Legislative Council,

Wednesday, 24th August, 1898.

Papers presented—Return moved: Goldfields Lands Sales and Municipal Grants—Question: Rabbit Invasion—Question: Railway Delivery of Machinery at the Boulder—Question: Kalgoorlie Railway Time Table—Warrants for Goods Indorsement Bill, third reading—Fire Brigades Bill, second reading—Return ordered (as amended): Agricultural Bank, Loans Granted—Divorce Amendment and Extension Bill, second reading, debate resumed—Wines, Beer, and Spirit Sale Act Amendment Bill, first reading—Jury Bill, in Committee; want of a Quorum—Adjournment.

The PRESIDENT took the chair at 4.30 o'clock, p.m.

PRAYERS.

PAPERS PRESENTED.

By the COLONIAL SECRETARY: Coolgardie Water Supply Scheme, Return of expenditure, as ordered. Electors for Legislative Council, Return of number, as ordered. Geological Survey, Report for 1897.

RETURN: GOLDFIELDS LAND SALES AND MUNICIPAL GRANTS.

HON. H. G. PARSONS moved, that a return be laid upon the table of the House—(1) Showing the total amount received by the Government to date as the proceeds of land sales, including town lots and residence areas, at Coolgardie, Kalgoorlie, and the Boulder. (2) The amount granted to the aforesaid municipalities in respect of subsidies, including all grants to health boards, progress committees, and adjacent roads boards. This return was asked for, he said, as a matter of public information on the fields, where it was not quite known how the various places stood in the matter of grants, and in a financial way generally. He believed that some parts of the fields had almost more than their share of public money; and, at any rate, it was better to know the exact position.

QUESTION: RABBIT INVASION.

HON. R. G. BURGES asked the Colonial Secretary if the Government were taking any active steps to stop the known invasion of rabbits into the settled portions of the colony.

THE COLONIAL SECRETARY (Hon. G. Randell) replied:—The Commissioner of Crown Lands informs me that Mr. Page was sent out to inspect and report on the question of invasion by rabbits, and he is now making his report, which will have to be considered before any decisive steps are taken. A report of what has been done up to the present was made and laid before Parliament.

QUESTION: RAILWAY DELIVERY OF MACHINERY AT THE BOULDER.

HON. H. G. PARSONS asked the Colonial Secretary:—1, Whether the Railway Department would undertake that, in all future cases where machinery is offered for consignment to stations between Kalgoorlie and the Boulder, the same would be accepted? 2, Whether the Department would undertake that an adequate crane should, in all cases, be available for the delivery of such machinery?

THE COLONIAL SECRETARY (Hon. G. Randell) replied:—1, Yes, in accordance with the regulations. 2, No stationary crane is provided. Special arrangements may be made with the District Superintendent, Kalgoorlie, to supply cranes as they are required.

QUESTION: KALGOORLIE RAILWAY TIME TABLE.

HON. H. G. PARSONS asked the Colonial Secretary:—Whether, in view of the fact that the present mail delivery at Kalgoorlie involves the delay of an unnecessary day in replying to letters, the Government would re-adjust the railway time table?

THE COLONIAL SECRETARY (Hon. G. Randell) replied:—The new time table having so recently come into operation, the Government have no intention at present of making any alteration therein.

WARRANTS FOR GOODS INDORSEMENT BILL.

Bill read a third time, and *passed*.

FIRE BRIGADES BILL.

SECOND READING.

THE COLONIAL SECRETARY (Hon. G. Randell), in moving the second reading,

said: I have looked carefully over this Bill two or three times, and I am fully seized with all its provisions, and I shall endeavour to lay them before hon. members as clearly as I possibly can. This Bill has been taken very largely from the Fire Brigades Act of South Australia. There are one or two clauses which have been taken from the Queensland Act. I may say—judging from the report I have before me on the operations of the Fire Brigade Board of South Australia—that if such a board is brought into existence here, and work of the description pointed out in this report carried out in this colony, there will be reason for us to be satisfied with the introduction of a Bill of this kind. It is desirable that a law of this sort should be established, and provision made for the control and management of Fire Brigades. I think that admits of little doubt, when we remember the correspondence that has taken place in the newspapers of recent date. I believe hon. members will be glad to have an opportunity of discussing a Bill of this description and of passing it into law, believing as I do that it will operate beneficially in the interests of the citizens generally. The Bill in the first place is intended to apply to the municipality of Perth, but it may be extended by the request of other municipalities, throughout the colony, from time to time.

HON. D. K. CONGDON: It is not compulsory, then?

THE COLONIAL SECRETARY: I think, if I remember rightly, from my reading of this Bill, that the provisions of the measure may be extended at the request of the municipalities. The fourth clause, if the hon. member will look at it, will supply him with an answer. "The Governor, on the recommendation of the council of any municipality, and on being satisfied that an efficient fire brigade has been enrolled in such municipality, may accept the services of such fire brigade." The word "may" is used and not "shall." By this Bill a central authority is established. I may mention here that the superintendent will have control of the Perth Brigade, and he will on certain occasions have the control of all other fire brigades established in the colony. It will be easy to understand that at a fire the chief officer should superintend all other officers present. This is desirable, as we cannot have two heads of a fire brigade acting at a fire, in the same way as it would be impossible to have two commanders in charge of an army. Clause 6 is rather an important clause, inasmuch as it provides for the constitution of the board. The board is to consist of seven members; three are to be nominated by the councils of the municipalities; three by the insurance companies, and one by the Governor. There are some other provisions in the same clause, but I need not refer to them now. Clause 10 provides the scale on which votes are to be given according to premiums held in the colony by the different insurance companies. I think it will be found to be on an equitable basis. Clause 14 makes it the duty of the board to provide for the extinguishment of fires. Clause 15 deals with the meetings of the board, and clause 16 allows the board to acquire property, and by clause 18 the board is allowed to borrow for the purposes of carrying out the operations of the board. Clause 19 provides for the formation of brigades and all the necessary equipment, etc.; and by clause 20 power is given to make by-laws for the carrying out of the various duties, and for the efficient control of the officers and men under the board. The board must also, by clause 22, furnish an annual report, by clause 24 it may establish a salvage corps, and by clause 25 recognise brigades formed by various insurance companies. Clause 26 provides for the registration and control of volunteer fire brigades. Then clauses 27 to 41 set out in full the powers and duties of the superintendent or the captain, as the case may be. I may point out to hon. members that those powers are very large indeed. Very extensive powers are given to the superintendent to carry out his duties. I could not enumerate them all, but they are embraced in the clauses from 27 to 41. From my reading of the Bill I gather that all these powers are necessary for the efficient carrying out of the fire brigade. Clause 43 provides for the contributions for the upkeep of the board.

Towards the annual expenditure, as estimated by the Board, in establishing and maintaining fire brigades in each municipality, and for the

purposes of this Act the following contributions shall be made, that is to say:—(1.) The Colonial Treasurer shall pay to the board out of the consolidated revenue a sum of money equal to one-ninth of such expenditure; (2.) The fire insurance companies carrying on business in the municipality shall pay to the board a sum of money equal to four-ninths of such expenditure; and (3.) the councils of the municipalities shall pay to the board a sum of money equal to four-ninths of the expenditure.

I notice this differs somewhat from the contributions in the other colonies. The Government here have evidently come off a little better. I do not see why the municipalities and the insurance companies should not contribute towards the upkeep of the fire brigades, for these are more a municipal than a Government institution.

HON. D. K. CONGDON: There are a good many Government buildings in most of the municipalities.

THE COLONIAL SECRETARY: The clause makes provision for that. There is a clause that the owners of property should pay for the cost of the fire brigades when called upon, and the Government is included in that, but I am not quite sure. The Government in the first instance have to advance the money to the fire brigades, and this amount has to be deducted from the contributions they may afterwards have to pay for the upkeep of the fire brigades. Clause 44 provides for returns being furnished by insurance companies, and the board and the companies are to make these returns under penalties fixed by the clause. The returns, however, are to be kept secret by those to whom they are sent; therefore the business done by the insurance companies will not become public property, nor will the returns be available to other institutions for the purposes of competition.

HON. J. W. HACKETT: Suppose an insurance company declines to pay?

THE COLONIAL SECRETARY: I assume the Bill provides for the enforcement of the contributions. I will draw attention to clause 47, which says:—

The amount of any contribution payable under this Act by any municipality (other than the municipality of Perth) may, if necessary, be raised by the council of such municipality by increasing the general rate for the year following the payment of such contribution by such a sum in the pound as shall be sufficient to provide the amount.

HON. F. M. STONE: Clause 48 also bears on the point.

THE COLONIAL SECRETARY: I thank the hon. member for the interjection. Clause 48 provides:

The amount of any contribution payable under this Act may be recovered by action or in a summary manner before two justices of the peace in petty sessions.

HON. J. W. HACKETT: There might be some objection in connection with insurance companies doing business.

THE COLONIAL SECRETARY: I may perhaps in Committee answer the hon. member, and I would rather that he asked me the question then. Clauses 51 onwards deal with miscellaneous matters. A fire brigade may be employed on special service, and the police have to attend at fires; and I may mention that the police are to be under the control of the superintendent at all fires, which is a very necessary and useful provision. Then turncocks are to attend fires. Some difficulty has occurred, as hon. members are aware, in the City of Perth in finding the fireplugs, and, I am very happy to say, under one clause of this Bill, that fireplugs are to be done away with, and stand-pipes are to be erected in their place. That will prevent the difficulty which has frequently occurred, and which has caused losses of property in Perth in the past. Then there are provisions to prevent persons wilfully covering up fireplugs. There are also a number of small matters, but all important in their various places, so that we may have a full and efficient fire brigade service. In one clause in this Bill there is a penalty of imprisonment, without the option of a fine, for a period not exceeding two years, for tampering with the fire-alarms and the signalling apparatus. The clause says:

Any person who tampers or interferes with any fire alarm or other signalling apparatus, or gives a false alarm of fire, shall be liable for the first offence to a penalty not exceeding Five pounds or seven days' imprisonment, and for any such subsequent offence shall be liable to imprisonment for a period not exceeding two years, with or without hard labour, and without the option of a fine.

Clause 69 provides for the distribution of charges which may be made in certain instances. In the case of uninsured houses or buildings, according to sub-section (*f*), the owner has to pay in one case, and the

owner of the personal property has to pay in the other. According to clause 61, the owner of the house has to give the information in reference to the insurance of the building. A question that the fire brigades always ask now, when there has been a fire, is, "Where is the property insured?" and, in accordance with this clause, the owner of the house or property is compelled to give an answer to the question. There is a provision in clause 62 which is useful:

> Any damage done to property occasioned by any fire brigade, or by the superintendent or any members of any brigade, shall be deemed to be damage by fire within the meaning of any policy of insurance against fire covering the property so damaged.

I think that a useful provision, and it seems to be an equitable one. I think at present that a policy of an insurance company covers all damage. Clause 64 provides for an inquest; a very necessary provision, I think, when we remember some of the fires which have occurred in Perth and elsewhere. Clause 65 provides for an officer of the board entering and remaining in charge of buildings where a fire has occurred. All actions to be brought against the board must be commenced within six months, "and no action shall be commenced or process issued against the Board, or against any person, for anything done, or purporting to have been done, under this Act until notice in writing of such intended action or process has been delivered at the office of the board." I do not think I need go into any of the remaining clauses of the Bill. The measure has been drawn very carefully, and I see nothing in the Act on reading it through—and I have some little knowledge of the subject—to object to. I move the second reading of this Bill.

Question put and passed.

Bill read a second time.

HON. D. K. CONGDON moved that the committee stage of the Bill be deferred for a week. The representatives of Fremantle desired to ascertain the opinions of the fire brigades on the proposed legislation, before the Bill was dealt with in Committee.

Motion put and passed.

RETURN: AGRICULTURAL BANK, LOANS GRANTED.

Debate resumed on the motion of the HON. R. G. BURGES, moved on the previous day, as follows:—"That a return be laid on the table of the House—(1.) Giving the names of all applicants who have received money by loan from the agricultural Bank; (2.) The amount paid to each applicant; (3.) The amount still due to each applicant. (4.) Do they reside in the colony? (5.) If not, where?

HON. R. G. BURGES asked why the order of the day for the resumption of the debate on his motion had been placed last on the list. The order of the day was first in the list on the previous day.

THE PRESIDENT explained that the usual practice had been followed, in placing the adjourned order of the day at the bottom of the next day's list.

THE COLONIAL SECRETARY said he moved the adjournment of the debate on the previous evening, with the view of assisting the mover (Mr. Burges) to reconsider the proposal. Perhaps that hon. member was now willing to withdraw the motion, and introduce another proposal later on.

HON. R. G. BURGES: No; certainly not.

THE COLONIAL SECRETARY: It would be exceedingly inadvisable for the Government to supply the names of the applicants and other particulars, and no good could be accomplished by such a course. From the question asked by Mr. Burges, as to why his notice of motion appeared at the bottom of the list, it was, perhaps, sought to attach some blame to himself. As a fact, however, he had nothing to do with the arrangement of the Notice Paper, which was entirely in the hands of the President.

HON. R. G. BURGES said he had not mentioned the name of the Colonial Secretary in connection with the position occupied by the notice of the motion on the list.

