1s. 1d. per cent. It simply extends the principle, and in no way conflicts with the principle of the Bill that was introduced by the Treasurer. It reduces the annual payment by over 2 per cent. per annum. With regard to the omission of the clause, I would ask hon. members to seriously consider—and not be led away by any action which may have been taken last night—I would ask them to seriously consider the position of the local authorities with respect to tramway construction. I would ask them also to note the fact that the Government railways throughout the colony are only paying a little over 3 per cent., and that the money costs on an average £3 15s. or £3 16s. per cent. Every individual in the colony who consumes taxable articles has to pay his proportion of the loss between the earnings of the railways and the amount which has to be paid on the loan. Now it is very bitter for those individuals who have no railways to have to pay by direct or indirect taxation, whichever way you like to put it, for the maintenance and working of railways throughout the colony, which are actually competing with them in their daily work. All they ask is, that if the central Government cannot see their way to construct railways in agricultural settlements and in mining districts, where they are absolutely required for the development of the country, they will give them the power to do it on reasonable terms and so relieve them of the responsibility.

Mr. DUNSFORD: And it is a question whether they will give you the money or not.

Mr. COWLEY: That is so. If the local authorities are to pay over 7 per cent. per annum on the money they borrow from the Government to construct those reproductive works——

Mr. TURLEY: Which includes redemption.

Mr. COWLEY: I admit that, but the issue is this, that it is, or will be, impossible in many instances for local authorities to pay over 7 per cent. per annum, which includes interest and redemption—I do not want any mistake to be made—whereas in probably every other instance they will be able to pay 5 per cent. A reduction of 2 per cent. per annum might prevent them from going to the bad. In addition to the railways which are constructed by the State and run by the State at a loss throughout the country, we also have another class of railways which are constructed by the State under a guarantee by certain local authorities which are only called upon to pay about 2 per cent. per annum on the cost of construction. I would ask you, Sir, and the House, to take this into consideration: Is it fair that one local authority should be asked to pay over 7 per cent. per annum, and the other local authorities be only asked to pay 2 per cent. per annum? I admit that in the former instance they are paying a part of the purchase money, and that in the other instances they are only paying interest. But what is that? The great object of the construction of railways by local authorities is to develop the resources of the country, not to acquire the railway. They do

not want to make a profit out of the railway. All they want to do is to develop the resources of the country, and aid the central Government in that respect. And I say that when men are prepared to pledge their credit—because every individual in a local authority may be called upon to vote on the question; no local authority can apply to the Government for a grant of money to construct a railway without the matter being fully advertised in all the local papers, and every ratepayer has a right to object—where the ratepayers are unanimous and have pledged their property, and every acre of land in the district which constructs the railway is pledged for the security of that railway—I say that the Government will be perfectly safe in extending the term of repayment from twenty-one years to forty years. Over and above the railway, they have every acre of land in the district as a security for the repayment of interest and redemption. I think I have clearly shown, therefore, that the amendment is not irregular; that it is not outside the scope of the Bill; that it simply extends the provisions and principles of the Bill introduced by the Government; that it is a very desirable thing indeed to encourage local authorities to build tramways; and that the central Government and the whole of the country must benefit to a very great extent by such construction. We have had this Tramways Act in force since 1882, and how many local authorities have taken advantage of it? Up to the present time only three, I think, or probably four. One line only is working, and I think three others are in course of construction. Why have they not taken advantage of the Act? Simply because the burden has been too great for them to bear, and, like honest men, they have preferred to wait until they can get a more liberal measure by which, if they do borrow money under its provisions, they can pay their way without having to come cap in hand to the Government, and asking them for consideration. If the Tramways Act of 1882 had contained the provision now inserted in this Bill, instead of three we should have had forty or fifty tramways running throughout the colony. It would not be confined to divisional boards, because municipalities are empowered to construct tramways, and they also are included under the provisions introduced in this new clause. All local authorities must keep pace with the times, and must find means to carry the produce of their district to a market. And the time is coming when the example set in Brisbane by the Tramway Company will be followed by the local authorities in all the large towns. I believe it is already contemplated to build an electric tramway in Townsville, and there is little doubt but that Rockhampton, Maryborough, and other large centres of population will soon follow.

Mr. TURLEY: By a tramway company, from all we can hear.

Mr. COWLEY: If the local authorities are wise they will construct the tramways themselves, and I want to give them every facility for constructing them; that is the object of the amendment.

Mr. TURLEY: They have facilities now.

Mr. COWLEY: They may have facilities now, but I think the hon. member will admit that they will have greater facilities if they have only to pay £5 per cent. per annum instead of £7 per cent. The object of this clause is not to benefit the sugar districts only, but it is to benefit every local authority and every producer, whether an agriculturist or a miner, in the colony—to promote the interest of the colony generally; and I feel assured that if the clause is retained in the Bill an impetus will be given to the local authorities throughout the country to extend the means of communication. That will greatly increase production, and it will be the means of attracting thousands to our shores; it will be the very best advertisement of the colony we can give, not only to the southern colonies, but also to the countries of Europe, because people will come if they have means of communication. Our land laws are so liberal that if this power is conferred on the local authorities, and they take advantage of the power, it will usher in an era of prosperity unparalleled in the annals of our history.

* The PREMIER (Hon. J. R. Dickson, *Bulimba*): The position we have got into at the present time is one which presents a certain amount of embarrassment, and in connection with the vote which is about to be taken I desire to explain the position I held last night, and the position I shall now have to take up in this matter. When we discussed this question last night my colleague, the Treasurer, opposed the introduction of the clause, and when I spoke I pointed out that there was a proviso in the Local Works Loans Act of 1880 which rendered its insertion unnecessary. I also stated that it was a matter of no consequence whether the clause was inserted or rejected, but when the division was called I, of course, supported my colleague, the Treasurer, so as to maintain the Bill in its original form. Now a point of order has been raised which has got us into this present entanglement. While I paid great attention to your ruling, Sir, yet at the same time it did not appear to me that you decided that the clause was altogether outside the scope of the measure. I think you dealt with the matter very ably and very delicately, but you did not say distinctly that the clause was outside the scope of the Bill. If you had done so it would have relieved me of a great deal of embarrassment, because I desire to support precedent and the ruling of the Chair. At the same time, though you did not distinctly say that the clause was out of order, yet you emphasised the inconvenience that might accrue from introducing matter which was irrelevant to the scope of the Bill. You did not say distinctly that you considered this clause irrelevant, but you pointed out the danger that might accrue from introducing irrelevant matter. I expressed the opinion last night that the clause is entirely within the scope of the Bill, and I still adhere to that opinion; but I am placed in this position that, having opposed its introduction last night, I shall, if the hon. member now presses the clause, have to vote against it again. I would rather that the House had listened with respect to your ruling, and had proceeded no further with the clause. I think the Bill might very well have gone through in the shape in which it emerged from the Committee; but having voted against the clause last night, I feel constrained to vote against the clause at the present time if it is pressed to a division; and I deprecate having the question reopened in the way it has been reopened this afternoon, and in view of the fact that there is no distinct ruling by the Speaker that the amendment is *ultra vires* in respect either of the order of leave or of the scope of the Bill, I think it would be better for the hon. member to withdraw the amendment, and allow the Bill to go through in the form in which it was introduced. I do not think that any danger will accrue to the State by its inclusion, and I accept the very substantial majority who voted for the clause last night as an indication of a general desire that the clause should be inserted in the Bill. Still I think we are wasting a great deal of time unnecessarily, and introducing a dangerous practice, if we allow that a measure which has emerged is to be attacked in this way without notice, and a clause

to be excised which has been passed by the Committee. Of ccurse hon. members will understand that I am speaking with the view of facilitating the convenient passage of legislation through Parliament. I should prefer to see the clause withdrawn, and the Bill proceeded with by my colleague in the form in which it was introduced.

Mr. McDONALD (*Flinders*): I should just like to draw the attention of the House to several statements which have been made in the course of the discussion. The hon. member for Herbert, Mr. Cowley, quoted several precedents which were established during the time he was Speaker, but he did not quote the whole of his own ruling on the particular occasion to which he referred. He finished up his remarks with a very forcible appeal to the House to maintain the amendment that was passed last night. I may say that I was one of those who voted for the amendment, believing that it would be a good thing. I still believe that; but that is not the question now before the House. The question now attracting our attention is whether this clause has been put in the Bill in a proper way. When I came into this Chamber, I, with many others, thought that a lot of the forms that were gone through were useless and needless; but I am prepared to admit that after I had been here a short time I found that the various forms insisted upon were intended to protect the minority in the House. I should like to impress upon hon. members that every time we allow a little irregularity to take place, that gives power to the majority, and weakens the power of the minority to maintain their position. That is a very strong reason why, on an occasion like this, we should try to put the matter before the House in a proper way. What is the nature of the precedents the hon. member for Herbert quoted? When the Railway Bill was going through the House, an amendment was put in the Bill providing for free railway passes to members of Parliament after they had been in Parliament a certain period. It is quite true, as the hon. member has stated, that the then Speaker, who was the hon. member himself, ruled that amendment out of order, that Mr. Leahy moved that his ruling be disagreed to, and that the motion was carried by thirty-five to twenty-four. When the Bill came up at the report stage, the Premier, Sir Hugh Nelson, moved that the new clause be disagreed to, on the ground that its insertion in the Bill was not consonant with Standing Order 260. The Speaker, Mr. Cowley, again ruled on that occasion in a similar way to that in which he had ruled in the previous instance.

Mr. COWLEY: Was not the first case the Appropriation Bill?

Mr. McDONALD: No, the first case was in connection with that particular clause, and on the second occasion, on the report stage, in almost the last paragraph, the Speaker said—

> It may also be contended that leave having been given to introduce a Bill to amend an Act, a clause may be inserted in committee amending or repealing any clause of the principal Act, but this is equally erroneous.

Mr. COWLEY: Hear, hear!

Mr. McDONALD:

> In asking for leave to introduce a Bill to amend an Act it is not necessary or customary to state what directions the amendment will take—unless the motion is opposed—or to place any restriction or limit on the powers of the member introducing it. The Bill itself does this, and its scope is confined not to the order of leave, or to its title, but to its contents or the principle it enunciates. If it should contain any principle inconsistent with the order of leave the Speaker, or any member detecting it, should at once draw attention to the matter, and the Bill should be withdrawn. For instance, if the Bill now under consideration contained a clause amending or repealing the Railways and Tramways Act of 1882 it would not be in order; but if, on the other hand, it was desired to include principles such as those now introduced into this Bill, it would be regular to do so.

Now, I contend that in this particular Bill the principle was confirmed, as the hon. gentleman stated, on the second reading to reduce the rate of interest to local authorities. That was a principle to which no one took exception, and if it was thought desirable by any hon. member to go further than that then it should have been preceded by an instruction to the Committee. But that was not done. The amendment was sprung upon us without notice, and was passed. I voted for it because I believed the thing was good, and I should vote for it again; but I maintain that it was altogether against the principle of the Bill. That being so, any amendment which was passed on that particular line was out of order, and the hon. member for Herbert when he gave those rulings——

Mr. COWLEY: My rulings were disagreed to. That is the point I made.

Mr. McDONALD: Although they were disagreed to I contend that he was wrong.

Mr. COWLEY: I say, the principle was right.

Mr. McDONALD: I want to point out to the hon. gentleman that although the House voted against his rulings on both occasions, every one of the different clauses, seven in number, were disagreed to by the House.

Mr. COWLEY: Just so; but not because they were out of order; because they were not necessary.

Mr. McDONALD: The general impression was when the matter was brought up that it was not a good thing to acknowledge that the House had done wrong in inserting those amendments. Another point I would like to draw attention to is this: Where is the finality to legislation if this amendment is in order? If it is in order, then what a big door it opens for stonewalling. What was the use of the revision of the Standing Orders in 1892 to prevent stonewalling if this can be done? The Bill is one to amend the Local Works Loans Act of 1880, and if the amendment is admissible, then it would be within the right of any member of the Chamber to amend any clause of that Act. From the point of view of the person who wishes to stonewall that would be a very good thing indeed.

The SECRETARY FOR PUBLIC LANDS: You can get plenty of reasons for stonewalling when you want them.

Mr. McDONALD: I simply point out the danger that is likely to arise by the admission of such an amendment. It is not a question of whether we are in favour of the amendment or not, but it is a question as to whether it has been introduced in proper form, and, I think as far as the minority of this House is concerned, they ought to do their very utmost to prevent anything which would tend to weaken their powers. I maintain that all forms introduced under our Standing Orders which are meant to protect the minority against the majority should be adhered to with the greatest strictness. That being so, I think it would be better not to allow an amendment like this to get into the Bill in the manner in which it has got in.

The TREASURER: I intend to support the amendment moved by the hon. member for Brisbane South.

Mr. GLASSEY: That is in harmony with your action last night.

The TREASURER: But I do not support it for the reason which has been given. It is not right to speak of what has happened in committee, but I would point out that the same

motion was moved last night in committee, and the Chairman gave a ruling that it was in order. It was moved by the hon. member for Croydon, Mr. Browne, and was referred to the Chairman, who ruled that it was quite in order. I held then, and hold now, that it is within the scope of the Bill to introduce the clause, although I was opposed to it and voted against it. The question, to my mind, is simply whether we shall give local authorities twenty-one years or forty years in which to pay for their tramways. I contend that twenty-one years is quite long enough, and that is the reason why I intend to support the motion of the hon. member for Brisbane South. I think we can decide this question outside of the Standing Orders altogether, because the same question was decided by the Chairman when the motion of the hon. member for Croydon came on extending the time of repayment for bridges as well as tramways. The title of the Bill distinctly is a Bill to amend the Local Works Loans Act.

Mr. McDONALD: But what are the contents of the Bill?

The TREASURER: The only idea I had in my mind was to reduce the rate of interest, but if this House thinks that a further term should be given for the repayment of loans contracted on account of tramways I cannot help it. I think it would be very prejudicial to alter the system by increasing the term in the case of tramways when there are forty or fifty other different classes of work to be dealt with, and I think it would have been far better to have gone through the different classes of work carefully and make alterations wherever necessary. However, if hon. members think that local authorities should get forty years instead of twenty-one years for the repayment of loans contracted for tramways, they have a perfect right to vote for it, although I think the term of twenty-one years is quite long enough.

Mr. DAWSON: With the chance of extension.

The TREASURER: One case was mentioned last night of a local authority which had borrowed on the twenty-one years' terms, and I think it is a very good brake to have on local authorities.

Mr. DUNSFORD (*Charters Towers*): If the amendment of the hon. member for South Brisbane is carried, then the rights of the majority in this House are about to be upset. I certainly think the rights of the majority should be respected, especially when we come to look at the majority we had last night—the matter not being a party question; a majority comprising hon. members on both sides of the House, in which the larger proportion of the Labour members were on the side of the majority. When we come to analyse that, and when we know that there is such a thing as the rights of the majority, we should be very careful how we proceed to upset resolutions of this House agreed to on former occasions. There was a very full discussion on the merits and demerits of the new clause proposed, and after full consideration, the Committee came to the conclusion that it would be wise to insert it in the Bill. When we look at the title of the Bill—"Local Works Loans Acts Amendment Bill"—we see it is a very wide title. I am not going to be a party to so narrow the interpretation of the title of the Bill as to say that it would preclude any hon. member of this House from improving the Bill. We are told that the Standing Orders are to safeguard the interests of the minority. That may be so. But after all we have not had a strict interpretation of this Standing Order in this case, because you, Mr. Speaker, refused to give it. Therefore, as far as we know—and taking into consideration the opinion of an ex-Speaker and that of Mr. Charles McDonald, the constitutional authority on this side of the House—there is a conflict of opinion as to the interpretation of the Standing Order No. 260, which bears on this question. It says— [5 p.m.]

> Any amendment may be made to a clause or other part of a Bill, provided that the amendment is relevant to the subject-matter of the Bill, or pursuant to an instruction, and is otherwise in conformity with the Standing Orders of the House; but if an amendment is agreed to which in not within the title of the Bill, the committee shall amend the title accordingly and report the amendment specially to the House.

The key to the whole thing is this: is the new clause relevant to the subject-matter of the Bill? Now, the hon. member for Flinders stated that the relevancy of the Bill was confined to the reduction of interest only. That is not so.

Mr. McDONALD: Yes, it is.

Mr. DUNSFORD: That is not so, and I can prove it. There were said to be two essentials in the Bill when it was introduced. One was the matter of the reduction of the rate of interest, and the other was the extension of the time. These were the two essentials, so it is no good accepting without inquiry the statement of the hon. member that the Bill was confined to one thing. The Treasurer said on the second reading of the Bill—

> Its provisions are very much the same as in the present Act, and power is given to the Treasurer to fix the time at which the interest shall begin.

And then he goes on to state cases. Further on he says—

> In that case the Treasurer is given power to fix the date at which the payment is to commence. In the same way it may take a local authority two or three years to complete a waterworks scheme for which money is borrowed, and until the works are finished there will be no revenue coming in to the local authority. Those are the essentials of the Bill.

So any hon. member can see that there is more than one essential principle in the Bill. I say, that the principles in the Bill comply with the Standing Order, and the new clause merely meant the extension of the time mentioned in the Bill. If hon. members will turn to clause 5, subsection 2, they will see that it is stated there:—

> The Treasurer may make any adjustment which he considers necessary to be made with respect to the term of any loan or calculation of interest thereupon, or with respect to any other matter requiring adjustment.

