Legislative Council,

Wednesday, 2nd November, 1927.

The PRESIDENT took the Chair at 4.30 p.m., and read prayers.

MOTION—TUBERCULOSIS.

Dairy Herd, Hospital for the Insane.

Debate resumed from the 27th October on the following motion by Hon. A. J. H. Saw:—

That, in the opinion of this House, the policy of hush-hush adopted by both the previous and present Governments in connection with the presence of tuberculosis in the dairy herd at the Claremont Hospital for the Insane, which supplies milk to the Children's Hospital, is not in the best interests of the health of the people.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [4.35]: I regret very much that Dr. Saw is not present to-day, and especially do I regret the cause of his absence. He has found it necessary to seek rest and relaxation for a few weeks, and I hope that before long he will return to his Parliamentary duties with renewed strength and vigour. I am sure we all appreciate his ability, rectitude and intelligent interest in public questions. Dr. Saw in the course of his speech told us that a policy of hush-hush had been adopted by the previous and the present Government in connection with the presence of tuberculosis in the dairy herd of the Claremont Hospital for the Insane. Dr. Saw throws the responsibility in the first place on the Mitchell Government, but he adds that the present Government have probably been particeps criminis; that they have allowed a certain state of things to go on, whether in ignorance or not he did not know. There is another class of malefactor known to the law. It is he who, after a crime has been committed, and with a full knowledge of the seriousness of the consequences to society, shields the perpetrator or refrains from doing something to bring him to justice at the earliest possible stage. This class of offender is described as an accessory after the fact, and, although it is difficult to conceive such a conscientious citizen as Dr. Saw filling the role of an accessory after the fact, yet the evidence clearly points that way. I feel certain he did not do it wilfully, and, as he qualifies his charge against the present Government, by attributing their alleged inaction as probably due to ignorance, I will follow his example and ascribe his years of silence on the question under discussion to a failure to keep himself posted in a matter of the greatest public importance. The situation is not fully met by merely safeguarding the Children's Hospital. There are many thousands of children outside that institution, and many thousands of grown-ups also, entitled to consideration and protection. Yet, not only the welfare of these, but the welfare of the inmates of the Children's Hospital, has been strangely overlooked by Dr. Saw for something like five years. Was Dr. Saw's silence due to a policy of hush-hush on the part of the previous and present Governments? The suggestion will not bear examination for a single moment. Every year a report from the Department of Agriculture is laid on the Table of this House. In that report the Chief Veterinary Officer gives a frank statement regarding the existence of tuberculosis in cows in the metropolitan area. He does not publish the names of the owners of the different herds infected. He deals with the situation as a whole. To show how candid is that officer, I will read brief extracts from his annual reports in 1925 and 1926. He is referring to tuberculosis in dairy cattle. His report reads as follows:—

There has been no serious outbreak of disease amongst this class of stock, but it is evident, however, that there is a good deal of tuberculosis present amongst the dairy herds in the metropolitan area . . . . . During the six months, January to June, this matter has been receiving the attention of this branch, and although the inspections have been by no means systematic, on account of the shortage of staff, 59 animals were condemned for tuberculosis. On post mortem examination 35 of these were found to be generalised cases and 24 localised. These figures illustrate the urgent necessity for a regular and systematic inspection of dairies both in the metropolitan and country districts which contribute to the milk supply of the community.

Again in 1926 he reports as follows:—

Tuberculosis. There is no doubt that this disease is very prevalent amongst the dairy cattle in this State, and with the object of eliminating the worst cases a systematic inspection of dairies was commenced in the metropolitan area in March last, an officer being specially appointed for this phase of the work. As the result of his inspection of 73 dairies, 52 cases showing clinical or suspicious symptoms were selected for the application of the tuberculin test, and of these 27 animals reacted, representing 52 per cent. Of the 27 which reacted, 26 were generalised cases and one localised case. Ten of the generalised cases were of the most dangerous type, the udders being very badly affected. In no case was the tuberculin test applied wholesale to any herd, only animals showing clinical or suspicious symptoms being selected for testing. In addition to the above animals, 13 cases were detected in the cow markets, 12 of which were generalised cases, and one localised. Amongst cattle slaughtered under supervision in the abattoirs at Fremantle, Midland Junction, Northam, Geraldton and Kalgoorlie .51 per cent. were found to be generalised cases and 3.9 per cent. localised cases of tuberculosis.

There is no disguising of the true position in these reports. The position is set out as plainly as could be desired. Dr. Saw, as a medical man of high repute, and as one who has often taken a deep interest in the pure milk question, should have made himself acquainted with those reports, and long before this given the House the benefit of his knowledge and experience. There is a Latin proverb — Principiis obsta — which counsels us to oppose the beginnings of evil, and, in effect, warns us to attack the malady before it has waxed strong. With Dr. Saw's intervention—say back in 1922—we might have had a much more lively public interest taken in this question with resulting benefit to the community. However, let me say, on the information I have received, that the practice followed in Western Australia in reference to the detection of tuberculosis in dairy cows, is very much the same as that followed in Australia generally, and in most other parts of the world, though there may be isolated cases—as in Denmark—where it is said the "Bang" system is in operation, and dairy cattle are subjected to the tuberculin test and reactors isolated, but not necessarily destroyed. What has been done here, is what has been done and is being done in most other countries. Taking Claremont hospital, which is singled out for attack by Dr. Saw, the practice adopted in connection with the inspection of the herd is similar to that which obtains in dealing with other dairy herds. The cattle are inspected at intervals by a veterinary officer attached to the stock branch, and any animal that shows signs of infection is isolated and the tuberculin test applied. Take England, for instance, and it is not a bad example to follow. The Milk and Dairies Consolidation Act, 1915, only came into force in 1925, and it provides only these preventive measures, which I take from the "Medical Annual," 1927, page 316:—

(1) Any cow which is, or appears to be, suffering from tuberculosis of the udder, indurated udder, or other chronic disease of the udder; (2) Any bovine animal which is, or appears to be, suffering from tuberculosis emaciation; (3) Any bovine animal which is suffering from a chronic cough and showing signs of tuberculosis. These animals have to be notified to the police or other officer of the authority administering the Diseases of Animals Acts by the owner or any veterinary surgeon who comes across them in his practice. A veterinary opinion is then obtained, and, if the preliminary diagnosis is confirmed, the animals are slaughtered and compensation is paid. These three types of tuberculosis are those most likely to spread the disease to other animals, and to infect the milk supply.

That is very much the same as is being done here. We apply the tuberculin test in suspicious cases, but there is no reference to the tuberculin test in the section of the English Act I have quoted. There appears to be a diagnosis by a veterinary surgeon, and if he is satisfied that the animal is diseased, it is slaughtered. During the five years, inspections and tuberculin tests of the cattle at the Claremont Hospital for the Insane have been made on the 12th May, 1922, 27th March, 1925, 24th June, 1926, 5th July 1926 27th July, 1926, and 13th October. 1927. Dr. Saw said he would not be surprised if the latter test was made after he had asked questions in the House. In view of the fact that the test was made on the 13th October and Dr. Saw did not ask his questions till the 19th October, it is difficult to see how he can justify that statement. As a result of the inspection on the 13th of last month, the herd appeared to be in excellent condition, and the surroundings and conditions under which it is maintained approach the ideal. Out of a herd of 87 animals—consisting of 75 cows, 11 calves and 1 bull—only two exhibited clinical signs. These were subjected to the test: one gave a positive reaction and was slaughtered. The second gave a doubtful reaction to both tests; she has been segre-

gated and will be re-tested within two months. Veterinary Officer Toot, who inspected the Claremont herd on the 12th and 13th October, states in his report—

I am of the opinion that the Claremont dairy herd is the best kept herd in the metropolitan area. The herd is of excellent breeding, in good condition, and, as far as can be judged without the application of the tuberculin test, healthy. The farm manager (Mr. Kerr) adopts the policy of culling any animals that do not appear healthy. In handling the milk every precaution is taken against contamination

It will be seen from this report that out of a herd of 87, only two animals showed clinical signs. These two were subjected to the tuberculin test, and only one gave a positive reaction and was destroyed. Prior to the Dairy Cattle Compensation Act being passed the metropolitan dairies were inspected regularly, and those cattle showing clinical signs of disease were subjected to the tuberculin test; and those that reacted were destroyed. Because of the activities of the dairy branch, which resulted in cattle being destroyed for which no compensation was paid, the dairymen agitated for compensation for the beasts which were condemned, and finally a Bill was introduced into this House and passed into law. Under the then existing conditions compensation could not be granted, but the Minister made provision in a measure for the establishment of a fund to which the dairymen would contribute, which would be subsidised by the Government, and for which compensation would be paid. This Bill was introduced and passed by Parliament, and is now known as the Dairy Cattle Compensation Act. The Act, however, is not in operation, as much preliminary work has had to be done, but the regulations are now being prepared and the Act will be proclaimed in a brief interval of time. Anticipating the operation of this Act, and the consequent registration of all dairy stock in the metropolitan area, the inspections have not recently been so numerous as they were formerly. As a result of inspections during the years 1925-1927, 3,332 cattle were examined, 348 animals showing clinical signs of disease were tested for tuberculosis, and of this number 103 reacted and were condemned. Forty clinical cases were destroyed and confirmed by post mortem examination without testing. That means that 148 animals were destroyed during the years mentioned; the balance, so far as could be judged, were in quite normal health. No regular veterinary inspection takes place in connection with the dairy herds in the country districts. An analysis of these figures will show that only about 4½ per cent. of the 3,332 dairy cattle were found to be affected, and it will be interesting to compare these figures with those in England and Scotland where medical science has reached the highest plane. I will again quote from the "Medical Annual," page 315—

Tuberculosis may be conveyed through milk by its being contaminated with human tubercle bacilli from a person suffering from open tuberculosis having access to milk or milk vessels. The common method is infection with bovine tubercle bacilli from cows suffering from tuberculosis. This disease is very prevalent in dairy cows. J. W. Brittlebank, writing in 1925, states:—"The total bovine population of Great Britain is somewhere in the region of 7,500,000, and of these 3,000,000 (in round figures) are cows and heifers in milk or in calf; and I think it may be safely accepted that, on the average, one-third of these would be found to be tuberculous, as ascertained by the tuberculin test." This is the view of an experienced veterinary authority and facts from many sources amply confirm this opinion. For instance, A. Gofton states that in Edinburgh during 1920-24 the cows passing through the abattoirs were 16,249, and of these 7,277, or 44.8 per cent., were tuberculous. Of these cows, 0.77 showed microscopically recognisable lesions of the udder. In 48.2 per cent. of these the cows suffered also from generalised tuberculosis.

That comparison is not only in our favour but marvellously so. A great authority tells us that in his opinion 33⅓ per cent. of the dairy cows in England are tubercular, while we have definite evidence from Scotland that during four years 44.8 per cent. of the cows passing through the abattoirs were found to be tubercular. Here in the metropolitan area our percentage is 4½. Can it be said that there was any justification for the sensational speech of Dr. Saw. It is implied that we should do here what is not done in the Eastern States or in England, namely apply the tuberculin test to all dairy cattle, whether they appear healthy or not. If we did go as far as that, we would, to be logical, have to go much further. A test for tuberculosis would have to be applied to all humans handling milk or likely to handle it. Not only that, if the object was to prevent the spread of tuberculosis, all men, women and children in the State, whether handling milk or not, should be regularly examined, and if they were found to be infected with tuberculosis they should be drastically segregated

for life, as otherwise they would be potential dangers to the community.