HON. F. M. STONE moved, as an amendment, that all the words after "house," in the second line, be struck out, and the following inserted in lieu thereof: "Showing the amounts paid to applicants outside the colony by the Agricultural Bank." There was no doubt the House ought to be placed in possession of the names of borrowers residing

out of the colony. The object of the Agricultural Bank was to settle people on the land, and money was advanced to enable people to clear and cultivate the land. If speculators who came from outside the colony bought land and got advances from the Agricultural Bank on that land, the whole object of the bank, as originally understood, was done away with. It was easy to go to the Titles Office, where the fact could be ascertained who the persons were who had received advances from the Agricultural Bank; and he could not see what objection there could be to having the proposed return laid on the table.

HON. F. T. CROWDER: The House had no more right to ask the Agricultural Bank for the names of the persons to whom money had been advanced than to ask for similar returns from other banks in the city. The publication of such a return might do a lot of harm to the credit of a number of people; and Mr. Burges's object could have been attained had he asked whether persons residing outside the colony had received advances from the Agricultural Bank, and, if so, to what amount. It was not a fair thing to ask for the names. It must be remembered that the money advanced was bound to be spent in the colony.

HON. H. G. PARSONS: The House had been somewhat misled by the argument of certain members, that the names of borrowers of banks should not be disclosed. Surely there was a distinction between transactions with a private bank and transactions with the nation through the Agricultural Bank. The people of the country were practically lending the money, and their representatives had a right to know the names of the borrowers. The money was lent for the purpose of settling people on the soil, and Parliamentary representatives ought certainly to know the names of these persons. There was something mysterious about the position assumed by some hon. members, which might indicate hole-and-corner transactions that were not in the public interest. If the object of the Agricultural Bank was to settle people on the soil, and if people residing out of the colony were deriving benefits from the bank, and if members were justified in believing that a great many people resident in Perth who had never gone near the soil had been using the funds of the nation, then any attempt at concealment was unworthy of the House and unworthy of hon. members who were assisting concealment.

HON. F. T. CROWDER: There was a Government to do the business for the people.

HON. H. G. PARSONS: But the people ought to know with whom they were dealing. There was nothing about transactions with the Land Bank which would damage a man's credit or of which a man need be ashamed.

HON. A. P. MATHESON said he would certainly support the motion, and he entirely agreed with the views expressed by Mr. Burges and Mr. Parsons on the subject. Money was placed at the disposal of this Bank for the purpose of promoting settlement, and his personal view was that the money should not be lent to persons residing outside the colony. It had been said that it would be exceedingly inconvenient if the names of the borrowers were published, and that it would mean a breach of trust on the part of the Government. But if the borrower was unwilling that his name should come before the public, and was conscious that there was a risk of the names being published year by year, he certainly would not borrow. The *Government Gazette* in such instances did not show the amounts borrowed, but showed the names of the borrowers, and amongst these he had noticed names of men who had taken up land from the Government and who had apparently pledged their leases to the Agricultural Bank. Amongst the names were those of men residing in Melbourne and Sydney and other places on the other side, and the Agricultural Bank was treated in exactly the same way as the New South Wales Bank, the Western Australian Bank, and other financial institutions which appeared to have lent very largely on land in Western Australia. He failed to see, even if the names were published of borrowers in the colony, any very great harm would be done.

HON. R. G. BURGES said he must express his opinion on the remarks which had fallen from the Colonial Secretary. He esteemed the Colonial Secretary, and was one who congratulated him on assuming the position of the Leader of the

House. He (Mr. Burges) would not flatter himself, but he had been before his constituents this year, and had been re-elected, although another man was put up by the Government to oppose him.

THE PRESIDENT: There was no question before the House about elections. The question was whether the return moved for should be laid on the table.

HON. R. G. BURGES said he would not have referred to the matter again had he not felt that the Colonial Secretary moved the adjournment of the debate on the previous day in order that the question might not be brought forward again.

THE COLONIAL SECRETARY: That was not so.

HON. R. G. BURGES said he always supported the Government in endeavouring to obtain a proper expression of opinion on all subjects brought up, but when he found the Leader of the House trying to burke a question, he hoped hon. members would do their duty and insist on having the matter fully ventilated. He asked leave to withdraw his motion.

THE PRESIDENT pointed out that if the motion were withdrawn, the amendment moved by Mr. Stone would not be put, and that there would be nothing before the House.

HON. R. G. BURGES said in that case he would allow the motion to stand.

HON. C. A. PIESSE said he was against the principle of the Agricultural Bank lending money to people outside the colony, but he was equally against the principle of giving the names of those persons to whom money had been lent. He was astonished to hear hon. members advocating the public exposure of what ought to be one of the most secret matters. The original motion covered cases of men who had already their fee-simple, and who did not lease any land belonging to the Crown; and no doubt many borrowers outside the colony had their land in fee simple, and were justified in borrowing on that land under the Act. Mr. Burges should simply have asked the question as to whether it was a fact that moneys were lent to residents outside the colony, and the information supplied would have enabled him to submit a motion, such as it was to be hoped would yet be submitted, protesting against outside advances by the bank.

HON. R. S. HAYNES said he saw no objection to the motion submitted by Mr. Burges; and in his opinion the amendment was too narrow. It was considered that if the motion were carried there would be divulged secrets which a bank should never divulge with reference to the customers; but there was no analogy between a private bank and the Agricultural Bank. If a man pledged his land, the fact was registered in the Registrar's office, and anyone could see the register on payment of a fee of 1s; but if a man went and borrowed money from the Agricultural Bank, no person could find out what he owed.

HON. C. A. PIESSE: Yes; the information could be obtained in the same way for 1s.

HON. R. S. HAYNES: That was not the case, because such advances were not registered.

HON. F. T. CROWDER: The information could be got at the Lands Titles Office.

HON. R. S. HAYNES: No, the information could not be got there. If the land on which the money was lent was not freehold, but under conditional purchase, there was no record in the Lands Titles Office.

HON. F. M. STONE: It was recorded in the Lands Office as transferred to the bank.

HON. R. S. HAYNES: There was no right of search there. A person might write to the Commissioner of Crown Lands, as he had done, protesting against certain dealings with land, and the Minister would write back simply saying that the protest was noted. In his own case he found out in the end that the title had been given to the other man. If a farmer borrowed money from the Agricultural Bank, and then wished to obtain an advance or credit from any other person, it seemed unfair that it could not be ascertained how much was owed to the Agricultural Bank. He supposed the bank would not give the information.

HON. R. G. BURGES: Mr. Piesse said it could be found out.

HON. R. S. HAYNES: Yes; Mr. Piesse said the information could be obtained for 1s.

HON. C. A. PIESSE said he objected to being misrepresented. He had not said that the information could be got for 1s. at the Agricultural Bank. He was referring to advances made on fee simple, information of which could be got at the Titles Office.

HON. R. S. HAYNES: If it was fee simple that was involved, anyone could go and search in the Titles Office. The information on Agricultural Bank dealings might be got at the Lands Office, but he did not know whether the information would be reliable. He did not see that any person could have any objection to showing the amount he owed to the Government on lands occupied. Other persons' indebtedness on land could be found out at the Titles Office.

HON. F. T. CROWDER: But it was not published broadcast.

HON. R. S. HAYNES: No more would the information desired by the Hon. R. G. Burges

THE COLONIAL SECRETARY: Information laid on the table of the House would be published.

HON. R. S. HAYNES said he was satisfied that Mr. Burges did not move the motion simply out of curiosity. In a matter such as this, some reliance should be placed on members who were agriculturists and took a great interest in the Agricultural Bank; and he, for one, would certainly follow them whenever they asked for information. The Government were much too fond of refusing information and locking the door on people making inquiries. Last year he had to complain about answers given to questions he had asked, and he then said he would support any person who sought information from the Government, and he would do so now.

HON. W. T. LOTON: Although there was a wide difference between the Agricultural Bank which lent public money, and the ordinary banking institution, still it did appear unfair to publish the names of people who had borrowed money from the former. What good could it do?

HON. R. S. HAYNES: It would stop log-rolling.

HON. W. T. LOTON: It would not have that effect, even admitting there was any log-rolling.

HON. R. G. BURGES: The information was wanted in order to get the Act amended.

HON. W. T. LOTON: Mr. Burges desired that no money should be loaned to persons residing outside the colony. But such advances had been made in the past, and it would have been very much better to move a distinct motion that no further moneys should be lent in that way, the information as to the amount being given without the names. It was not agreeable to people who had borrowed—whatever their position might be—to have the facts published broadcast, and Mr. Burges, after this discussion, should stay his hand. If Mr. Burges thought no money should be loaned to people outside the colony, a motion could be submitted in that direction

HON. R. S. HAYNES: The House would then be told that there was no necessity for the motion.

HON. C. E. DEMPSTER said he had always been under the impression that the object of this Bank was to make advances to *bonâ fide* settlers in the colony, who expended the money on their land, and by those means enhanced its value and encouraged production. It was a departure from the intention of the Act to make advances to people residing outside the colony, and, if such advances had been made, it was quite time steps were taken to prevent them in the future.

HON. E. M'LARTY said he saw no good purpose to be served by publishing the names of persons who had borrowed from the Agricultural Bank; and if advances had been made to persons outside the colony, against the wish of hon. members, it would be quite sufficient to express disapproval. It would be objectionable to people who had borrowed from the Agricultural Bank to have their names published all over the colony. It must be remembered that money advanced by the bank could not be spent outside this country, and if, in an exceptional case, a non-resident had obtained a loan, it must have been for the purpose of improving land here, because the improvements must be made before the money was handed over, so that no great harm could have resulted. The object of the Agricultural Bank was to get land under cultivation, and it did not matter where the bor-

rower resided, because the money, as he had said, must be spent in improving the public estate.

HON. A. P. MATHESON: What became of the proceeds?

HON. H. G. PARSONS: And why not know who the borrower was?

HON. E. M'LARTY: The money was spent here in actual labour, and the produce from the land would be brought into the markets of the colony.

THE COLONIAL SECRETARY said his experience in reference to obtaining returns from the Government was quite different from that of the hon. member. He had always found that the Government was ready to give all information which would be of value to hon. members.

HON. R. S. HAYNES said that was not his experience.

HON. R. G. BURGES said he asked for certain returns last year, and they had not been laid on the table of the House yet.

THE COLONIAL SECRETARY said he did not know what returns the hon. member referred to, but his own experience was that the Government cheerfully supplied all information that was required, and he saw no reason why the Government should withhold any information of a proper character from members of the House. Personally, he was only too anxious to give what information he could.

HON. R. S. HAYNES said he was speaking of the past.

THE COLONIAL SECRETARY: The amendment seemed to be somewhat objectionable. If the hon. member would strike out the names and leave only the amounts, that would meet the object of the hon. member who moved the motion. It was highly objectionable to have the names of those persons who had borrowed money from the Agricultural Bank made public, and there did not seem to be any distinction between those persons who borrowed money from the Agricultural Bank and those who borrowed from a private bank, and the private bank would commit a great breach of trust by divulging the names of persons who borrowed money from them. The information which was being moved for would not be of great value, but he did not think that Mr. Burges had asked for this information out of idle curiosity, but that he had asked for it from a strong feeling in his mind that it was improper to advance money to people outside the colony. He would remind the hon. member that the money had been advanced for the purpose of opening up the country, and would result in good to the country.

HON. R. G. BURGES: Nonsense.

THE COLONIAL SECRETARY said he still held to his opinion. If the money was borrowed for the purpose of clearing land and performing other improvements on the land, it must at once, and more so in future, be of benefit to the country. He (the Colonial Secretary) had just had pointed out to him that if a man borrowed £500 he had to spend another £500 in addition, and we should encourage such persons to spend money. He hoped Mr. Burges and Mr. Stone would see their way to leave the names out, and simply ask for the amounts.

HON. F. M. STONE said he was willing to fall in with the suggestion of the Colonial Secretary. He would ask leave to withdraw his amendment for the purpose of substituting another.

Amendment, by leave, withdrawn.

HON. F. M. STONE moved that the particulars of the motion be amended in the following manner:—"1. The amount paid to all applicants outside the colony by the Agricultural Bank. 2. The amount due by such applicants."

Amendment put and passed, and the motion, as amended, agreed to.

DIVORCE AMENDMENT AND EXTENSION BILL.

SECOND READING.

Debate resumed, on the motion for second reading, moved by the HON. F. M. STONE on the 17th August.

HON. A. B. KIDSON: It is with diffidence I rise to address myself to the question before the House, and I say so because I think all hon. members in the House must agree that the manner in which this Bill has been dealt with by hon. members who have spoken to it is such that it leaves little to be added. Mr. Hackett dealt with it in a most admirable speech, from one point of view. Mr. R. S. Haynes has dealt with the measure as exhaustively as it is possible for anyone to do so, from another point of view. For myself, I do not intend to deal with the

question in the same exhaustive manner from a historical point of view as Mr. Haynes has done, because, really, I think there is very little to be gained by so doing; but I do intend to try and deal with the Bill from a practical point of view. In the first place, it must be admitted by all that the marriage contract, which it is proposed to very seriously modify by this Bill, is, without exception, the most solemn contract that any two persons can enter into; and I ask hon. members to consider whether, in view of that fact, it is an advisable thing to so modify that contract, as proposed in the Bill, and to modify it without sufficient consideration. This question has not been considered, to my mind, in as careful a manner as it should be. That is to say, what the effect is going to be if the Bill passes into law. And hon. members should not forget that the present contract of marriage is one that has existed for hundreds and hundreds of years, and the present law of divorce has also existed for hundreds and hundreds of years.

