

**Legislative Assembly,***Wednesday, 14th September, 1927.*

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

**QUESTIONS (2)—RAILWAYS.***Cost of Yarramony Eastward Line.*

Mr. GRIFFITHS asked the Premier:—1, Is he aware that the Railway Advisory Board recommended as a payable proposition that the Yarramony eastward railway be built with 25lb. rails? 2, When he quoted the cost of building the line as likely to be £250,000, was he calculating it on a 60lb. rail basis?

The PREMIER replied: 1, Yes. 2, The estimated cost, using 45lb. rails, is £359,000.

*Cost of Steel Rails.*

Mr. GRIFFITHS asked the Minister for Works: 1, What was the average price of steel rails, 45lb. and 60lb., from 1920 to 1927 inclusive? 2, What was the average price of 25lb. rails in 1920 and 1927?

The MINISTER FOR WORKS replied: 1, The average price per ton of steel rails imported on behalf of the Government is as under:—45lb., years 1920-1927 inclusive, average price f.o.b. shipping port, £8 15s. 8d.; 60lb., years 1920-1927 inclusive, average price f.o.b. shipping port, £7. A quantity of 60lb. rails were purchased from the Eastern States during this period at a cost of £12 2s. 6d. per ton, f.o.b. shipping port (Newcastle). 2, No 25lb. rails have been purchased by the Government, and information as to ruling prices is not available.

**QUESTION—ELECTORAL, POLLING HOURS.**

Mr. GRIFFITHS asked the Minister for Justice: Does he intend to extend the closing time of the poll on election day to the same hour as for Federal elections?

The MINISTER FOR JUSTICE replied: No, not at present.

**BILL—CLOSER SETTLEMENT.***Report of Committee adopted.***QUESTION—WROTH BANKRUPTCY CASE.**

Mr. SLEEMAN asked the Minister for Justice: 1, What amount was received by the Official Receiver for the property in the bankrupt estate of A. J. Wroth, held by the National Bank under its deed of 18th June, 1904, and to what account was it placed? 2, What amount was received by the Official Receiver for the property in the Bankrupt estate of A. J. Wroth held by Clarkson under his deed of 18th June, 1904, and to what account was it placed? 3, To what account was the £1,565 cash placed under Clarkson's deed of 18th June, 1904? 4, What is the value of the balance of the estate, and when are the proceedings likely to be brought to an end and a final distribution made of the assets? 5, As the Bankruptcy Act, 1892, Section 9, Subsection 26, provides that a statement of receipts and expenditure shall be furnished, and as A. J. Wroth complains that this has been refused him, will the Minister direct that the provisions of the Act be carried out under the two deeds of 18th June, 1904?

The MINISTER FOR JUSTICE replied: 1, Nil. 2, Nil. 3, Unknown, as it was not received by the Official Receiver. 4, The value of the balance of the estate is known only to the debtor. It is impossible to say now when the proceedings will be brought to an end and a final distribution made. At present, as far as the Official Receiver is aware, there are no moneys available for distribution. 5, Obviously an error has been made in quoting the section, which has no application to the matter. The case is not under the control of the Minister, as it is under the jurisdiction of the Supreme Court.

**MOTION—RAILWAY CONSTRUCTION, YARRAMONY EASTWARD.**

Debate resumed from the 24th August on the motion by Mr. Griffiths—

That in the opinion of the House the Yarramony Eastward railway should be built without delay.

MR. MANN (Perth) [4.37]: Various reasons impel me to support the motion. Firstly, there are the conditions under which the settlers now in that country went out to

settle. Secondly, there is the fact that from the time settlement first began there, successive Governments have without exception promised that this railway should be built. Each Administration that made the promise was no doubt sincere, and realised that relief in the form of transport facilities should be given to those settlers. We are, however, faced with the circumstance that after the 82 miles, the rest—15, 16, or perhaps 20 miles the line would be almost in the shape of a broad arrow. It would, in fact, be running within eight miles or ten miles of the two existing railways. There can be no question that the construction of this line would deprive the two existing lines of a proportion of their earnings. However, the fact remains that the settlers in question went out to settle that country on a definite promise of the construction of a particular railway, which promise has been repeated by all succeeding Governments.