The matter of the reduction of interest is clearly within the scope of the Bill, and the introduction of the clause only extends the second essential—that is, the extension of the term. I think, therefore, that the members of this House—and especially those who voted for the insertion of the clause—would not be doing right in stultifying themselves. In my opinion the new clause is an improvement to the Bill. The title of the Bill, which is very wide, permitted the new clause to be introduced. You, Sir, were in some doubt as to whether the scope of the Bill covered the new clause, and I suppose this House is now called upon in an indirect manner to interpret that. Some hon. members may say that the issues are confusing; but I suppose the hon. member for Flinders will vote against the amendment, because he thinks he will get, in some roundabout way, an interpretation of the Standing Order. The amendment of the hon. member for Brisbane South is an amendment to mutilate the Bill, and to knock out one of its best features, and I hope hon. members will vote according to their convictions and in accordance with the vote they gave last night.

Mr. GIVENS (*Cairns*): When the hon. member for Brisbane South moved that clause 6 be omitted from the Bill, he did so because he thought that clause was improperly inserted in the Bill. That appears to be the position he took up. His contention is that it is not in

accordance with the essential principles of the Bill. I would like to point out that one of the essential principles in the Bill is contained in clause 5, subsection 2, which states—

> The Treasurer may make any adjustment which he considers necessary to be made with respect to the term of any loan or the calculation of interest thereupon or with respect to any other matter requiring adjustment.

The new clause, added to that, relieves the Treasurer of the responsibility of making adjustments. In accordance with the essential principles of the Bill, the new clause was properly added. The hon. member for Brisbane South, in moving it, was very strong on the reverence which this House should have for ancient precedents. For my part I have absolutely no reverence at all for ancient precedents if they do not commend themselves to my common sense. I refuse to be guided or governed by the dead hand of former Parliaments. The hon. member for Brisbane South, in speaking on this subject, pointed out that Parliament, in 1895, in dealing with certain amendments in the Railway Act, in their wisdom decided that it was not wise to do or not to do certain things; and he contended that we ought to follow their example—because they did not think it wise to do or not to do a certain thing, we should not consider it wise to do or not to do a certain thing also. I contend that this Parliament is quite as competent to manage its own affairs as the Parliament of 1895, and perhaps the collective wisdom of this Parliament might be as correct in coming to a fairly accurate solution of the difficulty as the Parliameat of 1895. I would like to point out also that the hon. member for Drayton and Toowoomba, Mr. Groom, said we should almost bow down to those ancient precedents, that we should be guided by them, that we could not get away from them at all, that they were the final rules we had to go by. If they had been the final rule governing the human race from time immemorial we would never have made any progress at all.

HONOURABLE MEMBERS: Hear, hear!

Mr. GIVENS: If the son had always done what his father did before him and nothing else, and if that rule had been followed by the hon. gentleman's ancestors, it is probable that he would now be going round a naked savage to-day, getting a precarious livelihood by digging roots with his nails, instead of being the highly civilised gentleman he is. It has also been pointed out—I believe by my friend the leader of the Opposition—that the interpretation of the Standing Orders is the only protection the minority has against the tyranny of the majority. I think I am correct in saying that he put forward that view. I contend that such is not the case, because a Speaker or a Chairman of Committees may rule absolutely in accordance with the Standing Order and yet one of the majority may immediately get up and move that the ruling be disagreed to, and if that motion is carried the majority override the minority all the same.

Mr. DAWSON: I said that the only protection of the minority was the Standing Orders and the fair interpretation of them by the majority.

Mr. GIVENS: I am glad the hon. member has made the correction. That was not the sense in which his former statement appeared to me; however, I may have taken him wrong, but I think he is not altogether right in that contention, because the protection of the minority is a healthy public opinion outside this House altogether.

Mr. DAWSON: They have nothing to do with the rules of debate here.

Mr. GIVENS: The rule of debate here is that the decision of the Speaker or the Chairman may be overriden by the majority.

Mr. DAWSON: The outside public have no say in the conduct of our business.

Mr. GIVENS: They can prevent us from coming here next time.

Mr. DAWSON: That may be.

Mr. GIVENS: It is news to me that the outside public have no influence upon our deliberations.

Mr. DAWSON: I said they have no say about the conduct of business inside this House.

Mr. GIVENS: Certainly not, but we are amenable to public opinion notwithstanding that we are inside this House, and I take it that public opinion is the great protection of the minority all the time, and I for one shall certainly vote for the retention of this clause 6, because I, with my hon. friend the junior member for Charters Towers, Mr. Dunsford, consider that it is entirely in accordance with the principle of the Bill, and that it will give considerable relief to the local authorities throughout the colony, and enable them to carry on public works which will be of distinct advantage in opening up the resources of the colony, and assisting to promote the prosperity of the various districts where the provisions of the Act may be applied.

Mr. ANNEAR (*Maryborough*): I understood to-day when the hon. member for Flinders raised the question that you were of opinion that this clause came within the scope of leave.

Mr. DAWSON: The hon. member for Flinders did not raise the question.

Mr. ANNEAR: That was the question raised to-day, and I understood you to say, Mr. Speaker, that you were distinctly of opinion that this clause came within the leave for the introduction——

HONOURABLE MEMBERS: Hear, hear!

Mr. ANNEAR: Such being the case, I do not know what this discussion has gone on so long for. I think we should take your ruling on the question—that is, that this clause 6 was properly introduced in committee, and now forms part of the Bill. The title of this Bill is "A Bill to Amend the Local Works Loans Acts." Surely they can borrow money for the construction of tramways, and they form local works throughout the colony. The hon. member for Charters Towers, Mr. Dunsford, has taken away almost all I had to say in reference to the matter, and I thoroughly agree with every word he uttered. I think this House would be stultifying itself——

Mr. LEAHY: The House did not vote for it last night; it was the Committee.

Mr. McDONALD: That is a different thing.

Mr. ANNEAR: The Bill being within the order of leave, I say that the Standing Orders upheld the admission of clause 6 into the Bill. Clause 260 of the Standing Orders has been referred to by the hon. member, Mr. Dunsford, and the hon. member also referred to the adjustment. Under this Bill "the Treasurer may make any adjustment which he considers necessary to be made with respect to the term of any loan or the calculation of any interest thereupon, or with respect to any other matter requiring adjustment." Mr. Speaker, I know, Sir, that a great many people in the districts of this colony are looking forward to a measure of this kind. There are, I believe, scores of tramways that will be constructed if they have forty years to pay the interest and the redemption money instead of twenty years. The passing of this measure will greatly relieve the Government, because applications are being made for railways in all parts of the colony.

Mr. DAWSON: The question is, shall the Chairman of Committees override the Standing Orders?

Mr. ANNEAR: I think the hon. member for Herbert, Mr. Cowley, put the question clearly and forcibly this afternoon. I thoroughly agree

with all he said, and I shall vote against the motion made by the hon. member for Brisbane South, and vote for the retention of the clause.

Mr. KIDSTON: Before we go to a division I would like to say this: Both from the statement as given from the Chair and from the statement made by the previous Speaker in 1895, quoted by himself here this afternoon, it is evident, I think, that both the previous Speaker, Mr. Cowley, in 1895, and you yourself, Sir, at the present time, consider that the method of introducing these things has been a bad one.

Mr. DAWSON: It was not indicated or even circulated. We never saw it.

Mr. KIDSTON: I would very much have preferred if the House would have permitted the Treasurer to have withdrawn the Bill, and have had the matter brought in in a way more regular, more in accordance with the precedents of the House. I think that if the House rejects this clause a very great wrong will be done.

Mr. DAWSON: What about the Standing Orders?

Mr. KIDSTON: I am not troubled about the interpretation of the Standing Orders. The question is whether this clause is important to the Bill—what value this reduction of 2 per cent. is to be to the local bodies. It might in some cases make all the difference between them carrying out a work of this sort or leaving it alone. As I see by the tone of the discussion that it is quite evident that if the motion of the hon. member for Brisbane South is carried this Bill will be passed without the 6th clause, I think it is advisable to vote against the motion, although I am convinced, from what I have heard, that the amendment was introduced in an irregular form. I think the Bill should not be put in a less effective form, because it might have been in a better form. It is a pity it should be mutilated by striking out clause 6.

Question—That clause 6 be omitted—put; and the House divided:—

AYES, 23.

Messrs. Dickson, Chataway, Philp, Rutledge, Lesina, Dalrymple, Macdonald-Paterson, W. Hamilton, Foxton, Maxwell, Kerr, Fogarty, Browne, Turley, Drake, Groom, Hood, T. R. Cribb, Stephenson, McDonnell, McDonald, Dawson, and Armstrong.

NOES, 35.

Messrs. Glassey, Fisher, Hanran, Kidston, Dunsford, Newell, Murray, Cowley, J. Hamilton, Finney, Forsyth, Givens, Mackintosh, Jenkinson, Curtis, Forrest, Leahy, O'Connell, W. Thorn, Kates, Annear, Bridges, Story, Tooth, Lord, Campbell, Stodart, Fitzgerald, Hardacre, Ryland, J. C. Cribb, Keogh, Stewart, Dibley, and Jackson.

PAIR.

Aye—Mr. Smith. No—Mr. Bell.

Resolved in the negative.

On the motion of the TREASURER, the third reading was made an Order of the Day for to-morrow.

CRIMINAL CODE BILL.

SECOND READING—RESUMPTION OF DEBATE.

* Mr. LESINA (*Clermont*): As a layman I feel a certain amount of diffidence [5·30 p.m.] in getting up to criticise a measure of this character. It would appear that the necessary qualification for dealing with a measure of this kind is the possession of a legal mind. I think we are all agreed upon the necessity for the codification of our laws. Attempts have been made in various parts of the world to codify the criminal law, and they have been more or less successful. Attempts have been made in the old country, but so far they have not been the success which the friends of codification would like to see result from their efforts. There are various digests made in England of the criminal law, and very excellent works of reference on the subject, but so far the English Parliament has not seen its way clear to adopt any of these codifications. There is always a danger in codifying the laws of a country—especially the criminal laws—of errors creeping in through the framing of those laws in an entirely new language. In an Assembly like this, composed as it is chiefly of laymen, when passing such a Code as is now submitted to us, errors might easily be overlooked, which in the course of time would do a considerable amount of harm. We have to a large extent to depend upon the speech of the Attorney-General, and we have also to depend upon the report of the Commission, which was composed of eminent legal gentlemen like Sir Samuel Griffith and men of that type. There are one or two points which I say at the outset we may take for granted. They are based upon the speech of the Attorney-General and the report of the Commission, and with them I think the majority of hon. members will agree. For instance, there is the question of the expediency of such a Code. That is agreed upon. But it would be much better had the codification of the criminal law of Australia been left entirely to the Federal Parliament. When it was proposed here the other day that this Parliament of Queensland should pay old age pensions to aged workers, the Premier pointed out that the matter should, and might very well, be left to the Federal Parliament, which could deal with a comprehensive measure in a statesmanlike fashion. In the matter of the codification of the criminal law, there is even greater necessity for its being left to the Federal Parliament.

Mr. LEAHY: But the Federal Parliament has no power to deal with this.

Mr. LESINA: But it may. It is quite possible to give it power to deal with the codification of the criminal laws for the whole of Australia.

The HOME SECRETARY: Is it likely?

Mr. LESINA: In our Queensland laws we have some half-dozen offences in which the death penalty is inflicted, while in New South Wales they have the most bloodthirsty code in Australia at the present time. In the time to come the necessity will undoubtedly arise for dealing with these laws on a comprehensive and national basis, and not leave it to each colony to do the work for itself. However, the expediency of having a Code of criminal law is admitted, even if this colony undertakes the work for itself. So far, it is the only colony which has attempted—and attempted, I believe, with success—to codify its criminal laws. One argument which was used the other night by the Attorney-General which appealed to me was this: He drew attention to the fact that there were upwards of 1,000 offences to be dealt with, which were scattered over the pages of about 250 statutes, which, to Sir Samuel Griffith, exposed glaring inconsistencies and incongruities. He mentioned one specific offence—forgery—which was dealt with in no less than sixty-four statutes, sixteen of which were Imperial; and pointed out that the fact that it was necessary to take out of these various statutes the law dealing with this one crime showed the necessity for codification. I said in commencing that a layman might have a certain amount of diffidence in dealing with a matter of this kind, but I do not know that a legal mind is specially qualified for dealing with the task. It has been pointed out by one able writer in speaking of lawyers—and it is lawyers and judges who composed this Commission, and it is lawyers who have the best knowledge of things—that the truth is that lawyers are rarely philosophers. He says—

> The truth is, lawyers are rarely philosophers; the history of the heart, read only in statutes and law cases, presents the worst side of human nature; they are apt to consider men as wild beasts.

And that to a large extent accounts for the rather cold-blooded fashion in which lawyers deal with matters of this kind. Possibly the lay mind can shed light on the subject in a manner which a legal mind is not in a position to do. As to the completeness of the Code, the Commission which have furnished us with their report on the Code point out that it is very complete. In judging of the completeness of the Code we have to be guided by the Commission, and they say that their work is well done. Well, if you asked a builder who has just completed a building by contract to report upon that building, he would, naturally enough, give you an excellent report. The Commission tell us that this work has been well done, but it is for this House, after discussion, and after investigation of the Code, both on the second reading and when we get into committee, to find out whether the work has been well done.

The ATTORNEY-GENERAL: The cases are hardly parallel. The builder's work in this case is scrutinised, supervised, and revised by experts.

Mr. LESINA: I say we have largely to be guided by the report of the Commission—who say that the work has been well done—and by the speech of the hon. gentleman; but there is internal evidence in the Code itself which influences me in the belief that the Code can be improved in one or two respects which I will point out. The additional principles in the Code are the changes proposed in sections 57 and 59, section 319, section 696, and section 400, dealing respectively with obstruction to the legislature, aiding suicides, formal errors, and stealing by agents. There are also certain amendments proposed in the Code which are very important. For instance, there is the abolition of the death penalty in the case of rape and in the case of robbery under arms with wounding. Those are two far-reaching reforms with which I am in hearty accord. Then we have suspension of punishment by the application of the First Offenders Act to all offences, and a modification of the law dealing with public attacks on religious creeds. These amendments made in the Draft Code by the Commission are, to my mind, very important, and will be far-reaching in their effects; and I want, if possible, in the course of my argument, to carry hon. members with me so that they may see the necessity of pushing these reforms even further still, and entirely abolishing punishment by mutilation, floggings, and the death penalty. My address to-night will be devoted generally to an amplification of the argument in favour of the abolition of punishment by mutilation and those other punishments which are still retained in the Draft Code. I notice with a great deal of pleasure that a large number of obsolete laws are abolished by this Code, and also many others under which any judge, who strictly adhered to the laws as they exist in Queensland, might inflict on citizens found guilty of certain crimes the most atrocious and barbarous penalties. In the digest of the criminal law recently prepared by the Chief Justice, Sir S. W. Griffith, reference is made to the punishment to be inflicted upon anyone found guilty of high treason, according to 30 George III., chapter 48, and 54 George III., chapter 146. Those laws exist in Queensland to-day, though I am pleased to find that they are to be absolutely abolished. Under those laws a person found guilty of high treason is treated thus—

(*a*) If he is a man, that he be drawn on a hurdle to the place of execution, and there hanged by the neck until he is dead, and that afterwards his head be severed from his body and the body divided into four quarters and disposed of as the Government may think fit.

(*b*) If she is a woman, that she should be drawn to the place of execution, and there hanged by the neck until she is dead.

In the case of a man, Her Majesty may by warrant under sign-manual countersigned by a principal Secretary of State, direct that the offender need not be drawn on a hurdle, and that he be not hanged by the neck, but that his head be severed from his body while he is alive, and may, by warrant, direct how his head, body, and quarters shall be disposed of.

That is a nice piece of legislation to have in force in a colony in such a high state of civilisation as Queensland, and shows in what a high regard we should hold those legislators who have sat on the other side of this Chamber for so many years, and permitted this barbarous law to go unabolished. It is satisfactory to find that this vestige of a bygone day is no longer to appear on our statute-book. Then there is another pretty item in the "Digest" prepared by Sir Samuel Griffith, which should intensify the feeling of regard which we feel at present for the legislators sitting on the opposite benches. It is as follows:—

Any persons who, being assembled together to the number of more than ten, repair to the Government or either House of Parliament, upon pretence of presenting a petition, complaint or remonstrance, declaration or address, are guilty of a misdemeanour, and each of them is liable on conviction to a fine not exceeding £300, and to imprisonment for the term of three months.

This atrocious Act was not passed away back in the dark ages. It was passed in the tenth year of the reign of Queen Victoria, right in the middle of the present century. And some two or three years ago, when a number of citizens came here to present a petition, they would hardly have ventured upon doing so if they had known that such a law was in existence. That also is to be abolished, as also is the notorious 6th of George IV., chapter 129, the Act covering conspiracy, under which the union prisoners were sent to St. Helena. But there is some doubt in my mind, for on looking up the clause relating to conspiracy, I find that it is possible that a judge or a public prosecutor may enter a prosecution for intimidation. If a strike were on, and I went to a man who had returned to work in a place where the strike was in existence, and I argued with him that he should not go to work, the law would not be applied; but if two or three of us interviewed that man and tried to induce him not to go to work, it is very likely that it would.