Hon. V. Hamersley: Try it on the doctors themselves.

The CHIEF SECRETARY: Hon. members have just heard the report of the inspection and test of the Claremont herd on the 13th October. I will now direct attention to interjections made in the House while Dr. Saw was making his speech:

Sir Edward Wittenoom: Have there been any deaths directly attributable to these cows?

Dr. Saw: I have not the statistics. I know there were a great number of deaths at the Children's Hospital.

Mr. Lovekin: They die like flies up there.

Hon. A. Lovekin: My interjection was misreported altogether. I did not say "they die like flies," what I said was that "they died like flies." I was referring to the period 1912 to which Dr. Saw also was alluding.

The CHIEF SECRETARY: The hon. member's interjection is on record and I had to reply to it. I accept his explanation, but I cannot help saying this: What a beautiful testimonial to the Children's Hospital, to whose maintenance a generous public is contributing voluntarily large sums every year! What a consoling assurance to go out from this Chamber to the relatives and friends of patients past and present, a statement that, until to-day, had not been contradicted. To the ordinary lay mind the inference is clear. There is a deadly insinuation that the milk supply of the Claremont herd is responsible for the sickness of children in the hospital, and that it has caused them to die like flies.

The PRESIDENT: I think the Minister accepted the statement made by Mr. Lovekin.

The CHIEF SECRETARY: Yes. My desire is to place the position in regard to the Children's Hospital before the House. It should be obvious, even to the dullest intellect, that these children would not be in the hospital had they not contracted illness outside, and had they not sickened before they had tasted milk from Claremont. After Dr. Saw had made his speech on this motion, I communicated with the Secretary of the Children's Hospital, and asked him for information concerning the institution, and I received the following reply:—

I think the best reply I can give to the statements contained in your letter is to quote a few figures concerning this hospital for the first year of its operations ended the 30th September, 1910, and several subsequent years.

——	No. of Patients treated.	Total per cent. of Deaths.	Per cent. over two years.	Per cent. under two years.
1909–10 ...	614	12·28	5·26	34·0
1914–15 ...	1,235	12·5	4·7	22·8
1920–21 ...	1,652	13·35	4·21	31·35
1923–24 ...	1,602	7·8	2·75	20·87
1925–26 ...	1,882	6·0	1·76	17·7

In this latter year the then Medical Superintendent (Dr. J. G. Hislop) stated in his annual report:—

> "We are still faced with a large death rate of patients admitted to this hospital under two years of age, though we report the lowest death rate on record, namely 17.7 per cent. The progress that is being made in reducing this death rate is too slow to be gratifying, and in the near future big alterations will be necessary before this problem of infant mortality can be attacked seriously. We need a new ward or block of wards in which the patients can be separated according to the type of illness for which they have been admitted. Plans of this have already been submitted to the board, who have approved of the principle."

The figures for the year ending 30th September last have not yet been audited, but the following may be interesting, and are substantially correct:—

Number of patients treated—1,988.
Total number of deaths—125.
Deaths under 24 hours in hospital—21.

Amongst the causes of death were the following:—

Gastro-Enteritis and Dysentery, 37; in hospital under 24 hours, 6; average age, 14 months.

Pneumonia, 27; of these 7 were due to pneumonia following whooping cough.

Due to surgical diseases, 10; osteomyelitis, 4; appendicitis, 1; ears, 2; intussusception, 1.

Attributed to tubercular infection, 7; made up of tubercular meningitis, 4; generalised tuberculosis, 2—1 aged 12, 1 aged 5; tubercular peritonitis, 1—aged 2½ years, in hospital one day.

Of the other deaths, six of these were due to prematurity; 7, attributed to congenital deformities, and four directly attributed to syphilis.

The above figures all refer to inpatients only and on making comparison with the Children's Hospitals in the Eastern States, it will be found that our figures compare more than favourably with any hospital in the Commonwealth.

It will be seen from this letter that, with the exception of 1920-21, there has been a

yearly diminution in the death rate from the time the institution was established.

Hon. J. Nicholson: Any illness resulting from tuberculosis would not manifest itself until later on.

The CHIEF SECRETARY: For 1925-26 the mortality rate was abnormally low, while for children under two years, it was—according to Dr. Hislop—the lowest on record, and that, taken as a whole, it compares more than favourably with any hospital in the Commonwealth. I think I have clearly shown that Dr. Saw's motion is not warranted by the facts. There has been no hush-hush on the part of the Government in connection with this question. The extent of the prevalence of tuberculosis in dairy cows in the metropolitan area has never been disguised. It has been reported to Parliament every year by the officers of the Government. I have shown that there have been considerably more examinations and tests of dairy cows during the present administration than at any other similar period in the history of such activities, and I have proved that as a result of the inspection of the Claremont herd on the 13th of last month, the herd indicated that it was among the cleanest in the world—out of a herd of 87, only one animal of two that showed clinical signs reacting to the test. How can it be said, as the motion declares, that the presence of tuberculosis in the dairy herd at the Claremont hospital for the Insane is not in the best interests of the health of the people? The motion, if carried, will be damaging to the Children's Hospital, for, judging from past experience, my side of the case will receive little publicity. A scrap here and a scrap there will appear in the Press, and leading articles will be written based on the abortion. The result may be that a terror-stricken people will not send their sick infants to the Children's Hospital where they have been informed such a dire state of affairs obtains. Not only that, it is possible that numerous movements for raising funds for the institution may receive a death-blow. How could anyone expect the public to contribute funds for the upkeep of what we are told, in effect, is a menace to the metropolitan area? I shall send copies of "Hansard" containing the debate on this motion to the Department of Agriculture, which conducts the inspections and tuberculin tests of dairy cattle. But, in doing so I am not prepared to admit that the Government are in any way culpable. On the other hand I am in a position to prove—as I have already proved—that it has done infinitely more to safeguard the milk supply of the Children's Hospital than any of its predecessors, and with results that could scarcely be surpassed by the best records of any part of the world.

On motion by Hon. A. Lovekin debate adjourned.

BILL—ELECTORAL ACT AMENDMENT

Report of Committee adopted.

ASSENT TO BILLS.

Message from the Governor received and read notifying assent to the undermentioned Bills:—

1, Trustees Act Amendment.

2, Bills of Sale Act Amendment.

BILL—RAILWAYS DISCONTINUANCE

Received from the Assembly and read a first time.

BILL—HOSPITALS.

In Committee.

Resumed from the previous day.

Hon. J. Cornell in the Chair; the Honorary Minister in charge of the Bill.

Postponed Clause 27—Power of local authorities to expend revenues on public hospitals:

The CHAIRMAN: The clause has been amended by striking out Subclauses 1 and and 2.

Hon. A. LOVEKIN: Since we last considered this Bill I have placed an amendment on the Notice Paper, and if it is to be considered the clause will have to be recommitted. Therefore I suggest that we formally pass the clause as amended and later recommit the Bill. If Subclause 3 is to be retained, I think it will be necessary also to alter the title of the Bill, because, to my way of thinking, it does not come within the ambit of the title.

Clause, as previously amended, put and passed

Schedule, Title—agreed to.

Bill reported with amendments.

BILL—RACING RESTRICTION.

Second Reading.

Debate resumed from the 25th October.

HON. J. NICHOLSON (Metropolitan) [5.20]: It having been suggested by a previous speaker that the scope of the Bill should be enlarged, I thought some amendment would have been put on the Notice Paper, not only to provide for the restriction of betting, but actually to stop the particular form of sport contemplated.

Hon. G. W. Miles: That is covered by Clause 3 of the Bill.

Hon. J. NICHOLSON: If the hon. member peruses that clause he will find that it merely seeks to restrict betting.

Hon. H. Stewart: Read the clause.

Hon. G. W. Miles: The clause provides that it shall be unlawful to sell, lease, dispose of or be in posession of any mechanical device capable of being used for the purpose.

Hon. J. NICHOLSON: I thought Sir William Lathlain intended to strike out Clause 3.

Hon. G. W. Miles: We shall not allow him to strike it out.

Hon. J. NICHOLSON: I understood he contemplated striking it out.

Hon. G. W. Miles: Since then he has placed on the notice paper an amendment to Clause 3.

Hon. J. NICHOLSON: Then probably that will overcome the difficulty.

HON. J. M. MACFARLANE (Metropolitan) [5.22]: Like Mr. Nicholson, I felt that Sir William Lathlain was proposing a fundamental change when he suggested striking out Clause 3, and it was not my intention to oppose the adoption of that course. As some doubt appears to exist in the minds of the public, it might be well for me to offer some comments on that portion of Clause 2 which proposes that the restriction shall apply to the racing of motors and motor cycles held in any speedway, racecourse, public reserve or private property. I cannot agree to a proposition of that kind. There is a speedway on the grounds of the Royal Agricultural Society, where the sport is as clean as it is possible for sport to be, and is sufficiently exciting in itself without the introduction of betting to attract large attendances. The promoters of the speedway have entered into an agreement with the society that if betting is carried on in any shape or form and the lessees are proved to have been cognisant of it, the agreement shall be cancelled. The same condition would apply if tin hare racing were permitted on the show ground. An agreement has been drafted in very striet terms and is still being discussed. That agreement provides for a financial bond, the arrangement being that if betting is indulged in, the promoters of the sport will not only lose their lease, but will be made to forfeit of their bond in proportion to the culpability involved. The council of the Royal Agricultural Society have resolved that they do not want betting, and the promoters say the sport is sufficiently attractive without betting. If that is so, I feel sure that neither Sir William Lathlain nor any other member would desire to enact conditions so drastic as those proposed by this Bill.

Hon. G. W. Miles: There is an amendment on the Notice Paper.

Hon. J. M. MACFARLANE: But the hon. member said he would not permit Sir William Lathlain to withdraw the clause.

Hon. G. W. Miles: Sir William Lathlain himself has put an amendment on the Notice Paper.

Hon. J. M. MACFARLANE: The hon. member said he would not allow the clause to be withdrawn. Anyhow, even if I have made a mistake I shall not have wasted the time of the House in explaining what the Royal Agricultural Society has done.

Hon. J. Cornell: If Clause 3 would stop tin hare racing, there would be no need for Clauses 1 and 2

Hon. J. M. MACFARLANE: Who would desire to stop tin hare racing if there was no gambling attached to it? The contention is that the new form of sport can be conducted satisfactorily without gambling of any kind.

Hon. J. R Brown: If there is no gambling there is no hare.

Hon. J. M. MACFARLANE: I do not indulge in the sport and would not encourage it, but I would not advocate the suppression of all sport because of the suggestion that gambling might be introduced into it. If an agreement is made that gambling shall not be introduced, tin hare racing will be as harmless as the playing of marbles in a school yard.

Hon. J. Cornell: If the Bill be passed, that cannot come about.

HON. V. HAMERSLEY (East) [5.26]: I have a great objection to the measure. I feel that there is no necessity to have tin hare racing in this State. We should strenuously oppose the introduction of any new form of gambling such as tin hare racing involves. I do not know what good purpose it is likely to serve, except that of the breeding of dogs. I am quite satisfied that if we pass anything of so drastic a nature as Clause 2 we shall do away with betting on all the racecourses in the State.

Hon. A. Lovekin: How do you work that out?