Hon. G. Taylor: Are you sure the settlers had a definite promise when they went out?

Mr. MANN: "Hansard" records that the present Leader of the Opposition and other Premiers promised the settlers railways communication.

Hon. G. Taylor: But that was after the settlers went there.

Mr. MANN: The present Premier, when discussing the change of junction from Merredin to Newcarnie in 1923, said that if it were a question of giving railway facilities that was being discussed, it would not be a matter for the Working Railways to determine, but one for the Government to decide, but that as the only point at issue was the economical working of the line after construction, the persons to be consulted were the responsible officers of the Working Railways. This is a clear indication that the present Premier then realised the necessity for constructing the railway. I acknowledge that since that time the cost of railway construction has gone up to probably double what it was 15 years ago. However, there is still a great area of land to be developed in the district, and with the aid of railway communication the settlers now there would probably be able to extend their farming operations. I suggest that the Premier consider the construction of 50 or 55 miles of railway from Yarramony eastward, which distance would serve most of the present settlers, besides tapping the

country now lying idle. Future events may decide the point at which the line should junction. I know the country in question well, and it seems to me that a junction with Baandee on the Eastern Goldfields railway would probably be more economical than going to Newcarnie or Merredin. Going to Newcarnie means hauling the whole of the freight about 16 miles from Newcarnie to Merredin, and then 21 miles along the main line before touching Baandee. When the Bill was before the House discussion on that point was so acute as to produce an amendment authorising the construction of 82 miles eastward, with a dead end terminus. From the 82-mile point there would be practically only a stone's throw between the three lines, if the proposed railway were constructed to either Newcarnie or Merredin. The intervening space between the various lines would then be only four or five miles. In order not to hang up the construction, the Premier might cause his officers to inquire into the advisability of running out a light line for 50 or 55 miles. The hon. gentleman would then serve all existing settlers, and also tap unoccupied land still available, some 30,000 acres at South Caroling, and 50,000 acres between Hines Hill and Trayning. Both those areas are still available for settlement. In addition, there are areas at North Kellerberrin, West Yorkrakine, and Quela-getting. I have in mind the information I gained when I saw a goldfields firewood company pull up a railway from Mt. Jackson to Kurrawang. This took place when I was on the goldfields as a member of the Royal Commission on Forests. In the space of about four months the company pulled up 106 miles of railway, shifted the plant, and constructed another line 40 miles further south from Calooli. That line has been doing all that is necessary in the way of traffic. It hauls from 400 to 500 tons of firewood per day to the mines, and no accident has ever been heard of on the line.

Hon. G. Taylor: It is a private concern.

Mr. MANN: Yes. If the Premier would inquire from Mr. Hedges the amount for which he could construct a line from Yarramony 55 miles eastward of a similar description to the line that conveys wood from Calooli to Boulder, I think the hon. gentleman would find that it could be done

for much less than £300,000. Moreover, such a line would render all the service that is required. It would take away the settlers' wheat and other produce, and bring to them their superphosphates and other requirements. Passenger traffic on the line need not, I think, be seriously considered. The special need is a means of conveying the settlers' wheat and produce to market. The farmers there are really good farmers. I visited the district last year in company with the Leader of the Opposition. We travelled through it for three days, and saw there men who went out to settle that country 26 years ago, and we saw their sons, who had grown up on the farms, and eventually had gone out beyond their fathers' places to take up land for themselves. They are pretty game fellows. They are carting their wheat 20 miles upwards and are not complaining very bitterly. They did consider, however, that they were not getting a fair deal. Still, they are living in hopes. In point of fact they were relying on the promise of the present Premier to build the line. They put up to us some promises made by the hon. gentleman, and expressed their sure belief that those promises would be fulfilled. I am sure the Premier will endeavour to fulfil any promise he has made. While there are difficulties from the viewpoint of the Railway Department, there are also the difficulties of the settlers, and I think the Premier might for once get away from the orthodox method of constructing our lines, and in an emergency construct a line similar to those utilised on the goldfields for the cartage of firewood.

