land tax was only paying a part of that rent to the State. Who, then, actually paid the land tax, the land owner or the earner of an income who came under the income tax exemption? From that point of view the member for Claremont would see that although the wage earner was exempt up to £250 and had not to pay land tax directly, yet he had to pay rent to the owner of the land, who netted the difference between the rent he collected and the amount paid in land tax, while the exemption under income tax applied alike to the owner of the land and the person renting the land.

Mr. Wisdom: But there is a *quid pro quo* for the rent paid.

The PREMIER: There was none whatever.

Hon. J. Mitchell: Does the Premier realise that taxation all comes back upon the worker?

The PREMIER: Yes, I contend that.

Hon. J. Mitchell: Well, let us let him off a bit.

The PREMIER: That was being done to the point where it was considered fair to tax him. If a man received £251 in salary he immediately paid a tax and, as against the man who made £5,000 during the year, the man with the lower salary had to pay a very heavy tax, while furthermore he had to work for the money he received, whereas the other man probably did nothing at all. It was impossible to get an income tax to fall equally upon all the community unless we took a certain proportion up to a given point and afterwards took the lot.

Amendment put and a division taken with the following result:—

Ayes	.. .. ..	11
Noes	.. .. ..	22
Majority against	..	11

AYES.

Mr. Allen	Mr. A. E. Piesse
Mr. Broun	Mr. A. N. Piesse
Mr. Harper	Mr. F. Wilson
Mr. Lefroy	Mr. Wisdom
Mr. Mitchell	Mr. Layman
Mr. Monger	*(Teller).*

NOES.

Mr. Angwin	Mr. Mullany
Mr. Bolton	Mr. Price
Mr. Collier	Mr. Scaddan
Mr. Dwyer	Mr. B. J. Stubbs
Mr. Gardiner	Mr. Swan
Mr. Gill	Mr. Thomas
Mr. Green	Mr. Turvey
Mr. Hudson	Mr. Walker
Mr. Johnston	Mr. A. A. Wilson
Mr. Lander	Mr. Underwood
Mr. Lewis	*(Teller).*
Mr. McDowall	

Amendment thus negatived.
Clause put and passed.
Clauses 11, 12—agreed to.
Progress reported.

PAPERS PRESENTED.

By Hon. W. C. Angwin (Honorary Minister): 1, Annual report of the Chief Harbour Master; 2, Annual report of the Registrar of Friendly Societies.

House adjourned at 11·13 p.m.

Legislative Council,

Wednesday, 26th November, 1913.

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

PAPERS PRESENTED.

By the Colonial Secretary: 1, By-laws of the Albany Water Supply. 2,

Papers and departmental correspondence relating to the compilation of Supplementary Rolls Nos. 5 and 6 for the Geraldton Electoral District, and to the compilation of the amalgamated roll for the Geraldton Electoral District dated 24th October, 1913. etc. (ordered on motion by Hon. H. P. Colebatch).

BILL—RIGHTS IN WATER AND IRRIGATION.

Assembly's Message.

The Legislative Assembly having declined to make eight of the amendments requested by the Council, the same were now considered.

In Committee.

Hon. W. Kingsmill in the Chair; the Colonial Secretary in charge of the Bill.

No. 1.—Clause 2 : Strike out the definition of "bed":

The COLONIAL SECRETARY moved

That the request be not pressed.

Hon. H. P. COLEBATCH : It appeared that the amendments agreed to by another place were of a very comprehensive nature, and as the matter at present stood the difference between the two Chambers was not very great. However, he did not feel disposed to agree with the whole of the amendments sent forward by the Assembly, and if the situation which had now arisen pointed to a conference betwen the two Chambers, the quickest way of reaching that stage would be for the Council to stand by its amendments until such time as that stage was reached. He would like to see that course adopted, without for a moment suggesting that he would determinedly oppose all the amendments proposed by the Assembly.

The COLONIAL SECRETARY: It was to be hoped the Committee would not press the amendment. This and the related clauses set forth the law with regard to lands which were bounded by a river, lake, lagoon, swamp, or marsh. In Common Law the owner had the right of user only over the bed. That was supported by many judgments in law, and Mr. De Verdon, Commissioner of Titles in Victoria, had endorsed that view in the following words—

> The right of a riparian owner to the bed and banks of the creek is altogether different from a fee simple absolute, it is limited in user, restricted in alienation and incident to the abutting land, and therefore should not be either by colouring or acreage shown in a certificate of title as on the same footing and held under a title of equal estate as the freehold land to which it is incident.

As the Bill dealt definitely with the rights in natural waters throughout the State, it was considered only reasonable that it should also declare the law in regard to the receptacles which contained that water. It only asked Parliament to say once for all what would involve a court case to prove in any individual case. The Bill took away one right only, and that was the right to sue the Crown for trespass. If the amendment were pressed and the Bill became law, then any owner of land abutting on a stream could sue the Crown for trespass, if the Crown sent any of its agents to interfere with the bed for the purpose of irrigation. All the existing rights of owners were preserved under this Bill, with the exception of the right to sue the Crown for trespass. Although the Chamber might be sacrificing something sentimentally, practically it would be sacrificing very little by agreeing to this amendment.

Hon. J. F. CULLEN: The real point had not been dealt with by the Colonial Secretary. The attitude of the Committee was that in striking out "bed" the Committee were not attempting in any way to encroach on whatever rights the Crown possessed now. Members were simply saying that they were not prepared, at this stage, to declare that the Crown's claims, as made by the Government, were right. They were simply leaving matters as they stood to-day. If, as the Minister said, the Crown possessed all necessary rights, well and good.

The Colonial Secretary: It does not.

Hon. J. F. CULLEN: There was a difference between possessing and having a declaration of possession made. What the Bill proposed was to declare that the Crown had those rights, and the attitude of the Committee was that they were not prepared to make that declaration. He would counsel the Government not to be too ambitious at the present moment. Even supposing the Bill were not perfect, let us get an irrigation scheme started, and if the Government found that they had not the necessary powers, or that there was any risk of their being penalised, they would be in no worse position to come down for an amendment of the law later on. At this stage the Committee should consider whether it would not be a quicker way for this Chamber to re-affirm all these amendments and let the two Chambers go into conference.

The COLONIAL SECRETARY: The hon. member had said that he had no wish to encroach on the rights which the Crown possessed now. The Crown had absolutely no right whatever to the bed of the river at the present time.

Hon. J. F. Cullen: Oh yes it has.

The COLONIAL SECRETARY: The Crown had no rights whatever, unless it had land abutting on a river, and then the Crown had the rights of a user; otherwise the Crown had no more right to the bed than the individual owner.

Hon. J. F. Cullen: I do not think that opinion is sound.

Hon. E. M. CLARKE: In the amendments sent to another place provision was included that automatically the bed of a stream should become the property of the Crown for irrigation purposes. He had gone into the matter very fully, and when it became absolutely necessary to grant this right to the Crown he would be one of the first to give it. It was not desired to hamper the Crown in any way, but until such time as the bed of the stream was absolutely wanted for public purposes the owner should be left in undisputed possession of the rights he had now.