The ATTORNEY-GENERAL: No; it is expressly stated that it shall not be an offence for numbers to do that which would not be an offence if done by one.

Mr. LESINA: There seems to me some little doubt as to that. There are some five or six points laid down in clause 543, under which a person may be found guilty of conspiracy, in one of which it is stated distinctly that interfering with a person following his trade for a livelihood is one. That clause provides that it is conspiracy—

(1) To prevent or defeat the execution or enforcement of any statute law;
(2) To cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or
(3) To prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
(4) To injure any person in his trade or profession; or
(5) To prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or
(6) To effect any unlawful purpose; or
(7) To effect any lawful purpose by any unlawful means.

If a strike took place, I am under the impression that by the 4th subsection, or the 5th, a person interfering as I stated would be found guilty of

conspiracy, and sent to St. Helena, where the unionist prisoners were. With regard to Sir S. W. Griffith, it has often been remarked what a number of his judgments have been upset by the Full Court, and that many of the Acts he has drafted have been a source of endless litigation. Therefore, in the case of a Draft Code like this, where no doubt at all should exist, it behoves us to look into this matter very carefully. I am very doubtful whether the abolition of this 6th of George IV. is sufficiently well provided for, and I should like to see some amendment made in the clause when the Bill reaches committee. I have already spoken of the barbaric enactments which will be repealed as far as Queensland is concerned if this Code is carried. The abolition of these brutal and barbaric relics of an age of darkness, these remnants of the prison gang laws, shows the tremendous advance we have made, and it is in accordance with the humanitarian spirit of the age, which is beginning to make itself manifest even among lawyers, who are not very much amenable to the movement. I trust that no member of this House will object to the absolute repeal of any of these dangerous enactments. It would be an absurd thing for hon. members to object to the repeal of such laws, and yet through their magistrates and judges outside impose penalties on a small boy for beating a cat. The humanitarian spirit of the age is carried to such an extent that we have societies formed for the prevention of cruelty to animals, and the man who illtreats a horse or tortures a cat is as likely to go to prison as the man who commits manslaughter. If there are any members in this House who desire the perpetuation of the laws to which I have referred, I shall be very much surprised, but I hope there are not. The humanitarian spirit to which I have referred is carrying lawyers and judges, in common with the ordinary ruck of humanity, along with it; this spirit finds outlet in the formation of societies for the purpose of helping prisoners, preventing crime, and enlarging the sphere of human liberty in every respect, and for making our punishments more humanitarian and more civilised than they have been in the past. This spirit is one which during the past few hundred years has helped to abolish the barbaric enactments which visited criminals with cruel punishments. During the last 300 or 400 years there have been in England alone such a number of cruel punishments abolished entirely and absolutely as must prove conclusively to us that this spirit is particularly alive among British-speaking people. It would surprise the majority of people if they only knew the enormous number of crimes, or misdemeanours, or mere petty offences as they are called to-day, for which at one time the death penalty was the ordinary punishment. I have referred to several authorities during the past few days, and I find that there were several score of offences for which the ordinary penalty was death, but the statutes imposing these penalties have all been repealed, and I am glad to see that in this Code we are keeping pace with the march of reform in that direction by abolishing the death penalty for certain offences specified in the Code. The following is a list of offences which were at one time punishable with death:—

Edward I.—Refusing to plead on arraignment.

Edward II.—Breaking from prison, if the offence be capital.

Henry III.—Marrying a woman forcibly; imagining the death of privy councillors, &c.; soldiers deserting from the service, extended by Elizabeth to sailors.

Henry VIII.—Highway robbery; servants purloining their masters' goods, value 40s.; sodomy, arson, or burning of houses or lands or corn; administering poison; sacrilege.

Edward VI.—Horse-stealing; robbing a tent or a booth in a market; burglary or house-breaking.

Elizabeth—To be seen in company of gipsies; receiving, relieving, or maintaining a Popish priest; to defend the jurisdiction of the Pope; privately stealing, or pickpockets, above one shilling; embezzling military stores, value 20s; forgery of deeds, bonds, bills, or notes; rape.

James I.—Stabbing a person unarmed, if he died within six months; entering into foreign service; acknowledging fines or judgments, or suffering recoveries in another's name; concealing the death of illegitimate children; polygamy.

Charles II.—Lying in wait for the purpose of maiming any person. Sailors forcibly hindering their captains from fighting.

William and Mary.—Challenging above twenty persons; robbing a house in the day time, value, 5s.; shoplifting privately, above 5s.; buying and receiving goods, knowing them to be stolen; personating bail; buying, selling, or having any mould for coining, forging, or selling counterfeit stamps; piracy, or aiding and assisting pirates.

Anne.—Burning ships, or otherwise destroying them; attempting to prevent the succession to the Crown; being accessories to a felonious act; striking or wounding privy councillors; stealing from a ship in distress; stealing in a dwelling, value, 40s.

Then, in the time of the three Georges—the infamous Georges—the offences for which a person might be put to death ran up to twenty or thirty.

Mr. DIBLEY: The penalty for using that language would have been death some years ago.

Mr. LESINA: The offences for which death was the penalty in the reigns of the Georges were as follows:—

George I.—Breaking down the head of a fish pond whereby the fish may escape; deer stealing, under the Black Act; riots, by twelve or more, not dispersing in an hour after proclamation; stealing fish from a pond; receiving a reward for helping others to stolen goods; trading with a pirate; maliciously shooting any person; sending threatening letters; perjury by prisoners under insolvent Acts; pulling down houses, etc.; destroying trees in an orchard or avenue; killing, or maiming of cattle maliciously; riotously opposing the execution of legal sentence; destroying woollen goods in the loom; being at large after sentence of transportation; three or more persons assembling riotously to protect themselves from payment of their debts.

George II.—Stealing lead or iron bars; returning from transportation; bankrupts refusing to surrender, or concealing their effects, value £20; demolishing river or sea banks; cutting hop binds; demolishing turnpikes or floodgates; setting fire to coal mines; stealing cattle or sheep; stealing bonds, bills, banknotes, etc.; gilding a shilling to make it look like a guinea; stealing of linen from bleaching ground; smuggling by persons armed, or attempting to rescue smugglers; stealing over 40s. on a river; attempting to rescue a murderer; refusing to perform quarantine; stealing from ships in distress; making false entries in registers relating to marriages; agreeing to enter into foreign service——

Every one of the Irishmen in the Transvaal who have volunteered to assist the Transvaal against the British Government would be hanged under that if they were brought to England—

forging seamen's wills; forging the hand of receiver of port fines.

George III.—Stealing naval stores; coining a halfpenny or a farthing; selling cottons with forged stamps; destroying silk or velvet in the loom; robbery of the mail; stealing bank notes from letters; uttering counterfeit money, third offence; frame-breaking, etc.

For all those offences, with the exception of piracy, murder, and treason, the death penalty has now been abolished, and the abolition of the death penalty in those numerous cases has been due to the active and persistent agitation of men who believed that the proper way to suppress crime was not to mutilate the offender, or subject him to cruel punishments. In the abolition of the death penalty for such offences as those I have enumerated we see the results of the self-denying labours of the friends of humanity, the toiling reformers who, century after century, have done their share of the work of abolishing the detestable and unwarrantably

cruel brutalities, then called judicial punishments. And at every stage of the battle, the abolitionists were met with the cry that the proposed change would subvert morality, sap the foundations of society, and, as Boswell said of the proposal to abolish the slave trade,

> Shut the gates of mercy on mankind.

I have pointed out now a list of offences and crimes for which the death penalty was the ordinary punishment during the past 400 years. I have referred to quite a number of petty offences for which that was the penalty, but through the spirit of humanitarian feeling and modern christianity, and the influence due to the teaching of moral philosophy, we have come to regard human life as a much more sacred thing than it was regarded in the past, in consequence of which our criminal laws have undergone many very far-reaching changes. Continuing that subject, I would point out that, not only in the case of a number of important as well as trivial offences has the penalty of death been abolished, but there are other offences to which it was originally attached, but for which now we not only apply no punishment whatever, but we actually treat them in the kindest possible fashion. For instance, it was the custom in the times to which I refer to flog lunatics and persons suffering from infectious diseases, such as smallpox—to treat them as if they were the most cold-blooded criminals. All were treated as criminals. To go mad was crime; to express heterodox opinions was crime, and the heretic was either hanged, flogged, or roasted alive. The infliction of penalties by "law and order" upon lunatics and people suffering from various kinds of diseases was not only a regular practice, but it was profitable, and deemed a fairly honourable thing to do. I will quote a case in point to show how these things operated amongst the people. I have here a reckoning taken from some old document relating to the municipal affairs of Canterbury, and dated 1585—

> To bringing one heretic from London, 14s. 8d.
> One and a-half loads of wood to burn him, 2s.
> Gun powder, 1d.
> One stake and staple, 8d. Total, 17s. 5d.

That is the cost of putting to death one heretic. We do not treat heretics in that way now. Public opinion has got ahead of that method of treating people who hold different opinions to our own. Then, as we have made progress in that direction so we have made progress in other directions, and taken steps in the direction of reform which were urgently needed. To acquire an infectious disease or an infectious complaint a couple of hundred years ago was a very serious offence.

[7 p.m.]

At five minutes past 7 o'clock,

Mr. MOORE called attention to the state of the House.

Quorum formed.

Mr. LESINA: I was saying that to acquire any infectious disease or complaint was a very serious offence. Giving way to delirium was regarded as a crime, and the victim suffering from such disease was put upon a wheel and broken, or was subject to the penalty of whipping. In the parish constable's account of 1710 at Great Staunton in Huntingdon there was this entry—

> Pd Thomas Hawkins for whipping two people that had the small-pox, 8d.

and in 1714—

> Pd for watching, victuals, and drink for Mary Mitchell, 2s. 6d.; Pd for whipping her, 4d.

Yet the people who ordered and performed these atrocities were not destitute of humanity, but were gravely wanting in perception.

The SECRETARY FOR PUBLIC LANDS: Owing to irritation probably.

The SECRETARY FOR AGRICULTURE: A vigorous form of massage.

Mr. LESINA: I presume that the people who ordered those barbarities were kind-hearted people, and at their own firesides would compare very favourably with the modern Christian. I suppose they were just as kind-hearted and well-meaning as the Secretary for Agriculture; but that was the custom of the time. It was the state of public feeling which connived not only at the passage of legislation of that kind, but sympathised with the infliction of such penalties. There were other horrors practised which I shall make only passing reference to. If, as some of these people believed, it was possible to abolish crime by the infliction of severe penalties, then all crime should surely have disappeared by this time. If the infliction of such horrors as were perpetrated in the reign of Henry VIII. would abolish crime, surely it must have been wiped off the face of his dominions altogether! Henry VIII., in the twenty-second year of his reign, made treason a capital offence, and the penalty was being boiled to death. That did not abolish treason, and in later years they imposed the more humane punishment of beheading for that offence. The wooden-headed Charles I. they beheaded, and that was only one of the many atrocious cruelties of the time. In looking back over the record of the past couple of hundred years, we have accounts of maiming and mutilation of the most atrocious character for all sorts of offences—mutilation of the eyes, lips, nose, hands, and tongue, besides another nameless form of mutilation. Men were disembowelled for treason, hung, drawn, and quartered for all manner of offences; women were disembowelled and burnt. To be hanged, drawn, and quartered was common. Englishwomen were burnt for witchcraft, and for all kinds of treason, whether poisoning a husband or defaming the Queen.

The SECRETARY FOR AGRICULTURE: What are you quoting from?

Mr. LESINA: I am quoting the facts of history; I am not quoting anybody. I have simply made a list of the various punishments inflicted at various times in years past—and I want to point out that the imposition of many of these penalties—inflicted at one time or another by well-meaning persons with the idea that in that manner crime would be put down—has failed in its effect. And just as we become more civilised and more christianised, we take a more lenient view of the punishment which it is desirable to inflict, and as a result we become more moral and more law-abiding than if we inflict the severe penalties which were inflicted in olden times. In putting these facts forward I want to make the ground firm under my feet for the stand I intend to take against capital punishment and flogging being inflicted at this, the end of the nineteenth century.

The SECRETARY FOR PUBLIC LANDS: Or any other punishment, I should think.

Mr. LESINA: No. I speak of those two punishments because they are punishments by mutilation, which are altogether foreign to civilised ideas of punishment. Especially is that so if we look at the matter from a scientific point of view, or from the point of view of the eminent criminologists, who tell us that crime is merely a disease—that no person wilfully and in a depraved spirit breaks the law because he hopes to profit by it. Next we find that instead of disembowelling criminals, instead of being hanged, drawn, and quartered, they are hanged only, and that for

murder alone. Here in Queensland we hang them for murder, for treason, and for piracy. I can quote at least a dozen countries in the civilised world where the death penalty has been abolished, without any increase in crime—in fact, there has been an absolute decrease, as figures can show. Who can say that if we abolish the penalty of hanging, that we might not be as well off as we are to-day. I would like to point out to the gallows advocates in this House—to those who advocate the rope, the cat, and the triangle—to those who advocate torture and punishment by mutilation, that all down the centuries, as history shows, we have been slowly, gradually, but surely and quietly redeeming our reputation for the imposition of the cruel punishments practised by our forefathers. We have been gradually lessening the severity of punishments. Whereas, in olden times, we burned men, boiled men, hanged, drew, and quartered human beings, now we simply hang them. I would like to point out this also to the gallows advocates in this House, and I would like to ask the Hon. the Attorney-General whether he can say that the repeal of this last penalty—the death penalty and the flogging of criminals—might not be as wise as the previous abolition? Had we the same moral courage as our ancestors, we would certainly abolish all forms of punishment by mutilation. It was not only for ordinary offences—for petty offences against property and the person, or for great crimes like murder and treason—that the death penalty was imposed. We have evidence that the most atrocious penalties were imposed for offences—so-called—which we might not regard as offences at all, and which would be regarded by a philosophical mind as a distinct advance in our modern civilisation. For instance, in the reign of Charles I., instances are recorded which really equal in flagitiousness the deeds of Nero. The pillory, whipping, branding, cutting off the ears, grew into use by degrees. I may refer to one well-known historical case—that of Prynne, who was mutilated for printing a puritanical book—a religious work—an offence, in those times, which was considered very dangerous, and which might be regarded as equalling ruffianism in these days. The punishment inflicted on Prynne by the Star Chamber was that he should stand twice in the pillory, to be branded on the forehead, to lose both his ears, to pay a fine of £5,000, and suffer perpetual imprisonment. And why? Simply because he published a religious work which contained principles adverse to the ruling religious principles of the day. We don't do that kind of thing in our days. And are we any the worse off? When it was proposed in those days to abolish that kind of punishment, there were no doubt scores of people—men like the Secretary for Lands, the Secretary for Agriculture, and the Attorney-General, whose breasts throbbed with the milk of human kindness, but who thought that all civilised society would be subverted; that social chaos would follow if these punishments were abolished. But the world is more civilised now; at any rate, it is no worse off by the abolition of these barbarous penalties. Again, others for small kinds of offences were whipped, cheeks slit open, and red-hot brands applied to their faces twice a week for a fortnight. There are cases on record in which these extremes were reached. I will cite one case, which the Attorney-General, no doubt, being a lawyer, will be well acquainted with. A child was sentenced to death for stealing paint valued at 2s. 2d.

The ATTORNEY-GENERAL: Why harrow our feelings with these horrors? They have nothing to do with the Bill.

Mr. LESINA: They have, and I will tell you why. The judges and magistrates inflicted these punishments because they thought they were doing the right thing; that by their action they would terrorise the people into keeping the peace—to keep "law and order," and they carried out those laws relentlessly. I want to show that by the abolition of these cruel punishments society has not suffered. So, why should we not go further and abolish mutilation, flogging, and hanging. If we do that, we will take our place among the most civilised nations of the world. There is another case on record, which happened in the year 1787, in Worcestershire, England, where thirteen men and women were conveyed to the gallows one bright morning and hanged, not one of whom had committed murder. Yet in Queensland, if you hang one man, it creates a sensation. Does not that show our progress? The inferior punishments I will briefly refer to:—In the borough towns there were the tumbrel for such as pilfering millers, the cucking stool for scolding wives, the brank for taming shrews, the cage or pillory, the skimmington, and the stocks for all. Immorality was punished sometimes by the stocks and a whipping. But that does not complete the list of horrors our ancestors inflicted on their unfortunate fellow creatures. For instance, for the stealing of a sheep or the killing of a deer, hosts of excruciating tortures were inflicted to extort confessions. History tells this. Besides the "boot' and the rack there were a number of inferior engines of oppression. In that connection, it will be remembered that Cardinal Wolsey was at one time placed in the stocks for drunkenness—a man at the mention of whose name most of us would be inclined to raise our hats. There were also punishments of the dark house, or dungeon, the drunkards' clock, the whipping post, entries in the Hustings book, branding, and all sorts of arbitrary fines and imprisonment. Coming down to our times in New South Wales, Victoria, and Tasmania, during the present century—forty, fifty, sixty, or seventy years ago—we find that it was not an uncommon thing for numbers of men to be hanged before breakfast on Gallows Hill, or on the site of the Barley Mow Hotel, Castlereagh street, Sydney. There one morning seventeen human beings were launched into eternity—their old friends about, drinking, smoking, cursing and swearing—a public execution for the maintenance of public order, and in the sacred cause of the protection of property.' But we have abolished that. Here we don't always carry out the death penalty, and juries are loth to convict on circumstantial evidence. That is the result of the wide spread of education and the greater regard for human life. If the Government don't show regard for human life, then the average man will take pattern by the Government. I am glad to see the elimination of sections 466, 467, and 470, relating to the Game Laws, as being unnecessary in Queensland. These laws were for many years a fertile source of punishment in the old country. Even in recent times in England there have been a great many cases under this head. If a man took an egg out of the nest of certain birds he was visited with the imprisonment of a year and a day. Killing or wounding any deer in any park or enclosed ground was by a statute of George I. punished by transportation to the plantations for seven years. Scores of human beings for a petty offence like that, which we smile at to-day, or which would be punished, if at all, by the infliction of two or three months' imprisonment—scores of people were sent to the unhealthy plantations in South America for a period of five, six, or seven years. All these laws had an object. Their object was to reform men's morals;

to make them better by deterring from crime or frightening them into living virtuous lives and respecting the civil code. But it did not succeed. Where we hang one man to-day, they hung seventeen then. They hung a man for stealing a horse. We do not hang a man for stealing a horse; and I do not know that the crime is committed any oftener than it used to be. I say that society is the gainer by the change. The legislators of that day, very much like those of to-day in some instances, were moral reformers who believed, like the Secretary for Lands, that the faggot, the cat, and the rope were essentials in the government of men and the regulation of social affairs.