Hon. V. HAMERSLEY: From my reading of the clause. It says distinctly that from and after the passing of the Act it shall be unlawful for any person to bet in any place on the result of any race in which a mechanical device, contrivance or object is used for the purpose of coursing or racing of any kind. The term "mechanical device" would cover the totalisator. The clause would certainly prevent any of the sport that is now carried on in the country. I do not want to see horse racing abolished.

Hon. A. Lovekin: They do not race with mechanical horses

Hon. C. F. Baxter: They do not run with the totalisator.

Hon. E. H. Harris: What is a mechanical contrivance?

Hon. V. HAMERSLEY: Something used on the course in connection with racing.

Hon. Sir William Lathlain: For the purpose of racing.

Hon. V. HAMERSLEY: Such a measure would have a material effect on the sport of horse racing. The use of mechanical contrivances on racecourses affects the revenue and the amounts offered by way of prize money, and the Bill would therefore seriously affect that class of sport. It is a good thing to encourage horse racing.

Hon. A. Lovekin: You think the Bill will cover the totalisator?

Hon. V. HAMERSLEY: I certainly do, and I am satisfied the measure would have an effect that was never contemplated by Sir William Lathlain when he introduced it. If the Bill is not going to achieve what he desires, it would be better to withdraw it and bring down one that would give expression to his wishes. We were just on the point of passing the second reading a few moments ago, but the probabilities are that the Bill has not received sufficient consideration from members generally. I thought certain hon. members had looked into the measure carefully.

Hon. E. H. Harris: It has been here a fortnight.

Hon. V. HAMERSLEY: I personally have not gone into it, because I thought it would be withdrawn, as suggested, and replaced by another Bill which would have the desired effect of preventing tin hare racing.

Hon. G. W. Miles: Who suggested the withdrawal?

Hon. V. HAMERSLEY: Mr. Cornell, I think.

Hon. G. W. Miles: The Bill being before us, cannot it be amended?

Hon. V. HAMERSLEY: I must oppose the second reading of the Bill as it stands.

HON. W. J. MANN (South-West) [5.32]: I am inclined to agree with Mr. Cornell that it is a great pity the Bill was not framed so as to suppress tin hare racing straight out. If the measure passes, tin hare racing will be permissible but people will be debarred from betting on it. But what guarantee have we that the prohibition will be enforced? It must appeal to members that we are living in an age of much cant and hypocrisy on the subject of racing and betting. Much the better plan would be to legitimatise racecourse betting and adequately to control it. We are grown men, understanding the value of the law, and yet we condone racecourse betting simply because we like to indulge in a bet. It would be much more manly and much more to the point if Parliament legitimatised betting with a view to controlling it. Following that matter up a little further, betting on racecourses in these days is only a fraction of the betting that goes on. Throughout the State, in the streets and in hairdressers' shops, in every city and town, are to be found starting-price bookmakers who bet, and who are occasionally raided for doing something illegal while the bookmaker on the course is not molested.

Hon. J. R. Brown: The latter contributes to the revenue.

Hon. W. J. MANN: That is correct.

Hon. J. R. Brown: A penny on every ticket.

Hon. W. J. MANN: All the other parasites contribute nothing at all. The time is ripe for the Government to take the matter in hand, so as to make betting clean and above board. It is a standing reproach to the State and to the Commonwealth that for many years sweeps such as Tattersall's have

been barred and yet Governments have held out their hands every day of the week to collect revenue from them. I fail to see that the measure will have the effect anticipated by Sir William Lathlain. I would like to see the Bill withdrawn and another one brought down which we could support in the knowledge that it would be enforced and would prevent betting on mechanical hare racing.

HON. A. LOVEKIN (Metropolitan) [5.35]: The House should take advantage of an opportunity to check what we know has been a growing evil in this community for a long time. It is all very well for Mr. Cornell to say, "Bring in a Bill to get rid of the tin hare and let it say so straight out": we would have an iron hare, or some other kind of hare, and there would be a suggestion that the contrivance was not within the ambit of the measure. If we legislate, we must legislate upon some general principle to cover every phase of the whole business; otherwise the Act of Parliament will not be worth the paper it is printed on.

Hon. J. Cornell: The Title of this Bill describes it as a measure to prevent illicit betting.

Hon. A. LOVEKIN: In reply to Mr. Macfarlane I would say it is no use telling anyone who has been on this earth for more than five minutes that tin hare or anything else can be raced without betting—without wagers the crowd would never be got there. Whether the Bill quite fits the position is a matter we can consider in Committee. I agree with Mr. Hamersley that the measure might cover the totalisator. However, we can get over that in Committee. But let me say that in the matter of betting things are going too far altogether. At the Children's Court only last week a man was brought up for not paying maintenance money for his children, and he said that he had only been in work for a week or so, and that he would have liked to pay off some of the arrears of maintenance but that with the wages he got he went betting and unfortunately lost them. We have even women and children who indulge in betting on races. If any hon. member wants to see what the community is coming to in that respect, I suggest he look at to-day's newspapers. Now when there is something novel coming along that will contribute to the betting evil, should a House such as this not try to prevent it if possible? To frame a Bill to cover the position is extremely difficult, but between us, in Committee, we can perhaps make suggestions which will cover the position we desire, and that is to eliminate at all events another opportunity for betting, another inducement to bet. If we can only achieve that, we shall have done some good to the community. If we do not pass a measure of this kind, tin hare racing will simply pass into the ordinary run of things, and the betting evil will be aggravated instead of being lessened. I hope the House will pass the second reading, and then we can try to do some good to the community by so amending the Bill in Committee as to cover the position which, I take it, we all desire to achieve.

HON. W. H. KITSON (West) [5.40]: I cannot support the Bill as it stands, more particularly having regard to Clause 3. If Sir William Lathlain's object is to suppress illicit betting, why not confine the Bill to the matter of betting instead of rendering it impossible for any sport with a mechanical contrivance, such as the so-called tin hare, to be introduced here? I have seen the so-called sport of tin hare coursing, and rather enjoyed the experience. From the point of view of sport I could see nothing wrong with it. I did not have a bet; and at the same meeting there were many thousands of people who did not have a bet, although facilities for wagering were available. I venture to say that many people in this State would be only too pleased to spend an hour or two witnessing sport of this description without indulging in betting of any kind whatsoever. I agree with Mr. Mann that there is a deal of cant and hypocrisy on the subject of betting. We may hold strong views on that subject; and if we believe that betting is something that should not be tolerated in one direction, we should also hold that it ought not to be tolerated in any direction whatever. A remarkable fact is that men who give expression to strong views against such a sport as tin hare coursing so far as it relates to betting, are not themselves averse to going on a racecourse and there indulging in betting to their hearts' content. Personally, I like to attend any sports meeting, whether it be horse racing, foot running, motor cycling, or anything else of the kind. I see no harm in any of those sports. It may be argued that betting is not conducive to the welfare of young people, but I do not know that that

can be adduced as a reason for opposing the introduction of some other sport than horse racing, trotting, and so forth.

Hon. J. Nicholson: Do not you think that the interests of the young members of the community are a very serious charge on every member of this House and the other place?

Hon. W. H. KITSON: I admit that freely, but I also say, as Mr. Cornell said, that a law now on the statute-book will prevent betting at any race meeting if only it is enforced. Should members be desirous of making an effort to suppress betting, let them confine themselves to that particular point; but let us not try to take away from people the little enjoyment they may be able to secure at a cheap cost by attending such meetings as would result from the introduction of tin hare coursing here. Only a few weeks ago I attended a meeting at the Speedway in Claremont, which according to the newspapers drew a crowd of 20,000 people, and I saw no betting there. I thought the racing rather exciting, and certainly I enjoyed it. The same thing might apply even to tin hare racing. We have Mr. Macfarlane's word as to the conditions under which the Speedway people have the use of the Claremont Showground. We can rest assured that betting will never be allowed to take place there. I fail to see why the proprietors of other grounds could not, if they so desired, introduce into their leases a similar condition if the grounds are let for the purpose of tin hare racing or motor cycle racing or any other class of racing. We shall be going a little too far if we declare that it shall be unlawful to sell, lease, dispose of, or be in possession of any mechanical device, contrivance, or object capable of being used for any such purpose. On those grounds I fear I cannot support the second reading of the Bill.

HON. H. SEDDON (North-East) [5.44]: This afternoon's debate has brought out two or three points in which I think all members are interested. A point particularly stressed by various speakers is the existence on the statute-book of a law that prohibits gambling.

Hon. E. H. Harris: That law is not enforced.

Hon. H. SEDDON: No; it is not. If we are going to put on the statute-book another law to be similarly disregarded, we are simply wasting our time in discussing the subject. The mover's intention is, I gather, to take a step in what appears to me, at all events, the right direction. That is to endeavour to limit instead of extending the evil of gambling, which has taken so strong a hold upon the people of Western Australia.

Hon. J. Cornell: You are going from long beers to short beers.

Hon. H. SEDDON: That in itself will be a step in the right direction. There was a time when the legislature of a country stood for high ideals, and endeavoured to formulate their efforts in the direction of uplifting the people for whom they were legislating. We now find that the attitude adopted by some legislators is that of apologising for evils that are known to exist, decrying any attempts to deal with them in any way, and of adopting the attitude that such evils should be allowed to run their course and to that extent should be encouraged. I regard that as a most lamentable attitude for any legislator to take up. When we abandon those high ideals that have meant so much to the community in the past, we take a step in the wrong direction, and we encourage the demoralisation of the young people rather than uplifting them to any extent whatever.

Hon. E. H. Gray: There are far greater evils than tin hare racing.

Hon. H. SEDDON: For the reasons I have indicated, I welcome the introduction of the Bill. The object of Sir William Lathlain is evident and should meet with the approval of the House. It is an endeavour to prevent the introduction of a sport, if we can describe it as such, which in other parts of the world has proved itself to be one of the greatest incentives to gambling that has ever been introduced. I will instance the experience of Sydney. When the tin hare racing was first introduced scarcely anyone could be induced to go to the meetings. As soon as the bookmakers were permitted to attend, and betting was sanctioned, the people could not be kept away. That is an illustration of what is behind the tin hare proposal.

Hon. A. Burvill: It will mean big profits for the promoters.

Hon. H. SEDDON: Most hon. members have received a letter from a man named Bert Sutton, who advanced certain arguments in favour of tin hare racing and introduced that old time-honoured sneer at people who endeavour to limit evils, by referring to them as kill-joys and so forth.

That shows the influences that are behind the attempts to sway members of the legislature in favour of tin hare racing.

Hon. E. H. Harris: He is a man with a wad of shares in this show.

Hon. W. J. Mann: And after he was here for a little while he returned to the East with them.

Hon. J. Cornell: Give him this much credit, that he did not come to see us but wrote his letter.

Hon. E. H. Harris: He did come to see some members.

Hon. H. SEDDON: If the Bill does not effect what Sir William Lathlain desires, we can amend it so that it will meet with the approval of the House. I support the second reading of the Bill.

HON. H. STEWART (South-East) [5.48]: I support the Bill. After listening to the debate, I could not help thinking of that ancient association of philosophers who flourished in the days when high ideals dominated public thought. I refer to the days of ancient Greece when the sophists flourished in that country. In view of what I have heard, I think they would flourish here to-day, particularly when we hear an argument advanced such as that the effect of which was that if we did not allow this new sport, if it can be termed a sport, we would deprive people of a simple and cheap form of indulgence and amusement. When we hear such assertions as that, we can frankly admit that the days of the sophists are not yet passed.

Hon. J. M. Macfarlane: And they never will be.