Hon. Sir E. H. WITTENOOM: If the Government were going to acquire the water in any stream, they would naturally want some of the bed with it. The only difficulty he could see was limiting the bed to what would be called a fair quantity. He agreed with the Minister when he said that at present they had no authority over the bed. The question was governed to a large extent by Clause 26. The Murchison River had a small natural bed, but in time of flood was two or three miles wide, so it would be preposterous that the Government should take that as the bed of the water course. The question was so far-reaching in the first part that he did not think we could settle it until we got over Clauses 5 and 6, which proposed to resume the bed and take it away from people without paying for it. That was a most unreasonable proposition, as these people had acquired the bed under the laws of the country, had been induced to take it up in some cases, and it was a valuable consideration so if the Government were going to take the bed over again they should pay compensation. Apart from that he thought the interpretation of "bed" should be limited to where the water normally flowed over it. The matter might be better settled in a conference. Some provision should be allowed for the Government to control a bed.

Hon. T. H. WILDING: If the contention of the Colonial Secretary was correct how was it that we could not get a transfer of title except to high water mark?

The COLONIAL SECRETARY: It was because there could not be transfer in fee simple of the bed of a stream. It was not the absolute property of the man who owned the land adjacent, and he could not transfer the bed of the stream, apart from the land he was holding. He could transfer his land and that carried the right of user over the bed of the stream.

Hon. D. G. GAWLER: The Colonial Secretary was perfectly right in his statement of the law. He (Mr. Gawler) had voted in favour of the definition of "bed" remaining in last time and did not see any reason for altering his opinion, more

especially because if the later provision was insisted on that the measure was not to apply except in declared districts, we need not be afraid that, except in declared districts, what hon. members feared would operate. He could not see how the Government were going to put the measure into operation without having the bed to work upon. That was his chief reason for supporting the inclusion of the bed. A conference with another place at this juncture would save the time of the committee.

Hon. Sir E. H. WITTENOOM: Along the Avon River there was some pools more than half a mile long, and he had always understood that the boundary of people owning the adjoining land was the centre of the pool.

The Colonial Secretary: That is not so.

Hon. Sir E. H. WITTENOOM: Was there any statute which limited them to the bank?

The Colonial Secretary: It is the custom which has grown up through the ages and is recognised by courts of law.

Hon. E. M. CLARKE: If the bed of the stream did not belong to the persons on either side, it was difficult to understand the necessity of this measure to vest the beds in the Crown. He was prepared to admit that any navigable stream should be regarded as what might be called the King's highway, but he had yet to learn that where a person owned both sides of a river, anyone else had a right to that river.

Hon. H. P. COLEBATCH: Although there were apparently nine matters on which another place had disagreed to the amendments made by this House, six of them related to the one question of the beds, so there were really only four points of difference, and he certainly thought it would simplify matters very much if we refrained from discussing them, and simply insisted upon our amendments. Possibly some little alteration in the definition of "bed" would make it entirely acceptable to hon. members. This matter of beds could not be considered altogether apart from the application of Part III. of the Bill, so he again suggested that there should be a conference.

The COLONIAL SECRETARY: There was no objection whatever to a conference, but we must have something to go to a conference with. Therefore each of these amendments must be put to a vote of the House.

Hon. C. A. PIESSE: The Government should have the bed of a river where necessary for irrigation purposes, but a sweeping provision like this would certainly not meet with his approval.

Question (that request No. 1 be not pressed) put, and a division taken with the following result:—

Ayes	9
Noes	14
Majority against ..	5

AYES.

Hon. R. G. Ardagh	Hon. Sir J. W. Hackett
Hon. F. Davis	Hon. J. W. Kirwan
Hon. J. E. Dodd	Hon. B. C. O'Brien
Hon. J. M. Drew	Hon. J. Cornell (*Teller*).
Hon. D. G. Gawler	

NOES.

Hon. E. M. Clarke	Hon. M. L. Moss
Hon. H. P. Colebatch	Hon. C. A. Piesse
Hon. J. D. Connolly	Hon. C. Sommers
Hon. J. F. Cullen	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. A. G. Jenkins	Hon. A. Sanderson (*Teller*).
Hon. C. McKenzie	
Hon. R. D. McKenzie	

Question thus negatived, the Council's amendment pressed.

Requests Nos. 3, 4, and 5 were pressed.

No. 10, Clause 25—Strike out Subclauses 3 and 4:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Hon. J. F. CULLEN: This was the most important matter of all. It was striking out a useless provision regarding regulations to clear the way for putting in a new clause giving a proper scheme of regulation. The Committee would have to insist upon this.

Question put and a division taken with the following result:—

Ayes	..	..	8
Noes	..	..	15
Majority against	..		7

AYES.

Hon. J. Cornell	Hon. C. McKenzie
Hon. F. Davis	Hon. B. C. O'Brien
Hon. J. E. Dodd	Hon. R. G. Ardagh
Hon. J. M. Drew	(*Teller*).
Hon. J. W. Kirwan	

NOES.

Hon. E. M. Clarke	Hon. M. L. Moss
Hon. H. P. Colebatch	Hon. C. A. Piesse
Hon. J. D. Connolly	Hon. A. Sanderson
Hon. D. G. Gawler	Hon. C. Sommers
Hon. Sir J. W. Hackett	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. A. G. Jenkins	Hon. J. F. Cullen
Hon. R. D. McKenzie	(*Teller*).

Question thus negatived; the Council's amendment pressed.

No. 11, Clause 26—Strike out this clause:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

No. 24, Clause 61, Subclause 11—After "regulations" in line 1 insert the words, "sell under any of the provisions of the Land Act 1898 or any amendment thereof; or may":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question put and a division taken with the following result:—

Ayes	..	..	7
Noes	..	..	16
Majority against	..		9

AYES.

Hon. R. G. Ardagh	Hon. J. M. Drew
Hon. J. Cornell	Hon. J. W. Kirwan
Hon. F. Davis	Hon. B. C. O'Brien
Hon. J. E. Dodd	(*Teller*).

NOES.

Hon. E. M. Clarke	Hon. M. L. Moss
Hon. J. D. Connolly	Hon. C. A. Piesse
Hon. J. F. Cullen	Hon. A. Sanderson
Hon. D. G. Gawler	Hon. C. Sommers
Hon. Sir J. W. Hackett	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. A. G. Jenkins	Hon. H. P. Colebatch
Hon. C. McKenzie	(*Teller*).
Hon. R. D. McKenzie	

Question thus negatived; the Council's amendment pressed.

No. 25, Add the following new clause to stand as the last clause of Part III., as follows:—Application of this Part.—(27.) This part of this Act shall have effect only within such areas as the Governor may from time to time, by proclamation published in the *Government Gazette*, declare:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question put and a division taken with the following result:—

Ayes	..	..	7
Noes	..	..	16
Majority against	..		9

AYES.

Hon. R. G. Ardagh	Hon. J. W. Kirwan
Hon. F. Davis	Hon. B. C. O'Brien
Hon. J. E. Dodd	Hon. J. Cornell
Hon. J. M. Drew	(*Teller*).

NOES.