The SECRETARY FOR PUBLIC LANDS: You do not think I would advocate anything of the sort.

Mr. LESINA: The judge who donned the black cap and sentenced a young girl to be hung for stealing goods from a shop in the daytime valued at 5s., or the man who killed a deer or destroyed a tree in an orchard or an avenue, or was guilty of some other petty offence which we now dismiss with a few months' imprisonment, doubtless considered that he was upholding the fabric of social order—preserving society against the forces of anarchy. And he and his fellows in and out of Parliament from that day up to the present time fought like Trojans against the proposals to mitigate the severity of the English Criminal Code. Did they succeed? Did they make men more moral or greater respecters of law and order? Did punishment by multilation, hanging, flogging, burning, boiling, slitting the cheeks—did any of those things succeed in checking crime? Did those brutal and detestable judicial punishments in the old days ever deter men from stealing sheep? We know they did not; we know that they had a different effect altogether, as I have shown already. In the early days we find the grossest practices resorted to for the punishment of offenders against the then civil code; and the Attorney-General and the Secretary for Lands, as students of Roman and Grecian history, are well aware of the awful agonies suffered by the law-breakers in those times. But as the world progressed and the philosophers and moral reformers began to have a widespread influence in elevating human character, these severe penalties were in some degree reduced. Yet as we have seen for many hundreds of years, these brutalities, which were then called judicial punishments, were committed on offenders. England, which is the freest of all the nations of the world from cold-blooded, wicked laws, still had as incidents to her polity provisions for punishment which a later age condemned as detestable and unwarrantably cruel. In France, and many other continental countries, precisely the same kind of thing prevailed—the most brutal punishments were inflicted for all sorts of petty offences.

Mr. STEWART: So it is in Spain to-day.

Mr. LESINA: Yes—Spain, Italy, Russia, and other places. These punishments, inflicted with such extreme cruelty, gradually excited a deep impression of sympathy and resentment in the nation. From the time of the glorious revolution, when, as I have already pointed out, King Charles lost his wooden head, the nation began, aided by the Press, to condemn punishment by mutilation as foreign to right and British feeling. They recognised—as we must recognise, and what we certainly ought to recognise before this Bill becomes a Queensland statute, and as I hope the Attorney-General will recognise — that, apart from the lowering of the nation itself, the sufferer is perpetually debased. It also became acknowledged—and I think this much will be admitted even by the Secretary for Lands—as a constitutional principle that the natural consequence of harsh and cruel restrictive laws is to aggravate the crimes or disaffection which have served for their pretext, and that the legislature has still to pass on and enact fresh laws of even greater severity. I have said that the brutality of these inhuman laws gradually excited a deep impression of sympathy and resentment; and this feeling was not only confined to England; it went also throughout the continent of Europe, and in many parts of Europe, like France, this feeling took such hold upon the public mind that, aided by men like Victor Hugo and reformers of that calibre, attempts were made to reduce the severity of the penalties imposed upon criminals guilty of all sorts of offences against property and the person.

The SECRETARY FOR AGRICULTURE: They can stand more reform in France now.

Mr. LESINA: Undoubtedly; but reformers are met by men who won't move forward. Victor Hugo, who was one of the——

The SECRETARY FOR AGRICULTURE: Victor Hugo is dead now.

Mr. LESINA: Victor Hugo is dead, but Victor Hugo lives in his works, as is well known by those who have read Victor Hugo's "Les Miserables"; and we cannot help loving and reverencing the man for the work he has done. Some admirers of Victor Hugo may not know the story of what induced him to take up this work, and I will give it in his own words:—

> At Paris, he says, in 1818 or 1819, on a summer's day towards 12 o'clock at noon, I was passing by the square of the Palace of Justice. A crowd was assembled there around a post. I drew near. To this post was tied a young female with a collar round her neck and a writing over her head. A chafing dish full of burning coals was on the ground in front of her; an iron instrument with a wooden handle was placed on the live coals and was being heated there. The crowd looked perfectly satisfied.

The SECRETARY FOR AGRICULTURE: What year was that?

Mr. LESINA: 1819.

> This woman was guilty of what the law calls domestic theft. As the clock struck noon, behind that woman, and without being seen by her, a man slipped up to the post. I had noticed that the jacket worn by this woman had an opening behind kept together by strings; the man quickly untied these, drew aside the jacket, exposed the woman's back as far as her waist, seized the iron which was in the fire, and applied it, leaning heavily on her shoulder. Both the iron and the wrist of the executioner disappeared in the thick white smoke. This is now over forty years ago, but there still rings in my ears the horrible shriek of this wretched creature. To me she had been a thief, now she was a martyr. I was then sixteen years of age, and I left the place determined to combat to the last days of my life these cruel deeds of law.

And he fulfilled his promise, and he did work in France for the amelioration of the condition of the criminal and reducing the severity of the punishments for offences against property and against the person—a work only equalled in England by Wilberforce, and Howard, the prison reformer. What has been done in our time——

Mr. DAWSON: Or, Zola to-day.

Mr. LESINA: The work commenced by these great men—Victor Hugo, Wilberforce, Howard, and others, and carried on by their successors to the present year of grace, 1899, has resulted in the brightening of the moral tone of society. There can be no question about that. The moral tone of society is brighter to-day than it was when a woman might be partially undressed in public, and have her back branded just like you brand a steer. The moral tone has improved since we abolished those detestable and brutal punishments, and that is why to-night I am

appealing for the abolition of the last two vestiges of punishment by mutilation, the lash and the gallows; I would like to see them abolished. We have excellent precedents established by various other countries of the civilised world; precedents to go upon. We have not only the humanitarian spirit of the age which urges every man of right feeling to strive for the abolition of these brutal punishments, but we have the precedents established by various other countries of the civilised world—people like ourselves sprung from somewhat the same stock as ourselves, and who to-day have abolished this last dread penalty, the death penalty. The criminal code has been humanised by the efforts of these men, and the best proof I have that the work is still going on and is working a quiet revolution in the hearts and minds of judges, magistrates, and legislators is to be found in the Draft Code submitted for the consideration of this House by the Attorney-General to-night. Splendid progress has been made.

[7·30 p.m.] There can be no question about that. To what is it to be attributed? The domestic warfare of our forefathers, the fire of the forward movement, the love of justice and mercy have brought the English Criminal Code to-day down with only two systems of punishment by mutilation—two relics of cruel, barbarous, and detestable ages. I refer to the degrading punishment of gaol whipping and the extreme penalty of death. In looking through this Code, I find that the number of several punishments is nine:—1, death; 2, imprisonment with hard labour; 3, imprisonment in irons; 4, imprisonment without hard labour; 5, detention in an industrial or reformatory school; 6, solitary confinement; 7, whipping; 8, fine; 9, finding security to keep the peace. It is expressly provided in this Act—it is a long step in long-looked-for reform—that whipping cannot be inflicted on a woman. Yet less than 100 years ago women were flogged and branded like steers openly in the market-place.

An HONOURABLE MEMBER: Some want flogging yet.

Mr. LESINA: I now see the law expressly provides that they shall not be flogged—it does not matter what crime they may be guilty of. Is not that a long step in advance? Though this Bill expressly provides that they shall be exempt from this hideous punishment, the backs of their brothers may be mutilated.

The SECRETARY FOR PUBLIC LANDS: Where is that said?

Mr. LESINA: But they will become rarer and rarer as time goes by. The punishments of boiling alive, roasting alive, drawing and quartering, branding, torturing, disembowelling, beheading, slitting the cheeks, maiming, lopping the ears, the tongue, the nose, blinding, racking, and certain nameless forms of mutilation practised upon wretched criminals by our well-meaning but barbarous forefathers have disappeared from our statute-book; but we still retain the lash and the gallows—two relics of cruel, barbarous, and detestable ages. Yet all the others were considered necessary for the welfare and continuance of society. I suppose that if anyone had got up and proposed that the law which permitted women to be mutilated for petty offences should be abolished, persons like the Hon. the Minister for Lands would have said, "You want to upset society, overturn things in general, and destroy the guarantee of our person and property now given by this law"; but the groans of prophets of doom of that character were allowed to pass unnoticed, and these hideous forms of infliction were abolished once and for all. Still, society goes quietly on its way rejoicing, and we are no worse off, if we are no better. Then the infliction of these horrid judicial punishments—the calm, cool, deliberate strangulation of a human being, or the cutting off slices from the quivering back of a moral idiot—is, to my mind, inexpressibly shocking, and in direct opposition to the trend of modern thought and usage when dealing with crime. Lombroso and Professor Carrara say——

The SECRETARY FOR AGRICULTURE: It is all in the library.

Mr. LESINA: Yes, they are authorities who have written on the subject. I am surprised that the Minister for Lands, if he has read these works, is not more inclined to feel leniently towards——

The SECRETARY FOR PUBLIC LANDS: If I did not feel very leniently I should have gone out of this Chamber long ago.

Mr. LESINA: The criminal is not a wild beast, although that appears to have been the view taken of him all through history. It may be a subject of considerable humour to the Minister for Lands as well as to other members that a man should be strangled who has committed a crime. Possibly he takes his pleasures, like most Englishmen, sadly, and, if he has a day off, would sooner go to an execution than to a picnic. The view I take of the matter is entirely different. My view of the criminal is that he is an erring brother whose feet have wandered from the narrow path which we all weakly strive to follow. My contention is that the criminal should be punished undoubtedly. I have no sympathy with murderers or others who commit outrages any more than I have with those who got into the Queensland National Bank for £10,000. They are all criminals. But to take his life is not the way to cure him; you only brutalise him. It has been condemned by history as a failure. If the magistrates who love the ceremonial of the double bench would consider for a little the causes of crime and the effect of punishment by mutilation, they would exercise a kinder and more beneficial influence. If the judges who coolly don the black cap would consider a little on the awfulness and senselessness of judicial murder, the tone of society would be morally brightened, and the last vestiges of bygone criminal law extinguished. If they would consider the awful sacredness of human life, they would not be so ready to hang criminals as they are to-day. They should consider the cause of crime. Crime is largely a social product; it is very largely the outcome of our present social conditions. Its great breeding grounds are the highly-centralised cities of modern industrial society. It is due to the awful economic and industrial conditions which are the product of our systems of monopoly, caused by many of the unjust laws which produce these monopolies, encourage and strengthen them, and bring about such conditions of life as result in crime. But the alteration of our social conditions and our industrial conditions are reforming influences which will have the result of reducing crime. I have said that crime is a social product, and that its great breeding grounds are the highly-centralised cities of modern industrial society. Because of certain economic causes, offences against the person, against property, drunkenness, &c., flourish rankly in all big cities. Ignorance is also a fruitful cause of crime.

An HONOURABLE MEMBER: That is personal.

Mr. LESINA: It is not personal. I have "Queensland Past and Present" for 1897, which undoubtedly proves this. It says—

> Ignorance is apparently a greater cause of crime than poverty. The records of the magistrates' courts show that of the 11,899 males and 1,278 females taken into custody during 1896, nearly one-half of the males and more than one-third of the females possessed no education, or only that of a most rudimentary character.

Then there is a table. Then it goes on to say—

> Although a slight difference exists between the terms used in the census schedules and those adopted for the criminal statistics, yet they are sufficiently agreed to enable a very fair comparison to be made. Thus males of imperfect or of no education contributed to the criminal class in more than two and a-half times the proportion that their number in the population would justify. On the part of the females the difference was still more pronounced, for, whilst the census figures showed 8·46 as the percentage of illiterate women in the population, there were 35·05 of that class found amongst those arrested during the year.

That shows that the persons who are illiterate contribute considerably more than their rightful percentage to the total of the crime committed in the colony—that ignorance is a fruitful source of crime and a much more fruitful source of crime than poverty.

Mr. MAXWELL: Slow policemen.

Mr. LESINA: Perhaps they are an element, but the statistician has not taken them into consideration, but these people were not too fast for the police. We have what is called the habitual criminal—the man who has, as Mr. Gladstone put it, a kink in his moral organisation—the man whose pathological condition is one of habitual criminality. Dr. Cæsar Lombroso, his pupil, Mario Carara, Professor Pellman, Surgeon-Captain Buchanan, Havelock Ellis, and other experts in the new science of criminology, have shown that to punish habitual criminals of either sex by hanging, flogging, or torture is about as sensible as punishing the lunatic or a smallpox patient for his affliction—a thing which our ancestors used to do. They show that habitual criminals must be dealt with in a scientific manner. Our treatment to-day is largely punitive instead of being also reformative. Modern experts in the science of criminology assert that we will never settle the problem of crime and dealing with criminals until we make our punishments not only punitive but reformative, preventive, and scientific. To lash a man, to peel pieces off his back, or to "scrag" him, and thus place him beyond the reach of good or evil for all eternity, is not the proper way of dealing with a man who is inclined to be criminal. He is morally diseased. He may be in other respects a perfect man, but he is intellectually little more than a moral idiot; and there are examples that I can give of this. I will give one example which I know will cause a certain amount of interest in the minds of hon. members, and that is the case of Luccheni, the anarchist, who lately assassinated the Austrian Empress. Now, Lombroso, who is universally known as an authority on these matters, Lombroso—the great Italian criminologist—discovered that Luccheni is the son of a prostitute; his father is a criminal; and several of his ancestors have been inmates of reformative institutions, showing that heredity to a large extent helped in the production of this extraordinary criminal. And that the man is no more responsible for his morally diseased condition than the man who sickens of smallpox or typhus fever, and yet he is punished by some punishment such as we propose in this Code. He is just as much diseased as the lunatic whom our ancestors punished by flogging.

The ATTORNEY-GENERAL: What would you do with him?

Mr. LESINA: I would perpetually imprison him, as has been done with him.

The ATTORNEY-GENERAL: That is punishment.

Mr. LESINA: He committed the crime in one of the Cantons of Switzerland, where capital punishment has been abolished, and he has been immured for life in a dungeon.

The SECRETARY FOR AGRICULTURE: You say he is not responsible—he cannot help it.

Mr. LESINA: But it does not follow that because you recognise that a criminal is morally irresponsible for the crime which he commits that you must let him loose on society. I recognise that the tiger is irresponsible, and that he obeys certain natural instincts in attacking the first person or animal that he comes across, but that is no argument why I should let him obey those natural instincts. I must place it out of his power to do so, and the way to do that is to place him in perpetual imprisonment. That is what society should do, acting in the light of science, because crime is largely the outcome of our social conditions. Our laws have produced large numbers of criminals; and to make those criminals responsible, and punish them for doing what they cannot help doing is unjust to them and unjust to society, and it also produces ill results. Lombroso, not very long ago, wrote a book called "The Female Offender." This book, which deals with woman as a criminal, is not altogether an exhilarating volume. It does not act on the spirits like champagne, but it contains an enormous amount of information, which, if the House would specially study it, would have the effect of bringing about many important alterations in our treatment of female criminals. Lombroso gives some startling cases of crimes committed by females that reveal a fiendish atrocity. One reviewer says—

> The justification as well as the value of the book lies in its constituting a mass of evidence, gathered with infinite labour and scientific accuracy, bearing on the psychological and other causes of crime amongst women.

Professor Pellman, of Berlin, puts forward a fearful statement which he compiled after having made a special study of hereditary drunkenness in Germany. The professor has taken certain individual cases a generation or two back, and has traced the career of children, grandchildren, and great grandchildren, in all parts of the present German Empire, until he has been able to present tabulated biographies of the hundreds descended from some original drunkard. The last person whom Professor Pellman has thus pilloried in medical literature is Frau Ada Turke. She was born in the first half of the century, and she was a drunkard, a thief, and a tramp for forty years of her life, which ended in 1880. Her descendants have numbered 834, of whom 709 have been traced by the professor in local records from youth to death. Of these 709 he found 102 were illegitimate, there were 142 beggars, and sixty-four more lived on charity. Of the women 181 led disreputable lives. There were in this family seventy-six convicts, seven of whom were sentenced to death for murder. In seventy-five years this one family piled up a bill of costs in correctional institutions which totalled £250,000, all of which the law-abiding taxpayers have had to pay. Here is the product of one criminal woman. If that woman had been placed in an inebriates' home, or in some kind of correctional institution for the term of her natural life, the taxpayers of Germany would have been saved that £250,000.