Hon. H. STEWART: When we realise how the introduction of such a Bill has led to the combination of certain sections of the community with a view to influencing the legislature in the interests of tin hare racing, we can appreciate the position. We know that the law was violated to-day and it will be violated if this new sport is permitted, although Parliament may say that there shall be no betting in connection with it. During the time I have been a member of Parliament, and even before that, I have viewed with apprehension the action of various Governments in allowing the law to be flouted. It would be better to amend the existing laws rather than to allow to continue the indulgence in gambling in various forms, which grew up during the war period and has continued ever since. We can notice various forms of gambling used to-day in the causes of charity and even of political movements. Associated with the tin hare racing proposal are the names of men prominent in connection with a form of gambling that, under the excuse that it is in the cause of charity, is conducted by the Ugly Men's Association. Government after Government have allowed this practice to continue and have taken no steps to put an end to it. I have noticed that the names of some of those associated with that organisation are also associated with this new form of clean sport that is going to give pleasure without expense to so many of the people of Perth who have such difficulty in passing their hours of leisure!

HON. SIR WILLIAM LATHLAIN (Metropolitan-Suburban—in reply) [6.52]: I am certain that every member, in his heart, realises it is necessary to do something to stop this insatiable craving for gambling. While it is quite true that a section of the Criminal Code deals with the difficulty, the fact remains that the provisions of the section have never been given effect to. Certain provisions have been waived in order to grant certain facilities, more particularly in regard to the totalisator. If effect were given to the whole of the Police Act, a Bill of the description I have placed before hon. members would be absolutely unnecessary. We realise that, owing to the neglect of Governments to enforce the law, it is essential to do something to prevent the introduction of a new and greater evil than any one of those in existence here at present. In order to allay the fears expressed by Mr. Hamersley, I would point out that under Subsection 6 of Section 66 of the Police Act, it is distinctly provided that totalisators operated by various clubs registered by the Western Australian Turf Club are exempted. That means that the totalisator is free.

Hon. J. Cornell: What about the starting machines? They represent a mechanical device used in connection with racing and betting.

Hon. Sir WILLIAM LATHLAIN: I am afraid that some hon. members are trying to read into the Bill something that is not there, just as we noticed some members trying to read things into Bills that were discussed last night. It will require a great deal of imagination to read into the Bill all

that some hon. members suggest. Mr. Macfarlane said that his objection to the Bill was on account of the Speedway at Claremont. I am given to understand that that institution is being conducted in a first-class manner, that there is no betting there, and that the people associated with the speedway do not desire that any betting shall take place. That being so, everybody must realise that the sport conducted there is fair, clean and exciting. In addition, I propose later on to move an amendment to Clause 3 to provide that nothing contained therein shall apply to motor cars, motor cycles, cycles or aeroplanes.

Hon. J. M. Macfarlane: I understood you to say that you intended to drop Clause 3.

Hon. Sir WILLIAM LATHLAIN: It was difficult to alter the clause to overcome objections, but with the proviso I have indicated the clause should meet all requirements. Mr. Mann suggested that it was practically an act of hypocrisy to go on as we are doing. I agree with him. We know that betting is conducted on racecourses, in the public streets, and that sweeps are carried on throughout the city It is becoming a scandal, but the Government are receiving such large sums of money as the result of betting that it has become almost impossible to enforce the Act. I believe hon. members will agree with me when I say it is our duty to take steps to prohibit any further forms of gambling I realise that there are sufficient forms available at present to satisfy the most inveterate gambler. That is no reason why we should give permission for the establishment of another means by which betting can be extended This particular form of gambling, according to the evidence available, is having a very disastrous effect in New South Wales. A perusal of the English papers helps us to realise the deplorable effect it is having on the people there.

Hon. C. F Baxter: Especially on the young people.

Hon. Sir WILLIAM LATHLAIN: Mr. Kitson spoke about the cheapness of the sport. I have here a book from one of the tin hare racing meetings at Sydney. The charges for admittance are 4s. plus tax to the paddock and 2s. to the ledger, plus 1s. for the programme. Thus it costs at least 5s. 4d., irrespective of the fare to the course, so that I do not know if that can be classed as a cheap entertainment. On top of that I would draw attention to the fact that at this particular meeting there were 187 bookmakers registered for that one night. On some occasions there have been 40,000 people in attendance at the coursing.

Hon. C. F. Baxter: All those bookmakers have to pay license fees.

Hon. Sir WILLIAM LATHLAIN: Yes One of the evils of this particular so-called sport is, I am credibly informed, the fact that one of those most heavily interested is at present the owner of one of the proprietary racecourses in Perth. The whole position requires very serious consideration There is no end to the means to which these people will go to achieve their objective During the past three weeks at Claremont, where a referendum was recently taken, posters were displayed and circulars issued in which the unfortunate ratepayers of that suburb were told that if they voted "Yes," in order that tin hare racing might be engaged in on the local reserve, their rates would be reduced They went so far as to say that the income to be derived by the people of Claremont as the result of this racing would be £12,000 per annum. As the people of Claremont would receive only 10 per cent. of the money paid for admission, it is evident that the promoters expected to receive £120,000 per annum for admission to their enclosure. As Mr. Seddon has said, when the sport was introduced in Sydney without betting, the people attended in their units, but immediately betting became lawful they were there in their thousands That is exactly what will happen in Western Australia. Probably no other social question that has been before the people of Western Australia has created a greater interest in the minds of the citizens than the introduction of this pernicious sport. I venture to say the great majority of the citizens are strongly opposed to any additional means of gambling. We should all like to see gambling seriously curtailed, for I think Perth is the most sweep-run city in Australia. I regret to say that on Sunday last people were selling tickets in the principal streets of Perth, and it seemed to be nobody's job to stop them.

Hon. H. Stewart: What were the tickets for?

Hon. Sir WILLIAM LATHLAIN: For a £1,000 sweep on the Melbourne Cup. Those tickets were being sold on Sunday night in front of a well known business establishment that was lighted up.

Hon. H, Stewart: What organisation was behind it?

Hon. Sir WILLIAM LATHLAIN: Never mind about that. It is a standing disgrace to us all as citizens. It may go on on weekdays, but this was on Sunday afternoon and evening.

Hon. E. H. Harris: In order to catch the church people.

Hon. Sir WILLIAM LATHLAIN: It may have been so. However, I hope the Bill will pass the second reading. If, in the Committee stage, any member desires further information I shall be happy to supply it so far as I am able.

Question put and passed

Bill read a second time.

In Committee.

Hon. J. Cornell in the Chair; Hon. Sir William Lathlain in charge of the Bill.

Clause 1—agreed to.

Clause 2—Prohibition of betting on racing and coursing where mechanical devices,etc., are used:

Hon. W. J. MANN: What will be the position on racecourses where they have a clock operating in conjunction with the starting price? What will be the position on courses where there is a totalisator, and what will be the position of the Trotting Association, who have an electrical device for recording the finishes? I am afraid that under this clause those people would be out of court.

Hon. Sir WILLIAM LATHLAIN: The clause makes it unlawful to bet on any race in which a mechanical device or contrivance is used for the purpose of coursing or racing. Clocks, totalisators, mechanical barriers and recording machines are not used for racing.

Hon. C. F. Baxter: The words in the clause are "used for the purpose of coursing or racing." Those words will bring in the totalisator and any mechanical appliance for starting or finishing a race.

Hon. A. LOVEKIN: I suggest that Sir William Lathlain report progress, so that we may further consider the points that have been raised.

Progress reported.

BILL—CRIMINAL CODE AMENDMENT.

Second Reading.

HON. W. H. KITSON (West) [6.8] in moving the second reading said; Although this is only a small Bill comprising four clauses, I consider it to be one of the most important this House has been called upon to deal with for a number of years past. The subject it deals with, namely, mental deficiency as related to capital punishment, has from time to time been brought under our notice in a most remarkable way, and has been the subject of considerable thought and research by leading men in the field of criminology, psychology and by the leaders of the medical profession. There are in this State, as in most of the other States, two schools of thought regarding capital punishment. At the same time I think we have reached the stage where we can say the present law is not adequate to meet the needs of the times as we know them. It may be as well if, first of all, I quote the present law on the subject, in order that we shall know just how far the Bill will take us. The existing law in regard to capital punishment is contained in Section 282 of the Criminal Code, which reads as follows:—

> Any person who commits the crime of wilful murder or murder is liable to the punishment of death.

In association with the law so far as it relates to capital punishment, we have also to consider the present law relating to some other verdict being given in cases where capital punishment can be inflicted. It is to be found in Section 653 of the Code, which reads as follows:—

> If the jury find that the accused person is not guilty, or give any other verdict which shows that he is not liable to punishment, he is entitled to be discharged for the charge of which he is so acquitted; provided that if on the trial of a person charged with any indictable offence it is alleged or appears that he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, the jury are to be required to find specially, if they find that he is not guilty, whether he was of unsound mind at the time when such act or omission took place, and to say whether he is acquitted by them on account of such unsoundness of mind; and if they find that he was of unsound mind at the time when such act or omission took place, and say that he is acquitted by them on account of such unsoundness of mind, the court is required to order him to be kept in strict custody in such place and in such manner as the court thinks fit, until His Majesty's pleas-

ure is known. In any such case the Governor, in the name of His Majesty, may give such order for the safe custody of such person during his pleasure, in such place of confinement and in such manner as the Governor may think fit.

The law regarding insanity is a very old law. We find it in Section 27 of the Criminal Code, which reads as follows:—

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to know that he ought not to do the act or make the omission. A person whose mind at the time of his doing or omitting to do an act is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

That is the law to-day regarding insanity, in accordance with the Criminal Code of Western Australia. But the definition of insanity has not been altered since 1843, when it was laid down as the result of a celebrated case in which a certain man was acquitted of the charge of murder on certain grounds. As the result of an outcry made at the time, the House of Lords referred several questions to the judges of England. In consequence of the reference of those questions to those judges and the replies given, the definition of insanity was arrived at, and it has been used ever since.

Sitting suspended from 6.15 to 7.30 p.m.

Hon. W. H. KITSON: It is necessary to take into consideration the present law in relation to capital punishment, and also the law in relation to insanity. A person accused of murder or wilful murder may be found not guilty on the ground of insanity. Then we have to take into consideration the definition of insanity. There has been no amendment of the law in regard to insanity since 1843. The definition given in that year was given as a result of a certain case. In order to make the position clear I desire to quote from the history of the criminal law of England by Mr. Justice Fitzjames Stephen, who was judge of the High Court of Justice, Queen's Bench Division. He says in his book—

It has been the general practice ever since for judges charging juries in cases in which the question of insanity arises to use the words of the answers given by the judges on that occasion. It is a practice which I have followed myself on several occasions, nor until some more binding authority is provided can a judge be expected to do otherwise, especially as the practice has now obtained since 1843. I cannot help feeling, however, and I know that some of the most distinguished judges on the Bench have been of the same opinion, that the authority of the answers is questionable, and it appears to me that when carefully considered they leave untouched the most difficult questions connected with the subject, and lay down propositions liable to be misunderstood, though they might, and I think ought to, be construed in a way which would dispose satisfactorily of all cases whatever.