SEVERAL MEMBERS: No.

HON. H. G. PARSONS: It was passed in 1857.

HON. A. B. KIDSON: I mean the present principle in regard to divorce has existed for hundreds of years, and therefore I ask, are hon. members of this House going lightly, I might almost say, in a moment, to sweep away that which has existed for hundreds of years without giving the matter proper and due consideration? I say we have not had sufficient time to consider what the effect is going to be. I also go further than that, and state that men cannot possibly separate the religious aspect of the question from the State aspect. It is impossible to do that. It is rubbish for members to stand up and say that we can deal with the question from the State point of view without considering the religious aspect. I ask hon. members to consider for a moment—I presume hon. members have taken the trouble to read the Bill, and they should know, if they do not—what was the rule that was laid down by our Lord in the Gospel of Saint Matthew. If hon. members will take the trouble to read that, they will come to the conclusion why divorce should be allowed in the case of adultery. I am perfectly satisfied with the reason why. It is clear to me that is the sole reason which was mentioned by our Lord in the particular gospel to which I have alluded, for a man to put away his wife, and that is to divorce her.

HON. R. S. HAYNES: But the wife should not divorce the husband.

HON. A. B. KIDSON: The same applies to the wife as to the husband. Hon. members must use a certain amount of common sense in considering these things. With regard to applying it in this Bill, I would like hon. members to carefully consider the suggestion put forward by Mr. Haynes; that is, that this House should pass the second reading of the Bill in the ordinary way, and then if they desire to place a woman on an equality with man, in regard to divorce, they could do so, and then cut away the rest of the grounds for divorce if they like. I ask hon. members not to be led away by that. We know that if the Bill once gets into Committee, those in favour of it will use—if I may use the term—every subterfuge to get all the grounds in the Bill passed, and hon. members will be set off one against another, to get these grounds placed in the Bill.

HON. R. S. HAYNES: Those are not the tactics we follow.

HON. A. B. KIDSON: I am sure the hon. member is above that. If Mr. Stone wishes to bring in a Bill later on to place the wife on the same basis as the husband, then, perhaps—I will not say I will—I might follow the hon. member. Mr. Haynes has pointed out a number of horrible cases which have come under his notice, and he also stated that all professional gentlemen practising in Perth were in favour of the Bill. Mr. Haynes mentioned certain horrible cases, but I state this, and I think hon. members will agree with me, that whether this Divorce Bill becomes law or not, these horrible cases will continue.

HON. R. S. HAYNES: No.

HON. A. B. KIDSON: I am glad the hon. member says "no." Does the hon. member think that this Divorce Bill is to be the healing salve for all these horrible cases which he has mentioned.

HON. R. S. HAYNES: Women will not be content to live with brutes.

HON. A. B. KIDSON: This Divorce Bill will not alter that. This Bill will not alter human nature, and the hon. gentleman, when he made the statement, was aware of that. The hon. member made another statement; he said with regard to a judicial separation, "Look what it is going to cost—£150," and he went into details of a bill of costs which came out of his office, and which I am sure must have been very moderate. I will put this question to the hon. member: does it not cost just as much to get a divorce as a judicial separation? I reckon it will cost just as much to get a divorce, and I will point out that in certain cases separation can be obtained without going to the higher courts and paying £150 in expenses. It can be obtained by going to the inferior courts.

HON. R. S. HAYNES: How are you going to enforce the order? It cannot be enforced in the lower courts.

HON. A. B. KIDSON: That is the hon. gentleman's opinion. I have mine.

HON. R. S. HAYNES: Tell us how it will be enforced.

HON. A. B. KIDSON: I am not going to be drawn into a legal disquisition.

HON. R. S. HAYNES: Will the hon. member tell us how he would enforce the order.

HON. A. B. KIDSON: The hon. member ought to know if he has read the law, and I am not going to give a legal opinion. I could do so, but I am not going to be drawn into doing so now. Supposing the hon. gentleman is correct, and that it could not be enforced under the Act—although I say the hon. member is wrong—what is there to prevent the Act being altered so that the order can be enforced? There is nothing to prevent it.

HON. J. W. HACKETT: The law ought to be amended.

HON. A. B. KIDSON: The hon. member gave us a very learned disquisition upon the meaning of the term "habitual drunkenness," and in that definition he said that a habitual drunkard was a man who wasted his estate, and therefore the wife should be able to get a divorce if she so pleased. I would like to ask the hon. member what he would do in other cases in which the husband wastes his estate. It does not follow that it is only in cases of drunkenness that a man wastes his estate. A man may gamble and waste his estate and the estate of his wife and his family. It is quite clear that is so, and if you allow a divorce in one case, why not allow it in another? I should like to refer to the clauses of the Bill because they seem to me to be somewhat absurd. I cannot for the life of me understand on what principle the different grounds for divorce have been arrived at.

HON. F. T. CROWDER: On common sense.

HON. A. B. KIDSON: It seems to me to be exactly the opposite; the want of common sense has caused these grounds to be put in the Bill. I could quote numbers of causes—very bad causes—as bad if not worse than any of those in the Bill; should they be grounds for divorce?

HON. F. T. CROWDER: Give us some of them.

HON. A. B. KIDSON: I will give the hon. member some of them. Take the case of the husband—it is not a pleasant thing to talk about, but these cases no doubt have come before some hon. members, and they have come before me in my professional capacity. Take the case of the husband going with a woman and contracting syphilitic disease.

HON. R. S. HAYNES: That is proof of adultery immediately.

HON. A. B. KIDSON: It is not mentioned here as a ground on which divorce can be obtained, and there are other diseases, if that will not suit the hon. member, which a man might contract by having connection with women. There are diseases which might be contracted by the wife, to my mind more horrible and disgusting than such a case as that which I have mentioned.

HON. J. W. HACKETT: There is the disease of leprosy.

HON. A. B. KIDSON: Yes, there are hundreds of diseases. As the hon. member (Mr. Hackett) has mentioned, there may be the disease of leprosy, and there are all kinds of congenital diseases. The hon. member is not in a position to give an explanation why these grounds are not in the Bill. I have already dealt with subclause (c), habitual drunkenness. I now refer to clause (e), which says:—

> On the ground that, within one year previously, the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to

inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner.

There may be only one conviction of having attempted to do grievous bodily harm to the wife, and the hon. member would allow the wife to obtain a divorce upon that ground. I cannot reconcile my conscience with that. There are cases in which there may be faults on both sides, and in a fit of temper a man might possibly forget himself so far as to commit an assault upon his wife. If he does so, the hon. member suggests that it should be a ground for divorce. After the trouble is over, the pair might possibly live happily together for some time, and then, if they fell out again, the wife could bring an action for divorce on that ground..

HON. R. S. HAYNES: There would have been condonation. The hon. member does not know the rules of divorce, at all.

HON. A. B. KIDSON: But the hon. member has a little bit of common sense..

HON. R. S. HAYNES: I know something about the rules of divorce.

HON. A. B. KIDSON: I may know as much about the rules of divorce as the hon. member.

HON. R. S. HAYNES: What is condonation, then?

HON. A. B. KIDSON: If the hon. member will consult his law books, he will obtain the information he requires. During the whole of the admirable remarks that fell from Mr. Haynes, the hon. member did not attempt once to deal with the question other than from the State point of view; that is, how it affected the State. I am going to deal with the question from that point of view. Have hon. members tried to imagine in their minds what would be the effect of this Bill upon the public if it became law? Have hon. members tried to imagine what effect this Bill would have on society? I have endeavoured to grasp the situation, and it seems to me that it would have a most disastrous effect on society. The contract of marriage lies at the root and basis of society, and if you interfere with that you will interfere with society. What will be the effect on the children—I do not say of to-day, but the rising generation?

HON. R. S. HAYNES: What has been the effect in Scotland?

HON. A. B. KIDSON: I do not know what the effect has been in Scotland, but I know what it has been in New South Wales and Victoria, and I have come to the conclusion that it really must have a most disastrous effect here. It would, in the first place, encourage — that is the way it occurs to my mind, though I may be wrong, but I am here to express my views, and no doubt some hon. members will agree with me—people to enter into hasty marriages. They will not enter into the contract of marriage, after a Bill like this has been passed into law, with the same care and thought as they would at the present time, and what would be the effect of that? It would mean this, that people would enter into these marriages, and, if they found they did not get on well, all they would have to do would be to make an arrangement under sub-clause (b) of section 1 of this Bill, to leave each other in order to obtain a divorce. That would be a very bad thing. If Mr. Haynes will look at the matter seriously—if he can do so—I will ask him is such a thing to be desired? I submit it is not to be desired. There is another thing; it seems to me it will have this effect, it will lead to collusion between the contracting parties subsequent to the marriage, if they wish to obtain a divorce. In sub-section (b), if the parties wish to obtain a divorce, it seems to me that it would be very easy indeed to do so. Then there is another thing; what effect will the Bill have on the children? It seems to me that the children of the marriage, after this Bill has become law, and has been put into operation, will be placed in an invidious position. It seems heart-breaking to think of the position in which the children would be placed. The father and mother, for a slight cause in some instances, would obtain a divorce, and what position would the children then be in? I think hon. members will come to the conclusion that they would be in a position which is not to be desired. The effect of such a Bill as this, in the long run, would lead to a general laxity on the part of contracting parties all round. There was one remark I was sorry to hear from Mr. Haynes; it was in connection with the statement he made that if a man deserts his wife for a few years, he is bound to go and live in adultery. I have

not the same low idea of human nature as the hon. member has. There are some men who might be in such a position as that, but a man worthy of the name will not allow himself to stoop to such a disgusting contract as that. That is my opinion, and I take a higher view of human nature than the hon. member does.

HON. R. S. HAYNES: You must walk through the country with your eyes shut.

HON. A. B. KIDSON: Perhaps the hon. member keeps his eyes open, and sees more than I do. There is another aspect of the question I would like to mention, and that is, supposing this Bill became law, would it not have a tendency to turn the marriage contract—which all members agree is to a great extent a religious contract——

SEVERAL MEMBERS: No.

HON. A. B. KIDSON: I may be wrong but I am entitled to have my view as well as is Mr. Haynes. Would not this Bill, at all events, have the effect of turning all marriage contracts into civil contracts?

HON. R. S. HAYNES: No.

HON. A. B. KIDSON: I say advisedly that the vast majority of marriages are not contracted in the Registrar's office, but in church. I ask hon. members to consider for a moment whether the Bill would not, as I have said, turn all marriages into civil contracts. The words of the marriage service would be turned into a farce if this Bill became law. Hon. members know what the words of the marriage service are.

HON. F. T. CROWDER: Who framed them?

HON. A. B. KIDSON: I do not go into that question, but the fact remains that when persons are married in a church they go through a ceremony, and make use of the words put to them in the church.

HON. R. S. HAYNES: And the words do not recognise divorce at all?

HON. A. B. KIDSON: Never mind about that. I say that the marriage service does recognise divorce to a certain extent.

HON. R. S. HAYNES: The marriage contract does not.

HON. A. B. KIDSON: There is only one ground on which the church recognises divorce, and that is adultery.

HON. R. S. HAYNES: The words are "until death do us part."

HON. A. B. KIDSON: The words are "until death do us part," but the hon. member wants to extend the law, and make those words have less effect. The words of the marriage ceremony are "for better or for worse," and "until death do us part." Thus, this Bill would turn the religious ceremony into an absolute farce.

HON. R. S. HAYNES: You are begging the question, altogether.

HON. J. W. HACKETT: What is the use of taking the oath?

HON. A. B. KIDSON: Yes, what is the use of taking the oath in the face of a law such as is proposed in this Bill?

HON. R. S. HAYNES: You take the oath and get a divorce under the present Act.

HON. A. B. KIDSON: Mr. Haynes tried to make another point, on which he is wrong. He said that at the present time there is a tremendous amount of illegitimacy because of the present Act.

HON. R. S. HAYNES: I did not say that.

HON. A. B. KIDSON: I so understood the hon. member, but I beg his pardon if he did not say so. Whether the hon. member said so or not—and I believe my authority to be good—illegitimate births in New South Wales and Victoria are largely in excess of those in this colony.

HON. R. S. HAYNES: Because the law against abortion is enforced there.

HON. A. B. KIDSON: The supporters of this Bill are endeavouring to perpetuate what has been found in the other colonies to be a very bad law—indeed I am told that the Bill is worse than the Victorian Act. It is not as if we were trying to follow on lines that have been tried and found to work well elsewhere. The opposite is the case, and we find that the judges who have to administer the Act, both in Victoria and New South Wales, are the very persons to condemn it as strongly as it is possible to condemn it.

HON. R. S. HAYNES: Question? Name the judges.

HON. A. B. KIDSON: I say that judges both in New South Wales and Victoria condemn the Act.

HON. R. S. HAYNES: Name the judges.

HON. A. B. KIDSON: I do not want to name the judges, and surely the hon.

member does not question the judges of those colonies?

HON. R. S. HAYNES: I question the statement that the judges condemn the Act.

HON. A. B. KIDSON: Well, Chief Justice Madden does, for one.