The SECRETARY FOR AGRICULTURE: Not at all—there would have been a deputation to the Home Secretary to let her go.

Mr. LESINA: Not a bit. If we had correctional institutions in which we could imprison such women, where they would be scientifically treated, and where all kinds of reforming and corrective influences would be brought to bear upon them, society would save itself very heavy tax bills, and it would also prevent women of this stamp from giving birth indirectly to such a number of criminals. There is another case which occurs to my mind—a case mentioned by Herbert Spencer, in a collection of essays called "The Man *versus* the State." In speaking of the sins of legislators—and I commend this work

to the Secretary for Lands and the Secretary for Agriculture — Herbert Spencer refers to this case—

> The saying of Emerson that most people can understand a principle only when its light falls on a fact induces me here to cite a fact which may carry home the above principle to those on whom, in its abstract form, it will produce no effect. It rarely happens that the amount of evil caused by fostering the vicious and good-for-nothing can be estimated. But in America, at a meeting of the State Charities Aid Association, held on 18th December, 1874, a startling instance was given in detail by Dr. Harris. It was furnished by a county on the Upper Hudson, remarkable for the ratio of crime and poverty to population. Generations ago there had existed a certain "gutter-child," as she would be here called, known as "Margaret," who proved to be the prolific mother of a prolific race. Besides great numbers of idiots, imbeciles, drunkards, lunatics, paupers, and prostitutes, "the county's records show 200 of her descendants who have been criminals." Was it kindness or cruelty which, generation after generation, enabled these to multiply and become an increasing curse to the society around them.

Herbert Spencer adds—

> For particulars see "The Jukes: a study in crime, pauperism, disease, and heredity." By R. L. Dugdale.

The ATTORNEY-GENERAL: This is all very interesting, but what has it got to do with the Bill.

Mr. LESINA: I am trying to show that instead of hanging criminals and flogging them—barbarous punishments which were very good probably 200 or 300 years ago, but which are totally out of touch with the humanitarian spirit of nineteenth century civilisation—you should place them in correctional institutions, and prevent them from propagating their kind, and flooding society with a whole host of criminals, such as those I have mentioned. There can be no possible escape from that argument. If the Attorney-General wants to know my object in drawing the attention of members of the Chamber to these important facts it is this—we are asked to adopt a Draft Code of criminal law which, instead of providing for the scientific treatment of these abnormal types of humanity, provides for their punishment by mutilation, flogging, and hanging. That, I maintain, is cruel, barbarous, and detestable, and utterly opposed to the humanitarian spirit of the age. Surgeon-Captain Buchanan, an eminent authority on this question, has an article in a recent number of the *Calcutta Review*, in which he recapitulates the signs of the born criminal. I will read them, so that those in charge of our prisons and penal establishments will be in a position to carefully study the characters of the inmates of those institutions. Surgeon Buchanan says these are the signs of the born criminal—

> A special shape of skull; a pale, prematurely-wrinkled face; outstanding or otherwise deformed ears; a marked, projecting, or receding chin, and scanty beard. He is constantly lazy, and incapable of sustained work. His muscular strength is weak, but capable of great spasmodic effort. He is usually ugly, the fixed look in the eye may be noted, especially during effort. He is liable especially to diseases of the lungs and heart. He comes of a neurotic or criminal stock; is addicted to alcoholism. He frequently tattoos himself; the tendon reflexes are abnormal. He shows a deficient sensibility to pain. While his eyesight is keen, his other senses are usually inferior. He is remorseless and indifferent to suffering. His intelligence is below the average. He has a strong craving for excitement and change, and a love of orgy. Is liable to spontaneous and periodic outbursts of violence. He is open to sentiment, superstition, and attracted to the emotional side of religion. He has a special language of his own. His instincts are, in fine, anti-social, and he frequently believes that crime is an honourable calling. Many of his characteristics are found in savages and animals. While abnormal in his physical qualities, the moral side of his nature is a blank. Though not intellectually he is often morally an idiot.

These men are the product of our social system.

The SECRETARY FOR AGRICULTURE: You said just now it was hereditary.

Mr. LESINA: Is not hereditary influence due to environment? Look at the German case I mentioned just now, where a woman was a criminal for forty years, and where her descendants committed all sorts of crimes and cost the State £250,000; that is a study in heredity by itself. It shows the influences at work which tend to the production of criminals. A drunken mother and a drunken father probably beget children with a predisposition to alcoholism, and the social conditions that surround them induce them to commit actual crime. I am going to deal finally with the questions of flogging and capital punishment. All these things lead up to the objections I have to the Bill. The purpose of punishment is to cure the offender. How can you cure a criminal by flogging or hanging him? My first objection to flogging is this—and it is a very important and democratic objection: I object to flogging because it was never intended to be used on the backs of men wearing a broadcloth coat and a tall hat. Flogging is an institution specially reserved for Bill Smith, the hod carrier, and John Brown, the wharf lumper, for the man who wears moleskin trousers and blucher boots. There has never been a man in a cloth suit triced up to the triangle yet. It is an anti-democratic institution, specially reserved for the use of the working classes. When you find a man triced up to the triangle who has stolen £20,000 from a bank I shall begin to think you are sincere in your attempt to reform society by the use of the cat. I object to flogging, secondly, because it is an instrument of torture. I do not think it is necessary to torture people nowadays. I object to it, thirdly, because it degrades and brutalises for ever and all time the victim; fourthly, because it degrades and brutalises society; fifthly, because it further degrades the already debased wielder of the lash; sixthly, because it does not act as a deterrent. If it acted as a deterrent, how is it that people who have been getting flogged for centuries commit crime? If you were to allow the Press to be present at floggings—I do not know whether they are now—and they were to publish snapshot photographs of the bleeding weals on a criminal's back, and depict his agony in glowing language, the man who is a criminal would immediately become a martyr in the society in which he moves. The criminal class forms a fair percentage of society, and every member of that class moves as an honourable member of it. If flogged, he is looked upon as a martyr, and the result is that others emulate his example. Now, as to hanging, when that was carried out in public in the old country or in Sydney, and men smoked their pipes and cigars and chatted round the gallows, hanging had no deterrent effect. It brutalised the spectators. In the adjoining public-house they would tell how game a man had died. I contend that it has no deterrent effect under any circumstances. Yet the Attorney-General only proposes to abolish hanging for rape.

The ATTORNEY-GENERAL: I gave you the reason the other night.

Mr. LESINA: Because a man is likely to kill his victim in order to get rid of the only witness. Is he not just as likely to kill anybody else to dodge the punishment?

The ATTORNEY-GENERAL: I think the punishment is too great for the nature of the offence.

Mr. LESINA: I think any punishment is too great which takes a man's life away, or brutalises him for life. If your object is to reform a criminal, why brutalise him by flogging? [8 p.m.]

The SECRETARY FOR PUBLIC LANDS: Your argument is that he cannot be reformed, and that he should be locked up for life.

Mr. LESINA: Yes, if he cannot be reformed. But if your object is to deter criminals from committing offences, why resort to flogging? If that is your argument you would be justified in boiling a criminal, because that would be a greater deterrent than flogging. Why not boil him alive, or burn him in the public square? That would terrorise every criminal throughout the country, and it used to be done at one time. Why not hark back to those old English customs? Under the Code death by hanging is the penalty for three offences—murder, treason, and piracy. At present that is the penalty for some five or six offences. Is that not so?

The ATTORNEY-GENERAL: Five.

Mr. LESINA: I object to the infliction of the death penalty for certain reasons. (1) Because it is a form of mutilation; (2) because it is not necessary for the security of human life; (3) because its abolition increases the security of human life; (4) because its abolition, in the great majority of cases, has been, and remains to be, a marked practical success; (5) because the collective and united experience of those countries in which the death penalty has been abolished affords strong and sufficient proof of this; (6) because if in practice these countries had found that abolition was a failure, they would have resumed executions; (7) because the arguments in favour of the death penalty are equally strong if used in defence of boiling in oil or roasting at the stake; (8) because there is every likelihood of a decrease in the number of murders where the law sets the example of reverence for human life; (9) because where the danger of occasionally executing innocent persons is removed by the abandonment of an irrevocable penalty, convictions become more certain, and the murderers apprehended are far more sure not to escape than under the other system; (10) because the growing distaste for the death penalty induces jurymen to refuse to convict and many murderers thus escape; (11) that hanging does not deter; (12) because life imprisonment is a more certain penalty, and is therefore more deterrent; (13) because the abolition of the death penalty would result in a more diffused sense and intelligence of the sacredness of human life, in its spiritual and eternal relation; (14) because the retention of the capital penalty is attended with far more impediments to the repression of atrocious crimes than the substitution of a wise and uniformly severe secondary punishment; (15) because its application in Queensland is irregular and fortuitous; (16) because innocent men may be hung! Here is proof that the application of the death penalty in Queensland is fortuitous and irregular, and has not been carried out as the law instructs magistrates and judges to carry it out. In 1897 there were ten cases of murder tried, and there were three acquittals and seven convictions, but there were no executions during that year. You see, seven men were found guilty of murder.

The ATTORNEY-GENERAL: Probably it was not wilful murder in the sense in which the Code now proposes to define wilful murder.

Mr. LESINA: There were seven convictions for murder in 1897, and none of the men so convicted were hanged. Does that not show that the death penalty is carried out irregularly and fortuitously?

The ATTORNEY-GENERAL: The Code draws a distinction which was never drawn before between wilful murder and murder without malice aforethought.

Mr. LESINA: In England, I suppose, that out of every 100 murders committed 90 per cent. of the offenders are not executed, and in the countries of Europe the same thing occurs.

The ATTORNEY-GENERAL: You don't quarrel with that?

Mr. LESINA: No, I do not quarrel with that, but I ask why, if the death penalty deters people from the commission of murder, do we not carry out the thing regularly and fearlessly, and not with this fortuitous evasion? The real reason why it is not carried out regularly is that modern sentiment is against the hanging of criminals. There is a growing sentiment all over the civilised world against hanging criminals, but it is only beginning to manifest itself here. We have not been alive to the growth of that sentiment, but our jurymen have, because rather than have a man's blood on their heads they bring in a verdict of not guilty. If they knew that a criminal charged with such an offence as that for which the punishment is death would only be imprisoned for life, they would have no scruples about bringing him in guilty, but they will not shed a man's blood, and you cannot quarrel with jurymen for that. But there is another argument against the death penalty, and that is that an innocent man may be hanged. I do not think that will be disputed, for innocent men have been hanged. My opinion is that it is better that ninety-and-nine known murderers should escape than that one innocent man should be hanged. You can never give him his life again, and the taking of it is a mere judicial mistake, for which society, the judge, the jury, and legislators are responsible. They can make no amends to that man, for he has, as far as we know, only one life, and when that is taken from him it is gone for all time and eternity. Therefore, if there is a possible chance of innocent men being hanged we should not inflict the death penalty. Juries will not convict on circumstantial evidence, and if I were a juryman to-morrow morning I would not hang a man on circumstantial evidence; and that is the kind of evidence on which men charged with murder are usually convicted. You have to prove that the victim was poisoned or shot, or that he met his death in some other way at the hands of the person charged with the offence, and to do that you have to go on circumstantial evidence; and that may lead you into convicting an innocent man. I shall refer you to an authority on this subject. There is a case of circumstantial evidence that I should like to impress upon the Attorney-General, because this is an argument which needs to be emphasised. In a book published in Melbourne, and entitled "Fifty Years of Colonial Life," Mr. Sizar Elliot, an old Melbourne colonist, gives a case in which a man was hanged innocently on circumstantial evidence.

The SECRETARY FOR PUBLIC LANDS: What year was that?

Mr. LESINA: Mr. Elliot gives the year, and you can get the book in the library. Mr. Elliot was on a jury that tried a case of murder heard before Chief Justice Forbes.

The ATTORNEY-GENERAL: That was in the old days.

Mr. LESINA: Never mind. Mr. Elliot says that near Campbelltown one evening two men were riding one horse on their way home from work, and they were heard quarrelling as they jogged along. Next morning the front man was found dead, and his mate declared he had been shot by some unknown person in the scrub. But the medical expert swore that the wound was just the kind that a gardener's knife would make, and as the living man happened to be a gardener his flint was fixed at once. Judge Forbes told the jury that circumstantial evidence was just as good as direct evidence, and the unlucky gardener was thereupon found guilty and duly hanged. Twelve months later a bushranger named Curran was condemned to be hanged, and in his dying confession he declared he had shot the gardener's mate from behind cover. Then the remains of

the murdered man were exhumed, and the bullet wound was found in them. The *post-mortem* doctor did not feel too well, the jury did not feel well, and probably the judge did not feel too well at that discovery. Mr. Elliot says that the blunder had a lasting effect on him, and that he vowed he never would believe circumstantial evidence again.

The ATTORNEY-GENERAL: No Executive worthy of the name would hang a man on such facts.

Mr. LESINA: But they did hang him.

The ATTORNEY-GENERAL: They were unworthy of their positions.

Mr. DAWSON: What about the man who was hanged?

Mr. LESINA: There is another case, too. Of course the death penalty has been abolished for this offence in some colonies. In New South Wales there was a man named Butner who was sentenced to death for rape upon a woman who came from Queensland and took lodgings at his place. She came there late at night, and at 1 o'clock in the morning she was seen hanging from a spout and shrieking for help. A man passing by secured a ladder, erected it against the house, and rescued the woman from the coping. She at once went to the police station and laid an information against Butner for rape. He was duly charged with the crime and found guilty. The judge was perfectly satisfied that a case had been made out, the jury were satisfied, two medical experts swore that she had been raped, that previous to her encounter with the man she was *virgo intacta*. The prisoner was duly sentenced to death, but Mr. Crick, one of the present Ministers of the Crown in New South Wales, took up the case. He communicated with the Queensland police and discovered that the woman had been a licensed woman for about twelve months in Brisbane, and on the very morning on which Butner was to be hanged he received a pardon, £50 by way of compensation, and was discharged. There is what sworn expert evidence does for you at times.

The ATTORNEY-GENERAL: That would be impossible under this Code.

Mr. LESINA: I know that, and I say that in spite of yourselves you are being dragged along by public sentiment. You have to give way and abolish some of the-e cruel and barbarous punishments, unless you desire to be perpetually making mistakes and punishing the wrong men. I say that murder is murder under all circumstances. It is just as much murder when authorised and directed by the Executive as when it is committed in cold blood by the private individual. I can see no difference in effect, though it seems to me that the circumstances surrounding judicial murder are more cold-blooded and horrible. You tie the victim up, you have him like a rat in a cage, and you judicially strangle him because he has killed or attempted to kill someone else, or because circumstantial evidence points to the fact that he may have killed someone else. There is also the case of Habner in Manchester in 1879. He was sentenced to death for the murder of another person. He lay under sentence of death, and was reprieved at the last moment after being in gaol for twelve months. Just at that time Charles Peace was arrested and condemned to death for murder, and he confessed that he was the murderer of the man for whose death Habner had very nearly suffered the death penalty. Coming to another case nearer home. A case occurred in Rockhampton in which a man got eighteen months for burglary. The circumstances of the case were these: A policeman found a young newchum walking about the streets without any boots on. He arrested him and took him to the station, and at the station he showed him a pair of boots, and asked him why he had none on. The newchum said he lay down beside a fence and someone had taken off his boots and robbed him. The policeman said, "Are these your boots," and he said "Yes." Then the policeman arrested him for burglary. The boots had been found in a house which had been entered by burglars, who, being disturbed, had left them behind. The unfortunate man got eighteen months on the evidence of those boots alone; but the sequel came later on. A burglar was caught red-handed in a house, and he afterwards confessed to having committed the burglary for which the young newchum was suffering. He had robbed him of his boots, and these he had himself left behind in the house where he had been disturbed. I quote that to show what circumstantial evidence may do, and yet you take away a man's life or liberty on evidence such as that. I say perpetual imprisonment is infinitely preferable because if any new circumstances turn up you at all events have your man alive and can do justice to him eventually, but if you have killed him where is your remedy?

The ATTORNEY-GENERAL: When did that case happen?

Mr. LESINA: I suppose about eighteen months or two years ago.

The ATTORNEY-GENERAL: Did they not find any stolen property with him?

Mr. LESINA: I do not recollect anything like that.

The ATTORNEY-GENERAL: It was very insufficient evidence.

Mr. LESINA: Then, again, only a short while ago I saw a cablegram in the papers to the effect that a pauper in one of the London workhouses had confessed to having murdered a man for whose murder another man had been hung. This Code makes no provision against cases of that kind, and that is why I should like to see capital punishment abolished. Perpetual imprisonment is more effectual in many ways. It is a greater deterrent, I believe, and if capital punishment were abolished juries would have less hesitation in convicting. There is another matter to be considered in connection with hanging and flogging, and that is the employment of the man who wields the lash and the man who draws the bolt. I think it was Lord Brougham who said that the worst use you could put a man to was hanging him. There are any number of people who agree with that sentiment. I think that the next worst use you can put him to is to make him a flogger or hangman. Romilly says:—

> One of the most curious and instructive facts in modern societies is the sort of moral and social blight which attaches to the executioner of criminals condemned to death by the laws of the country; for if the punishment be such as to deserve our respect and approbation, the office is in a high degree useful and honourable. No such obloquy rests upon the officer carrying out any other description of punishment.