Hon. E. M. Clarke	Hon. C. McKenzie
Hon. H. P. Colebatch	Hon. R. D. McKenzie
Hon. J. D. Connolly	Hon. M. L. Moss
Hon. J. F. Cullen	Hon. A. Sanderson
Hon. D. G. Gawler	Hon. C. Sommers
Hon. Sir J. W. Hackett	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. A. G. Jenkins	Hon. C. A. Piesse
	(*Teller*).

Question thus negatived; the Council's amendment pressed.

No. 26, Add the following new clause: (1.) Any regulations or by-laws made or purporting to be made under or by virtue of this Act shall—(a.) be published in the *Gazette*; (b.) take effect from the date of publication or from a later date to be specified therein; and (c.) be judicially noticed, and unless and until they are disallowed as hereinafter pro-

vided, or except in so far as they are in conflict with any express provision of this or any other Act, be conclusively deemed to be valid. (2.) Such regulations and by-laws shall be laid before both Houses of Parliament within thirty days after publication if Parliament is in session, and if not, then within thirty days after the commencement of the next session. (3.) If either House of Parliament passes a resolution at any time within one month after any such regulation or by-law has been laid before it disallowing such regulation or by-law, then the same shall thereupon cease to have effect, subject, however, to such and the like savings as apply in the case of the repeal of a statute:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

Resolutions reported, the report adopted, and a message accordingly returned to the Legislative Assembly.

BILL—FREMANTLE IMPROVEMENT.

Assembly's Message.

The Legislative Assembly having declined to make the nine amendments requested by the Council, the same were now considered.

In Committee.

Hon. W. Kingsmill in the Chair; the Colonial Secretary in charge of the Bill.

No. 1.—Clause 4, Subclause (1).—Strike out the word "ratepayers," in line five, and insert "election of the owners of ratable land situated within the municipal district":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Hon. H. P. COLEBATCH: The whole of the amendments ought to be pressed. There was practically only one point in dispute, and that was as to whether this proposal should be submitted to the ordinary ballot provided under the Municipalities Act, or whether there should be an extraordinary provision whereby all owners and occupiers should have one vote, and one vote only. Nothing had been said to induce hon. members to alter their opinion.

Hon. M. L. MOSS: The Committee ought not to follow the hon. Mr. Colebatch on this question, but ought to agree to the Bill as printed. This was not an entirely new principle. It was applied in connection with the purchase of the Gas Company's undertaking. The question involved in the Bill affected the ratepayer, whether he was an owner or an occupier.

Hon. H. P. Colebatch: Would you be prepared to amend the Municipalities Act in the same direction?

Hon. M. L. MOSS: That was hardly a relevant question. His object was to ensure that this proposal should go to the widest possible constituency, so that the Bill would be made effective when put to a vote. Some owners were so unprogressive that they might block the proposal. The land comprised the most important block in Fremantle. On it there were no modern buildings, and there was an excellent opportunity to widen the street at two very dangerous points. To submit the question to a vote of owners only who might be scared by the prospect of a small additional rate would be very unwise from the standpoint of the bulk of the people.

Hon. H. P. Colebatch: They may spend thousands in putting up new buildings and all the rest of it.

Hon. M. L. MOSS: The Fremantle Council, who would do that, were elected by the ratepayers, and surely could be trusted to do what was right.

Hon. H. P. Colebatch: The same thing applies to the whole of the Municipalities Act.

Hon. M. L. MOSS: This was a definite scheme, the main object of which was to widen a thoroughfare which was so narrow that the lives and limbs of all who used it were in jeopardy, and in future the difficulties would be increased a hundredfold. If the vote was so restricted that a few owners would be able

to put an obstacle in the way of this public work being undertaken, the people would not thank the Legislative Council for having made that possible. If there was a collision between the two Houses on the question he had good reason to believe that the Assembly would not give way, and the difficulty of undertaking this work later on would be increased, because the present ramshackles would be replaced by modern buildings. Having come to the conclusion that this street-widening was necessary, legislation should have been passed and the matter should not have been submitted to a vote at all.

Hon. J. F. CULLEN: The hon. Mr. Moss was ordinarily so clear-minded and reliable an authority that the House could follow him, but on this occasion he attempted to establish a kind of humanitarian ground for not pressing the amendments.

Hon. F. Davis: Is not that worth considering?

Hon. J. F. CULLEN: Hon. members must have some regard for principle and business. If the promoters of the scheme considered it a good one, why should not they expect it to commend itself to the property owners? Why should the hon. Mr. Moss ask the House to transgress a very important principle governing all municipal matters, namely, that the people who had to carry the responsibility should have the right to say yes or no? Presumably the men and women passing along the street would be included in the hon. member's conception of the widest possible vote. How would the voters' list be compiled if everyone was to have a vote? The municipality would be put to increased cost to create a special list for this one poll. The Committee should be consistent, and stick to the principle that the property owners, who would have to bear the pecuniary risk, should be the people to say yes or no to the question of borrowing money. Under cover of this Bill, there might be an expenditure of £50,000 or £100,000, for which the property owners would be responsible. By all means, therefore, we should let the property owners vote. There was no reason to think that they would say no to a feasible scheme.

Hon. A. SANDERSON: This was one of those occasions when a great responsibility was thrown on the House by not being posted up as to the details regarding the matter. He, however, could not see why there should be any difference made in the procedure in this case. If it was of sufficient importance, the municipal council, or the ratepayers, or the Government, would doubtless move to take this strip of land, but he understood we did more than that in the Bill. Was it not the case, he would ask Mr. Moss, that, apart from this area of land to be resumed for the protection of life and limb, there was something else in the Bill?

Hon. J. D. Connolly: Turn to the first schedule.

Hon. A. SANDERSON: If it was necessary to amend the Act dealing with these matters, we should do so in a general way, and not pick out Fremantle for special consideration, when other municipalities were left to work under the original Act.

Hon. D. G. GAWLER: The case of the Perth City Council purchase of the Gas Company's property had been quoted, but the circumstances were different, for in that case the whole undertaking was given as security to the debenture holders. There was no going concern at Fremantle. We should also remember that the question to be put before the ratepayers was not whether High-street should be widened, but whether a very large piece of land, amounting in value to anything up to £100,000——

Hon. M. L. Moss: Nonsense.

Hon. D. G. GAWLER: The figures had been quoted. If a large amount was to be spent in the purchase of this land, and another sum was to be spent in the erection of buildings, that was a point which ought to be taken into consideration. It had been stated that the Fremantle Council were there to protect the interests of the people, but the council were returned not by the owners but by the ratepayers.

Hon. H. P. COLEBATCH: There was no limit to what might be done if this Bill was passed. The Perth Gas Co. was submitted to the ratepayers as a going concern to be purchased for a sum of money, but here all we submitted was whether the municipality should be empowered to acquire lands, and having acquired them, whether they should spend whatever money they thought fit on improvements. It had been said that if this Chamber insisted on the amendment the Bill would be wrecked. Why? If it was wrecked, it would be because members of another place would see an excellent opportunity of trying to force in the thin end of the proposition they held very dear, and that was that the ratepayer and the property owner as a voting unit should be done away with, and that there should be in municipalities one man one vote.