HON. R. S. HAYNES: Sir Alfred Stephen approved of it.

HON. A. B. KIDSON: The Chief Justice of Victoria condemns it most strongly.

HON. R. S. HAYNES: Well, he is a peculiar authority to do that, anyhow.

HON. A. B. KIDSON: He may be peculiar, but he is not more peculiar than the hon. member, who takes an opposite view. It is a matter of opinion as to which is the most peculiar, and I prefer to rely on Chief Justice Madden and the Chief Justice of New South Wales, and I think hon. members will do the same. We find the judges who have tried these cases condemning an Act which is not so drastic as the Bill now before the House. What could we have better than the opinion of those judges, who surely have the best right to express their views on the divorce law? No one here knows better than those judges, because we have had no experience, and do not know how the Bill would work. No steps have been taken to find out how the proposed law would work; and we ought not to take a leap in the dark and be sorry afterwards. Let us be guided by what has taken place in the other colonies, where a similar law works badly. Give the Divorce Act a longer trial in New South Wales and Victoria, where perhaps it may work well in time, though I do not think it will. Another statement I understood Mr. Haynes to make was that a woman, if separate from her husband, must live in adultery.

HON. R. S. HAYNES: No; I was misreported in the newspaper.

HON. A. B. KIDSON: I took a note at the time the hon. member was speaking.

HON. R. S. HAYNES: What I said was that the judicial separation of a woman from her husband was conducive to living in a state of adultery. The newspaper report made me say that the wife, under these circumstances, would live in a state of prostitution. What I said was that such circumstances conduce to a state of adultery, and I repeat it.

HON. A. B. KIDSON: The words I took down as having been said by the hon. member were that a woman separate from her husband must live in adultery; and I am glad to hear the hon. member deny that he said that. It is a good deal worse to apply such a proposition to a woman than to a man who might be separated from his wife for a year or two. I do not intend to speak at any great length. I think I have dealt with all the points I desired to touch on, but in conclusion I should like to say that so far—and I believe hon. members will agree with me—there has been no demand in this colony for this legislation. The general public look to this House to check hasty legislation, and I say advisedly that the Bill is hasty legislation. Mr. Haynes may smile, but I hold my own opinion on this point. The matter has not been sufficiently thought out as to its effect, and the public look to this House to conserve their interests in such cases. Would not the general public be satisfied to see this measure postponed until the question has been more thoroughly considered? This House is constituted for the purpose of checking legislation that is calculated to create such a tremendous difference in our social conditions. I ask hon. members to agree with me, and to vote for the amendment moved by Mr. Hackett.

HON. A. P. MATHESON: I have determined to support the second reading of the Bill, and I have not come to that determination without giving the subject the very gravest consideration. I recognise that the Bill is one bound to give offence to a very great number of people who hold strong views on the subject. For that reason I set to work to frame my opinion, by carefully investigating the history of both marriage and divorce from the very earliest periods. It was only in that way, and by collating the results which have been arrived at by the experience of people in the past, I could reasonably frame an opinion as to what the effects of this legislation might be in the future. Having done

that, and having studied the question to the extent I did, I was very much surprised at some of the remarks which fell from the Hon. J. W. Hackett yesterday. I have carefully noted his words, and I should be glad if he would correct me if I misinterpret what he said. To the best of my recollection the hon. member drew attention to the extraordinary fact, as he said, that the institution of marriage had in all times and places been associated with religious sanction; that whether in ancient or modern times, whether amongst blacks or whites, whether the religion was Christian or Pagan, the ceremony of marriage was always surrounded with religious sanctity. I think that accurately represents what the hon member said.

HON. J. W. HACKETT: Except the registrar's department of modern times.

HON. A. P. MATHESON: The hon. member was dealing with ancient times and modern times, and with black or white races, Pagan and Christian; and it struck me as remarkable that a gentleman, who is admittedly so well posted, should stray so far from facts as they are represented in history. I speak, of course, subject to correction, and when the Bill is in Committee—if it gets there—Mr. Hackett can call my attention to any mistakes I may have made in quoting his remarks. But the fact is, that from the very earliest time the marriage ceremony has been one of either capture or barter. In only one instance of aboriginal races, so far as my researches go, was there any association of religious ceremony with the marriage.

HON. D. MCKAY: They were savages.

HON. A. P. MATHESON: I am speaking with regard to the races from which we Saxons have sprung. You may say they were savages, and they had certainly not reached the stage of civilisation we have.

HON. R. S. HAYNES: Instances reappear frequently.

HON. A. P. MATHESON: But they were the Aryan race from which we claim descent. The only exception I could find to the rule, as I have stated, was amongst the early Mexicans. They were the only aboriginal race that associated the ceremony of marriage with religion. In every other case the marriage originated, in the first place, with seizure and, in the second place, with barter when the nation became a little more civilised and began to recognise the value of the lady.

HON. J. W. HACKETT: You find the religious sanction there all the same, later or earlier, and I do not recede from my position one bit.

HON. A. P. MATHESON: I have prepared a few notes from the earliest times to substantiate my statements, and I will give them if there is any doubt.

HON. J. W. HACKETT: I will withdraw what I have said then.

HON. A. P. MATHESON: But I should like to substantiate my statements. From the very earliest history of the world there was no such thing as marriage at all. There was a promiscuous sexual union prevailing.

HON. J. W. HACKETT: Will the hon. member give his authority for these statements. I am sure they could be found in an encyclopœdia.

HON. A. P. MATHESON: I can assure the hon. member they have not been taken from an encyclopœdia, and I will give him authorities later on. I do not propose to give them now, they would take too long. Frequent allusion to the fact of promiscuous sexual union will be found in the ancient Greek and Roman writers, and perhaps I had better give some authorities now. Herodotus refers to it, and describes this condition as prevailing amongst the Scythians, the Tamils, and the Ethiopians; and Strabo even mentions the Celtic population of Ireland in the same context. Every one of the statements can be substantiated. Vero states that the early Greeks indulged in the same intercourse. In the early days it was the case in China, and at the present day it prevails amongst the indigenous Indians of California, and certain of the aboriginal tribes in India. I may say here with reference to the remarks about the encyclopœdia, if the statements are correct it does not make much difference where one gets the information. Information must be obtained somewhere, and even the hon. member, with all his learning, must obtain his information somewhere.

HON. J. W. HACKETT: Not second class, if I can help it.

HON. A. P. MATHESON: In modern times the same practice has prevailed among the Cossacks, and in Syria, and also among the Hottentots. The sole object was the propagation of the human species. I may go on to say that by degrees the various nations, indulging in the practice which I have mentioned, acquired property, and they began to recognise the advantages of trading their daughters as a species of property, and the richer people who acquired more property recognised that as they owned more property they could buy a more desirable wife than a poorer man, and the result was that amongst a large number of races of Europe and Asia, the practice sprang up of the father selling his daughter and the husband buying his wife. This was recognised as a civil contract of marriage. The wife had a perfectely well recognised legal status, and there was no religious ceremony of any sort or kind connected with the matter.

HON. J. W. HACKETT: The hon. member will qualify his information, if he looks deeper into the subject.

HON. A. P. MATHESON: I shall be able to look into the matter later on, but I think my hon. friend will find that my statements will be substantiated.

HON. J. W. HACKETT: I am not going to substantiate them. I am going to upset them.

HON. A. P. MATHESON: Amongst the races in Europe, and more particularly amongst the races in Central Asia, the practice of carrying off a wife prevailed, and to this day the ceremony of marriage by capture prevails. The people were a little rougher; they had less wealth and fewer laws, and, as a consequence, when a man desired a wife, he carried off the lady; and this practice prevails to the present day, which the hon. member will find if he refers to Atkinson and those who have travelled in Liberia. The Mongols had a practice of carrying off a wife, and the same practice prevailed in New Zealand, I think, but am not quite certain about that.

THE COLONIAL SECRETARY: It occurred with the tribe of Benjamin.

HON. A. P. MATHESON: The hon. member refers me to the Bible. We could not have a better authority.

HON. J. W. HACKETT: It was done, they thought, by the suggestion of the Deity.

HON. A. P. MATHESON: The hon. member's argument, that it was done by the direction of the Deity, is rather absurd. A man might steal a pair of boots, and say that he was moved to do it by the direction of the Deity. I want to dispel the impression which Mr. Hackett has conveyed to hon. members of this House, that a religious sanction, and a religious sanctity, were thrown round the ceremony of marriage; that is what I want to dispel. No such religious sanction or sanctity prevailed. Marriage was simply a matter of contract, where it prevailed at all; and in other cases it was a matter of theft, pure and simple. Throughout Europe, in the more civilised parts, amongst the Greeks, the Latins, and the Barbarians, a young girl was negotiable property, and marriage was simply a sale. The Roman law, to which the hon. member referred when he was discussing the question, confirms my statement in this very particular. A woman was distinctly looked upon as a chattel, and was sold by her father to her husband; and I may inform hon. members that to such an extent did that practice prevail, that the father, after three years' desertion of his daughter by her husband, was entitled to sell her again.

HON. J. W. HACKETT: He could sell his son also.

HON. A. P. MATHESON: My argument, which the hon. member endeavours to avoid, is that there was no religious ceremony in connection with the ceremony of marriage; it was simply a matter of bargain. Throughout the whole of Africa, where the negro races prevailed, marriage always has been, and is to-day, a matter of bargain, without a scrap of religious ceremony surrounding it. In many cases the chief has also to be paid. Amongst the Lamas of Thibet, who are the most scrupulously religious nation of the world, it is particularly to be noted, while religion enters into every branch and action of their civil life, it is particularly left out of the question of marriage; and if the hon. member refers to any marriage in Thibet, he will see that.

HON. J. W. HACKETT: I remember very particularly reading of a marriage in Thibet, and it was a religious ceremony.

HON. H. BRIGGS: The Lamas of Thibet are celibates.

HON. A. P. MATHESON: The Buddhists, the people who worshipped under them, purchased their wives by barter, and it is particularly noticeable that the religious element does not enter into the marriage at all.

HON. J. W. HACKETT: You say that exists amongst the Buddhists?

HON. A. P. MATHESON: Yes, it is a matter of contract: the same amongst the Buddhists. It is simply a matter of civil contract, and the husband is at liberty, for certain good and valid reasons, to return his wife.

HON. J. W. HACKETT: You will find you are mistaken. There are five different ways of marriage amongst the Buddhists.

HON. A. P. MATHESON: The ordinary way is the civil contract. In England a man can have a wife, and he can obtain that wife by civil contract. The recognised marriage of the country is a civil marriage; but if you like to have a religious ceremony at the same time, and which perhaps is desirable, you can do so, but it does not form a necessary adjunct of the rites. The only allusions you can find in the early classics to the religious observance being associated with marriage is in the case of the Romans, not very long before the advent of Christianity. There were three recognised forms of marriage prevailing. One arises from the continuous cohabitation without any contract or ceremony. People living in that state had the right to claim to be married. Secondly, there was marriage by purchase; and then there was the third class of aristocratic marriage, only indulged in by the aristocracy, by the high priests of Jove distributing cakes to the bride and bridegroom's friends, which evidently is the foundation and basis of our wedding breakfast.

HON. J. W. HACKETT: A patrician marriage.

HON. A. P. MATHESON: Other marriages were associated with religious rites, but in no case was the religious rite necessary for the marriage. I may say, in dealing with the question, that I do not wish to enter into any side issues, but I wish to point out that marriage is a civil contract, and not a religious one. In many cases feasts and insobriety were characteristic of the period.

HON. J. W. HACKETT: Did you notice that the feast was almost always a religious ceremony?

At 6.30 p.m. the PRESIDENT left the chair.

At 7.30 the PRESIDENT resumed the chair.

HON. A. P. MATHESON (resuming): I have said sufficient to dispose of Mr. Hackett's contention that from the very earliest ages the ceremony of marriage has been hedged about with religious observances. That is the point with which I have dealt, and I hope I have proved conclusively the marriage contract was exclusively one of purchase, in which the wife was treated exactly as if she were a piece of merchandise. Now to consider the history of adultery and divorce. Adultery with a woman was considered from absolutely the same point of view. It was an interference with the husband's property, and was punished with the very greatest severity the law could devise. The wife was, without doubt, the husband's most valuable property. Nothing that the ancients recognised exceeded her value, and they punished any tampering with that property in the very severest way. We find that such tampering was almost invariably punished with death, sometimes by burning alive, and sometimes by burying alive. Later on, as the ancients became more civilised, they saw that the death penalty was a waste of a commercial article, and a pecuniary penalty was enforced. That is to say, instead of exacting the penalty of death, the husband was compensated for the loss of the chattel, and he received, what we call now a-days, substantial damages. In fact it was not until Christian times, and then in the very earliest Christian times, that we find any objection to divorce or any halo of mysticism or sacred idea thrown around the ceremony of marriage. After the church took the matter in hand—the Christian church, because that is the only church that has not recognised divorce in its very broadest sense—when the Christian church took the matter in hand, the mar-

riage tie was declared indissoluble, and marriage was elevated to the condition of a sacrament. Dealing as I am with the historic view of the question only, I do not propose to go into the question of whether that was justifiable or the reverse. I simply mention it as a fact, and the position remains the same to-day. As has been most accurately pointed out by Mr. Haynes, the canon law of the church governs the question of divorce to day, from the point of view of the church, in exactly the same way as it governed it 400 or 500 years ago. The church, as a church, sets itself absolutely against divorce. The church recognised marriage as a sacrament, and the only breach of the marriage recognised was the non-completion of the marriage. By a legal quibble the church goes on to maintain that if the married parties come within the bounds of consanguinity, as laid down by the canons of the church, the marriage has never taken place and may be dissolved; and this, as Mr. Hackett very properly pointed out, is the invariable practice of the Roman Catholic Church in dealing with the question of divorce. Now the Church of England, to the best of my belief, as a church, maintains precisely the same position. The church has been obliged, by the force of civil law, to recognise the necessity of re-marrying divorced parties. But I believe that any clergyman who conscientiously objects to celebrate the marriage of divorced persons, under existing Acts, is free from any obligation to celebrate such marriages. In fact, the English Church distinctly sets its face against divorce. I want to emphasise this point for the benefit of hon. members. It really seems to me a waste of time for hon. members to object to this Bill on the grounds of any religious principle. In strict logic they have already cut the ground from under their feet. The day they originally accepted any Divorce Bill, they accepted a complete severance of the principle of divorce as recognised by the State, and the non-existence of divorce, as recognised by the church.