I read an article some time ago in the "Fortnightly Review," written by Major Arthur Griffiths, in which he asks:—"Why have a hangman?" He describes the baleful, brutal, horrible occupation of the human butcher who carries out the last dread sentence of the law. He speaks of the hangman as concentrating in himself immeasurable shame and disrepute, an abject, degraded being, whose name is universally recognised as synonymous with that of the ignominious post he occupies. The occupation degrades the executioner and degrades society. The hangman degenerates into a callous, cold-blooded ruffian. This vile being is universally execrated. Is it a correct thing to deliberately

allow a man to follow an occupation which brutalises and degrades him and the society in which he moves? As Major Griffiths truly observes—

An executioner, constantly and exclusively engaged in the taking of human life, must, by the very nature of his avocations, become brutalised. This is established beyond doubt.

The abolition of the gallows would lead to the abolition of these degrading offices which no human being, morally responsible, would hold. These are my chief objections to the Code, and I would like to see these two punishments entirely wiped out. I would like to say to those persons who believe in capital punishment that they must assume the following four propositions, and then prove their own case:—(1) The fear of death is the only fear which is sufficiently intense to deter from the commission of murder. (2) Juries are never led by their dislike of capital punishment to give false verdicts. (3) Innocent men are never hanged. (4) A week or two of professed penitence for a great crime will secure the offender's pardon in the next world. If, as Romilly says, they can only succeed in persuading themselves of the truth of these four propositions, they may go on hanging with a safe conscience and save themselves a world of trouble and perplexity. To follow up my contention on this point, I shall quote from an article by a judge of the New Jersey Supreme Court, in the *Arena*—Mr. C. G. Garrison—who says—

The jurisdictions that still retain capital punishment without qualification are:—Arkansas, Connecticut, Delaware, Florida, Idaho, Kansas, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wyoming.

Those in which the death penalty is abolished are:—Colorado, Maine, Michigan, Rhode Island, and Wisconsin

It appears that the death penalty is absolute in twenty-four jurisdictions, that it has been abolished in five, and qualified in sixteen.

The following extract from Mr. Curtis's report shows the state of legislation in foreign countries: Capital punishment is retained in Austria, China, Columbia, Denmark, Ecuador, France, Germany, Great Britain, Greece, Haiti, Hawaii, Honduras, Japan, Corea, Siberia, Mexico, Persia, Peru, Siam, Spain, Sweden, and Turkey.

It has been abolished or qualified in the Argentine Republic, Belgium, Brazil, Chili, Costa Rica, Guatemala, Holland, Italy, Norway, Portugal, Russia, Switzerland (eight cantons), and Venezuela.

The article goes on—

Another eminently practical consideration is the stand that is constantly and increasingly being taken by juries against finding a verdict of murder of the first degree upon circumstantial evidence when the death penalty is to follow. It may be urged that the position taken by juries in this respect is illogical, since the effect is to absolve from punishment in exact proportion to the successful secrecy with which a crime has been concealed. It is useless to argue; juries will find the most absurd verdicts of insanity where none exists; will, if necessary, acquit where they believe the prisoner to be guilty, but they will not take the responsibility of inflicting a punishment resting upon the correctness of their conclusion upon a train of circumstances that puts the man beyond the pale of restitution should new and modifying circumstances come to light. The result is that the worst criminals escape under colour of law, not because a reasonable doubt exists as to their guilt, but because of the unwillingness of juries to assume the responsibility in view of the sanguinary and irretrievable effect of their verdict.

Again, we have cases to show that juries will not convict on circumstantial evidence, and they cannot be quarrelled with for so doing. Innocent men have been condemned, and that is a strong argument for the abolition of capital punishment. In eight cantons in Switzerland capital punishment has been abolished—in a country which some hon. members hold up as an example to Australia with regard to federation—so why should we not imitate them in this case? The experience of all these countries goes to show that the abolishment of the death penalty does no harm, but infinite good. To draw my arguments to a conclusion, I think I have shown, going back 400 years, that all sorts of punishments were inflicted for petty offences because the legislatures, the judges, and the public at large believed that only in that way could crime be put down. Torture, burning, branding, boiling, hanging—these were the means adopted to try and teach men to lead a moral life. It was contended that these punishments were necessary for the welfare of society; that if they were abolished society would not last a single day. It is hardly necessary for me to give the lie to all these "prophets of doom." We don't hang, draw, and quarter, boil, rack human beings now. We have risen above all the tortures and horrible punishments of our forefathers, and the best evidence of this is the abolishment of many of the old laws and the repeal of many Acts quite out of date, which is in harmony with the enlightened spirit of the times. Capital punishment has been abolished in many civilised countries, and I object to the hanging and flogging of men for the offences mentioned in the Code. I think society would be just as secure without these cruel punishments. Let us obey the dictates of common humanity by abolishing this out-of-date punish-

[8·30 p.m.] ment, and by establishing punitive, reformative, preventive, and scientific treatment of our criminals; and I shall do my utmost, when the Bill is passing through Committee, to remove those provisions. Whether I fail or whether I succeed, I shall try to have them struck out of the Draft Code. I would like to see once for all in this new land, where we are building up a new civilisation which we hope to ground upon humanitarian principles—I would like to see these things done away with for all time; and I shall earnestly strive and use what little influence I can bring to bear upon the matter to have them struck out. If I should fail I can only fail and somebody else, as surely as the sun will rise to-morrow, will take the matter up where I leave it. I feel perfectly satisfied that it will not be many years longer before the humanitarian feeling now spreading through the colony, and through all civilised communities, will demand once and for all the abolition of flogging and the death penalty.

HONOURABLE MEMBERS: Hear, hear!

After a pause,

Mr. DUNSFORD (*Charters Towers*): I think it would be almost a pity at this comparatively early hour to permit the Bill to go through.

The ATTORNEY-GENERAL: Do not talk for the sake of keeping it back. We want all the time we can give to it.

Mr. DUNSFORD: I know there are some hon. members who are desirous of talking on the matter, but I do not see them present. There is the hon. member for Fassifern, the Hon. G. Thorn.

The ATTORNEY-GENERAL: Oh!

Mr. DUNSFORD: We know that he is a law reformer; he has brought Law Bills before the House, and I think it is a pity that he has not had an opportunity of discussing this matter. I shall be as brief as possible in the remarks I have to make to-night. I suppose all hon. members will agree that it is a wise thing to have a codification of the criminal law, and I think we all agree that the Bill should pass its second reading, though probably there are some matters to which some hon. members on both sides may take exception when we get into committee. When we come to look at the size of this Criminal Code, containing as it does 216 pages, a large number of schedules—and I

believe there are something like 708 clauses—when we look at the formidable nature of this Criminal Code, we may well ask ourselves how it is that any man is at liberty at all? It appears to me that if we consider these in the light of so many traps into which we are all liable to fall, it is really surprising how many of us have managed to escape. Of course I am speaking in a general sense, because we must remember that these 700 odd clauses have been scattered through—so the Attorney-General tells us—some 250 Acts of Parliament, and the public cannot have known what the law of the land has been—what the living criminal laws have been—because the public do not hunt through the statutes. They have not the time or the opportunity, and how people are to obey the laws of the land without knowing that such laws are in existence must be to us a puzzle.

The ATTORNEY-GENERAL: The Code will minimise the risks.

Mr. DUNSFORD: Yes, it does to some extent, because if it does nothing else it will enable the public, if they like to peruse it—at any rate it will enable members of Parliament to see how much behind the age the living criminal laws of our land are. I believe it was—I do not know whether it was or not—the Attorney-General who first gave it the name of the living criminal law.

The ATTORNEY-GENERAL: Hear, hear!

Mr. DUNSFORD: It may be in one sense a living criminal law, but those on whom its punishments are inflicted will come to the conclusion that it is a killing criminal law, especially when we consider the large number of cases where capital punishment is inflicted, and flogging is inflicted, and irons may be put on the criminal, and where solitary confinement may be ordered—I say, when we consider all these things, it almost makes one believe that instead of being a living criminal law it will have the effect, to some extent, of mentally, morally, and physically killing those unfortunates of society who are termed our criminals. I do not wish to go into details in this matter; but I want to point this out: Going through this Code, I have discovered that there are no less than sixty-four clauses under which there are thirty-eight different crimes where the sentence of life, together with solitary confinement as a portion of that sentence, may be inflicted. I do not think we can say that the humanitarian spirit has been very much abroad when this large number of clauses were drafted. Of course I am aware that this is merely a codification, and I am not going to blame the Minister or the Commission for permitting these to remain, but I think it is not going beyond our rights if we enter a protest, as it were, against this sin—if it is a sin—of omission—that is, not making some effort to remove the possibility of what I call these inhuman sentences. On page 135 there are nineteen cases of crime against property; clauses 419, 417, 400, 399, 398, 306, 224, 156, and 151, ten crimes; 64 is another clause, and there are eleven clauses and thirty-eight crimes. All of these make it possible for the punishment of solitary confinement, and though a prisoner is suffering a life sentence I think that is rather inhuman. Then there are clauses where solitary confinement and flogging can be imposed. It cannot be for the protection of society, it cannot be for the reformation of the criminal that flogging and solitary confinement are added to the punishment of a criminal who is incarcerated for life. The effect cannot be to improve them in any way, and the effect must be to brutalise them. Of men it makes devils, desperadoes, and if they do, after undergoing these inhuman punishments, get turned loose on society, worse luck to society, because society will be the sufferer, though the individual has been the sufferer in the first place. There are a number of clauses where solitary confinement and whipping are inflicted during life sentences, and provision has been made for prisoners being ironed. On page 178 there is a clause providing for the ironing of prisoners. All these things are, in my estimation, inhuman, and would have been better left out of the Bill, and when it comes to the committee stage I shall make some effort at any rate to improve it from my standpoint, and lessen these inhuman punishments. I do not wish to follow up the matter any more, because the speech or lecture delivered by the hon. member for Clermont must have been very interesting to hon. members. He has covered all the ground—certainly all the ground I intended to cover. I had made notes of matters on which he has touched; but I think it would be almost an infliction if I were to trench the ground he has already and so ably gone over. While entering my protest against the inclusion in this Code of so many of the relics of bygone centuries, I must, at the same time, give credit to the hon. member who has introduced the Bill for the very clear manner in which he placed it before the House, and to those who have had the matter in hand from the start. The Code will simplify matters for everybody. It will make the law much more easily understood. If we are to get any good out of our criminal laws we should have them all under one Act. I hope the Code will pass its second reading, and I am sure opportunity will be given hon. members to introduce any amendment they may think fit in the committee stage.

Mr. FITZGERALD (*Mitchell*): It is really astonishing to see the interest which appears to be taken by members on the other side of the House in the great and important measure which is now before the House and which was brought in with such a glare of trumpets. There is a most wonderful attendance on the Government benches. I regard the measure as so important that I should not like to see it go through to-night. There may be some hon. members who may like to discuss it, and, speaking as a member of the legal profession, I should like to hear an expression of opinion by those outside the ranks of the profession, because it is a question which might be discussed very well and very much to the point outside the profession as well as inside it. Reference has been made to the gentleman who drew up this Code, and to those who revised it. We know who the gentleman is who drew it up in the first instance. But I notice that all who have had anything to do with it are leading legal gentlemen. Not a single layman has been asked to consider it or look over it. Yet when it comes to the trial—when it comes to bring these laws before the courts—it will be the layman, the ordinary business man, who will be asked to go into the jury-box and find out the facts, come to a decision on the facts, and find out whether the prisoner is guilty or not guilty. The members of the jury are always reminded that they are the country, and the whole responsibility, when the judge sums up, is placed on them. They are men of ordinary intellect, and men of ordinary business experience, and they are asked to bring their ordinary business experience and their ordinary intellect to bear. So I should have liked to have seen some persons on the Commission outside the profession.

The ATTORNEY-GENERAL: For a codification?

Mr. FITZGERALD: Yes, for a codification. This is not simply bringing together the old law. The Attorney-General has admitted that. He has admitted it is not a *précis* or *résumé* of the

present law, but that there are alterations in the present law, and some very important alterations.

The ATTORNEY-GENERAL: A few—comparatively few.

Mr. FITZGERALD: As far as putting it into the ordinary legal phraseology, if that had been all that was required, leave it in the hands of the legal gentlemen—leave it in the hands of Sir S. W. Griffith, and even a good draftsman, and the work is done. I admit that; but when the Government go to the trouble of codifying the law and of bringing a big thing like this before us, they might as well have gone a step further, and considered whether a great many of the principles of the present law should not have been amended. There are many things which want amending. Take it from a juryman's point of view. The Attorney-General, in moving the second reading, said the Code was not only an attempt to cover the whole ground of the law itself, but of the procedure. There is one question of procedure which ought to have been considered more carefully than it has been—one which affects jurymen or laymen very much. I will give a few instances which will show why I should have liked to have seen laymen on the Commission. How many times have we seen a judge attack and actually insult jurymen? How many times have we seen a judge actually tell them, after they have given their verdict, that they ought to be ashamed of it? In many cases they deliberately insult them after telling them they are the country. There are many things besides codifying the law which require looking into. Jurymen do not get the rights they are entitled to, or the respect that is due to them. How often do we hear the most learned and unbiased judge lecturing them on the facts? The duty of the judge is to see that the law is complied with—to advise the jury what the law is, and to sum up the evidence; but in many cases, especially criminal cases, he usurps the powers of the jury. You will hear him addressing the jury, and trying to ram down their throats his own view of the facts—his own convictions of the facts. You will hear him sum up against or in favour of a prisoner, as the facts strike him. That is not the province of a judge. It has nothing to do with him. He says, "I am not responsible for finding as to the guilt or innocence of the prisoner. That is your prerogative. You twelve men have to decide. You have the responsibility." Yet in almost every case you will find him actually trying to convince the jury on the facts as they strike him—not simply summing them up as they come out in evidence, or saying: "It is a question of which witness you believe. Retire to the jury-room and say whether you believe this witness or that witness." Another thing, he criticises each witness's evidence, and tries to induce the jury to believe one witness or the other, just as he believes.

The ATTORNEY-GENERAL: That is not my experience.

Mr. FITZGERALD: Then I must say that my experience has been different from the Attorney-General's.

The ATTORNEY-GENERAL: The cases are very exceptional.

Mr. FITZGERALD: It is done in almost every case, and in civil matters it is exactly the same. Hon. members who have listened to a case must admit that more or less that a judge is biased, not wilfully biased, of course. I mean that his opinion leans to one side or the other. Naturally a man must have his own belief. But he goes further and tries to imbue the jury—whether wittingly or not—with his own belief. I should like to see the position of judge and jury defined. If we are going to have a Code, let us have it complete. Here is another question which really wants redressing. That is the right to challenge. There were one or two clauses in the original Code drafted by Sir S. W. Griffith, but they have been struck out. Then with reference to the right of the Crown to challenge——

The ATTORNEY-GENERAL: Yes—that belongs more properly to the law relating to juries.

Mr. FITZGERALD: Just so, but the hon. gentleman must see that there are a number of other clauses relating to juries that might also have been wiped out. There are clauses here which tell the prisoner that he can object to the whole panel of jurors—that is, before they are sworn at all. There are clauses which tell you, if one juror is challenged for cause, how he is to be tried to see whether he is partial or impartial. Why not go further?

The ATTORNEY-GENERAL: Giving the prisoner his rights, you know.

Mr. FITZGERALD: I contend that this Code actually encroaches on the law relating to juries. To be consistent you might almost wipe out the whole of these clauses, and bring in a Jury Bill. Then I would agree with the hon. gentleman, but if we once encroach on the jury law, we should make it perfect. It struck me on reading the Code that the learned gentleman who framed it—I am sure he must have taken a great deal of time over it—but when he got to this part he must have been very tired and let it go.

The ATTORNEY-GENERAL: Oh, no!

Mr. FITZGERALD: The right of the Crown is a very important question. I know of one case in which there was an extra big panel of 124 men. One man fell sick, which left 123. The Crown had no right of challenge, but they had the right to make ninety-nine out of those 123 men stand out, whilst the prisoner only had the right to challenge twelve men, which left twelve others, so that the Crown had what amounted to the same thing as the right to challenge.

The ATTORNEY-GENERAL: The prisoner has the same right.

Mr. FITZGERALD: No, the prisoner is limited to his twelve challenges.

The ATTORNEY-GENERAL: Peremptory challenges.

Mr. FITZGERALD: I am not saying whether the jurors were challenged for cause or not. The Crown could make those ninety-nine men stand out, and if the prisoner challenged twelve of the remaining twenty-four, the other twelve had to be the jury. These are questions on which there may be a great deal of argument, and, if the Code is to be complete, I cannot see why all this should not be put in, if there is to be anything inserted with reference to juries. A great deal has been said this evening about the death penalty. I must say that my sympathies are a great deal in the same direction as those of other hon. members who have spoken on this side. I am glad to see that in several instances the death penalty is taken away, but I would really like to see it further safeguarded. Every hon. member knows of cases, either from reading of them or they are cases which have come under his own observation, where persons have been condemned to death under circumstances which gave rise to a suspicion that the sentence was unjust. If I have any support, I intend to bring the matter up in Committee to see if some safeguard cannot be devised whereby the jury will not only have the responsibility of bringing in the verdict, but, if they should find a man guilty, they will have the privilege of recommending him to mercy, and also have the right of saying to the judge, "We find that the prisoner should not be sentenced to more than so many years."