Hon. E. M. CLARKE: It was realised that the Municipalities Act provided all the machinery to empower local authorities to take this strip of land for the purpose of the widening of streets. The property owners of Fremantle would not veto the proposal for the purchase of the land to widen streets, but he failed to see why they should widen that street by tacking on to it something like half an acre of very valuable land.

Hon. Sir E. H. Wittenoom: They spent £3,000,000 in Sydney, in widening streets.

Hon. E. M. CLARKE: It was not one of the functions of the House to vary an existing law which had worked well, just to suit some particular properties.

Hon. J. E. DODD (Honorary Minister): It was all very well to say this was a new principle, but it was not new so far as this House was concerned. The principle had already been adopted in connection with the Gas Company. It was no use trying to hide that fact; the ratepayers there were given the right to vote on that particular purchase, they were given the right to commit Perth to a large expenditure. The idea now was to assist the people of Fremantle to make their streets better than they were at the present time, and it was possible that the land might get into the hands of a few people, and the owners might be satisfied with the results accruing to them from the buildings that might be on the land. These few people might stand in the way of beautifying the town or doing something which the Council might desire to do for the benefit of the town. This question affected all the people. It was beside the mark to say that it was the policy of he Government to strike out "owner" in all parts of the Municipalities Act and insert "ratepayer"; it was only being done in the one particular case, and that was for the benefit of the people of Fremantle. It was to be hoped that the Committee would not press the amendment.

Hon. J. D. CONNOLLY: This was not altogether a matter for the ratepayers of Fremantle, but for the public generally. The proper course would have been to bring down a Bill to resume the land referred to and to saddle the cost on the municipality. That course the Committee would not have objected to. Members would then have known what they were saddling the ratepayers of Fremantle with. No one could now say what was being saddled on the ratepayers of Fremantle. In the case of the Gas Company's Bill, it was a known quantity. The price was known; it was a going trading concern, and it was known what the ratepayers would have to pay. This was an entirely different matter. The municipality were given an open order. It was quite reasonable that the owners only should vote on the question. There were no special circumstances why we should depart from the provisions of the Municipal Act.

Question put, and a division taken, with the following result:—

Ayes	9
Noes	14
Majority against ..	5

AYES.

Hon. J. Cornell	Hon. J. W. Kirwan
Hon. F. Davis	Hon. M. L. Moss
Hon. J. E. Dodd	Hon. B. C. O'Brien
Hon. J. M. Drew	Hon. R. G. Ardagh
Hon. Sir J. W. Hackett	(*Teller*)

NOES.

Hon. E. M. Clarke	Hon. C. A. Piesse
Hon. H. P. Colebatch	Hon. A. Sanderson
Hon. J. D. Connolly	Hon. C. Sommers
Hon. D. G. Gawler	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. A. G. Jenkins	Hon. J. F. Cullen
Hon. C. McKenzie	(*Teller*).
Hon. R. D. McKenzie	

Question thus negatived; the Council's amendment pressed.

No. 2.—Clause 4, Subclause (2).—Strike out this subclause and insert in lieu thereof:—"For the purpose of this section the term owner means any person entitled to a legal or equitable estate or interest in rateable land in fee simple, or for a term of years having at least seven years unexpired.":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived: the Council's amendment pressed.

No 3.—Clause 4, Subclause (3).—Strike out the word "ratepayers," in lines two and six, and insert "owners.":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived: the Council's amendment pressed.

No. 4.—Clause 4, Subclause (4).—Strike out the word "ratepayers" and insert "owners.":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

No. 5.—Clause 4, Subclause (5).—Strike out the words "and each ratepayer on the special roll shall be entitled to one vote only":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question put, and a division taken, with the following result:—

Ayes	9
Noes	13
Majority against ..	4

AYES.

Hon. R. G. Ardagh	Hon. J. W. Kirwan
Hon. F. Davis	Hon. M. L. Moss
Hon. J. E. Dodd	Hon. B. C. O'Brien
Hon. J. M. Drew	Hon. J. Cornell
Hon. Sir J. W. Hackett	(*Teller*).

NOES.

Hon. E. M. Clarke	Hon. C. McKenzie
Hon. H. P. Colebatch	Hon. C. A. Piesse
Hon. J. D. Connolly	Hon. C. Sommers
Hon. J. F. Cullen	Hon. T. H. Wilding
Hon. D. G. Gawler	Hon. Sir E. H. Wittenoom
Hon. V. Hamersley	Hon. A. Sanderson
Hon. A. G. Jenkins	(*Teller*)

Question thus negatived: the Council's amendment pressed.

No. 6.—Clause 5, Subclause (2).—Strike out the words, "except sections four hundred and forty-four, four hundred and forty-five, four hundred and forty-six, four hundred and forty-seven, four hundred and forty-eight and four hundred and forty-nine thereof":

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

No. 7.—Clause 5, Subclause (3).—Strike out this subclause:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

No. 8.—Second Schedule.—Strike out the Schedule:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived; the Council's amendment pressed.

No. 9.—Third Schedule.—Strike out the Schedule:

The COLONIAL SECRETARY moved—

That the request be not pressed.

Question negatived: the Council's amendment pressed.

Resolutions reported; the report adopted and a Message accordingly returned to the Legislative Assembly.

BILL—CRIMINAL CODE AMENDMENT.

Report of Committee adopted.

BILL—MINES REGULATION

In Committee.

Resumed from the 20th November; Hon. W. Kingsmill in the Chair, Hon. J. E. Dodd (Honorary Minister) in charge of the Bill.

Clause 46—Employment of foreigners: The CHAIRMAN: Progress had been reported on an amendment by Mr. Cullen to strike out Subclause 6.

Hon. J. E. DODD: Mr. Cullen had stated that no instance could be given which would justify the inclusion of this subclause, and that there never had been a case in which a man had refused to be examined. The subclause had been necessitated by the occurrence of cases, in which men had refused to be examined as to whether they could speak English. In one particular case a man, who was of Italian parentage but born in Australia, had refused to be examined, and had attempted to mislead the inspector by that refusal. When the man was threatened with dismissal, it was found that he could speak the English language very fluently. The striking out of the subclause might possibly render the whole clause inoperative, by allowing foreigners to refuse to say whether or not they could speak the English language. The subclause simply stated that when a man refused to be examined by the inspector he might be dismissed from the mine. That was merely giving the inspector power to enforce the clause.

Hon. A. SANDERSON: The Committee should have some guarantee that this measure would not be used as the Immigration Restriction Act was used. In that Act a language test was provided, but it was known to everybody that it was not so much a language test as it was a means of keeping coloured people out of the country. Did the Minister intend to use this language test as a means of keeping the foreigner out of the mines? It was a matter of administration, and if Ministers chose they could effect the exclusion of the foreigner by means of this language test. There ought to be an independent examination quite apart from the Ministerial authority.

Hon. J. E. DODD: The provision that the English language should be readily and intelligibly spoken was in the present Act. So far as his knowledge went, the test had been very limited and it would have been much better if it had been made more severe. A man was simply asked what level he was working in, could he push a truck or bore a hole, or some question of that sort. If the test were made too severe, the person affected could take action, and one case had already been heard as to whether the inspector had applied the test in accordance with the Act.