Hon. G. Taylor: The Working Railways would not care to take it over.

Mr. Griffiths: The Advisory Board recommended a 3ft. 6in. tramway on 25lb. rails.

Mr. MANN: It would be interesting to know what it is costing to run that line from Meekatharra out to the Horseshoe. I doubt if it will cost £3,000 or £4,000 per mile. Yet it will do all that is required, and the pastoralists out there will use it to bring in their stock. It will do all the work of a line costing £4,000 per mile as constructed by the department. It will serve its primary purpose and will give relief to the pastoralists, whose cattle will then come to the Midland Junction market in improved condition. So if the Premier would consult those charged with the con-

struction of that line, they might be able to advise him as to the possibility of building a light line out from Yarramony 50 or 55 miles eastward, which would not be expensive and which would do all that is required in shifting the produce of the settlers. Then we could let time and the future decide as to where it should be connected up with the existing system. Railways running to a dead end are not economical; it is far better to loop them up with the existing system. But we have the Rencubbin line, constructed in the first instance as far as Rencubbin and then on to Cowewong. Now it is being linked up with Bullfinch. Then the area east of Baandee could be taken up, and in course of time it may be found satisfactory to connect up the line with Baandee. Of course there may be engineering difficulties of which I am not aware, or some reason not on the file and not so far mentioned in the debate. The only connecting points alluded to have been Newearnie and Merredin. There we have the difficulty that for the last 20 miles the line would earn nothing, for it would be running between two existing railways. I hope the Premier will consider the possibility of doing something on the lines I have suggested, and I trust that the settlers who have been labouring for so many years under grave difficulties will at last get the relief to which they are entitled.

MR. GRIFFITHS (Avon—in reply) [4.49]: I should like to correct slightly the remarks made by the member for Perth. He spoke of 50,000 acres unalienated at North Baandee. There are, I believe, 50,000 acres, but of that area only 10,000 have not been taken up. Still, the other 40,000 acres are not by any means fully developed, being virgin country, and so without much exaggeration it may be said that there are at North Baandee 50,000 acres, which with the advent of the railway would be brought under the plough. At Southern Brook, where there are 18 or 19 settlers, there is an area of at least 35,000 acres of virgin country. So in those two centres there are 85,000 acres awaiting development. Then there are other large areas about Flowery Patch, North Kellerberrin, North Cunderdin, and the soldier settlement at Quelagetting. A settler from North Baandee told me to-day that of the 448,000 acres to be served by the

railway there is not much more than half already under cultivation. The statement made by the member for Guildford (Hon. W. D. Johnson) the other night, that probably there was not sufficient land to make this an economic project, goes by the board when we consider the area of land that must come under the plough as soon as the railway is built. The Premier the other evening stated something that, of course, I already knew. Still it was gratifying to the people out in those areas when he said that Parliament having passed a Bill for the construction of the line it was only a question as to when the line should be built. During the last fortnight I have told the people out there of the Premier's statement, and they have told me that the Premier is like many more we have had before him, in that he is going to take it into consideration.

Hon. G. Taylor: Mature consideration.

Mr. GRIFFITHS: I hope the consideration will be something more than that previously given. I had hoped that he would give us something more definite to go upon.

Mr. Lindsay: His consideration should be mature after all these years.

Mr. GRIFFITHS: The conditions out there to-day are but little different from what they were, except that there is now greater development. Those people have battled along improving their properties with their own sweat and blood. They served to increase the wheat production during the war. I must ask the member for Mt. Margaret (Hon. G. Taylor) not to take this proposal in a joking mood, for it is very serious to those people out there. Even what the Premier said the other night, although said in a joocular vein, was very much resented. When people have been waiting 20 years for a railway they do not want their project to be treated as a joke. The question as to when the railway will be built, as the Premier said, should be left to the Government. Members, perhaps, should not dictate to the Government, for the Government will build the line when they think fit. That, of course, is the position. At the same time the Premier invites criticism, for he has said that reasonable criticism is quite in accord with the fitness of things. The Premier admits, and so too does the Leader of the Opposition, that I have been absolutely fair in my statements regarding this railway. When moving the motion, I said this railway, having been authorised 3½ years