Mr. LORD: What is the good of the judge?

Mr. FITZGERALD: The judge is not there to convict the man. The judge is there to advise the jury of the law, and to tell the jury that the responsibility for the verdict rests on the consciences of the jury. If the judge was there to find the facts, and find the verdict, it would only be right that he should also be the man to give the sentence; but the wings of the judges should be clipped just as much as anyone else's wings. Especially in the case of capital offences the jury ought to bring in as part of a verdict of guilty, their decision as to whether the extreme penalty should be inflicted or not. Of course, even if they recommend the infliction of the extreme penalty, the Executive would still have the power to examine the matter again. If a proviso was inserted in the Code that in the few cases in which the death penalty is still to be inflicted the jury may add a rider of this description, it would take away the responsibility from the judge. Jurymen have often told me that if they had thought that the judge would inflict such heavy sentences as they have done, in cases in which the jury have brought in a verdict of guilty with a recommendation to mercy, they would not have brought in a verdict of guilty at all. They have brought in a verdict of guilty with a recommendation to mercy, expecting the man to get off with a couple of years or twelve months, and the judge, thinking he is carrying out the recommendation of the jury, has sentenced the prisoner to six or seven years. To some people six or seven years in a case in which the maximum penalty is fourteen years, may appear a very merciful sentence, but in the minds of the jury a merciful sentence would have been, perhaps, a couple of years. We have heard a great deal lately about a certain case in France. People raise their hands in horror. They cannot imagine that in a civilised country such proceedings should be allowed as the Dreyfus case. I believe Dreyfus was tried before a military tribunal; but we will assume the same case tried here before the Supreme Court and that he is found guilty. Of course I am leaving out of the question all the irregularities of the trial. Things quite as bad might happen here.

Mr. FISHER: Some things have.

Mr. FITZGERALD: We will presume that he was found guilty, after a fair [9 p.m.] trial, and that later on some new facts crop up which lead people to suspect that he was really not guilty. What would be done here? There is no such thing here as a new trial. In France, Dreyfus did get a new trial. Under our beautiful British law there is no such thing as quashing a conviction under those circumstances. During the hearing if counsel for the prisoner thinks that any fact of law or evidence has been wrongfully refused or rejected, he may ask that the point be reserved and referred to the Full Court. And that must be disposed of before the verdict is entered. After the sentence is entered, no matter what new facts come to light he has no right of appeal. The prisoner has been convicted, and you can never wipe that conviction out of the judge's book. There is no way of quashing it except by writ of error, of which I myself have known an instance.

The ATTORNEY-GENERAL: I have known of one.

Mr. FITZGERALD: If the hon. and learned gentleman with all his experience has only heard of one case, I should say that course of procedure must be so obsolete and intricate that it is never used.

The ATTORNEY-GENERAL: It is so seldom necessary to call it into effect.

Mr. FITZGERALD: What generally happens when new facts come to light is that the matter is referred to the Executive Council, who consider the question and examine it impartially, and if there is any doubt they will naturally give the man the benefit of the doubt and release him. But the slur is still there. His name is still on the books as having been convicted of murder or larceny, or whatever it is, even though he be the most innocent man in the world. If it was found out that a mistake had been made five minutes after sentence was entered—if the real culprit came to the judge and swore on oath that he was the guilty party, and that the other man was innocent—there is no possibility of amending that verdict. That is one instance in which our law is much in need of amendment. Another is with regard to witnesses for the defence. The Crown get their witnesses down to Rockhampton or Brisbane, but the prisoner, if he is sent down to Rockhampton for trial, has to subpœna his witnesses, and get them there at his own expense; and, as a rule, he is too poor to do so. The result, very likely, is that the man never has a fair show. I remember a case of an old man who was charged with shooting at his wife. There was a whole crowd of persons in tents, and this man was supposed to have fired a pot-shot into the group. One of the witnesses for the prosecution was sitting down alongside the wife of the man. I was defending him at the police court, and I asked him did he run away. He said "No; I was there enjoying the fun." The whole thing seemed so ridiculous in the police court at Barcaldine that the police magistrate was half inclined not to commit the man for trial, but there was sufficient evidence to send him for trial to the Rockhampton Circuit Court. The man was so poor that he could not get anybody to defend him or bring down witnesses. If he had brought any witnesses at all the jury would have laughed the case out of court. But the Crown had their witnesses there, and he got three years. In that direction also a good deal might be done by the Government in their new Code.

The ATTORNEY-GENERAL: I have always advocated a Crown defender in very serious cases.

Mr. FISHER: Why not in all cases?

Mr. GLASSEY: The late Attorney-General gave a distinct promise to me that a Crown defender would be appointed.

Mr. FITZGERALD: There are yet other matters in which the Code might be improved. One is with regard to false pretences. In the far Western districts there is no such thing as gold passing from hand to hand, or even bank-notes. It is usually cheques. Drovers and others come into the towns and give cheques on banks in Brisbane and elsewhere, and by the time they have been sent for collection the persons giving them have disappeared. The offence is very hard to prove, and the result often is that those men go scot free. I should like to see some summary method adopted for dealing with those people, because it concerns the protection of business men. There are men in my district, storekeepers and business people, who have been brought to the verge of insolvency through such action as I have indicated, and I hold that there should be some attempt made to prevent it. There is a peculiar clause in the Vagrancy Act which may be used in some cases, but I really think there should be some summary way of getting at such people. Again, on the question of perjury the Code might be made more complete. I do not think a single day passes in any police court in the colony on which perjury is not committed. One witness on one side will swear black, and one witness on the other side will swear white; so that there must be perjury on one side.

The SECRETARY FOR PUBLIC LANDS: It is the other man's witnesses whom you suspect of perjury.

Mr. FITZGERALD: I do not know that it is; I sometimes suspect my own witnesses. The Attorney-General knows how hard it is to get a conviction for perjury under the present system, and I think there should be some summary way of dealing with that offence by magistrates, not by the magistrate before whom the offence has been committed, but by other magistrates, who should have the power to impose a sentence of three months' imprisonment. Then, I am of opinion that it is time that the farce of swearing witnesses on the Bible was abolished. When I see witnesses kissing the Bible, and swearing to tell the truth, the whole truth, and nothing but the truth, and different witnesses giving an entirely different version of a matter, I know that one of them must be telling a deliberate falsehood; and I say our present system of swearing witnesses should be abolished at once. It is only making a mockery of religion. Taking the oath has become a mere matter of form, and when a man kisses the book he does not think of the solemnity of the occasion. A constable, for instance, who has often to go into the witness-box does not think of the solemnity of the act of taking an oath, and it is the same with many other people. It is simply making a mockery of religion, and should be stopped.

Mr. FISHER: What would you substitute?

Mr. FITZGERALD: Just simply make a witness say that he will tell the truth, the whole truth, and nothing but the truth. If a man is not bound by his conscience when he makes such a promise, and by the knowledge that the telling of an untruth may hurt an innocent man, no oath in the world will prevent him telling a falsehood. The only thing that deters witnesses in these days from telling a falsehood is the danger of being put in gaol if they give false evidence; and that is not a great deterrent, because it is so hard to get a conviction for perjury. If the oath were abolished, and there was some way of calling perjurers to account, and having them tried summarily and given three or even six months' imprisonment for the offence, I think that would be an improvement on our present system, and that it would do more good than threatening them with seven years' imprisonment. I do not think there is any other matter I need speak upon. I must compliment the Attorney-General on having undertaken such a big task, and I am sure that everybody will be only too pleased to see the criminal law codified. I remember that the last time I had the pleasure of meeting him was when I was a student. I had to pass before him, as Attorney-General, and I particularly remember that he let me off very lightly by asking me to define murder. I say lightly, but I must add that the definition of murder in those days was a very complicated matter. The hon. gentleman has improved on that definition in this Code, and I hope some day to see the hon. gentleman carrying on the good work he has here started and codifying other portions of the law. I should like to see the civil law and other branches of the law codified, because it means a lifetime for a person to acquire anything like a thorough knowledge of the various branches of our law. People outside the profession do not undertand the difficulties of the work of codification, but if anyone was to go into the Attorney-General's office, and see the rows of musty volumes, dating from the fifteenth and sixteenth centuries, through which he has to search to find out what is the law on a particular matter, he would be satisfied that the work of codification is a very big undertaking. I hope, however, that the Attorney-General, or Sir Samuel Griffith, will grapple with this question, and give us a codification of the civil as well as of the criminal law, and also simplify the procedure of our courts. Then there will be no complaint on the part of the public that law is too expensive a luxury to indulge in.

Mr. MAXWELL (*Burke*): I do not intend to say much on this Bill. The hon. member for Clermont has sandpapered the legal fraternity in this House, and the hon. member for Mitchell has come along with the oil can, so that they seem to be a very happy family. I think a good deal of kudos is due to Sir Samuel Griffith for codifying the criminal law, and I really think it is due to the people of the colony that all the laws of the land should be codified. I quite understand the very difficult task it would be, but notwithstanding its difficulty if it was once done it would be of great benefit to those who come hereafter. There have been two or three things touched upon to which I wish to refer. The first is the matter of juries. My hon. friend the member for Clermont touched upon that and put it in a very clear light. If a jury are intelligent and competent enough after the judge has pointed out the law to bring in a verdict of guilty, they should surely be intelligent and competent enough to be able to say what the punishment should be. I think that ought to be left to juries. Then in reference to the Crown appointing counsel for defendants. The Attorney-General said that wherever serious cases were concerned he was in the habit of seeing that defendants were alloted counsel. But I do not think it should rest with him to say what are serious offences, because what might not appear a serious offence to the Attorney-General might be very serious in its effect upon the accused person. I think it is the duty of the Crown when they find counsel to prosecute to also find them to defend accused persons. The man who is put upon his trial for an offence is contributing, like all other members of the community, towards the cost of maintaining a Crown prosecutor, and in all justice to him, as well as to the whole community, he ought to be supplied with the services of someone to defend him. When you go into a court of law and see a man standing in the dock, it is a very common thing to hear it said "there is no doubt he looks as if he were guilty." Just put the Secretary for Lands in that position——

The SECRETARY FOR PUBLIC LANDS: Try one of your own side.

Mr. MAXWELL: I am quite sure if people saw him in that position they would say he looks guilty enough.

The SECRETARY FOR PUBLIC LANDS: Look at yourself.

Mr. MAXWELL: My hon. friend, the member for Clermont, referred to the British and French laws. I think our laws are equally as good as those of France, and I am sure that no British community would for a moment tolerate the trial and sentence of Dreyfus. I, therefore, firmly believe that our laws are equal, if not superior, to the French laws. I do not intend to oppose the second reading of this Bill, but when it gets into Committee there are two or three things I intend to do my best to have struck out, even if I stand alone on division. One of them is the everlasting whip. I am not going to indulge in as strong language as was used by my predecessor, who represented the constituency that I now have the honour to represent, but I firmly believe that if a man whipped me I should go to extreme measures to see if I could not return the compliment. The other matter is solitary confinement, which I do not believe is to the benefit

of any man or serves any good purpose whatever. I shall do my best when the Bill is in Committee to have those two items struck out.

Question—That the Bill be now read a second time—put and passed; and the committal of the Bill made an Order of the Day for to-morrow.

ABORIGINALS PROTECTION AND RESTRICTION OF THE SALE OF OPIUM BILL.

The HOME SECRETARY (Hon. J. F. G. Foxton, *Carnarvon*): Mr. Speaker,—I move that you do now leave the chair.

Mr. BROWNE (*Croydon*): I do not wish to cause any delay, but I would point out that only this evening I have handed to the Clerk an amendment which I wish to move in the Bill, and which, of course, has not yet been printed or circulated. The amendment is only a small one, but if we go on with the Bill I intend to move it when we are in Committee.

The PREMIER: What clause do you wish to amend?

Mr. BROWNE: Clause 4.

Question put and passed.

COMMITTEE.

[9·30 p.m.] Clauses 1 and 2 put and passed.

On clause 3—

Mr. BROWNE (*Croydon*) had an amendment to move in the form of a proviso at the end of clause 3, which read as follows:—

Provided that no such permit shall be issued to any Asiatic or African alien.

There were many good reasons for this addition. It would not only prevent coloured aliens going into competition with whites, but it would prevent a lot of very serious abuses. This Bill was introduced mainly to restrict the sale of opium to aboriginals, and he was sorry he had not got the returns he had asked for showing the importation and consumption of opium, which he had been led to believe had increased in the colony since the passing of the Act. It had been represented to him that when aboriginals got the taste for opium, which was generally supplied to them by these Asiatic aliens, white men could not get them to work at all, although they treated them far better than these Asiatic aliens. The reason was that although white men paid them well and treated them kindly, they would not supply them with opium. The Home Secretary had visited Thursday Island, and had received deputations on the subject, and he would probably know that this was true. He believed that the Hon. John Douglas was against granting these permits, and the matter did not only concern the pearlshelling industry; it concerned the employment of aboriginals by anybody. They found that Chinamen had these aboriginals, both male and female, round about their places for all sorts of purposes, and by granting permits to these aliens the same evils would be perpetuated. For these reasons he begged to move the amendment.

* The HOME SECRETARY admitted that the amendment of the hon. member for Croydon had his sympathy in some degree. Besides going to Thursday Island, he had gone to various other centres of the pearlshelling industry, and had received several deputations on this subject, but he thought the Europeans who appealed to him were actuated by a desire to benefit themselves rather than the aboriginals. That was natural on their part, and no doubt the average white man treated the aboriginals far better than the Asiatic aliens, but, nevertheless, abuses were practised by both classes of employers. Some of the Asiatic aliens had become well-known citizens in the North; in some cases were married to Europeans, and their sympathies were with the whites, in most cases. The amendment would entirely exclude this class from employing aboriginals in this class of work—the pearlshelling industry. There was also this further objection that while it would be perhaps doing that it would also not have entirely the effect the hon. member desired to see brought about. There were many Europeans who would employ those men, but who would have and who had at present in charge of their boats nobody but Asiatic aliens, and the consequence would be that in a large number of cases the very men who waited on him at Torres Strait in regard to the question would practically be evading the provision the hon. member sought to import into the Bill—that was to say, they would be nominally the employers of "binghis," but actually the employer would be the Asiatic alien.

Mr. BROWNE: The white man will be responsible for anything that happens.

The HOME SECRETARY: That was very little satisfaction to the unfortunate aboriginal. How could a man be held responsible for something that occurred, perhaps, two or three hundred miles from where he was?

Mr. BROWNE: I take it that the holder of the permit is responsible.

The HOME SECRETARY: But what could be done? He admitted that he rather liked the amendment, but he feared that it would not have the effect the hon. gentleman desired to attain, and he was certain that it would deprive many aboriginals of humane and excellent employers. He thought, on the whole, that discretion should be left to the protector to discriminate between those who belonged to the class of Asiatic aliens, who were in every way estimable citizens, and that other class about whom there was no absolute certainty of treating the "binghis" with humanity and consideration. It was chiefly in deference to the experience and opinion of the Hon. John Douglas that he had refrained from inserting in the Bill the amendment proposed by the hon. member, and he still had his doubts whether it would be entirely for the benefit of the aboriginal if the amendment were carried; however, if it was the desire of the Committee generally that it should be accepted, he had no serious objection.

HONOURABLE MEMBERS: Hear, hear!

Mr. J. HAMILTON (*Cook*): The Home Secretary was quite right when he stated that in some instances the alien employers were very humane and treated the "binghis" humanely; at the same time nearly the whole of the instances in which "binghis" had been subjected to inhumanity and brutality had been cases in which they had been employed by aliens. There were many well-authenticated cases where those Asiatic aliens had raided the coast, and captured "binghis" and kept them in service against their will. The "binghis" as a rule were treated well by white employers. In the olden times—in the bêche-de-mer industry—there were some who did not treat their employees well, and the result was that these employers were killed, but the present white employers were of a different class and deserved every encouragement, especially now that the industry of native diving was assuming larger proportions. This was conducted principally by white men, and it was better in their interest and better in the interests of the "binghis" that their employment should be confined to men of that description. For that reason, and in the interests of humanity, he was very happy to support the amendment.

Mr. MAXWELL (*Burke*) believed that one of the greatest crimes there was to-day, in many districts of the colony, was the practice followed by Chinese and other aliens of supplying the blacks with opium, and for that reason he hoped the Committee would accept the amendment.

Mr. JACKSON (*Kennedy*) was very glad to know that the Home Secretary had no objection to the amendment. He thought there were other aboriginals besides those that had been referred to who would be affected by this—namely, the inland aboriginals and the aboriginals employed by Chinamen on the coastal rivers. As he had pointed out yesterday, they were employed occasionally by Chinamen scrub-cutting.

The HOME SECRETARY: They all have permits.

Mr. JACKSON: He was not aware whether they had permits.

The HOME SECRETARY: They are criminally responsible if they have not.

Mr. JACKSON: They knew it had not been the custom of the Government to enforce the provisions of the Act on account of, at any rate, the doubt as to whether they could issue permits for a period under twelve months. Of course, it would be permissible, under this Bill, to issue them for any period; but he took it for granted that the law would be administered very much as it had been before.

The HOME SECRETARY: More stringently.