HON. R. S. HAYNES: The canon law. Hear, hear.

HON. A. P. MATHESON: Yes; the canon law. The law of divorce which exists to-day finds every member of this honourable House a consenting party in opposition to the tenets of the Church of England.

HON. R. G. BURGES: Oh, no.

HON. A. P. MATHESON: No other position can be maintained. This Legislative Council passed, some years ago, an Act, or confirmed an Act.

HON. C. A. PIESSE: No; we did not.

HON. A. P. MATHESON: They passed or confirmed an Act which permitted divorce.

HON. R. S. HAYNES: The Legislature did.

HON. A. P. MATHESON: Yes, the Legislature of the country, and I was assuming hon. members confirmed the acts of the Legislature.

HON. R. S. HAYNES: It was introduced and passed as an Act

HON. J. W. HACKETT: There is only one member of the House now who was a member of Parliament at that time.

HON. A. P. MATHESON: And never since has a member raised or entered any protest in accordance with his conscience against the Divorce Act. Therefore, I say every member here has sat down and accepted the Act, and accepted divorce as a principle.

HON. J. W. HACKETT: Or want of principle

HON. A. P. MATHESON: If the hon. member likes, or want of principle; but I should regret to find that any member of the House is absolutely devoid of principle. What is the object of the Bill? The object is, as Mr. Haynes has very properly pointed out, to facilitate divorce. Divorce up to recent times was an extremely difficult and expensive thing to obtain. The Legislature of Great Britain failed to see why the privilege of separating oneself from an objectionable wife or husband should be confined to the very wealthy classes, and that Legislature provided an easy method by which an individual, with a reasonable sum of money, is able to obtain the same privilege as the wealthy. All that the members of this House are now asked to do is to extend that privilege in a perfectly reasonable and legitimate way, and in what I maintain is in the direction required by the necessities of the present era. The only point on which hon. members differ from me logi-

cally is as to whether or not the requirements of the present day demand an extended form of the Divorce Act; and I maintain they do.

HON. A. B. KIDSON: That is a matter of opinion.

HON. A. P. MATHESON: It is a matter of opinion; and I trust the House will not be debarred from taking the subject into consideration. I do not in the least suggest that hon. members should in Committee pass clauses which appear to them objectionable. But let members, at any rate, take the matter into consideration. Do not let them refuse to consider the question, simply because the Legislature of Great Britain, as suggested by an hon. member, has not been in advance of us.

HON. A. B. KIDSON: We are considering it now.

HON. A. P. MATHESON: Consider the question in Committee, and deal with the clauses on their merits.

HON. J. W. HACKETT: You always argue that, on every Bill you are in favour of. This is the fourth time this session you have used that argument.

HON. A. P. MATHESON: I shall certainly use the argument on any Bill I am in favour of, and I assume every hon. member would do the same.

HON. J. W. HACKETT: In the hope of squeezing the whole thing through.

HON. A. P. MATHESON: I certainly hope to squeeze the whole thing through.

HON. J. W. HACKETT: That is quite honest.

HON. A. P. MATHESON: I hope the Bill will go into Committee and be passed without the clauses to which I take exception. There are portions of the Bill on which I lay no very great stress, and there are minor portions of the Bill, to which I am in opposition.

HON. A. B. KIDSON: Very minor.

HON. A. P. MATHESON: That will be apparent in Committee.

HON. A. B. KIDSON: The Bill will never get there.

HON. A. P. MATHESON: It would only waste time to go into those points now. I beg hon. members not to reject the consideration of this Bill because it differs from Acts in force in the other colonies. Mr. Hackett has pointed out that by passing this Bill we shall be introducing a greater divergence into the Acts at present in existence on the question of marriage and divorce, than there already is. Mr. Hackett says this Bill goes further than the Acts in the other colonies; but he has, on the other hand, admitted that most of the colonies differ from each other. And in England, Scotland, and Ireland we find the marriage laws all on different bases. Which of these different Acts are we to bring ourselves into line with? Which shall we accept as the best Act?

HON. A. B. KIDSON: The Bill does not follow any of them.

HON. A. P. MATHESON: That is exactly what I say—we should not follow any of them. Let us endeavour to be *in* advance, and *not* behind the others. Let us endeavour to meet the necessities of the age, and prove we have some originality in this colony. We should not hang on submissively to the tail of the other colonies and Great Britain.

HON. J. W. HACKETT: Hear, hear. That is the whole thing he wants us to do.

HON. A. P. MATHESON: I propose to deal with the various reasons given in the Bill as grounds for divorce. It is perfectly clear that the chief object of the Bill is to enable the wife to obtain divorce on the same terms as can the husband.

HON. F. T. CROWDER: And justly too.

HON. A. P. MATHESON: The reason why the wife is not in the same position as the husband, is owing to the facts I have already pointed out. Up to recent times the wife was simply considered as a chattel.

HON. R. S. HAYNES: She had no existence in law until recently—1870.

HON. A. P. MATHESON: She was sold by the parent or guardian to the husband, and became the husband's property. In law she received no damage if the husband neglected her, or had connection with another woman. But on the other hand, as his property, it was a heinous crime in the eyes of the law for any outside party to interfere with her. Now, I ask the members of the House whether they are prepared to perpetrate that abuse of the woman's position?

HON. J. W. HACKETT: That is not the reason given by the English lawyers.

HON. A. P. MATHESON: Are hon. members going to maintain that woman to-day is a chattel?

HON. J. W. HACKETT: That is not the reason given by the English lawyers.

HON. A. P. MATHESON: I do not care what the hon. member says about English lawyers. I am arguing logically from the position of historical fact.

HON. J. W. HACKETT: That is not history.

HON. A. P. MATHESON: The hon. member may say it is not history, but I maintain it is history, and my opinion is supported by my researches amongst the best authorities.

HON. J. W. HACKETT: No. Divorce was refused to the woman because it tainted the inheritance. That was the primary reason why woman's offence was considered more serious than the man's—it tainted the inheritance, while the man's offence did not.

HON. A. P. MATHESON: I believe I am stating facts when I say the reason the woman is put in that position is because the House of Lords only recognised her status, as I have described, at the time when the Divorce Bills had to go through the Houses of Parliament, and her position has remained the same to this day. I believe that was the case, though I speak subject to correction, as I am not a lawyer. I maintain that I am perfectly justified in saying it is simply the continuance of a bad custom that governs our action in this matter to-day.

HON. R. S. HAYNES: It was in 1801 that a woman first got a divorce in England.

HON. J. W. HACKETT: But the reason for woman's position is not that stated.

HON. R. S. HAYNES: Authorities say it is.

HON. A. P. MATHESON: The other grounds of divorce in the Bill are shortly, desertion for six years, imprisonment for five years, and insanity for three years. Now, I consider these are good, arguable grounds for divorce, for moral reasons. I do not wish to go to any extreme length in dealing with this question; but every member of the House must be perfectly well aware of the position which either a man or woman occupies who is debarred from intercourse with the husband or the wife during long periods. Of course, there are many people with whom moral restrictions would have weight, but, equally, there are numbers of people with whom moral restrictions would have no weight whatever. Yet as man and wife, people are separated by law, or for other reasons, for long periods, and are actually obliged, if they wish to have intercourse with the rest of mankind, to do so illegitimately. I maintain that from the point of view of the State—I may be wrong again, but I maintain I am right—it is much more desirable that people in that position should have facilities afforded them of legitimatising connections they form.

HON. C. A. PIESSE: And getting another divorce.

HON. R. S. HAYNES: Yes, if necessary.

HON. A. P. MATHESON: It would be more desirable to legitimatise their connections rather than they should have illegitimate connections. I conceive that the stigma cast in the case of children of divorced parents would not be half as great as the stigma which falls to the lot of unfortunate children who are born of women occuping an irregular position, owing to the cause which I have already described. The Legislature of this colony ought to take this point into grave consideration. This is one of the reasons why I urge the Bill should go into Committee. I know hon. members, to a large extent, have very strong feelings against the Bill, but I do not think they can have carefully weighed the pros. and cons. The easiest way for them would be to discuss the Bill clause by clause in Committee.

HON. C. A. PIESSE: Not if we know it.

HON. A. P. MATHESON: An hon. member says, "Not if we know it." That proves very small confidence in his case, or in the stability of his argument.

HON. C. A. PIESSE: Have we not been discussing the Bill?

HON. A. P. MATHESON: The other grounds of divorce proposed in the Bill—habitual drunkenness, attempt to murder, and habitual cruelty—are more open questions in which no morality is in-

volved. They simply resolve themselves into a question of humanity, which I do not propose to discuss. But Mr. Hackett gave one very curious reason why the discussion of this Bill should not be proceeded with. He said the Bill was imperfect, inasmuch as there did not appear in it a ground for divorce provided in the Acts of many other countries. I speak subject to the correction of the hon. member.

HON. J. W. HACKETT: That is something like what I said.

HON. A. P. MATHESON: If that be so, then let the hon. member move that the Bill be amended by the insertion of such a clause as he indicated

HON. J. W. HACKETT: I mentioned that as a *reductio ad absurdum.*

HON. A. P. MATHESON; No, not in the least as a *reductio ad absurdum.*

HON. J. W. HACKETT: You misunderstood me.

HON. A. P. MATHESON: The hon. member suggested that a clause making incompatibility of temper a ground for divorce, should be inserted in the Bill. I am afraid I could support that contention only if the hon. member were prepared to agree to the incompatibility of temper being proved for a number of years. If we refer to the records of the Roman law on the subject, we find that divorce by mutual consent was a frequent practice, and there were several methods of obtaining that divorce.

HON. J. W. HACKETT: The Roman law was the most liberal law for divorce.

HON. A. P. MATHESON: There were other countries that provided for divorce by mutual consent, especially the Mahommedan. The Mahommedan religion prevails over a larger portion of the world, with the exceptions of the Christians and the Buddhists, than any other, and the Mahommedans accept mutual consent as a reason for divorce.

HON. J. W. HACKETT: There is a plurality of wives there.

HON. A. P. MATHESON: That I would point out does not affect the legal status of the principal wife as principal wife.

HON. J. W. HACKETT: It shows the standard of morality.

HON. A. P. MATHESON: I quite agree with the hon. member, but we believe our religion is right, and the hon. member will find that the Mahommedans thoroughly believe that their arrangement is right, and just as strongly. A great deal has been said upon the subject of divorce, to the effect that it is admitted that it is contrary to the tenets of the present Christian Church; but that is the only church throughout the world, as far as I can ascertain, that holds this objection to divorce.

HON. J. W. HACKETT: You do not think it the worst church for that.

HON. A. P. MATHESON: I maintain it is the best church, but as a matter of argument as to practice I would wish to point out that the ancient Jewish Church, on which the Christian Church is based, recognised divorce to its fullest extent. As the hon. gentleman has referred to divine inspiration, to quote his own words, if the hon. member refers to the book of Deuteronomy at the 24th chapter, and the first and second verses, he will find the husband is authorised to get rid of his wife, not for adultery, not for any great offence, but if she does not find favour in his eyes. Does the hon. member deny the divine inspiration of the old Testament?

HON. J. W. HACKETT: What do you mean by inspiration?

HON. A. P. MATHESON: Exactly what the hon. member meant.

HON. J. W. HACKETT: I did not use the words, because I do not understand them.

HON. A. P. MATHESON: The hon. member, in referring to marriage by capture, referred to the fact that according to the Book of Deuteronomy wives were carried off by divine inspiration.

HON. J. W. HACKETT: I did not use the words.

HON. A. P. MATHESON: If the hon. member did not use the words, he conveyed the same meaning.

HON. J. W. HACKETT: I said they believed it was the suggestion of the Deity.

HON. A. P. MATHESON: Well, the words the hon. member used were "suggestion of the Deity." I say the Book of Deuteronomy, in my opinion, was just as much written by the suggestion of the Deity as the capture of the maidens was suggested by the Deity.

HON. H. BRIGGS: If the hon. member will read the Book of Deuteronomy, he

will see that it was for uncleanness that a man could put away his wife.

HON. A. P. MATHESON: The first and second verses of the 24th chapter of Deuteronomy say:—

> When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement, and give it in her hand, and send her out of his house. And when she is departed out of his house, she may go and be another man's wife.