ago, had been pushed on one side for the Ejangding-northwards railway. The Premier, we are told, is going to give it consideration. The people out there ask the Premier, through me, that it should not be merely considered with the idea possibly of some other railway projects being put in front of the Yarramony-eastwards. There is quite a host of railway projects in the air at present, being discussed in the Press and by deputations. These projects will be brought up in the House, and we say it is not fair that they should be considered while this long-authorised railway remains unbuilt. The Ejangding-northwards line has been started, as the Premier admitted, and is being built out of ordinary loan funds.

Mr. Ferguson: But this is not an ordinary railway.

Mr. GRIFFITHS: The hon. member thinks the Dandaragan railway the most important of all. I ask the hon. member, as one of my colleagues, to keep his funny remarks to himself.

The Premier: Hullo! You are chastising everybody this afternoon.

Mr. GRIFFITHS: The Premier has admitted that the Yarramony railway is justified and should be built. There can be no doubt about the necessity for the line.

The Premier: A few more rebuffs, and the hon. member will get his motion lost.

Mr. GRIFFITHS: The Premier cannot go back on his own word. I am looking to him to support the motion.

The Premier: You will want support if you are to carry it.

Mr. GRIFFITHS: I got in touch with the people out there, and asked them whether I should withdraw this motion. They said, "No, let the motion go through."

Hon. G. Taylor: Yes, but perhaps it won't.

Mr. GRIFFITHS: They added, "and let us see how sincere the Premier and his colleagues are in the promises they have made in the past."

The Premier: Those promises would not be affected by the carrying of the motion.

Mr. GRIFFITHS: Perhaps not, but I can hardly think the Premier, if the motion were lost—I do not suppose it will be—on a party vote—

Hon. G. Taylor: You cannot get a party vote on it after attacking your own colleagues.

Mr. GRIFFITHS: Surely the Premier would not shelter behind such a subterfuge as that?

The Premier: Certainly not. Fancy a party vote on a question like this! If they turn down the motion we will ignore them; likewise, if they carry the motion we will pay no heed to them.

Mr. GRIFFITHS: The Premier, a little while ago, said something about going through the Avon electorate in relation to a redistribution of seats. I hope, having regard to his statement on this motion, he will bear that in mind. Possibly it will be of use to him in the future if he helps to get this motion carried. It is not a question of carrying the motion. Surely the Premier can give us some indication. If necessary I would be prepared to modify the motion and make it read that this should be the next railway constructed.

Hon. W. J. George: Are they satisfied with the route?

Mr. GRIFFITHS: Yes. The Premier has stated that I was quite fair in my treatment of the subject. That being so I now ask him to be fair to the soldier settlers at Quelagetting and to the pioneers at North Baandee, Yorkrakine and other places along the proposed route. The report of the Advisory Board stated that there were 100 settlers. I have received a petition from over 200 settlers, and I can assure the Premier that there are now nearly 240 settlers along the proposed route. The Premier stated that if the motion were defeated it might be taken as an indication that the House was not concerned as to when the line would be started.

The Premier: That is what I am afraid of.

Mr. GRIFFITHS: I have impressed upon the Premier the injustice done to those settlers, and surely he would not seek to shelter himself behind such an argument. He knows how badly those people have been treated. He has told us it is a manifest injustice that they have not been provided with the means for getting their produce to market. Surely he will now stand to that statement and give some assurance of what will be done!

Mr. A. Wansbrough: There are thousands of settlers in other districts that are in a worse position.

Mr. GRIFFITHS: Have those settlers that are in a worse position been out for over 20 years battling along as these people

have been doing? No doubt many people have settled on the land during that period and railways should be constructed to serve them. It is only right that such lines should be constructed in their turn. But are the people in the district under discussion to be penalised because they have battled along and have attained a certain degree of financial stability? Should we take the view that they are all right and that we should first look after some other Johnny-come-late?