Mr. JACKSON: Where they were employed for a day now and again, or for a week at a time, he took it that the Government would not enforce the permit system. If the Home Secretary administered the Act in a hard-and-fast manner, he would cause a good deal of ill-feeling in the mining districts in the North, and also in the country places, where, as anyone who had any experience knew, the men were employed for an hour or two in chopping wood, and the gins at the wash-tub. He hoped the Home Secretary would not compel permits to be taken out in cases of that kind, or there would be such an outcry against him that he would have to make some alteration in the law at once. He was going on the supposition that the law was to be administered as it had been in the past. Unless it was it would be very hard for the police to discriminate between cases where they were employed for a day or two by whites and Chinese; but if Chinese were not to be allowed to employ them, there would not be any dispute. The police would then be able to go straight to a Chinaman who employed them and tell him it was against the law. So there was an advantage in the amendment, and he was very glad to know that the Home Secretary had no serious objection to it. It would be of advantage to the aboriginals employed in the sugar districts and in the inland districts as well.

The SECRETARY FOR PUBLIC LANDS (Hon. D. H. Dalrymple, *Mackay*) said he only rose for the purpose of expressing his sorrow that this alien or black labour question had penetrated so far back and become so universal. He had not expected to find the representative of a large body of miners say that they could not possibly get along unless they had a blackfellow to chop their wood and gins to nurse their babies. He was astonished to find the hon. member for Kennedy saying that a veritable devil would be raised if the whites were deprived of their blackfellows to do their chores—that, at any rate, there would be very great indignation in the North. He had been under the impression that the black agony was confined to the coast; but he found, from what the hon. member for Kennedy had said, that it was really widespread and intensely popular.

Mr. JACKSON: Not black labour.

The SECRETARY FOR PUBLIC LANDS: It was black coloured labour anyhow. It was cheap labour, too—cheap and unreliable. He really felt he could not allow this to pass.

An HONOURABLE MEMBER: Without having a joke.

The SECRETARY FOR PUBLIC LANDS: Hon. members opposite had occasionally charged him with representing a district in which black labour was employed; but he saw now that it was employed in the mining districts. The only objection he could possibly see to the amendment was that the Bill had been introduced apparently with the intention of protecting the aboriginals.

Mr. GLASSEY: That is your objection.

The SECRETARY FOR PUBLIC LANDS: That was not his objection. But while the Bill was introduced with that object, the amendment would have the effect of diminishing the number of persons who would employ them. The Bill fixed a minimum wage; but the amendment would deprive them of the advantages of the open market. The more employers there were, the better would be the employment and the higher would the rates of remuneration be.

Mr. JACKSON said it had been pointed out that in many of the inland districts the blacks were not a bit better off since the Aboriginals Protection Act was passed, and, as far as his experience went, that was quite true. He did not know how they fared on the coast, but in his district and other districts in the Kennedy, they got scarcely any assistance in the way of rations from the Government. They got a blanket or half a blanket; but no rations whatever. It was in the interests of the aboriginals he was speaking, not so much in the interests of the miners and the bushmen who employed them. Only a little while ago complaint was made to him that the blacks ought to have something done for them by the Government, because they were almost starved, and they were not able to get the game in the bush that they could get some years ago.

The TREASURER (Hon. R. Philp, *Townsville*) did not rise to oppose the amendment, though he knew that a great many white people employed aboriginals who ought not to be allowed to employ them at all. Some Chinese were capital employers, and he had been told that the natives of the Gilbert and Ellice Islands preferred Chinese as employers to white men. He did not know whether any Chinese in Torres Strait employed aboriginals, but he believed it would be better for the aboriginals if they were not allowed to work on board the boats at all. They worked very hard, got very little for their work, and usually got home to their camps with nothing at all. Ashore they could look after themselves pretty well, because they could run away if their employers were not good to them, but on board ship they were entirely at the mercy of their employers. He was sorry to say that a number of white men did not treat them like human beings at all.

[10 p.m.]

Mr. NEWELL (*Woothakata*): As far as he could see the Bill had been framed altogether in the interests of the aboriginals who were engaged in pearlshelling in Torres Strait. In his district the blacks were worse off than before the principal Act was passed, as they had been deprived of the employment by which they had previously got rations and clothes. Since the passing of the Act several people had been prosecuted for employing them without permits. The matter had been brought under the notice of the late Premier, and instructions had been given that the Act was not to be insisted upon in that manner, in that district, at all events. It would be a great improvement not to allow the aboriginals to be employed by Chinese and other Asiatics. In his district there were a number of Chinese who had farms. They employed blacks, and in several instances they had supplied them with opium. Some of the Chinese had been fined for doing so. The blacks preferred to work for them as they were very

fond of opium, and they could not get it from Europeans. It had gone so far that even black troopers had been supplied with opium by those Chinese. The amendment would materially improve the condition of the blacks, and he would be very pleased to support it.

The HOME SECRETARY said the hon. member for Woothakata was in error in supposing that in drafting the Bill no thought had been given to the blacks in the interior. It would be found to very materially protect them, because its provisions were made applicable not only to those employed at sea but to those employed on land. He anticipated very satisfactory results from it in that respect. With regard to what had fallen from the hon. member for Kennedy, and also from the hon. member for Woothakata, it was true that up to the present there had been a difficulty, which he had pointed out the other night—that was that the protectors held the view that it was not competent for them to grant permits for the employment of aboriginals for less than twelve months.

Mr. DAWSON: You had no protectors.

The HOME SECRETARY: The hon. member was speaking of something he did not understand. There were plenty of protectors throughout the colony.

Mr. DAWSON: You had the police, and you had Dr. Roth and Meston.

The HOME SECRETARY: There were plenty of protectors. It had been necessary to wink at breaches of the law, because, although they were not technically breaches of the law, the employment was of such a character as, he believed, was not contemplated by Parliament when the Act was passed. It was proposed to remedy that by the Bill, and the protectors would have authority to give permits for the employment of aboriginals for any period—down to one day, for the matter of that. If there was the slightest suspicion that the aboriginals were not being properly treated, or that they were being supplied with opium or grog by their employers—and that was improper treatment from the Government point of view—they would be proceeded against for employing without a permit; and those permits would only be given to persons who were of good character, and who were likely to treat the aboriginals in a proper way. He thought that was what Parliament desired. If they were not going to do that, and if the law was not going to be carried out with that degree of strictness, it practically meant that it was a dead letter, and in a number of districts it would afford no relief whatever to the aboriginals.

Mr. JACKSON: You cannot possibly provide any law to deal with them where you may employ them for an hour or two.

The HOME SECRETARY: They could not do it legally at the present moment, but it had been allowed because it was necessary. But it was highly desirable that even such employment as that should be under the supervision and control of the protector, because just as much harm was likely to arise to the aboriginal if he was paid in opium or rum as if he was employed for a month or six months.

Mr. DAWSON: The amendment says the character of a man shall be defined by his being a white man.

The HOME SECRETARY was surprised to hear the leader of the Labour Opposition advocating cheap and unreliable labour for the miners, and threatening them with the indignation of that body if they were deprived of that privilege.

Mr. HARDACRE: Another question, that of casual labour, had now arisen, and unless the amendment of the hon. member for Croydon was withdrawn for the present it would, if carried, prevent any other amendment from being made in the clause. A difficulty had arisen with regard to permits for less than twelve months, and the employment of aboriginals for small temporary jobs. He was prepared to take up that particular question in the interests of the aboriginals themselves, and also in the interests of the white people who desired to employ them. There were aboriginals in places where it was impossible to get white labour at all; they were not there. If he was travelling through a station and asked an aboriginal to hold his horse, or run an errand, or help him to fix his camp, and gave him 1s. or 6d. for doing so, he would be legally punishable. Then there were isolated settlers, with no companionable neighbours, who could not get their washing done, or their errands run, or their wood chopped by white people, and who would only be too glad to give casual employment of that nature to aboriginals who had been prevented in many cases from getting employment under the Act. In that respect the Act had been anything but a benefit to them. On the banks of the Nogoa River there was a camp of aboriginals who were for many months on the verge of starvation, because they were prevented by the Act from earning small sums of money which had previously enabled them to buy food and other necessaries. Although he wrote and telegraphed to the department, and spoke personally to the protector, it was something like six months before that state of things was altered. Under the Bill anybody who wanted to give a black a small job would have to take out a permit, and a station manager who wanted to employ one for a few hours might have to ride fifty miles to get the necessary permit from the constable. It was never the intention of the legislature to prohibit the employment of aboriginals in casual labour; the intention of the Act was to protect them when they were employed for long periods. If so, why not specifically exempt the necessity of taking out permits for casual work?

The HOME SECRETARY: Because no one would ever employ them except casually.

Mr. HARDACRE: The hon. gentleman must know that if a man employed aboriginals day after day it would not come under the definition of casual employment. The exemption would not cover that kind of employment. He would be liable to the penalties imposed by the Bill, because casual labour did not mean continuous employment or repeated engagements. He should like to propose, as an amendment, that "Provided that permits shall not be necessary in the case of casual employment not exceeding at any one time twenty-four hours' duration." If that did not cover the matter, perhaps the Home Secretary would draft a clause which would deal with it.

The HOME SECRETARY had very great sympathy with those constituents of the hon. member who wanted to send someone on errands, and having no neighbours, had to employ blackfellows; but if the hon. member had his way he would defeat the whole object of that legislation, except in regard to such employment which from its nature was necessarily of a continuous character. If an exception was to be made in every instance in which an aboriginal was employed for a period not exceeding twenty-four hours, then he did not hesitate to say that there would be no agreements for more than twenty-four hours on the mainland, and the whole legislation on the subject would be a dead letter as far as the employment of blacks in the interior was concerned. In order to obtain a conviction it would be necessary to show that there was a continuous agreement, and that the case did not come within the exceptions the hon. member now proposed to create,

and that could only be done by producing a continuous agreement. So far as he was aware, the blacks had suffered no injury up to the present time in regard to casual employment. As to the statement of the hon. member for Leichhardt that some blacks in his district had been starving for want of employment, he was inclined to think that the hon. member was attributing that state of starvation to some reason which did not obtain, because it was well known that the casual employment of aboriginals by respectable persons who were not in any way suspected of illicit payment to those aboriginals was not interfered with. Possibly a protector might have been over-zealous in a particular instance, but one swallow did not make a summer, and it was far better to be on the safe side and allow the protector to take action when necessary than to open the door to a wholesale evasion of the provisions of the Act.

Mr. JACKSON (*Kennedy*) was not aware of any case like that quoted by the hon. member for Leichhardt. In his district the Act had been administered fairly, and the casual employment of aboriginals had not been interfered with, and he hoped it would not be interfered with in the future. With regard to the fancy picture drawn by the Home Secretary of the aboriginals getting up an agitation in consequence of white people not being permitted to employ them, he would point out that it was not altogether a fancy picture. A few weeks ago when he was up North a deputation of aboriginals interviewed him in connection with that matter, protesting against a proposal which they had heard was to be made to remove them to some other reserve, and asking him to take steps to prevent that. They also mentioned the matter of employment, and said that some people had refused to employ them, because it was against the law. He did not think it was possible to frame any law that would cope with the matter, and was of opinion that it was better to leave it to the discretion of the administrator. There were many aboriginals who were employed as stockmen, though not so many now as formerly when they used to send cattle to the southern colonies, and they were employed for one, two, or three months, after which they went back to their own particular country. Of course they knew that aboriginals were not fond of steady employment, but liked to go hunting after they had been at work for a few months. When they had been hunting for a while they came back and were glad to do a little work so that they could procure flour, tea, sugar, and a little tobacco. If they could not get those articles by doing a little work they would simply beg for them, and he held that it was better that they should earn them by their labour than receive them as charity. He believed that the Government made provision for giving them rations in the district of Woothakata and in many coastal districts, but he did not think they gave them rations at stations inland.

The HOME SECRETARY: Yes, they do.

Mr. JACKSON: Were rations distributed to blacks on Charters Towers, at Ravenswood, and in the Cape and Burke districts?

The HOME SECRETARY: I cannot tell you where rations are distributed, but they are distributed at a large number of interior stations.

Mr. JACKSON did not think they were distributed in the districts he had mentioned, or in what he might call the inland settled districts, and it would be a pity if the white people in those districts were not allowed to employ aboriginals casually. However, he was quite satisfied to leave it to the discretion of the Home Secretary to give instructions to the protectors not to interfere with aboriginals who were employed casually.

Mr. HANRAN (*Townsville*) intended to support the amendment of the hon. member for Croydon. The Bill aimed at the abolition of two great abuses—namely, immorality and a supply of opium; and he believed it would do away with those two serious evils. He also believed that the country would benefit by aboriginals being employed by white men. If the amendment was adopted, the proceeds of the labour of the aboriginals would remain in the country, but if it was not, then the proceeds would get into the hands of Asiatics, who would take the money out of the country. He hoped the amendment would be adopted. [10·30 p.m.]

Mr. HARDACRE (*Leichhardt*) pointed out that according to the present Act any person employing an aboriginal, except with a permit, was liable to a penalty not exceeding £50, or less than £10, or to imprisonment for six months. That was the penalty if he violated the Act by employing an aboriginal for half an hour. He knew of a case where people were brought up and fined.

The HOME SECRETARY: They probably richly deserved it.

Mr. HARDACRE was sure they did not. They were most respectable people, and were fined because the Act had a wider scope than was intended. That was the law, whatever the administration might be. They were now altering the terms of the permits to come into operation for shorter periods of labour.

Mr. DUNSFORD (*Charters Towers*) rose to a point of order. Was the discussion relevant to the amendment of the hon. member for Croydon? It appeared to be a kind of stonewalling of the amendment.

The CHAIRMAN: I must say the discussion is not strictly relevant to the amendment moved by the hon. member for Croydon.

Mr. HARDACRE recognised that, but only wanted to say three or four words. It, however, it was desired to pass the amendment, he could say what he had to say on the amended clause.

Question—That the words proposed to be added be so added—put and agreed to.

Mr. HARDACRE: They were altering the law so as to make it more clear that permits would be available for the employment of aboriginals for short periods. The Act clearly said that no one should employ an aboriginal for a short period without a permit, and what he wanted made clear was whether the administration would go on in the same way as in the past; that was to say, that permits would not be necessary for casual employment. If that was so he was quite willing to let the clause go. He only wanted an assurance from the Home Secretary that as a matter of practice it would not be necessary to get permits for casual labour on small jobs.

The HOME SECRETARY: He had already explained how the Act had been worked in the past. As far as he was aware, little or no difficulty had occurred. Any person who wanted a permit would only have to write to the sergeant of police at the nearest station, and he would be supplied with the necessary form, which he would fill up and obtain his permit.

Mr. HARDACRE: Will it be necessary to obtain a permit to employ a man for an hour?

The HOME SECRETARY: The blacks were not to be treated as if they were tramps. They were generally camped in particular localities, and nothing would be more simple than to get a permit to employ them in any casual occupation.

Mr. HARDACRE: Will it be necessary to obtain a permit in every case?

The HOME SECRETARY: He would not say in every case; he was only pointing out how very much more simple it would be under the Act for persons to employ aboriginals than it had been in the past.

Mr. HARDACRE: There was evidently some misunderstanding on the matter. He wanted to know definitely if the new amendment would affect the employment of aboriginals for short periods?

The HOME SECRETARY: Not any more than before.

Mr. HARDACRE: It would be ridiculous if anyone wanted an aboriginal for a few hours to have to ride sixty or seventy miles to get a permit from a constable. There had been difficulties, and on one occasion a man was convicted and fined for innocently employing an aboriginal to chop wood. A large amount of power would also be placed in the hands of the police, and if an officer were over-zealous it might lead to considerable disturbance. He wanted to prevent any misunderstanding, especially with regard to the new amendment, but he would let the matter go for the present.

Clause put and passed.

Clauses 4 and 5 put and passed.

Clause 6 passed with a verbal amendment.

The remaining clauses of the Bill were agreed to without discussion.

The House resumed; the Bill was reported to the House with amendments, and the third reading made an order for to-morrow.

ADJOURNMENT.

The PREMIER: I beg to move that this House do now adjourn. The business to-morrow will be in the following order:—The third reading of the Local Works Loans Act Amendment Bill, the third reading of the Aboriginals Protection and Restriction of the Sale of Opium Bill, and after that the consideration of the Criminal Code Bill in committee.

Mr. DAWSON (*Charters Towers*): I notice in the *Telegraph* to-night that the votes in connection with the referendum would be counted by Saturday, I would, therefore, like to ask the Premier when he will be in a position to move the adoption of the Address to Her Majesty respecting federation.

The PREMIER: I think I may safely say that I shall be able to give notice either to-morrow or on Tuesday with regard to the Address to Her Majesty. I must receive the certificate of the returning officer showing the actual result of the referendum before I take action. As soon as I receive that certificate, I shall lose not a moment in tabling a motion for the adoption of an Address to the Queen.

Mr. McDONNELL (*Fortitude Valley*): I would like to ask the Premier about one measure mentioned in the Governor's Speech—that is, the Bill to amend the Factories Act, which is of interest to a large number of people. I would like to ascertain from him when we can expect that Bill to be brought forward.

The SPEAKER: I have already pointed out that the discussion of general questions on the motion that the House do now adjourn after the business of the day has been completed is not in order. I have permitted the leader of the Opposition to address queries to the head of the Government as to the proposed business on the next sitting day.

Mr. DAWSON: That is usual.

The SPEAKER: That is usual; but the privilege cannot be extended to private members.

Question put and passed.

The House adjourned at nine minutes to 11 p.m.