I am not prepared to argue exactly what the hon. member wishes, but I assume that the words were used in the sense of some blemish in the woman.

HON. J. W. HACKETT: Or the violation of religious ordinances.

HON. A. P. MATHESON: I am prepared to take the Bible as it is written, for the purposes of my argument. I do not propose to detain the House much longer, but I would point out that this Bill does not go nearly so far as the practice in the older countries. For instance, in Scotland there was no obstacle to the wife obtaining a divorce for the same causes as the husband could divorce the wife. With that fact before hon. members, they should not refuse to pass a Bill which has that provision for its principal object. And I speak again subject to correction—I do not know whether it is still the case—a marriage could be declared nullified if either party should prove impotent. This Bill does not go nearly as far as that. Numerous other instances might be quoted.

HON. J. W. HACKETT: That is already the law.

HON. A. P. MATHESON: There is one other point I should like to deal with. Mr. Hackett challenged those who were debating this question to prove the advantage of divorce over judicial separation. That is a distinct point which he wants answered. The advantages in the interests of morality are too apparent to need much accentuation. No doubt, there are a large number of people—I may say a majority—who have sufficient strength of mind to stand up against the temptation when separated from their partner during a long period. But I can conceive nothing more likely to lead to immorality than the fact that a person should be compelled to remain single for long terms of years; and the experience of hon. members must tend to confirm the view, whether they like to admit it or not.

HON. J. W. HACKETT: Then you ought to compel all celibates to get married, in the cause of morality.

HON. A. P. MATHESON: In ancient Sparta that was the law.

HON. J. W. HACKETT: It is not so in the Christian Church.

HON. A. P. MATHESON: That is one of the points on which the Christian Church may be different. This is not a religious question, it is a civil question in which the Church has thrust its finger It is absolutely impossible for some men and women to remain celibate and chaste I hope and trust the majority of the inhabitants will be able to do so; but there are a minority who have not the same steadfastness of purpose, for whom we should legislate if necessary, so as to meet the necessity of that minority.

HON. A. B. KIDSON: Is this Bill going to be a cure?

HON. A. P. MATHESON: Did the hon. member ever find any medicine which would cure everything? Medicine is very good, and alleviates a disease, and if we can alleviate the troubles of these persons we should do so.

HON. R. G. BURGES: This Bill would spread it.

HON. A. P. MATHESON: I deny that absolutely. Mr. Hackett wanted to know what was the argument in favour of divorce against separation.

HON. J. W. HACKETT: That they may indulge the animal side of their nature.

HON. A. P. MATHESON: Indulge the animal propensities which they cannot resist in the minority of cases; and in order that the children of these alliances might be regularised, because it is a shame that the children of these connections should go into the world without a name, when the mere passing of a Bill like this would alleviate the position.

HON. J. W. HACKETT: It will not touch one in a thousand.

HON. A. P. MATHESON: These are my views on the subject. I would give those people a chance. Mr. Hackett has said that the result of this Bill would be that marriage in this colony would mean no marriage in another colony, and legitimacy would be a question of

latitude, and that the stain of illicit birth would fall on the innocent. I fail to see on what portion of this Bill he bases his argument. A divorce in this colony, having been once proclaimed a divorce, would be a valid divorce throughout the world, as far as I understand it. I do not suppose that the hon. member would maintain that a divorce in this colony was not good in any other country.

HON. J. W. HACKETT: We will not argue the question of domicile, that is a large one.

HON. A. P. MATHESON: I want to know what the hon. gentleman meant by saying that a marriage in this colony would be no marriage in any other colony.

HON. J. W. HACKETT: Mr. Haynes got what I meant correctly by his interjection. You have got hold of the wrong end of the stick.

HON. A. P. MATHESON: I could hardly have invented such a phrase. The hon. member made those remarks, but I maintain that a divorce in this colony would be a divorce throughout the world. Possibly when the Bill is being discussed in Committee, the hon. gentleman will be able to explain what he meant by the sentence I have quoted. As to Scotland, I may say in this connection, there has been a tendency on the part of members to sniff and sneer at the number of illegitimate births in Scotland. I may be able to explain to a large extent how that arises. The reason is this, that from the earliest period of which we have any historical record in Scotland, especially in the North of Scotland, the system prevailed of what was called "hand-festing." It was an arrangement entered into, a temporary alliance of people in certain classes, and was as binding as a marriage could be. I do not want hon. members to imagine that this connection was made between a member of what we might call the gentry and a woman of a lower order; that was not the case. But in the history of the Highlands of Scotland there are numerous instances of "hand-festing" among members of families in the same social status, and it prevailed amongst all classes of the people, and to-day the people stand by it. Amongst the lower orders in Scotland, and especially in the Highlands, such a system as that has been considered perfectly justifiable, and in many instances after the birth of a child the connection has been consecrated by marriage in the ordinary way. But the first child in every one of these cases was born an illegitimate child. That is why the proportion of illegitimate births in Scotland is greater than it is in England. As to France, I would like to correct an inadvertent mistake made by Mr. Haynes. In France, within the last three or four years a Divorce Act has been established, in consequence of the trouble that arose from the absence of a Divorce Act in the past.

HON. H. BRIGGS: I have only a few words to say on this subject. I shall not attempt to deal with the question at any great length, because I think it is unnecessary. The hon. member who preceded me has gone through the history of marriage and divorce from almost prehistoric times, and he has mixed up with it a lot of legendary knowledge, and a lot of other knowledge, with the evident desire to make us acquainted with the question; but all this we have little to do with. What we have to consider is the Bill before the House. In the remarks I am about to make I shall only just touch on one or two things spoken of by hon. members, and which require a little more emphasis. I thoroughly agree with much that Mr. Hackett said, and also with a great deal of what Mr. Kidson has said, and I think all the members who have spoken on this matter have spoken so very fully, that it only remains for those who now speak to gather up the threads or emphasise points upon which there has been a little misdirection. We have listened for a long time to the early history of marriage as a matter of capture and barter, but I will take hon. members further back than that. When marriage was instituted in the Garden of Eden, woman was brought to man to be a help-mate for him, and they twain became one flesh. That is the whole basis of the marriage contract. It does not require any priest or any religious ceremony; only I agree with Mr. Hackett that there is a kind of intuitive religion amongst all nations, that this

contract should be surrounded with an amount of dignity and religious ceremony.

HON. J. W. HACKETT: To distinguish it from the union of wild beasts.

HON. H. BRIGGS: That is so, I think. I do think that in all ages people have surrounded this one contract of their lives with some religious ceremony, and an amount of dignity, as it is an important contract. Mr. Hackett spoke of the question of incompatibility of temper being made a ground of divorce. I may say that this is really the logical deduction from all other questions, and I may mention that one of the greatest prose writers—John Milton—wrote a pamphlet containing fifteen or eighteen chapters on this subject, and in these chapters he spoke in his learned and measured manner of the relations of man and wife: and the great ground of all his arguments was that the original contract in Eden was that the woman was to be the help-mate for man, and when she was no longer fit for him the marriage should be broken. No doubt that was biassed because John Milton had an unhappy home.

HON. A. P. MATHESON: I am quite prepared to meet you on that point.

HON. H. BRIGGS: John Milton wrote this great tract and published it for the Assembly in the time of the Commonwealth. No doubt he looked at his home a great deal, and he said when woman was not fit to live with a man, then there should be a separation. In the time of the Commonwealth that pamphlet appeared before the public. We have heard a great many hon. members learned in the law on this question, and, as on many other questions, they differ a great deal. Not only do they differ, but their practice is in direct variance with the principles enunciated. I will direct the attention of Mr. Haynes to one of the greatest lawyers who ever lived—Cicero—and this is what he said: "The first bond of society is the marriage tie, the next is the children." And yet this eminent lawyer, who we would say nowadays led the court in a great case, after living with his wife for thirty years, and after his wife had borne him children, divorced her and married a young woman. Those are his principles, and I have told you what his practice was. There was another point that was mentioned. Mr. Stone, in a clever and clear way in introducing the Bill, stated that he would not touch on religion. I say that religion is at the basis of this question, and as some eminent lawyers have spoken, I will tell the House what an eminent English judge said—Sir James Fitz-Stephen. He said, "God is more palpable in law courts than in churches." And now God's primal law of marriage is ostensibly sought to be repealed, from the very seat of justice itself.

HON. R. S. HAYNES: Sir James Fitz-Stephen never sat in the divorce court.

HON. H. BRIGGS: It was in a discussion that he used these words. I am not going to answer every speaker in a connected way; I am just going to deal with points here and there. Even on a low ground it is the duty of the State to respect the marriage bond; by safeguarding social order and the rights of inheritance and alimony. The United States are trying to get away from the regulations they have now; they find the evil of them. Under British rule I will give an instance of gentlemen learned in the law who have had their feelings harrowed with hearing cases brought before them; cases showing all the vices and sorrows and evils which may be found in this colony with its 170,000 population. I also will give you the opinion expressed by two lawyers —two learned judges—who have had the iniquities of the British Kingdom brought into their minds in an unusual manner. When the Divorce Act of 1857 was passed into law, the first judge under the Act was Sir Cresswell Cresswell. He had brought before him all the accumulation of the antecedent years, and the judge who succeeded Sir Cresswell Cresswell was Lord Penzance. This is what they said about the Divorce Act: "The family is the greatest of all social questions." I will not quote at length what these judges say, but I will put it in this way: Both Sir Cresswell Cresswell and Lord Penzance, with unrivalled experience of the effects of modern divorce legislation, have publicly confessed their adhesion to Lord Stowell's words, that the general happiness of the married state is secured by its indissolubility. There you have

the first judge under the Divorce Act of 1857, and the second judge, both of them saying, after having had the villainy that it was possible to accumulate in a number of years poured into their minds, after having heard cases in which brutality, and crime, and wickedness, were uppermost, after all this experience their conclusions are that the general happiness of the marriage state is secured by its indissolubility. There is another point as regards the usages of the churches. Speaking in this House, we do not belong to any one church. At any rate we are not supposed to belong to any one church. In this colony there are the Anglican Church, the Church of Rome, and the Greek Church. We have many Greek fishermen at Fremantle.

HON. R. G. BURGES: And in Perth too.

HON. H. BRIGGS: I dare say. At any rate they form a portion of the people of this country. The usages in these churches are different, but it is everywhere held by them that, except in case of adultery, marriage is indissoluble. In the Roman Church both parties to a divorce are forbidden to marry during the lifetime of either. That is a canon of the Council of Trent. The Church of England never contemplated the re-marriage of divorced parties, though it does contemplate judicial separation. Married adherents of the Church of England who are separated are enjoined by Canon 107 of A.D. 1603, to live chastely and continently, and neither may marry during the lifetime of the other. The practice of the Eastern Church, which we understand as the Greek Church, is that the innocent person is allowed to re-marry, while the guilty person is regarded as incapable of re-marrying; and the same rule is applied to Christian churches in eastern countries in communion with Rome. I am speaking of church rules which guide a vast number of the inhabitants of this colony. The present Divorce Act follows on the English Act of 1857. It is a very bad thing when the church forbids you to do certain things as a Christian man, and the State by law allows you to do those very things. It is better when the law of the State and the law of the church harmonise; and I say the English Divorce Act of 1857 has had a corrosive and evil effect, as I shall show presently, on English society since that time.

HON. R. S. HAYNES: And yet there has been no attempt to amend it.

HON. H. BRIGGS: In regard to the attitude of the English Church, to which I belong, many members have expressed their opinion; and the more I have looked into the subject—and I have looked into it a great deal—the more doubt I feel. The majority of the bishops in 1857 voted in favour of the present English Divorce Act. A High Church bishop introduced that Divorce Act, which followed on the system of Divorce Bills in Parliament so fully described by Mr. Haynes. At the Convocation of Canterbury, a report was presented in the Upper House by the Bishop of London, and in that report we read:—

> The Lambeth Conference of 1888 considered the matter in the light of Scripture and ancient custom, and expressed its mind in three resolutions which, though they have been quoted by the committee of the Lower House, we think it well to quote again:—1. That, inasmuch as our Lord's words expressly forbid divorce, except in the case of fornication or adultery, the Christian Church cannot recognise divorce in any other than the excepted case or give any sanction to the marriage of any person who has been divorced contrary to this law during the life of the other party.

There are other regulations in the report which I shall not read to hon. members. I will, however, read one extract, which is under the imprimatur of that most broad-minded archbishop, Dr. Temple. In the encyclical letter of the Lambeth Conference of 1897, the archbishop said:

> The maintenance of the dignity and sanctity of marriage lies at the root of social purity, and, therefore, of the safety and sacredness of the family and the home. The foundation of its holy security and honour is the precept of our Lord, "What therefore God hath joined together let not man put asunder." We utter our most earnest words of warning against the lightness with which the lifelong vow of marriage is often taken, against the looseness with which those who enter into this holy estate often regard its obligations, and against the frequency and facility of recourse to the courts of law for the dissolution of this most solemn bond.