Mr. Justice Stephen, who is looked upon as a legal authority of very high standing, states that the decision arrived at was not very satisfactory from several points of view. This happened in 1843. The law relating to capital punishment was amended in 1838, but there has been no amendment since. Members will therefore agree that there is room for the consideration of a question such as that contained in this Bill. From time to time many cases have been tried in our courts, where, had it been possible to stretch the definition of insanity, as it was given in the year 1843, quite a number of convictions which have been recorded would never have been recorded, and the probability is that the prisoners would either have been acquitted or some lighter sentence than the death sentence would have been imposed upon them. It is just as well to consider for a moment the reason for the infliction of capital punishment. My reading leads me to believe that capital punishment was originally inflicted with the object of taking revenge for some offence committed by the individual. Not many years ago capital punishment was inflicted for quite a number of offences which would be regarded to-day as being of a petty nature, and which would not be received by the public with any great degree of alarm. One hundred years ago it was possible that a person would be sentenced to death for a petty theft. At one time, if the value of the goods stolen exceeded 1s. 1½d., the offender was liable to capital punishment. We have long passed that stage. A hundred years ago the death penalty could be inflicted for something like 200 offences. We must agree, therefore, that it is time to give consideration to this particular question, as our views have altered so much since then. Some people argue that capital punishment along with other punishments, is meted out to

prevent people from committing offences. In my opinion the punishment does not have that effect. More particularly am I of that opinion in crimes of murder or wilful murder. It seems to me that in a case of murder the accused person is not responsible for his action in most instances.

Hon. Sir Edward Wittenoom: Do not you think it is a good thing to get him out of the way?

Hon. W. H. KITSON: No.

Hon. Sir Edward Wittenoom: I think so.

Hon. W. H. KITSON: Anything but that.

Hon. Sir Edward Wittenoom: If he is not responsible for his actions.

Hon. W. H. KITSON: He may not be responsible for his actions at that moment. In practically every case, of which I have any knowledge at the time the crime was committed the individual did not possess a full knowledge of what he was doing. He was not fully responsible for his actions.

Hon. Sir Edward Wittenoom: That may occur at any time.

Hon. W. H. KITSON: Of course it may.

Hon. Sir Edward Wittenoom: Then we should have nothing more to do with him.

Hon. W. H. KITSON: After a certain time the law was amended so that capital punishment could not be inflicted except for two or three offences. Capital punishment has not proved a deterrent to crime. If we take the number of crimes committed since the time when the law relating to capital punishment was amended, we find that crime has considerably decreased. In those countries where capital punishment is still provided by law there are just as many murders as there are in countries where capital punishment has been abolished. In Belgium there have been no executions since 1863; in Finland there have been none since 1826; in Holland none since 1870; in Norway none since 1846; and in Switzerland, in 15 out of the 22 cantons there have been no executions since 1874. Quite recently in Queensland capital punishment was abolished, and in some of the divisions in Germany.

Hon. Sir William Lathlain: Queensland also abolished the Legislative Council.

Hon. W. H. KITSON: Some of the States of America have also abolished capital punishment. Statistics will prove quite conclusively that, where capital punishment has been abolished, comparatively no more murders are committed than are committed in those countries where capital punishment still exists. There must be some reason for this. I admit it is a large question and an absorbing subject, and one upon which a considerable amount of literature has been written. Practically all experts and authorities are at one upon it. I desire to quote one writer, who seems to put the position very well in regard to capital punishment not being a deterrent. His book is called "Crime." It is written by Clarence Darrow. He is well known as a lawyer, and has had a large experience in criminal cases. He claims that crime as much as insanity and any disease deserves intelligent treatment at the hands of wise and humane specialists. I agree with that. I wish to quote a few lines from this author upon the matter of capital punishment being a deterrent. On page 171 he says:—

> It is not easy to estimate values correctly. It may be that life is not important. Nature seems extravagantly profligate in her giving and pitiless in her taking away. Yet death has something of the same shock to-day that was felt when men first gazed upon the dead with awe and wonder and terror. Constantly meeting it and seeing it and procuring it will doubtless make it more commonplace. To the seasoned soldier in the army it means less than it did before he became a soldier. Probably the undertaker thinks less of death than almost any other man. He is so accustomed to it that his mind must involuntarily turn from its horror to a contemplation of how much he makes out of the burial. If the civilized savages have their way and make hangings common, we shall probably recover from some of our instinctive fears of death and the extravagant value that we place on life. The social organism is like the individual organism: it can be so often shocked that it grows accustomed and weary, and no longer manifests resistance or surprise. So far as we can reason on questions of life and death and the effect of stimuli upon human organisms, the circle is like this: Frequent executions dull sensibilities toward the taking of life. This makes it easier for men to kill and increased murders, which in turn increase hangings which in turn increase murders, and so on, around the vicious circle.

It is to the last view that I desire to draw particular attention because I believe that is the real effect, and I know that from time to time, when crimes have been committed, even in this State, men who ordinarily would be prepared to calmly consider a matter of that kind are apt to be swept away by Press criticism, or references in the Press, until they get to that stage when they may do something for which they are sorry afterwards. Such men have become affected by the propaganda that may have appeared in

the Press and which may have been popular at the time. That authority's statement of the case cannot logically be controverted. There is no doubt that in those countries where life is cheap we find murders to be more commonplace than in those places where life is held more dearly, and I think the time has arrived when the life of the individual should be considered as sacred to him. I do not consider that the community has the right to deprive any individual of his life.

Hon. Sir William Lathlain: Moses did.

Hon. W. H. KITSON: Did he?

Hon. Sir William Lathlain: Yes, on the Mount.

Hon. W. H. KITSON: These are my opinions and I advance them as such. Personally I do not believe in capital punishment, but the Bill does not go so far; it simply provides that in certain cases capital punishment shall not be inflicted but that the alternative, imprisonment for life, shall be the punishment. The author I have quoted has had 40 years' criminal experience and is recognised as an authority. We can take a good deal of notice of what he has to say. There are one or two other authorities whose opinions I shall quote a little later on. While I have given a good deal of thought to this subject, it is a very big question and covers quite a lot of ground, and whilst it may be possible for me to express my opinions, at the same time in putting forward arguments in support of the Bill, if I advance the arguments of those who have made a lifelong study of the subject, I think we should take notice of them by reason of their being the views of men of ability, scientific men, and so on. We know that in recent years the subject of mental deficiency has received increasing attention from men of the scientific world, and it is time that we took notice of their findings and endeavoured to put into effect some of the recommendations made by those people. Dealing with the question of capital punishment being a deterrent to crime, quite a number of men who have been associated with criminals in various capacities have expressed their views, and there is a remarkable unanimity amongst them. This is so to such an extent that I may be permitted to quote one, Mr. Lewis D. Lawes, who was warden at Sing Sing Prison, New York. He wrote a book entitled "Man's Judgment of Death." His writings have often been quoted, and the reason I intend to refer to a pasage from the book is that it has been accepted by many other experts on the subject as being a fair and reliable summary of the position. Mr. Lawes was president of the Warders' Association of America and he was also president of the American Prisons' Association, and therefore we can take some notice of what he says on the subject. Mr. Lawes, after 20 years' experience in penological work, has come to the conclusion that capital punishment is futile—

> The deterrent argument, he says, rests on the erroneous supposition that life is the most valued possession of man, whereas there is no fear nor thought of death in the minds of most murderers. There are many shootings upon slight or no provocation, by boot-leggers burglars, or traffickers in drugs. In one case police officers were killed for no better reason than because the offender feared to be cross examined in the police station. After the electrocution of Police-Lieutenant Becker and four gunmen, five more were in the death house at Sing Sing Prison within a year.
>
> Mr. Lawes contends that the death penalty conforms to none of the best ideas of modern criminology. He points out that in fifteen out of the forty American States in which juries are permitted the choice between the death penalty and life imprisonment, they have chosen the latter, in a ratio of more than five to one.
>
> We have tried capital punishment for many generations in a great majority of our States. Yet we have a homicide rate to-day—and always have had—to which in comparison with other nations we cannot point with pride. In those States where capital punishment has been abolished the record is better than where it exists. There have been greater increases in homicidal crimes occurring in States that have always retained the death penalty than have ever occurred in States where it has been abolished.

Hon. Sir Edward Wittenoom: If life is so valuable, why are there so many suicides?

Hon. W. H. KITSON: I think that by the time I have finished my address we may be able to find some of the reasons for suicides here and elsewhere. The quotation I have just read is the opinion of a man who has had lifelong experience with criminals and who has been associated with many men who have been found guilty of the crime of murder. As the result of his experience he comes to the conclusion that I have quoted and we can take it from those views that capital punishment cannot be assumed to be a deterrent so far as murder is concerned. I think that Lord Bacon sums the subject up most aptly in the following words:—

> There is no passion in the mind of man so weak but it mates and masters the fear of

death. Revenge triumphs over death, Love slights it, Honour aspireth to it, and Grief fleeth to it.

If we examine those lines carefully we must admit there is a great amount of truth in them. It is perfectly correct to say that in many crimes of murder passion of one sort or another is the real cause, and the author points out that where passion affects the individual, the individual has no regard whatever for death. I think he is perfectly right. I should say that in every case where men commit murder they have no thought of the punishment that is likely to be theirs if they are found out. I should say that even if they were aware at the time that the punishment was to be death or life imprisonment, it would have little effect on them because in that particular time they were not normal beings. I would like to quote Mr. Justice Stephen again on this point because he sums up the matter fairly well. On page 171 of his "History of the Criminal Law of England" he says, dealing with the question of self-control—

All that I have said is reducible to this short form:—Knowledge and power are the constituent elements of all voluntary action, and if either is seriously impaired the other is disabled. It is as true that a man who cannot control himself does not know the nature of his acts, as that a man who does not know the nature of his acts is incapable of self-control.

I do not think we can argue against that.

Hon. H. Seddon: It is a dangerous argument.

Hon. W. H. KITSON: It may be, but I contend it is a logical argument.

Hon. Sir Edward Wittenoom: Don't you think men like that are better out of the way?

Hon. W. H. KITSON: I do not see why we should adopt the extreme measure of taking away the life of a man who may have been in an abnormal state for a short period, a state brought about, perhaps, by heredity, something over which he had no control, something for which he was not responsible. We should find a more humane method of dealing with people who are so afflicted. Because an individual is born into the world with certain drawbacks of which he has no knowledge, that individual's case should receive every consideration.

Hon. Sir Edward Wittenoom: What about the man he kills; have you no sympathy for him?

Hon. W. H. KITSON: Yes, I have for him and his family, but I do not know that it will do any good to execute the man responsible for the crime. I believe that in the majority of cases the family of the murdered man would be prepared to agree with that sentiment. With regard to the first clause of the Bill which relates to mental deficiency, I would like to refer to the test of insanity as laid down in the law. The authority I quote on this point is William A. White, M.D., who wrote "Insanity and the Criminal Law." Dealing with tests of insanity, on page 103, he says—

However possible it may have been at one time for the medical and the legal professions to come together on these tests and find in them a basis of common understanding, that day has long since passed, at least from the standpoint of the specialist in mental medicine. The standpoint from which he approaches the problem of human behaviour no longer makes it possible for him to be dogmatic and categorical in his replies to the questions of the lawyers on these points. Impulses, delusion, knowledge of right and wrong are no longer conceived as concrete entities that either are or are not.

He goes on to say—

Of course the law is not interested in the fact of the existence of mental disease in the abstract, but only in so far as its existence bears upon the question of responsibility of the defendant. If the mental disease was of such a nature as to make it impossible for the defendant to entertain a criminal intent, or to know the nature and quality of his act, or to know that it was wrong, then he is insane in the meaning of the law. If his mental condition does not produce these results, then he is legally of sound mind, no matter how mentally ill he may be from a medical standpoint. The law attempts to say when a man is legally responsible for his acts, and only recognises mental disease when it affects his responsibility as that responsibility is defined.