Hon. D. G. GAWLER: A great injustice might be done to both employer and employee under this subclause. The employee was to be dismissed if he could not speak the English language readily and intelligibly, and moreover he would be committing an offence against the Act. The employer might have satisfied himself that the man could speak the English language readily and intelligibly, but the inspector might place quite a different interpretation upon those words with the result that the employee would be held guilty of an offence and the employer, who had satisfied himself that the man sould speak English readily and intelligibly also would be guilty of an offence unless he proved that the man's language was ready and intelligible. If the employee refused to speak, how was the employer to get himself out of the offence?

Hon. J. CORNELL: There would be no more hardship placed upon the employer by this subclause than by any other clause in the Bill, and if members were prepared to trust to the discretion of the inspector right through the measure they ought to be consistent and trust to his discretion in this matter also. The test was a fairly easy one, and all that the inspector tried to satisfy himself of was that the man he examined had a sufficient knowledge of the English language as not to be a menace to other workers in the mine. If a person could refuse to say a word to the inspector

when examined the inspector's powers would be inoperative, because he would not be able to decide whether or not the man could speak the English language readily and intelligibly.

Hon. D. G. Gawler: Then he could dismiss him.

Hon. J. CORNELL: That was what the clause proposed. The inspector could order the mine manager to dismiss him.

Hon. J. F. Cullen: And punish him and his employer.

Hon. J. E. Dodd: The amendment gives the foreigner power to fool the inspector every time.

Hon. J. CORNELL: What was the use of empowering the inspector to do certain things when they did not give him the machinery with which to do it? If a man refused to speak, the inspector had no remedy. The subclause would not inflict a hardship on anybody, because it only gave the inspector a power in law which hon. members said he should have by inference.

Sitting suspended from 6.15 to 7.30 p.m.

Hon. J. F. CULLEN: As the Minister insisted that there should be power to deal with the foreigner who refused to speak, he was willing to withdraw his amendment, and simply make the clause cover what the Minister wanted and no more. With the permission of the House he proposed to withdraw the amendment and amend the first line of the subclause by bringing it into line with Subclause 2, making the first words "in a mine" instead of "on a mine," and to end the subclause with the punishment of dismissal. The latter, however, was an after-proposal, so he would first like permission to withdraw his amendment with a view to further action.

Amendment by leave withdrawn.

Hon. J. F. CULLEN moved a further amendment—

That in line 1 of Subclause 6 the word "on" be struck out and "in" inserted in lieu.

The object of this amendment was purely to bring the subclause into keeping with Subclause 2, in regard to which the Committee had unanimously agreed that "in a mine" would cover the whole situation, whereas "on a mine" might include people who came to deliver firewood or something of that kind.

Amendment passed.

Hon. J. F. CULLEN moved a further amendment—

That in line 5 of Subclause 6 the words "in addition to being," prior to "dismissed," be struck out and "may be" inserted in lieu.

Amendment passed.

Hon. J. F. CULLEN moved a further amendment—

That after "mine" in line 5 of Subclause 6 the words "shall be guilty of an offence against this Act. In such a case the manager, owner, and agent shall not be guilty of an offence against this Act if it is proved that the said person is able to speak the English language readily and intelligibly" be struck out.

When a man was dismissed from a mine there was no need to follow him and hang, draw, and quarter him. There was no need to impose a penalty on him, much less was there need to impose a penalty on his employer, who might be entirely innocent.

Hon. J. E. DODD: By the amendment the clause would be rendered inoperative. One could quite see the purport of it. If the hon. member had made his previous amendment read "shall be dismissed" instead of "may be dismissed" there might be something in it.

Hon. A. SANDERSON: Was the object of this clause to deal with the Australian born miner who refused to answer questions? If the clause was directed against such cases only he would support the amendment, if on the other hand there was something upon which light had not yet been thrown, and which the Minister thought would influence the Committee, he ought to tell hon. members.

Hon. J. E. DODD: The clause was perfectly intelligible. The idea was that where a man refused to submit himself to an examination he would commit an offence. If a man got a sulking fit and refused to answer, and made the whole thing a farce——

Hon. J. F. Cullen: Then he is dismissed at the inspector's discretion.

Hon. J. E. DODD: The man "may be" dismissed according to the hon. member's previous amendment.

Hon. J. F. Cullen: There is no objection to putting in "shall," only it would have to be done on recommittal.

Hon. E. M. CLARKE: The latter portion of the subclause appeared to have been put in to safeguard the owner, and therefore he would vote against Mr. Cullen's amendment.

Hon. A. SANDERSON: The words proposed to be struck out would not safeguard the owner. A man would be employed and the manager might think he could pass the test. The inspector would come along and say "The man cannot speak English readily and intelligibly." The inspector was the examiner and would dismiss the man, and the owner, according to this subclause, was guilty. If the Committee struck out the end of the subclause surely the manager would be safeguarded. To contend that the manager was safeguarded by including the last portion of the subclause was not a right interpretation.

Hon. J. CORNELL: The Committee should not agree to the amendment. He wanted the clause to be fair to both sides. To give the inspector power as proposed in this clause was only following on the general order of the law where a person was given power to do certain things, such as, for instance, where a policeman had power to ask for a man's name and if the man refused to give it, the refusal would be an offence against the law. A man's dismissal might be sufficient punishment in some cases, but there should be something to prevent that man from going to another mine, whereby the offence would be repeated. He could not see the force of the Committee insisting upon the amendment unless it were that they could not trust either the inspector or the magistrate. If the man could not speak English, the person who employed him ought to be the one to be prosecuted. In any case it should be made an offence against the Act, and the man should be given a fair trial.

Amendment put and passed; the clause as amended agreed to.

Clauses 47, 48—agreed to.

Clause 49—Exceptions:

Hon. J. D. CONNOLLY moved an amendment—

That the proviso be struck out.

The clause provided for Sunday labour in certain cases. The proviso prescribed that in all such cases the district inspector should certify in writing that Sunday work was necessary, and should prescribe the maximum number of men to be so employed. It was unreasonable to provide that no such work could be undertaken until the inspector had certified to the necessity for the work. Surely it was sufficient that if the mine manager unnecessarily employed Sunday labour, he was liable to prosecution. In a scattered district it might be impossible to obtain the attention of an inspector at anything like reasonable notice.

Hon. J. E. DODD: At one juncture the Committee were urged to make the inspectors all-powerful, while at another it was proposed that the inspector should have no power worthy of the name. We had been told that the inspector should have the power of saying to what height a stope should be carried, which was a very different attitude from that taken in connection with the amendment. The clause provided that Sunday labour might be employed upon certain classes of work. Under the guise of these provisions a manager, without the check of the inspector, could bring in an unlimited number of men, for the manager, like everybody else, would go along the lines of least resistance. It had taken four or five years to induce the mine manager to observe the Sunday Observance Act. Time after time had mine managers brought in 20 out of 50 men against the provisions of that Act, and the police under whose supervision the Act the was, could not say whether or not the work was necessary. The proviso was quite necessary.