That extract shows clearly the mind of the majority of the bishops of the English Church on the subject. I dare say there are many members who have read the words of one of the most learned and most devoted of English bishops. This is a

bishop who might not be expected to use the words I am about to read, but I think it is fair to quote his words in order to show that the canon law of the Church of England is far wiser, and stands on sounder foundations than the mere opinion of any one bishop. These are the words of the Bishop of Lincoln:—

> Nevertheless the argument from Scripture seems to me such that I cannot regard marriage as absolutely indissoluble. The excepting clause in St. Matthew's Gospel must, it seems to me, limit the general statement of St. Mark and St. Luke. Such would be the conclusion of my own mind, and when I consider the weight of authority of our greatest Biblical scholars I dare not put it aside. Such was the conclusion come to by my most learned and saintly predecessor, Bishop Wordsworth, whose learning is known to all of us. His mind more than almost any man's was imbued with the spirit of holy Scripture and the writings of the early fathers; and yet he felt that he could not regard the bond to be indissoluble. Then there are the writings of the Bishop of Gloucester. We all unceasingly admire the width of his learning and the pains he takes to bring us to the exact truth. Then, again, we have the conclusion of his great predecessor, Bishop Lightfoot, and Archbishop Trench. All these agree in saying that in the case of adultery the marriage bond may be dissolved and the innocent party, at least, allowed to marry again. The responsibility of opposing their judgment is very great.

I give that extract to show there are certain learned bishops of the English Church who view the matter differently and more liberally than the canons or law of the Church itself. Where there is such a doubt, I simply mean to rest my opinion on the ground of authority. I think that the church collectively is in all ages wiser than the wisest exponents of its doctrines; just as the House collectively is wiser than the wisest member, at any one time. The older sister church, the Roman Catholic Church, is very astute in all its worldly concerns; it knows the innermost workings of men's hearts. There are no clergy who know more of the inner mysteries and secrets of private family life. And yet, with all that intimate knowledge of human nature—not in small populations like our own, which could be put in a corner of one of the great cities of Europe—that great church, knowing all the weaknesses and evils of human nature says, "We will stand fast by the words of the Master; it is safer to make marriages indissoluble, and suffer the present evils, than to relax the marriage tie and, thereby, it may be, create no end of other evils." On the ground of authority, therefore, I shall vote for the amendment moved by Mr. Hackett. There is just one other argument, or reference, I should like to protest against. Mr. Haynes stated that, if a man was away from home for say ten years, that might be taken as absolute proof of his having committed adultery. I maintain there are persons who have the gift of continence; and I protest against the common error that persons who live single lives must of necessity relax control over their moral habits and fall into sin.

HON. R. S. HAYNES: I did not say absence was absolute proof of adultery; I said it was presumptive proof, and to my mind almost absolute proof; and I repeat the statement.

HON. H. BRIGGS: I accept the correction. I thought, from the strong way in which the statement was made, that it cast a slur on a number of noble men and women who have taken vows of celibacy.

HON. R. S. HAYNES: I did not refer to women at all, but to men.

HON. H. BRIGGS: I refer to the subject, because there are only two bachelors in the House. I felt the remarks could not apply to me, and I wanted to defend Mr. Hackett, who, having already spoken, has no right of reply.

HON. J. W. HACKETT: I am very much obliged.

HON. H. BRIGGS: I heard the metropolitan Bishop of Sydney, Dr. Barry, give an address in the Cathedral of Perth on this very subject, and he stated clearly, as one having experience amongst young men, that, because a person was not married, it was not to be assumed that person got his pleasure in an unlawful way; for sexual commerce is not a necessity of life. I said a little while ago that the relaxation of the marriage laws in 1857 has given rise to a vast amount of wickedness and crime, even crime which is almost unmentionable. Our newspapers are crowded with advertisements which would seem to indicate that the "regularity-restored" business is flourishing; and one can scarcely pick up a paper without seeing accounts of fearful

crimes. Why I mention this unsavoury subject is because it has been said in the course of the discussion on this Bill —not in this House, but in another place —that the class who would be assisted by this measure would be the lower class. But lately in England a Dr. Collins was found guilty of illegal practices, and the jury brought in a rider deploring "the growing tendency on the part of certain sections of the community who, as proved by the evidence in this case, availed themselves of their marital rights, but tried to evade the responsibility arising therefrom." In passing sentence the judge expressed regret that in those ranks of society which possessed by far the largest share of the advantages conferred by education, culture, and refinement, those practices were most rampant. This showed the evil practice was more abundant amongst the wealthy people, who could pay the price for bold and skilful villains to assist them in escaping the responsibilities of married life, than amongst the poorer classes. For a long time there was no poorer class in the British dominions than the Irish peasantry, and yet there is no chaster class than the peasantry of both Ireland and England. Poverty and license do not always run together; wealth and luxury and license are more frequently found combined. I will conclude these remarks with a quotation from one who has evidently studied the question:—

> It was predicted in 1857 by those who opposed the Divorce Act that, in course of time, the old bond of the family life would be dissolved, and with it would disappear the sense of responsibility attaching to the married state. And this has come true. A new generation has been born accustomed to the idea that marriages can be dissolved at will; and, if so, then that the married state involves no moral duties. The lesson that the past week enforces is plainly this, that every decent man and woman should work, not only for the preservation of the high standard which the church enjoins, but for the removal from the statute-book of this corroding law of divorce.

I beg to support the amendment moved by Mr. Hackett.

HON. H. G. PARSONS: I must congratulate the House on the high tone the debate has taken, and also Mr. Briggs on the valuable support he has given to the Bill. I am unable myself to begin my remarks with the Deluge, but I would just like to say a word in regard to the Roman law on the subject. It seems to me a parallel may be drawn between the Roman law on divorce and the Roman law as to real property. The latitude given by the Romans in divorce was followed by a natural revulsion when Christianity, with the canon law, came into power; and the introduction of equity showed a similar revulsion against the Roman law, which was much too strict in regard to real property. I look on the canon law as going as much too far in one direction as, in my humble opinion, equity went in another. The best way is to arrive at a compromise in such matters as divorce, as is rapidly being done in the blending of equity and common law, and is rightly being done in such matters as marriage and divorce. We have had many authorities quoted, most of them, however, of the nature of the exception which proves the rule. Lawyers, like clergymen, are most of them, at bottom, convinced that divorce should be permitted. I believe honestly that most clergymen, of whatever denomination, are very half-hearted in their opposition to divorce, and that they only take the stand they are obliged to take for purely professional reasons. Clergymen and lawyers are best acquainted with the misery, sin, and crime, consequent upon a want of adjustment of the divorce law to the exigencies of modern life and civilisation, Milton, Madden, Cicero, Fitz-James Stephen, and many other authorities have been quoted. Milton, though a good poet, was an utterly bad husband, and is about the only poet opposed to divorce. Madden is a brilliant exception in his profession, and about the only judge we have heard quoted in opposition to this legislation; and he had particular reasons for taking the view he did. Cicero was as bad a husband as he was a lawyer, and as bad a lawyer and husband as he was a man, and he really cannot count. Fitz-James Stephen, whose opinions I have the deepest respect for, was particularly qualified, as shown by his conduct in the Maybrick case, to deal with any case in which women were concerned, and he, most of his life, was distinctly in favour of divorce. I do not wish to be unconciliatory, but one thing in the course of the debate which strikes an impartial mind is that we have many well-meaning

hon. members trying to throw the odour of sancity around the sub-clauses of clause 1, and say, "Those whom God hath joined together, let no man put asunder," even when a man has been guilty of adultery, desertion, drunkenness, or is insane. It may be found necessary in Committee to abandon some of the proposed grounds of divorce, though I am in favour of abandoning none. I cannot see why the State, as a whole, should wish for a man or woman to live with a wife or husband who has been guilty of adultery.

HON. C. E. DEMPSTER: Why should they marry anyone else?

HON. R. S. HAYNES: Why not?

HON. H. G. PARSONS: Divorce may be taken either as a penalty or a privilege, and both ecclesiastical and civil lawyers have often been at a loss as to which light to regard it in. If it be a penalty, let it be a penalty on the erring party; if it is to be a privilege, let the party in the right have the advantage of the privilege. But in either case where would be the advantage of penalising anybody? Let us regard the question from the woman's point of view, because, to a large extent, that is the point of view which we must take. Legislation of this kind is intended to remove the remaining restrictions which have been on women from the time when real property was the only thing considered; when every social consideration was sacrificed to purity of descent, because of the entailing of the land. Speaking as a Tory in principle, I think it is unfortunate that state of society has passed away; but, as it has passed away, let us give women the benefit of her position. If a woman gets a judical separation, how is she to live? We may give a woman a judicial separation and allow her to sink or swim; but in Australia particularly we ought to adjust the law to the social conditions of the country. We know perfectly well that women, almost of every class, are not in a position to maintain themselves, should they either through the fault of themselves or the fault of their husbands, be judicially separated. A woman, under the circumstances, has really to choose between infamy and starvation. In most cases she has to maintain the children, and she inevitably drifts into evil courses or the direst poverty. Take the two extreme cases as presented in the marriage laws of Italy, and the marriage laws of the United States. Italy has been entirely under the thumb of the Romish Church, and no divorce is permitted there at all; and we all know the social state of Italy. I have lived there a good deal myself, and have seen the regular system of women having other men than their husbands attached to them. The other extreme is found in America. There you find a system of divorce which is a scandal and a disgrace to the civilisation of the United States. But that is no reason why we here should not legislate and adapt the law to our own social conditions. The conditions of the eastern colonies are beginning to apply more here. There is a large floating population in Australia, amongst which there are many men who leave their wives without maintenance. These women may be left for five or six years, and it is common knowledge what happens in the absence of their husbands. In such a country divorce should be possible for married persons who are deserted, because, otherwise, immorality must prevail. Deserted women, in order to regulate their position, should have a chance of taking another partner. No woman ought to live without a man to regulate her life and pay her bills. I am no believer in the "new woman." The Council of Trent may have known the conditions of Europe in their day, but the Council of Trent did not know the modern conditions of Western Australia or Australia as a whole. We must recognise facts, and not be slaves to any particular dogma, church principle, or prejudice. The subclauses of clause 2 are so many chapters of misery too solemn to jest over. Surely it is not desired that people under the circumstances therein contemplated should live together. It is undesirable that scrofulous or insane people, or habitual drunkards should breed children. If a man sent to goal was good enough for his wife to stick to him; she need not avail herself of the Bill; but if a man was so bad a character that it was found necessary to isolate him from his fellow men, surely it would not be contended that an unfortunate woman should be bound to a criminal for life. Under such circumstances the bargain is "off." The canon law was barbarous and a revulsion against

the laxity of the Roman law ; and now the pendulum is swinging the other way. In spite of the English Church, or the modern Protestant Church, we are committed to the principle of divorce. The Church of Rome has found a very good *modus vivendi* in dealing with marriages as no marriages. And we know how the Mahommedan Church, which is a wiser church in many social matters, arrange these matters. If one follow the Old Testament we know the inevitable result. Leaving all these things aside, as we in this colony are bound to do, we ought to consider the facts as we find them, and, in the interest of good citizenship, it is our absolute duty to go at least as far as the Bill proposes. Where a union has become absolutely unholy and unwholesome —where a union has become a public menace and a private source of misery—give the woman a chance. Give her a chance of starting life afresh with another partner; and do not offer her the wretched hyprocrisy of a separation; which, in the long run, only means misery and crime. This appeal I make as solemnly as I can to the House.

HON. R. G. BURGES: I move that the question be now put.

Motion put and negatived, and the debate continued.

HON. F. WHITCOMBE: I am much disappointed at the attitude taken up by Mr. Hackett in this matter. He appears to have taken a stand throughout the Bill from a purely academical point of view. He has regarded this question from a theoretical standpoint. Are we to regard the question as of importance from a practical standpoint, or are we to stand afar off and look at it? This Bill has passed through what is termed the popular Chamber.

THE PRESIDENT: The hon. member should say "another place."