As I explained earlier, the definition of insanity is so narrow that there have been many cases which could not possibly be brought within the definition, and yet all the authorities on the subject are agreed that in the great proportion of cases the persons concerned were insane at the time they committed the crime. Having considered the definition of insanity as it stands to-day, we must realise what a wide margin there is between the person legally considered to be of unsound mind and the normal person. At present a man only 10 per cent. deficient may commit the crime of murder and it might be possible to prove conclusively that he was not responsible for his action at the time. Under the existing law he would not

be considered to be of unsound mind and would be liable to suffer the extreme penalty. If a man is only 10 per cent. normal the law at present would not allow of that fact being taken into consideration. According to the medical cases he would be pronounced to be not of unsound mind, and therefore would be liable to suffer the extreme penalty. That is not right or fair. When an individual is thus suffering as a result of various causes, the point should be taken into consideration when he is arraigned on a serious charge. The Bill provides that if a jury find any person guilty of murder or wilful murder, such person or his counsel may move the court to commute the punishment of death on the ground that such person was, at the time when he was committing the crime, incapable by reason of mental disease or deficiency of forming a rational judgment as to the moral quality of the act which he was committing. That brings me to the question of mental deficiency and mental disease, on which subject I have a large number of authorities. Most of them are very convincing in their arguments. While my own views coincide with the views expressed by most of those authorities, I would rather confine myself to quoting what they have said than use my own words. They have given the result of their research in words which have been well weighed and which I think can be easily understood by all who care to give study to the subject. I have found it difficult to decide exactly what quotations to use, so wide is the subject. However, I propose to confine myself to quoting two or three authorities who are recognised as leading men in the world of criminology and psychology. I shall also quote from them cases which may be regarded as standard cases, because they have been inquired into by more than one authority and the facts have been proved beyond all doubt. We have all heard of Havelock Ellis, who has often been quoted on the subject of criminals. He has written quite a number of publications. In one of them, entitled "The Criminal," he gives the result of investigations he has made and refers to investigations made by other experts. On page 113 he says—

. . . . . Allison, superintendent of the Matteawan State Hospital, New York, is impressed by the frequency with which very serious crime, especially murder and violent assault, occurs in the same family. He notes that at Matteawan such cases as the following were all confined at the same time (1898):—Two brothers, one convicted of two assaults to kill and the other of robbery in the first degree; two brothers, both accused of murder in the second degree; two cousins, both charged with assault to kill; father and son, father had committed four homicides and the son was indicted for assault to kill; two sisters, one accused of assault to kill and the other of assault in the third degree; two brothers, both convicted, one of murder and the other of forgery; two brothers, both committed murder in the first degree.

Morrison (another criminologist) found that among the inmates of English industrial schools, 51 per cent. or more than half are either illegitimate or have one or both parents dead, or are the offspring of criminals and parents who have abandoned them. Even when the parents are alive, "in nine cases out of ten one or other of these parents is distinctly disreputable." Morrison concludes, concerning the parents, that "at the very least 80 of them in every hundred are addicted to vicious, if not criminal habits."

Magri, in Italy, has pointed out another tendency in the heredity of criminals, though it has scarcely yet been widely confirmed. He finds that criminals very frequently belong to large families. He has found on questioning criminals that they belong with remarkable frequency to large families. He has also found that epilepsy, hysteria and neurasthenia flourish in large families. This is in a line with the fact that high evolution diminishes the number of offspring. Magri finds a special cause for degeneration in large families from the precocious senility and organic exhaustion produced in women by much child-bearing.

Ellis goes on to say—

The history and genealogical tree of a very remarkable Brittany family of criminals through five generations has been published by Aubry. The history begins in the last century with Aime Gabriel Kerangal and his wife, who were both normal so far as is known. The outcome through five generations has been a family of eccentrics, of criminals, of friends of criminals, and of prostitutes, but none of them were insane or at all events recognised as insane. It is very interesting to find that one branch of the family is free from crime, and includes a poet and a painter of great talent, who have both reached high social position. Suicide, incest, and all sorts of reckless licentiousness have flourished in this family. Their impunity has been very remarkable, although besides their proved crimes there have been various attempts at crime and many merely suspicious occurrences. Crimes of blood are laid to the charge of seven persons in the genealogical tree; other offences to nine persons.

Then he refers to the Jukes family of America:—

The so-called Jukes family of America is the largest criminal family known, and its history, which has been carefully studied is full of instruction. The ancestral breeding-place of the family was in a rocky, inaccessible spot

in the State of New York. Here they lived in log or stone houses, sleeping indiscriminately round the hearth in winter, like so many radii, with their feet to the fire. The ancestor of the family, a descendant of early Dutch settlers, was born here between 1720 and 1740. He is described as living the life of a backwoodsman, "a hunter and fisher, a hard drinker, jolly and companionable, averse to steady toil," working by fits and starts. This intermittent work is characteristic of that primitive mode of life led among savages by the men always, if not by the women, and it is the mode of life which the instinctive criminal naturally adopts. This man lived to old age, when he became blind, and he left a numerous more or less illegitimate progeny. Two of his sons married two out of five more or less illegitimate sisters; these sisters were the Jukes. The descendants of these five sisters have been traced with varying completeness through five subsequent generations. The number of individuals thus traced reaches 709; the real aggregate is probably 1,200. This vast family, while it has included a certain proportion of honest workers, has been on the whole a family of criminals and prostitutes, of vagabonds and paupers. Of all the men not 20 were skilled workmen, and ten of these learnt their trade in prison; 180 received out-door relief to the extent of an aggregate of 800 years; or, making allowances for the omissions in the record, 2,300 years. Of the 709 there were 76 criminals, committing 115 offences. The average of prostitution among the marriageable women down to the sixth generation was 52.40 per cent.; the normal average has been estimated at 1.66 per cent. There is no more instructive family in criminal heredity than that of the Jukes family.

That case has been quoted on many occasions and the facts as stated have been proved by quite a number of investigators. It might be said that that is an extreme case; but quite a large number of cases could be quoted, though not passing through so many generations. There are scores of cases showing family histories with the same things prevailing through two or three generations. Even in Western Australia we have a case of the kind. It is a case vouched for by local medical men. Indeed, one of our medical men, with the assistance of the late Dr. Anderson, made the necessary researches into the history of the family, and drew up an illuminating family tree covering four generations. The circumstances are as follows:—

In the first place a normal-minded man married a female with some mental affection. They had four sons, whom we may describe as 2, 3, 4, and 5. No. 3 married and had four children, whom we describe as 6, 7, 8, and 9. No. 5 married and had three children, two boys and a girl, whom we will describe as 10, 12, and 13. This is the history of that family. No. 2, the first offspring, a son of the original marriage, committed suicide. No. 3, after being married and having four children, also committed suicide. No. 4 never married. He had religious mania. No. 5, who married, had three children and died in an asylum. No. 6 is apparently all right. No. 7, who married, had three children, and afterwards went to Africa. No. 8, who married and had one child, had delusions and died of phthisis. No. 9, a girl, was pregnant at 15. No. 10 committed suicide, as did No. 12, and No. 13, who was the mother of five children and married to a normal-minded man, at the birth of the fifth child attempted to commit suicide. The husband of this woman was naturally much concerned to find that his wife had made this attempt. Just following upon that, No. 10, who held an excellent position in this State, who was apparently without any serious cares, and who was much respected, shot himself, without rhyme or reason. Then the husband of the sister began to think that possibly there was something wrong in the family, and called in his medical adviser. That gentleman went into the family history, and with the assistance of Dr. Anderson traced out the facts I have narrated. Surely in this instance there is evidence of a strain of insanity running right down through four generations. Up to the present, No. 6 has been all right, but probably there is still in the man's mind a weakness which, should it not develop in his lifetime, may develop in that of his children. The point I wish to make, however, is that if No. 6 took the life of another person, he would have to pay the full penalty of the law.

In view of the history of that family, in view of the fact—which should be patent to everyone—that there is a strain of insanity running through the whole family, the individual members of it at present existing should not be penalised to the extent of forfeiting their lives if at some stage they develop the symptoms described in the family history and commit some act carrying with it the capital penalty. It is no fault of those individuals that they have been born into that family. If it can be proved that at the time of committing the crime of murder such an individual was suffering from delusions or some mental trouble of the kind, he should not be treated as if he were of sound mind. The family history shows conclusively that something of the kind may be expected in every member of that family, though I do not say even for a moment that the hereditary trouble will exhibit itself in every one of them. They are certainly not normal, however, and it should be possible, as it will be possible if this Bill passes, to prevent the infliction of capital punishment in their case. As for mental defectives, a good deal of study has been given to the question by medical men. Some little time ago a conference of the British Medical Association on the treatment of mental

defectives was held in London. Dr. East, medical officer of Brixton Common Gaol, said that out of six men who were under his observation awaiting trial for murder, three were insane. I believe he is right. I believe also that in the great majority of cases early treatment under observation—such treatment as we are now giving to a number of cases in Western Australia—would have prevented those persons from reaching the stage of committing murder. Indeed, I am convinced that in many cases there is no escape from a life of crime, and this for many reasons. Unfortunately, numerous children are born of parents not in a position to bring them up as they should be brought up. Their environment is by no means of the best: in many cases it is absolutely of the worst. Then, if there is any taint of mental disease in the family, it is more likely to exhibit itself in children brought into the world and reared under those circumstances than in children who enjoy the best conditions. Consequently I say again that if our social system were as I consider it should be, we would have a means of dealing with such cases long before it became possible for them to reach the stage of committing a capital crime. At the conference of the British Medical Association, to which I have just referred, Dr. Wm. Potts, another authority on the subject, said—

> The number of mentally defective persons in England and Wales, apart from lunatics, was estimated at 149,600, of whom it was calculated that 665 were in urgent need of provision being made for them in their own or the public interests. All mental defectives who were at large were a potential danger, and in proportion as modern industry became more complicated their opportunities for wrongdoing increased. He was confident that the public would welcome a thorough preliminary medical examination to determine the extent to which an offender was a deliberate wrongdoer or the victim of his environment.

Let hon. members observe the number of mentally defective persons, apart from lunatics, in England and Wales—149,600! That is more than the population of the metropolitan area of Western Australia. At the same conference Dr. Gibbons spoke as follows:—

> It was never known for two mentally defective individuals to become the parents of a normal child. One could be reasonably certain by the time a defective child reached the age of 16 years how much benefit it could obtain by treatment from segregation and so forth. If there was no indication of such a child ever being regarded as normal or as approaching normal, steps ought to be taken to prevent it from ever becoming a parent.