Hon. H. P. COLEBATCH: Did the Minister think the clause was reasonable practicable in all cases? Paragraph (f provided for the doing of any wor

necessitated by a dangerous emergency. Did the Minister propose to make it compulsory for the mine manager to commit a breach of the Act, or fail to provide against such dangerous emergency? The necessity for striking out the proviso lay in the fact that if the proviso was left in, and a dangerous emergency arose, the manager would not be able to provide for that emergency until he had hunted up an inspector, who might not be within 20 miles of the mine. Then the inspector, on being located, might make a provision which the manager did not deem sufficient for the emergency, in which case the manager would have to apply to the Mines Regulation Board; and all the time the dangerous emergency would be left unprovided for. If a manager wrongfully brought men back on a Sunday he could be prosecuted, but to make it an offence for the mine manager to meet a dangerous emergency without the approval of the inspector was entirely wrong.

Amendment put and passed; the clause as amended agreed to.

Clause 50—Power to authorise Sunday labour:

Hon. J. D. CONNOLLY moved an amendment—

That all the words after "brace" in line 15 be struck out.

It should be sufficient to post a notice at the top of the shaft without giving 24 hours' notice or the longest notice possible in the circumstances to the men.

Hon. J. E. DODD: On Saturdays the men started work at three o'clock and finished at ten. It had been the practice at Kalgoorlie in many instances without giving notice to ask the men to work on until eleven o'clock or midnight. Hon. members should consider what anxiety this meant to the relatives of men working in a big mine where accidents frequently happened. It was an easy matter to give some notice. In one instance a strike had occurred at Kalgoorlie through notice not having been given.

Hon. A. SANDERSON: The Honorary Minister had offered a reasonable explanation and the amendment should not be pressed. It was difficult to understand why probably the most powerful body of men in industrial life in Australia required this protection. If the hon. member pressed the amendment he would feel inclined to walk out of the Chamber.

Hon. Sir E. H. WITTENOOM: All cases of Sunday work would be emergency work, and that being so why should 24 hours' notice be necessary? The words which the hon. Mr. Connolly proposed to strike out were superfluous.

Hon. J. D. CONNOLLY: The words comprised an unnecessary restriction which might cause a mine manager a good deal of bother. The Honorary Minister's argument did not bear on the point, as the clause applied to Sunday labour.

Hon. J. CORNELL: As one who had had many years' experience in mines, both underground and on the surface, he could say that the provision was necessary, and would cause no hardship. The practice was to tell the men or to ask some to inform the others that Sunday work would be required. This would apply more particularly to keeping the mill going. What might be termed an emergency might be known for 24 hours or more before the men were required. It could be seen at almost any stage of a breakdown whether there was likely to be any shortage of ore in the bins. The minimum notice which would suffice would be 16 hours. Rather than carry the amendment it would be better to strike out the whole of the paragraph. He agreed that it would be difficult for the underground foreman to notify each man individually that he would be required to work on Sunday. It ought to be possible for the Honorary Minister to come to an agreement with the hon. Mr. Connolly in order that the clause might not be rendered inoperative.

Hon. J. F. CULLEN: No doubt it was intended that both notices should be posted on the brace. He advised the hon. Mr. Connolly to withdraw the amendment because when it was not possible to give 24 hours' notice the longest notice possible could be given though that might be only one hour.

Hon. J. E. DODD: The fact that his remarks a few moments ago did not refer to Sunday work had been overlooked by him, but the principle applied just the same.

Amendment put and negatived.

Clause put and passed.

Clauses 51 to 59—agreed to.

Clause 60—Daily wages:

Hon. J. D. CONNOLLY: It was only necessary to remind hon. members that this clause dealt with the question of the abolition of contracting in mines, and members had made up their minds as to what they intended to do. The question had been discussed fully on the second reading, and it was not necessary to take up much time at this stage. The one argument which had been used against contracting or subletting was that it was a sweating system. The Honorary Minister would admit that the argument did not apply because it was provided that a miner had to earn the standard rate of wages, and it was not an uncommon thing in the big mines for at least half a dozen of the gangs to have their wages brought up to the standard rate. It would therefore be seen that this resolved itself not so much into a contracting system but a bonus system. If a man did more than the manager stipulated, he received so much per foot, but if he did less he still had to receive the standard rate of wages.

Hon. J. E. DODD: It was clear the clause would go, yet he desired to say that we were not discussing the whole principle of contracting as applied to underground work, and the difference in contracting underground and contracting on the surface was very great. As a rule when one took a contract on the surface he had some idea as to how that contract would pan out, but underground it was largely guesswork. Certainly skilled men could gauge what a contract was like and what the remuneration was likely to be. That was on the surface. The system was really a bonus system which made the position ten times worse. The bonus system was simply a system of speeding up. A contract was set fortnightly and if a man made more than the wage usually allowed by the contractors, his price was immediately cut and he got a lower price. Therefore the bonus system was the worst form of contracting. The principal objection being raised to it was from the health standpoint, because men working on contract would always take risks which they would not take under other conditions. Personally he considered that it would be a good thing for the miners of the goldfields if the contract work were done away with.

Hon. J. CORNELL: One could safely forecast the fate of this clause. One of the reasons in favour of the abolition of contract was that contract as we knew it underground was not the contract system at all, it was a system of speeding up and the men were employed to their fullest tension, while the tendency was to reduce their remuneration. Hon. members on recommittal might give some of the clauses favourable consideration in the direction of minimising accidents and providing better inspection so as to make the lot of those engaged in contract work easier than it had been in the past.

Clause put and negatived.

Clauses 61 to 68—agreed to.

Clause 67—Accident *prima facie* evidence of neglect:

Hon. D. G. GAWLER: This clause was very far-reaching. His first objection was that this was one of the very few Bills in which the clause found a place. It was not in the Act of 1906, although it was in the previous Act. Another point was that not only did the clause operate in civil proceedings but in criminal proceedings; in other words, under Clause 62, which dealt with offences, hon. members would see the negligence mentioned in paragraph (b.) would also come under the operation of Clause 67. In criminal proceedings under this measure where negligence was involved, it would be necessary for the owner, agent or manager to prove that negligence did not occur. That fact in itself was a strong argument against allowing the clause to remain in the Bill. Hon. members would agree that to allow a clause like that to remain would be to put the owner, agent or manager in a serious

position. Many accidents occurred in mines of which neither the owner, agent nor the manager were aware, and yet without knowing anything of the circumstances it was for them to disprove the negligence, and it might not be possible for them to secure a vestige of evidence to enable them to do so. Hon. members knew the well known maxim that "he who affirms must prove" and that was held dearly, and very few exceptions were made in that rule. When they were made they were made chiefly on two grounds, one was where the fact itself spoke for itself, and the other was where the facts tending to show negligence or otherwise were in the special knowledge of certain persons. In the circumstances he had mentioned, was it not obvious that the facts showing negligence could not be in the possession of either a manager or his agent. If they were in the knowledge of anybody they must be in the knowledge of the persons who had witnessed the accident. It was very difficult to say how far-reaching an effect a clause of this sort would have. Under the Employers' Liability Act, which largely did away with the doctrine of common employment, negligence against an employer had to be proved in many cases, and if a case occurred in a mine this clause would operate, and therefore we had this position that whereas under the Employers' Liability Act the ordinary doctrine of negligence would apply, this clause would do away with that portion of the Act and put the onus of proof on the employer. That meant the introduction of this principle into mining and no other occupation. It was for these reasons he asked the committee to say that such a dangerous doctrine should not be introduced.