HON. F. WHITCOMBE: And as it has passed through another place it is entitled to a great amount of consideration at our hands. I was surprised to find that Mr. Hackett, with all his knowledge and education, should have dealt with this question from the standpoint that, if this Bill is allowed to become law, the moral tone of the colony will be depreciated. I do not think he can find an instance, at any rate he did not quote any instances, to show that. We have had the statement made that Victoria is worse than it was before its present divorce law was passed. That is simply a bare statement unsupported by evidence, and it is not sufficient to convince hon. members that the system which prevails in that colony is absolutely wrong. This statement was made by Mr. Hackett, when, I believe, that hon. member has only visited that colony—I should think about three times—and if Mr. Hackett had been prepared to attach any weight to his assertion so as to convince this House, he would have brought forward some statistics to show that his statement was borne out by fact. Following in the debate we have Mr. Kidson, who is a member of a body that recognises divorce as far as the husband is concerned. He believes that the husband should have all the rights and the wife none. He is prepared to pass a law allowing women to hold property; he may discuss the question and be in favour of extending the franchise to women. We extend the powers of women by giving them seats on local boards and educational boards, and yet members are prepared to keep woman continually under this one disability, that she cannot separate herself from her husband who has been unfaithful to her. We have an attempt in this colony to place woman on the same political platform as man, and yet some members will not place her on the same moral platform. When any attempt is made to place woman on the same moral platform as man, why should that attempt be burked? It smacks of unfairness that this disability should be allowed to remain on woman. The Bill in itself is not perfect; no one has suggested that any Bill that has ever come to us is perfect. Our practical experience shows us that every measure requires some alteration or amendment before it leaves our hands. There is one clause in this Bill on which I would spend the whole of my energies in supporting and striving to bring into existence. That is sub-clause (*a*) of the first clause of the Bill, to give woman an absolute equality as to the fidelity or otherwise of her husband. I know that a considerable section of this House are opposed to other portions of the Bill, but are in favour of the sub-clause that I have mentioned. Should hon members be nervous of their strength, and

thus refuse to allow the measure to go into Committee? Hon. members would throw the just moral rights of woman aside because there are one or two clauses in the Bill that they object to. If hon. members had the courage of their convictions, they would carry this Bill into Committee, and then eliminate those clauses to which they have objection. Members have the right to throw this Bill out if they like; they have the right to say to the women "You have still to stand on a plane lower than us." If that is to be the moral standpoint to be approved of by this House which is supposed to be past the sudden passions and influences that assail others who have not arrived at the calmness of this Chamber, then we are not altogether fit for the position we are supposed to occupy. We have it from Mr. Kidson that the Bill has not been sufficiently considered. This very ground in sub-clause (*a*) to which I am referring has been under consideration for a long time. I do not know whether it has been under consideration in this colony, but it has been under consideration in the colony from which I came—New Zealand—for fifteen years. The subject has been discussed in other colonies, and this Bill is the law in other colonies, therefore the question must have been under consideration in this colony for a number of years. The Bill has been before the House for a fortnight; it has been fully discussed elsewhere. The discussion has been published in the Press, and it has also appeared in the *Hansard* reports of the colony. To say that there has not been sufficient time for the consideration of this Bill is nonsense. Its very weakness should be its strength. A further idea has been impressed on the House by Mr. Kidson, that if the Bill became law, it would alter human nature altogether. A Bill that would raise one portion of humanity to the equality of another cannot have such an effect as that which the hon. member anticipates. It would not alter human nature for the worse. To give freedom to a woman who is tied to a man who has been unfaithful to her cannot deteriorate human nature. The argument used by the other side—because I may state now I am going to support the second reading, and I am going to support the Bill containing sub-clause (*a*)—against the Bill has been to show that hon. members are afraid to discuss the measure in Committee, and are afraid to go through it clause by clause because they fear that sub-clause (*a*) might be carried against them.

HON. D. K. CONGDON: We do not want the Bill.

HON. F. WHITCOMBE: It is a tribute to the intelligence of the House that all members do not take the same stand. We might as well have a Bill brought in and read a first time and members say we do not want it, although they have not read a clause of it. Judging from the remarks of the hon. member, he has not read the Bill, and it would be a great amusement to the House if, when we go into Committee, the hon. gentleman were asked to explain the Bill clause by clause.

HON. D. K. CONGDON: I am not a lawyer.

HON. F. WHITCOMBE: A man does not require to be a lawyer to do that. I was struck by the forcible argument advanced by Mr. Briggs, and I quite agree with him that in a certain way the religious aspect cannot be separated from this subject. It has been imbued into our natures to look on the marriage contract as a religious contract. A woman has a prejudice against marriage anywhere except in a church. A man might be glad to go to a registry office and get married, but a woman objects to that. When Mr. Hackett wished to discuss the church's attitude towards the law, he admitted that the church allows divorce, but it objects to the re-marriage of divorced parties. Mr. Briggs has given us a quotation from many eminent divines—I think five eminent divines of the Anglican Church—who all hold with the principle of divorce, which is the primary object of the Bill, and yet hon. members say, "Although the Bill allows divorce I will not vote for the second reading of it. I will vote to have it thrown out." We cannot expect that those who view the question of marriage from an independent standpoint can enter into all the aspects of the case. In discussing this question there should be some amount of experience. Those who have children have a better opportunity of discussing this question. They can look at the subject from a better point of view,

and especially as to what will probably become of the children of divorced parents. It has been said that when parents are divorced, the children have a stigma cast on them. This was brought forward as an argument, but I say that the statement is without foundation. It is without a single fact to support it. Anyone who has had any experience of life knows that there are many divorced persons living in Perth and in the other colonies, and that no stigma rests on their children, who suffer no disability through the separation of the parents. Of course the separation of the parents is a disability. There is the loss of opportunity of advancement in the world, in the case of children being with the mother; and where the children are with the father there is the loss of home comforts. It is idle to come forward with an argument and say the children of divorced parents, if properly divorced, will suffer from the stigma of the divorce. The argument was brought forward forcibly by Mr. Hackett, and it loses the whole of its point when we look at it from that standpoint. There is no doubt that had Mr. Hackett, in an earlier period of his life, indulged in matrimony, and was now the father of children, he would have looked at this question from a very different point of view from that which he looks at it now, and he would have seen that no stigma attaches to the children of divorced parents. It seems to me that Mr. Hackett's address on this subject was too academical to be of any advantage to us. It was too academical altogether. It was, however, clever and learned, and showed a great deal of research; and although a considerable amount of information can be obtained through research, that information cannot be applied unless there is some amount of practice. Mr. Hackett brought forward some arguments which were pretty and nice to listen to, in favour of throwing out the Bill suddenly. I have extracted from John Oliver Hobbes this statement:—"Beware of the tyranny of a false ideal—an ideal based on an unreal knowledge of human nature. It will sear your soul with hot iron." I will ask the hon. member to apply that caution to his actions in the future, and he will find that it will be of great advantage to himself. Members who have not had some experience cannot speak on this subject in the same way as those who have children, and look at it from that standpoint.

HON. J. W. HACKETT: You want me to get married and then to get divorced.

HON. F. WHITCOMBE: If the hon. member did get married, he would not argue in the same strain that he argued last night. If he did, it would not be long before the hon. member's wife would get a divorce. I do not think Mr. Hackett, when he comes to consider the actual grounds for divorce, will object to the Bill going into Committee. I am satisfied he is not averse to giving a woman her rights to be on an equality with her husband. That is a right which has always been denied her. Those who support the Bill on clerical grounds must support it as far as sub-clause (*a*), unless prepared to desert the clerical standpoint and go back to the feudal standpoint. At present a woman can get a judicial separation, which is worse than if she remained in her present state. If I had anything to do with the Matrimonial Causes Act, I should do away with judicial separation altogether, and only have divorce; and I should provide that the court could order a certain amount for a woman's support after the divorce. When matters come to such a pitch between husband and wife, that separation becomes necessary, it is all but impossible that these two will ever come together again, and a divorce might just as well be granted. The Bill really turns, I take it that it is intended to turn, on the question of whether a divorce should be granted to a woman or not. That is really what it comes to. Hon. members have said, "Throw it out this year, and bring in another Bill simply containing sub-clause (*a*)." If that is the idea of hon. members, it is our duty to put this Bill into Committee, and pass it so as to include sub-clause (*a*), and sub-clause (*a*) only. The Bill can be reduced in Committee. The objectionable grounds can be struck out, and I believe it is the unanimous opinion of the House that sub-clause (*a*) should become law.

HON. C. A. PIESSE: Subject to the opinion of the country.

HON. F. WHITCOMBE: Do hon. members suppose that if Parliament went to the country on this one issue, the

country would be against it. Members in this Chamber are supposed to represent the property owners of the whole of the colony, and hon. members know that if a Bill embodying sub-clause (*a*) was submitted to their constituents, it would be passed without a dissentient vote, except that dissentient vote came from so-called men who would rather that the Bill should not come into force, as they might then be turned out of their homes. Those opposed to the Bill are afraid lest one hon. member—I won't mention the name—will insist when the measure gets into Committee upon having sub-clauses (*b*), (*c*), (*d*) and (*e*) passed, or the Bill would be wrecked. That seems to be a foolish stand to take. It is an exhibition of weakness, and I cannot understand hon. members taking that stand.

HON. R. G. BURGES: Who mentioned that?

HON. F. WHITCOMBE: It has not been mentioned in this House, but it has been mentioned in this building. There is a certain fear that if the Bill goes into Committee, hon. members will not be able to stop at sub-clause (*a*). I am surprised to hear that, and I am surprised that hon. members will shield themselves behind the whole of the Bill lest they shall not be able to accept only a portion of it. Hon. members admit that the Bill is right, that a certain portion should be passed, but they are afraid to allow the measure to go into Committee lest they should give more than they desire to. There is a matter I would like to refer to in clause 2. The principle that is introduced allows, in the event of a dissolution of a marriage, the court to restrict the offending party from marrying again during the life of the other party. I do not think that is a good principle, or that it would operate fairly. I would rather like to see it put in another form, to give the court power in the event of a decree for dissolution of marriage, to follow up the law; but if the enormity of the offence is not so great and the court is of opinion that it should grant the divorce under this Bill, then the court should have the power to go on with the case under the present Act and grant a judicial separation. In all these things we should get at the desired object as far as we can, gradually educating public opinion up to the necessary standpoint. Although I do not like judicial separation, I would like to see the court given power, in refusing a dissolution of marriage, to order a separation on terms to be laid down. I would also like to see a further power given to the court to provide for the custody of the children for a longer period than is at present allowed. Children of a tender age at present can be, and in many cases are, ordered to the custody of the mother, but, after a certain age, they, as a rule, are awarded to the father, with the right to the mother to have interviews from time to time. In a gross case, I would like to see power given to the court—in order to emphasise a power which may exist, but is very seldom used—to deprive the offending parent of all rights to the custody of the children, but, at the same time, to compel the husband, if unfit to have their custody, to make sufficient provision for their maintenance. We have heard from Mr. Haynes that, as a rule, the alimony ordered is not paid throughout the whole term. That, I suppose, is one of the chances that has to be taken in a country where it so easy for a person, under the order of the court, to avoid the performance of that order. I suppose that, without exception, this colony is one of the easiest in the world to get away from.

HON. R. G. BURGES: The boats are watched.

HON. F. WHITCOMBE: I know the boats are watched, but still people are allowed to slip through, and of this I have had some experience, to my cost. I would like to see such a provision as I have indicated, which would make the Bill more perfect, although it might give rise to greater opposition than is expected to the measure as it stands now. I am not in favour of the whole of the grounds for divorce given in the subclauses, but insanity should be retained as a ground for divorce. Even if after a lapse of time a person be declared recovered and harmless, it would be dangerous to allow marriage relationship to be resumed, because there might be added to the population unfortunates practically insane, or with a tendency to insanity

from birth. There are therefore two sub-clauses of clause 1, with which members ought to be quite satisfied to agree, and yet there is an objection to allow the Bill to go into Committee. I urge hon. members to have the courage of their convictions, and if they are satisfied, as I know they are, that one clause at least in the Bill is essential to the restoration of the natural and proper rights of woman, they will allow this Bill to go into Committee, and then, if it be thought proper, strike it all out except sub-clause 1.

On the motion of the HON. F. T. CROWDER, the debate was adjourned until Thursday, 1st September.

WINES, BEER, AND SPIRIT SALE AMENDMENT BILL.

Received from the Legislative Assembly, and, on the motion of the HON. R. S. HAYNES, read a first time.

JURY BILL.

IN COMMITTEE.

Consideration in Committee resumed on new clause moved by the HON. R. S. HAYNES, as follows:—"The verdict of a jury shall not be set aside or interfered with upon the grounds that the verdict is against evidence, or the weight of evidence, or that the damages awarded are excessive or insufficient, unless the court hearing the application shall unanimously so decide."

THE COLONIAL SECRETARY (Hon. G. Randell) said he regretted he could not support the proposed new clause. Mr. Haynes suggested that on application to the Full Court to set aside a verdict on the ground that the verdict was against the weight of evidence, or that the damages were excessive, the court must be unanimous. Therefore, if two judges should be of opinion that the verdict was wrong, and one that the verdict was right, the opinion of the minority would prevail and the verdict stand. Even if the judge who tried the case should consider the verdict against the evidence, and another judge should agree with him, yet if the third judge should consider otherwise, his opinion would prevail, and the verdict stand against the opinion of the other two judges. The circumstance that we had only three judges required that the judge who tried the case should sit in Full Court; and, therefore, if the judge who tried the case, and upon whose summing up the jury found the verdict, should think the verdict not against the weight of evidence, or not excessive, his opinion would fail against the two other judges. The Judicature Act and rules of practice were based on the English Act and rules, but in England the rule now was that a judge who tried a case should not sit in the court to which an application was made to set aside the verdict. Nevertheless, there was no such rule in England as Mr. Haynes sought to establish here. There was much more reason why there should be no such rule here, where the judge himself who tried the case might be the minority to overrule the opinion of the other two. Mr. Haynes, in speaking on the subject previously, mentioned there was a Provisional Court to which appeals were made in England; but he (the Colonial Secretary) was informed on good authority that the Provisional Court had been abolished for about two or three years.

HON. R. S. HAYNES: No.

THE COLONIAL SECRETARY: The law was practically the same here as in England, appeals being referred to the Full Court, with the difference that the judge who tried the case did not sit.

HON. R. S. HAYNES: The Colonial Secretary had either misunderstood his authority, or the authority had misunderstood him.

HON. F. T. CROWDER called attention to the fact that there was not a quorum present.

WANT OF A QUORUM.

The CHAIRMAN having found there was not a quorum present,

The PRESIDENT resumed the chair; and there still not being a quorum, he declared the House adjourned until the next sitting day.

ADJOURNMENT.

The House was thus adjourned by the PRESIDENT at 9.50 p.m. until the next day.