In view of the fact that leading medical men of Great Britain hold that opinion, it is only reasonable that we should, by amending our statutes, ensure that defectives do not run the risk of suffering capital punishment because they were mentally deficient or suffering from mental diseases to such an extent as not to know what they were doing. There are other authorities on the same subject. I will quote a letter signed by Sir Wm. Arbuthnot Lane, Sir Bruce Bruce-Porter, Sir Alfred Fripp, Sir James Dundas-Grant, Dr. R. A. Gibbons, Sir Thomas Horder, Sir James Purves Stewart, Mr. T. E. Knowles Stansfield, Sir Geo. Robertson Turner, and Sir John Thomson-Walker—

> According to the last annual reports there are in Great Britain over 201,000 mentally affected individuals. Of these, over 51,000 are congenital mental defectives, for many hundreds of whom no vacancies in existing institutions are available. In addition, there are many mentally deficient individuals who are taken care of by relatives or friends, so that the above appalling figures are by no means comprehensive. It is with the mentally deficient only we wish to deal in this letter. In the vast majority of cases, heredity is the cause of mental deficiency. We feel that the time has more than arrived when something definite in the way of treatment should be undertaken in lessening the number of mentally deficient children. We know that we have the means in our power if we are supported by legislation. As our aim is radical improvement, we consider it to be the duty of the medical profession to impress upon the public the immense importance of hereditary tendencies in dealing with mental defectives. The "fundamentals of the mind" are begotten with the body, and predetermine character and conduct. The offspring of mental defectives are themselves mostly mentally deficient. We feel that it is because the general public have never fully realised the enormous influence of heredity that the question of the thoroughly efficient treatment of the mentally deficient has not long ago been ventilated.

Hon. J. Cornell: That is an argument for putting mental defectives in a place where they cannot commit capital offences.

Hon. W. H. KITSON: I read that quotation in order to show the importance attached to the matter by the leading medical authorities of Great Britain. However, there is another line of thought. I agree as to the treatment of mental deficients, but that is the treatment of such deficients as are not in the position of being charged with crime. They are in the unfortunate position of suffering from mental deficiency as the result of heredity and so forth. They, however,

do not stand in the position of the individuals whom this Bill proposes to cover. I claim again that if ours were a proper social system, and if we were dealing with the mentally deficient in the manner modern thought leads us to believe is the correct one, there would be no great necessity for such a measure as the Bill before us. Seeing that we are dealing with facts as they are, and circumstances as we know them to be, I claim that the unfortunates who are victims of mental diseases or mental deficiency should receive the consideration that is outlined in the Bill. As a matter of fact there is an idea in the minds of quite a number of experts that this subject should be looked upon from another point of view, as to whether crime should not be treated as a medical problem. The law does not treat crime as such, but I can quote from authorities various opinions that certainly lead me to think that there is a lot in their argument. They suggest it is possible to deal with these unfortunates from a medical point of view long before they reach the stage when they are not responsible for their actions and become a menace to the community. Recently there was a gathering in London styled the International Prison Congress. Many reports were received and each referred to the fact that the prisons right throughout the world were gradually being emptied. That gave rise to the question of how far they were prepared to treat crime as a medical problem, or in other words, was crime preventible or was a criminal curable? As the result of that congress, an American expert, Dr. Woods Hutchinson, wrote as follows:—

> My own first vivid realisation of crime as a medical problem, dates from a visit to the State Home for Feeble-Minded Children at Vineland, New Jersey. On tracing the pedigree of inmates it was found that nearly one-third of the 700 children were as closely related as second cousins. In tracing a new family of delinquents and paupers it was found that in the same towns and regions was another large family who had the same name, but were all prosperous and law-abiding citizens. On looking up the pedigree of these families it was discovered that both were descended from one common ancestor about seven generations back. A young man of good family ran a little wild, and for some time lived with an attractive, but feeble-minded and delinquent girl, by whom he had a child. Then he went away to the war of 1776, and on his return reformed and married a respectable girl of excellent family, and had several children. From his child by the feeble-minded girl sprang a family reaching some 150 members in seven generations, nearly all of whom were feeble-minded, petty thieves, drunkards, prostitutes, paupers. From his marriage with the girl of good family sprang a second group of about 120 in the same time, all of whom, with the exception of a few hard drinkers, were respectable, prosperous, law-abiding citizens of good standing in the community. Weak wit, crazed by wild blood—and we see the sins of the fathers visited upon the children unto the fifth and sixth generations. Wild blood, steadied by sound stock—and the lines "have fallen unto us in pleasant places." One family born to honour, the other to dishonour.

That is a very illuminating instance. We should not be prepared to say that the descendants of the first family mentioned in that report should be held responsible to the full extent for their actions, in view of the fact that it can be proved, because of the hereditary taint, they are suffering from mental diseases or mental deficiency. I claim again that there is further proof that if we were to deal with mental diseases and those suffering from mental deficiency in a scientific and up-to-date method, we would be merely doing a fair thing. Instead of that, in accordance with the existing law, we do not take into consideration the fact that these people, who could not help being born into the world, are suffering in a way that means they cannot take any responsibility for their actions at times and in respect of whom it can be proved in many instances that they are not at all responsible for their actions on occasions. If that is so, I claim we shall be doing bare justice to them in asking, should those unfortunates have to face a murder charge, that their circumstances shall be taken into consideration. It is interesting to know the views of one of our local authorities, Dr. Thos. B. Hill, who is a consulting psychologist, and is known for the work he has been carrying out at the Seaforth Boys' Home at Gosnells. In abbreviated form he has set out his views on some of the problems concerned. I do not propose to read the whole of his statement, but in one paragraph he says—

> What becomes of untrained, unsupervised and uncared for mental deficients? They swell the ranks of unemployed, quadruple the work of the courts, pack the gaols, commit murders, are always the prey of the unscrupulous and the tool of the extremist, and in the case of females induce immorality and its attendant evils. Investigations of mental deficients give us cause for alarm. The noted Kallikak case shows that of 480 descendants of a mentally deficient girl. 36 were illegitimate, 33 were sexually immoral, mostly prostitutes, 4 were confirmed alcoholics, 3 were epileptic, 82 died

in infancy, 3 were criminal, and 8 kept houses of ill-fame. Studies of other mental deficient families show similar results.

I assume that most hon. members are aware of the work that is being done at the Seaforth Home. It is excellent, and should receive the encouragement of everyone who has the interests of the State at heart. In view of the results achieved there and in similar homes, it gives us hope that if we are prepared to treat these people in a scientific manner, in accordance with the suggestions of the medical fraternity, psychologists and criminologists, who have conducted a considerable amount of research work that has thrown great light on the subject, we could say almost with certainty that in years to come, instead of having such a large percentage of mental deficients as we have at present, we would find many of them useful citizens, able to take their place in the world.

Hon. J. Cornell: That may apply to environment, but it would be hard to prove in connection with heredity.

Hon. W. H. KITSON: No doubt environment has a lot to do with it. I could mention one or two instances under that heading, particularly one with which I have been associated during the last four or five years.

Hon. Sir Edward Wittenoom: With a murderer?

Hon. W. H. KITSON: No, I was responsible for having a boy and a girl taken away from the environment they were in and wonderful results have followed. I do not want to go into the details, but that instance was an eye-opener to me. I am assured by people who have given much thought to this question that if we could remove many of the youthful delinquents from their existing environment, they could be encouraged to develop into estimable citizens. As it is, many of those youths become a menace to society, because we are not in a position to treat them as they should be treated. The member for Perth who introduced the Bill in the lower House sought the opinion of local church leaders and I have their replies showing that they are fully in sympathy with the measure as it appears before hon. members. I do not propose to quote all the replies, but there is one from the Rev. Eric H. O. Nye, which I think is well worth quoting. I understand that rev. gentleman has given a fair amount of study to this problem, and this is what he says—

In regard to the proposals of your Bill, it appears to me that the general case for capital punishment rests upon two foundations: (1) That capital punishment is a deterrent; (2) that capital punishment satisfies the principle of justice—"an eye for an eye" . . . "a life for a life." In regard to (1), I think the foundation cannot be proved. In regard to (2), justice in punishment depends—not upon the deed committed—but upon the responsibility or "guilt" of the perpetrator of the deed. For example, a man is out in the bush shooting. In firing at a kangaroo, he hits another man hidden from him by the trees of whose presence he was quite unaware. The deed—*i.e.*, the actual killing of the man—is the same as if he had deliberately aimed at him; but the responsibility and "guilt" are not. He is "not guilty" of murder or of killing. But there are accidents in men's minds; in their mental condition there are things for which some men are not responsible. These mental accidents may lead to an act which, if performed by a responsible person, would be criminal. And unless the perpetrator can be proved wholly insane, he is adjudged "guilty," notwithstanding anything in his mind. In other words, the law requires the accident dependant upon external circumstances, but not the accident caused by mental conditions. Yet psychologists assure us that nearly all criminals are abnormal or subnormal. I take it that these are the cases your Bill is designed to meet; and I am heartily with it.

That expresses the view of a large number of people. I quote that letter because I think it puts in a nutshell the position in which many men find themselves when they have to face a murder charge. There has been an accident in their mind, something over which they had no control, and as a result there is the murder charge. Owing to the definition of insanity, as we know it to be, such men have not been able to take advantage of the law as an insane individual would be able to.

Hon. J. Cornell: That lapse might occur in the mind of a normal man.

Hon. W. H. KITSON: It might, but I think if it were to occur one would be able to find, if he traced the history of that man that probably a generation or two earlier some mental disorder was exhibited in one or other of his ancestors. On the other hand, of course, where no such traces could be discovered in the ancestors, the lapse might be traceable to some other reason as, for instance, the giving way of the brain, in consequence of which the accident happened. Probably it could be explained away by the psychologist or the medical man, who would show that at the time the unfortunate person

was not responsible for his actions. The Bill, in the clause I have read, deals with the question of moral insanity. On that point I wish to quote another authority who is looked up as perhaps the leading criminalogist of the day. I refer to Dr. Maudsley. He is quoted by Mr. Justice Stephen in "The History of Criminal Law in England." Dr. Maudsley deals with the question of moral insanity, and says—

> There is a disorder of mind which, without illusion, delusion, or hallucinations, the symptoms are mainly exhibited in a perversion of those mental faculties which are usually called the active and moral powers—the feelings, affections, propensities, temper, habits, and conduct. He has no capacity of true moral feeling; all his impulses and desires to which he yields without check are egoistic; his conduct appears to be governed by immoral motives, which are cherished and obeyed without any evident desire to resist them. There is an amazing moral insensibility. The reason has lost control over the passions and actions, so that the person can neither subdue the former nor abstain from the latter, however inconsistent they may be with the duties and obligations of his relations in life, however disastrous to himself, and however much wrong they may inflict upon those who are the nearest and should be the dearest to him. He has lost the deepest instinct of organic nature, that by which an organism assimilates that which is suited to promote its growth and well-being; and he displays in lieu thereof perverted desires, the ways of which are the ways of destruction. His alienated desires betoken a real alienation of nature. It may be said that this description is simply the description of a very wicked person, and that to accept it as a description of insanity would be to confound all distinctions between vice or crime and madness. No doubt, as far as symptoms only are concerned, they are much the same whether they are the result of vice or of disease; but there is considerable difference when we go on to inquire into the person's previous history.

I think every authority agrees with what Dr. Maudsley says in that passage. I could quote three or four others on the same subject. Earlier in the evening I quoted Clarence Darrow, whose book has been handed to me by Mr. Lovekin, a book which, I believe, belongs to the Children's Court. It is one of the best publications I have seen on the subject. Darrow has written several books, but in this one he deals with the subject from certain points of view, putting it in simple language, whereas some of the other authorities are very technical and, consequently, to a layman, seem involved. I think I have shown from the authorities quoted that as the result of inquiries and research there is a case for the individual who is suffering from some mental disorder or is mentally deficient, although not coming within the definition of insanity or of unsound mind as we know it Yet on his behalf it might be claimed that if an individual for no cause over which he has control finds himself in the position of committing some act for which he could not be held at the moment to be responsible, although he is not of unsound mind in accordance with the definition under the law, that should be taken into consideration. We have not morally the right to take away his life because of what he has done. Darrow says—

> Society is beginning to find out that even where there is no marked insanity, many are so near idiocy that they cannot fairly be held responsible for their acts. The line here is just as vague and uncertain as with the insane. Thus far, society has not provided adequate protection for the public against this class; neither has it properly cared for these unfortunates. It has simply excused their conduct, except in cases where some act is so shocking that it arouses special hatred, and then it freely declares that it makes no difference whether the accused is a defective or not; he is of no value to the world and should die. Many of this class are put to death. I am inclined to think that most of those executed are either insane or serious defectives.