Hon. J. E. DODD: The provision that the occurrence of an accident should be *prima facie* evidence of neglect was not a new one. The speech of Mr. Gawler would seem to imply that this was some new provision that had been inserted. This provision was in the 1895 Act and in almost every other mining Act in the world. It was in the New Zealand, Queensland, and Tasmanian Acts, and despite the fact that a Workers' Compensation Act had been passed in Queensland and New Zealand, the provision still existed in those countries. A similar provision was also in the Coal Mines Act of England. That measure stated—

> That the owner of a mine shall not be liable to action for damages as for breach of a statutory duty in respect of any contravention of or non-compliance with any provision of this Act if it is shown that it was not reasonably practicable to prevent such breach.

It was a very difficult matter for a miner to prove that an accident was due to negligence, but it was not difficult for the mine manager to prove that there had been no negligence.

Hon. D. G. Gawler: The manager is not there.

Hon. J. E. DODD: His responsible men were there. The injustice of the doctrine of common employment at common law had been frequently pointed out. Mr. Gawler had said that the Employers' Liability Act had to a certain extent eliminated the doctrine of common employment. That was so to some extent; the damages under that Act was only three years' wages, and, in addition, the principle of contributory negligence was introduced. The doctrine of common employment had made it impossible for a workman to recover damages at common law unless there was some such provision as this passed, because it was held that the manager was in common employment with the miner. The only redress where negligence could be proved against a mine manager was under the Employers' Liability Act, under which, however, damages were limited to three years' wages, and sometimes those wages would not amount to as much as he might recover under the Workers' Compensation Act. He did not think there was one authority that did not point out the absolute injustice and cruelty of the doctrine of common employment. The captain of a vessel had been held to be in common employment with a seaman, and it would be the hardest thing in the world for a workman, especially a miner, to prove that an accident was due

to negligence. The principle contained in this clause was by no means new.

Hon. D. G. Gawler: It is not in the present Act.

Hon. J. E. DODD: It had been omitted in 1902 when the Workers' Compensation Act was carried, because it was thought that the damages under the Workers' Compensation Act would be sufficient to meet all cases. He did not think any hon. member would agree that the compensation given under the Workers' Compensation Act was sufficient to meet all cases for damages, where there was some culpable neglect on the part of the mine manager.

Hon. J. F. CULLEN: The Minister did not attempt to answer the objection raised to the clause that there might be accidents in which it would be absolutely impossible for the owner or manager to procure any evidence in rebuttal of the assumption made in the clause. The occurrence of an accident was *prima facie* evidence of negligence on the part of a manager or owner. Was that not a preposterous doctrine? Might not the Bill as equitably provide that it would be *prima facie* evidence against the whole of the miners? Suppose a man went down a mine on Monday morning with jangled nerves and brought about an accident, no manager or mining official being near; the man caused an explosion which destroyed the mine and every atom of evidence; the clause said that the accident was *prima facie* evidence of negligence and the manager had to show proof to the contrary. How could he possibly do it? The object of the Minister would have to be attained in some other way.

Hon. J. CORNELL: In a shipwreck in mid-ocean there would be nobody left to tell the story of how it happened, and if a man went down a mine and blew himself up, although it could be held that it was an accident, he did not think there would be anybody left to tell the story as to whether the manager was or the victim himself was culpable. He would like to draw the attention of members to the provisions of the present law. If a person owned a mine and employed a manager to work it, and a man was injured, that man could avail himself of his common law rights, and he could prove ownership and could sue the owner at common law. On the other hand, in the case of the Horseshoe mine, for instance, the property was owned by people in all parts of the world, the manager was an employee of the mine, and the doctrine of common employment held good. There was this anomaly: a mine owner who lived in the State was liable at common law, but the big mining companies were made exempt by the doctrine of common employment. This clause was part of the 1895 Act, and he commended Sir Edward Wittenoom for having inserted it. Presumably it had been copied from some Acts in operation in the Eastern States then and still in operation to-day. Since the introduction of the Act of 1902 he did not think there had been any claim against a large company or corporation in which the doctrine of common employment had not held good. The manager was held responsible in the first place and he was held to be in common employment with the workers, and in consequence the latter lost his common law rights. If the Committee agreed to the amendment they would leave the position as it was to-day. He did not desire to see any individual in this State, who invested his money in a mine, put in a position where he could be shot at, whilst the big companies were so protected that they could not be shot at. If his reading of the clause was correct when an accident happened and the mine manager could prove that he was in no way to blame, the action would go by default. He had yet to learn that any hardship had been imposed upon companies under the 1906 Act.

Hon. M. L. MOSS: If the Committee agreed to the principle contained in Clause 67 an attempt would be made to have it engrafted upon every industry in the State. There was a good deal underlying the clause. In 1895 when it found its way into the Mines Regulation Act, there was no Workers' Compensation Act in force in Western Australia. The Workers' Compensation Act, one of the most up-to-date measures which existed in any

part of the world, provided a fair amount of compensation to persons injured or the representatives of persons fatally injured in connection with the carrying on of any industry in the State, and of course included those employed in the mining industry. Under Clause 67 of the Bill it was sought to make the occurrence of any accident *prima facie* evidence of neglect, but under common law no person was liable for the injuries sustained by any other person unless it was a case of negligence. There was, of course, the right to recover compensation provided in the Employers' Liability Act of 1904, wherein the doctrine of common employment ceased to have any force or effect in a case where the accident or injury arose from a variety of causes mentioned in that statute. The principle contained in this clause went very much further than the Workers' Compensation Act or the Employers' Liability Act. If this principle was acceded to here then we must have it in regard to the shipping industry, the manufacturing industry, and the farming industry. If we agreed to a principle of this kind being put into the Bill it must as a matter of logical sequence go into a general measure affecting every other industry. Why should only persons employed in the mining industry have the right of a common law action, the basis of which was always an allegation of negligence, without any allegation of negligence, but where the mere occurrence of an accident was *prima facie* evidence of negligence. Speaking as one with a vast amount of experience in the conduct of negligence actions, both on the side of the master and that of the servant, he could say he had never yet known a jury err on the side of leniency towards the master, and he had seen some flagrant cases of juries deciding the other way. Under this clause a man charged with negligence would have to prove that he was not negligent, and he would in all probability not be able to do it. Personally he (Mr. Moss) was sympathetic to the last degree towards the man who sustained injuries in the course of his employment, but we had already gone as far as we could possibly go in giving the remedies that were given under the Workers' Compensation Act. He hoped it would not be said the Legislative Council was hard-hearted over a matter of this kind, but we must remember what was already on the statute-book in connection with the Employers' Liability Act and the Workers' Compensation Act, and if we allowed in this Bill that the occurrence of an accident was *prima facie* evidence of negligence the principle would have to be applied in every other industry.