He also says—

> Criminality exists only in reference to environment. One cannot be born a criminal. One may be, and often is, born with such an imperfect equipment that he cannot make his adjustments to life, and soon falls a victim to crime and disease. All that a physical examination could do would be to show the strength or weakness of the body and its various organisations. What may befall him will depend partly on the kind and quality of his mind and nervous system, and partly on the physical structure and the kind of experiences that life holds in store for him.
>
> No matter what one may think of the so-called criminal and his responsibility, or quite regardless of whether we feel pity or hatred, the great mass of the community will not suffer one who has little self-control to interfere seriously and directly with the peace and happiness of the community in which he lives. Whether by the action of the law or by vigilance committees, some men will not be allowed to be at large. Doubtless under proper treatment and environment most of this sort of anti-social conduct would disappear, but for many years to come it will remain.

We can all agree with that. Finally, let me quote this—

> If there were any justice in human judgment and civilisation, then each human being would be judged according to his make-up, his tendencies, his inclinations, and his capacities, and no two would be judged alike.

Hon. J. Cornell: He is quite right there.

Hon. W. H. KITSON: I think so, and that is the purpose of the Bill. There are in Great Britain large numbers of people, estimated at over 200,000, and I am sure that in Australia also there are large numbers of people who, as the result of heredity or environment, cannot by any stretch of the imagination be considered to be always answerable for their actions. They may appear to be quite normal for a number of years, but owing to some cause or other at some period of their lives they exhibit symptoms some of which I have described. And if, as the result of that development in their system, they commit murder, they are liable to the extreme penalty. I submit that if it can be proved they are suffering from mental disease, that should be taken into consideration and if they were not responsible for the crime they committed, that they should be entitled to what we provide in the Bill. The Bill says the court may be moved. But the court cannot be moved until the jury have brought in a verdict of guilty. I claim that we should be prepared to give the Bill our support. I look upon it as a contribution to reform and one that all those who have any interest in the cause of humanity should support. I believe that in those cases where mental disorder or mental deficiency can be proved to have been in the family, there is every probability that an accused person may not have been responsible for his action at the time of the crime, and consequently should be given the protection that the Bill affords. I move—

That the Bill be now read a second time.

HON. J. CORNELL (South) [8.59]: I did not hear all the hon. member's remarks, but I congratulate him upon his sincere endeavour to favourably place before the House the case for the Bill. I do not intend to wander into the realms of environment or heredity. I have given considerable thought and attention to both those problems. In my opinion crime is more the result of environment than it is of heredity. As the law stands to-day, it provides for capital punishment for the crime of murder. If the jury find that the person charged was in a state of insanity or of unsound mind, they have the right to bring in a verdict of not guilty on those grounds. It then rests with the Governor-in-Council to incarcerate the individual charged, and thus to see that he is not given a chance to commit a similar crime again. The proposed amendment to the law provides that if the person who commits the offence is mentally diseased or mentally deficient he can then be brought within the same category as is provided by law with regard to insanity or persons of unsound mind. There is much logic and reasoning in the proposition. If a person commits a murder whilst in a state of insanity or of unsound mind there is a lot to be said for the suggestion that he is not responsible for his actions at the time, and should not suffer the extreme penalty, if it can be proved that he was not responsible for his actions on those grounds. If a person commits a crime because he is mentally deficient, or suffers from a mental weakness, it is just as logical to say that he too was not responsible for the crime he committed. That is all the House need concern itself about when discussing this Bill. In our field of medical research and psychology we have arrived at the stage when we can extend to the judge the same power with regard to persons who are mentally deficient or are mentally diseased, when it comes to a capital offence, as is extended to them through a jury in the case of persons who are insane or of unsound mind? The question I ask myself is whether medical science has sufficiently advanced for that point to be determined. In the case of unsoundness of mind the matter is left to the jury, who decide on the evidence tendered. It is proposed in this Bill that in the case of persons who are mentally deficient there should be the right of appeal to the Criminal Court of Appeal, who will then decide the question of responsibility. Have we advanced sufficiently to enable the law to be extended in that direction? The question of heredity is a difficult one. The family tree of one individual who has been tried before a jury may be forthcoming, but it may not be available in another case. There is going to be difficulty in that direction. I have my own views with regard to the abolition of capital punishment. The simple issue in this Bill is whether we are going to give the same power to the Criminal Court of Appeal in regard to mentally diseased or mentally deficient persons, as we extend to the jury to-day in the case of persons of unsound mind or people who are insane. I am inclined to give the Bill my support. I suppose all the arguments that were adduced when the law was extended to cover

persons of unsound mind can probably be adduced against extending the law to cover persons who are mentally deficient. Meanwhile, I support the second reading of the Bill. I hope members will not discuss the question of the abolition of capital punishment, but will content themselves with dealing with the Bill on the lines set out by Mr. Kitson.

On motion by Hon. E. H. Harris, debate adjourned.

BILL—INDUSTRIES ASSISTANCE ACT CONTINUANCE.

Second Reading.

THE HONORARY MINISTER (Hon. J. W. Hickey—Central) [9.8] in moving the second reading said: Bills of this kind have been brought forward on many previous occasions. No doubt members are conversant with the reasons for continuing this law. Successive Governments have desired that the activities of the Industries Assistance Board should either cease or be curtailed, but for many reasons it has been found that this would create extreme hardship for the clients of the board, and financial loss to the State. This may be an opportune time to give an explanation of the activities of the institution. The Act was introduced in 1915 as an emergency measure to relieve the distress then caused by the failure of the 1914-15 harvest. The board has rendered valuable service in enabling upwards of 3,000 settlers to remain on their holdings, and continue the work of production. But for the intervention of the board many of these settlers would have been forced off their holdings. In 1918 the Discharged Soldier Settlement Board was established to place discharged soldier settlers on the land. It has achieved a considerable measure of success and has made up for many of the years of war. Since 1917 the Industries Assistance Board has been restricted in its operations to discharged soldiers who were in receipt of assistance under the Discharged Soldiers' Settlement Act. The Government have now decided to extend the provisions of that Act to all qualified discharged soldiers on approved holdings, irrespective of whether they have acquired land since the termination of the Commonwealth agreement in June, 1925. That is an innovation that will be greatly appreciated, and one that was essential. The extension of the activities of the board would practically have rendered that necessary. Of the 1,073 fully and partially assisted settlers on the books of the board 742 were discharged soldiers. Approximately 70 per cent. of the activities of the board were concerned with soldier settlers. The total number of settlers indebted to the board is 2,031, of whom 958 are receiving no assistance. There are 396 settlers with an aggregate indebtedness of £347,717. This money has been placed on fixed mortgage. Inoperative accounts were similarly dealt with. The advances made by the board for the last financial year amounted to £864,286, and repayments from crops, etc., £877,719. The total advances outstanding on the 31st March were £1,880,286. The losses written off up to the same date amounted to £441,133. This included bad debts totalling £280,293. cancelled debts £38,957, administrative and trading debts £121,893, a total indebtedness to the Treasury of £2,456,545. In all, 76 properties were on the hands of the board on the 30th June last, carrying deficiencies of £84,150. It was expected that when the agreement was finalised the board would be able to recover from the Commonwealth grant for soldier settlement the losses which had been incurred in establishing discharged soldiers on the land, the amount being £41,000 odd. Since June, 1924, the board has been able to finance its operations from receipts without having to draw upon the General Loan Fund. The same position of affairs is expected to obtain this year. The season has been most favourable for soldier settlement and for the wheat belt generally. The number of clearances was 142, a total of 1790 odd since the inception of the board. It has to be recognised that the upward movement in connection with land values generally has naturally benefited the board to a certain extent. Many of the securities that a few years ago possessed little more than paper value, and hardly that, are to-day readily saleable for the full mortgaged indebtedness. The board's losses, as I stated, amounted to £441,133, but against this the indirect gain to the State has been considerable, the value of crops and other produce grown by assistant settlers exceeding £11,000,000. That is a very satisfactory position. No new clients other than soldier settlers are being granted assistance. The prospects for the ensuing harvest are very bright and with a continuance of good seasons and good prices, as well as increasing land values, the board will be enabled to work out its salvation

without any serious loss of capital. Never in the history of the State have the prospects been better, and we are hopeful that we shall find ourselves at a later period in the position of being able to declare that there is no further need for continuing the operations of the board. Everyone realises that the Industries Assistance Board has been a wonderful institution. It was created out of necessity and came into existence at a time when it was essential that something of the kind should be instituted. It has to a great extent been responsible for our existing prosperity. I move—

That the Bill be now read a second time.

Question put and passed.

Bill read a second time.

In Committee.

Bill passed through Committee without debate, reported without amendment and the report adopted.

BILL—LOAN AND INSCRIBED STOCK. (SINKING FUND).

Second Reading.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [9.19] in moving the second reading said: Prior to Responsible Government, Government loans were raised by the Crown agents. Those loans carried a sinking fund of 10s. per cent. per annum. This is different from our ordinary sinking fund in the following ways: (1) The instalments are paid to and invested by the Crown agents themselves. (2) Our ordinary sinking fund trustees do not come into the investment at all. (3) Unlike our ordinary sinking fund, these funds are invested in securities other than State stock. The loans which mature in 1934 amount to £998,353. The sinking fund on the 30th June, 1927, amounted to £821,473. The annual contribution from revenue has been £11,518. The investments are all earning interest, and not being in State stocks are not affected by the proposed Financial Agreement. It is estimated that by 1934, from interest alone, without any additional sinking fund contributions, there will be more than sufficient capital in the fund to redeem the loan fully at that date, which is the maturity date. These facts have been placed before the Crown agents in London and they agree that the position is as stated. In the Bill it is proposed to discontinue any further payment of sinking fund instalments. Similar action was taken in 1923 when instalments of sinking fund to the Coolgardie Water Scheme Loan were discontinued, with the approval of Parliament. The Crown agents agree to the discontinuance of the instalments, subject to Parliamentary authority. The Bill represents the authority required by the Crown agents. It is proposed to authorise the suspension of contributions to the sinking fund as the sinking fund is sufficient, with accruing interest to redeem the loan at maturity without any further payments from revenue. A special provision has been inserted at the foot of the clause to provide that the contribution must recommence if the trustees at any time deem that necessary. This position, however, can arise only through the failure of any of the securities held by the trustees.

Hon. H. Seddon: Can you tell us the average rate of interest the stocks are earning?

The CHIEF SECRETARY: I shall supply the information when the Bill is in Committee. I move—

That the Bill be now read a second time.

On motion by Mr. Seddon, debate adjourned.

House adjourned at 9.25 p.m.

Legislative Assembly.

Wednesday, 2nd November, 1927.

The SPEAKER took the Chair at 4.30 p.m., and read prayers.