Hon. E. M. CLARKE: From the little experience he had had with men and machinery he was inclined to think this was a mischievous clause to put in any Bill. He knew of one instance where an enginedriver and two men were working on a stone crusher in connection with municipal work, and by some means the hopper was smashed. The men swore that the hopper was smashed by a stone that was put in it. It had been customary for the men to use a piece of steel for turning the truck round, and one of the directions under which they worked was that they were never to go near the hopper with that piece of steel. He (Mr. Clarke) found that they had put their heads together to deceive him in regard to the uses to which this piece of steel had been put, but when they found he knew more about detective work than they knew about telling lies, negligence was admitted. The driver, who was blameless, had tried to shield the other two men. The three of them simply laid their heads together to throw upon the employer the blame of what had closely approached an accident. One would not contend that all men were like that, but it was only human to try and evade the blame if anything went wrong. Under English law it should be always assumed that a man was innocent until he was proved guilty. His sympathies would always go with the man who was unfortunate, even through ignorance, but this clause was dangerous. If the Committee did what was correct and fair, and bore in mind that men were after all only human, the clause would be rejected.

Hon. J. E. DODD: It was gratifying to hear the remarks of the last speaker, because it could be shown conclusively how different were the provisions of the

Mines Regulation Act from those dealing with such matters as the hon. member had referred to. Hon. members had a knack of getting down on all the provisions affecting the employer only, and overlooking others dealing with the employee. None of the provisions objected to were new; all had a place in the Acts of the other States, notwithstanding the existence there of the Workers' Compensation Act. Clause 54 threw upon the men the onus of seeing that the appliances and the working places were safe, and if a man found that any of these things were unsafe it was his duty to report it at once, in default of which he was guilty of an offence against the Act. Under that particular provision he had seen cases inconceivably cruel; as, for instance when, on a fatal accident occurring, a man had hurriedly snatched a bosun's chair for the purpose of lowering another man, without noticing that the chair was defective. As soon as the weight was put on it the chair had broken, with the result that the man attempting the descent was killed. Subsequently the man who had snatched up the chair was prosecuted for not having stopped to notice that it was defective. In the case referred to by Mr. Clarke, there had been no responsibility on the men other than a moral responsibility.

Hon. E. M. Clarke: As a matter of fact they were dismissed.

Hon. J. E. DODD: But they could not have been prosecuted for an offence. Under Clause 55 the full onus was thrown upon the men of seeing to the safety of appliances. Mr. Moss had spoken of the sympathy of juries. But with Clause 67 out of the Bill no case could ever go to a jury; indeed no case had been put to a jury since the ruling of the High Court that a breach of the regulations did not place any responsibility on the management, other than that the manager could be prosecuted for an offence under the Act. In 1895 Sir E. H. Wittenoom, then Minister for Lands, speaking in defence of the self-same clause had said—

> I am unable to accept this amendment, because this seems to be a proper and necessary clause.

Hon. J. D. Connolly: The Workers' Compensation Act and the Employers' Liability Act were not then in force.

Hon. J. E. DODD: As he had already pointed out, in those countries where the Workers Compensation Act was in force this clause had been allowed to remain, in no case had it been struck out, except in Western Australia, and that striking out, he felt sure, had been due to a misunderstanding. Sir E. H. Wittenoom's remarks had continued as follows:—

> In legislation of this kind we must look after the miner and see that he is safe as far as possible. This clause need not trouble any one who takes proper precautions, but we must make owners feel that they have some responsibility as regards accidents which may happen through their neglect.

In those few words the hon. member had put it as concisely as possible.

Hon. M. L. Moss: You did not know the hon. member in those times when he was a Minister.

Hon. J. E. DODD: As a matter of fact, he had known the hon. member very well in those days. The only alteration to-day in regard to the situation was that the Workers' Compensation Act was in existence. But no hon. member could think that the compensation recoverable under the Workers' Compensation Act was sufficient for all classes of accidents.

Hon. D. G. GAWLER: The Minister had pointed to Clause 54, under which the employees must satisfy themselves as to the safety of appliances. It was obvious that to prove a breach of that provision would be exceedingly difficult. But Clause 54 should be read with Clause 68, when it would be found that a breach of Clause 54 would not deprive the men of the recovery of damages under Clause 68, no matter how neglectful they might have been. To be consistent the Minister should provide that failure to see to the safety of appliances should deprive men of the recovery of damages under Clause 67.

Clause put, and a division taken with the following result :—

Ayes	7
Noes	14
Majority against ..	7

AYES.

Hon. R. G. Ardagh	Hon. J. M. Drew
Hon. J. Cornell	Hon. B. C. O'Brien
Hon. F. Davis	Hon. Sir J. W. Hackett
Hon. J. E. Dodd	(*Teller*).

NOES.

Hon. E. M. Clarke	Hon. R. D. McKenzie
Hon. H. P. Colebatch	Hon. M. L. Moss
Hon. J. D. Connolly	Hon. C. A. Piesse
Hon. J. F. Cullen	Hon. C. Sommers
Hon. D. G. Gawler	Hon. T. H. Wilding
Hon. V. Hamersley	Hon. A. Sanderson
Hon. A. G. Jenkins	(*Teller*).
Hon. C. McKenzie	

Clause thus negatived.

Progress reported.

The House adjourned at 9.15 p.m.

Legislative Assembly,

Wednesday, 26th November, 1913.

The SPEAKER took the Chair at 3.30 p.m., and read prayers.

ELECTION RETURN, GERALDTON.

The Speaker announced the return to a writ issued for the election of a member for Geraldton, showing that Mr. Samuel Richard Lewes Elliott had been duly elected.

Mr. Elliot took the oath and subscribed the Roll.

PAPER PRESENTED.

By the Minister for Works: By-laws of the Water Supply, Sewerage, and Drainage Department.—Albany Water Supply.

ADULTERATED MILK, PROSECUTIONS.

The HONORARY MINISTER (Hon. W. C. Angwin): I have to present a return showing the names of the inspectors of dairies who have conducted prosecutions for the sale of impure and adulterated milk for the period from the 1st October, 1911, to the 1st September, 1913. Owing to the size of the State the return is not complete. The return is in accordance with a motion moved by the member for East Perth (Mr. Lander).

QUESTION — UNIVERSITY, FEES FOR TECHNICAL SUBJECTS.

Mr. B. J. STUBBS asked the Premier: 1. Has his attention been drawn to the published statement that it is the intention of the University Senate to rescind so much of the motion previously passed, deciding not to charge fees at the University, as will allow of fees being charged for certain technical subjects? 2. Will the Government, on behalf of the people, make a protest to the University Senate against their action?

The PREMIER replied: 1, No. 2, The matter is one for the Senate to determine.

QUESTION—MAIL STEAMER, ALTERATION OF BERTH.

Mr. CARPENTER asked the Premier: 1, For what reason was the s.s. "Medina" berthed at the North Wharf on Monday last instead of her usual berth