Hon. W. J. George: Who questions that the railway should be built?

Mr. GRIFFITHS: No one, but we want to know when it will be built. The Premier, in a rather humorous vein the other evening, said the House might now consider that the settlers could wait a little longer; they had waited 19 years and a few more years would not matter. Is that a fair thing?

Mr. Mann: I think you have put up a good case.

Mr. GRIFFITHS: Let me refer to the question of cost. The Premier stated that the line would cost about £250,000. When perusing "Hansard" I read that the Premier chided the ex-Minister for Works with lightly treating the proposition which might cost £400,000. I was puzzled to find the basis on which the cost was calculated. When the Premier said the line would cost £250,000, I could not find out the basis on which he had made his calculations. Consequently I looked up the report of the Railway Advisory Board and found they recommended that a tramway be built. It is a tramway that the people are asking for and nothing more, a tramway of 3ft. 6in. gauge and 25lb. rails.

Mr. Withers: You would want special rolling stock for it.

Mr. GRIFFITHS: The estimate of the Railway Department was that a one-in-sixty grade would cost £135,000 and a one-in-one hundred grade would cost £175,000.

Mr. Angelo: Why not have a broad gauge and make it part of the Trans-Australian railway?

Mr. GRIFFITHS: Certain statements have been made this afternoon by the member for Perth. In reply to them let me quote from the report of the Advisory Board—

The forest country is separated by lower grade country at present not used to any great extent, but which, with rail communication, might in the future be made productive.

The board recommended the line not only on account of the present production of the

district, but also because of the probable increase of production. With railway facilities and the present price of wheat the line would be a payable proposition. There is nearly half a million acres that would be served by the railway. I realise that the ultimate construction of the railway is not in jeopardy; the great question is when will a start be made? I have received a communication from the head of the railway league to the effect that the settlers do not expect the Government to build an expensive line. If a light line were built as recommended by the Advisory Board, it would be quite satisfactory.

Mr. Withers: When did the Advisory Board recommend the building of a light line?

Mr. GRIFFITHS: I think it was in 1920

Mr. Withers: The cost would be greater now.

Mr. GRIFFITHS: The member for Guildford (Hon. W. D. Johnson) the other evening suggested the consideration of motor traction to serve the district. If motor traction were used, a perfect network of roads would be required. The carting of wheat and fertiliser and such like heavy freight on roads in preference to railways cannot be considered for a moment. The roads being built are costing £1,000 and in some instances more than £1,000 per mile, and after they are built there is heavy upkeep to be considered. The Leader of the Opposition stated that last year £2,600,000 was sent out of the State for motor vehicles, oil, etc., an increase of £1,200,000 in a period of three years. Against that, to operate railways, we have the Collic coalfields, we have a coalfield at Wilga, and we are boring at Eradu to secure a payable seam there. Why, therefore, should we send out of the country £2,500,000 annually for motor vehicles and petrol?

The Premier: If that were good argument against this proposal, it would be good argument for motors and petrol everywhere.

Mr. GRIFFITHS: It is so long since the Advisory Board reported on this railway that members have probably forgotten what was said. Let me quote a portion—

From the table showing the probable financial results of such a tramway it will be seen that, given a one in 100 grade, there should be a surplus of £1,793 over working expenses, excluding interest and a loss of £8.137 including interest, sectional rates being charged. If through freights are charged the estimated loss including interest would amount to £13,922

per annum. Seeing that with sectional charges an excess of £1,793 over working expenses proper is shown, the proposed line would compare favourably with most agricultural lines which, in few if any cases, provide interest on the capital cost.

Since then the number of settlers has doubled and the volume of traffic has doubled, while the prospective increase of traffic is a further argument in favour of the construction of the railway. It has been stated that the line would cost £400,000 and also that it would cost £250,000. The settlers do not want an expensive line. They merely want a line that will carry the traffic.

The Premier: It would have to be a standard line. You know that of late years we have been taking up 45lb. rails and laying heavier rails on all our important lines.

Hon. W. J. George: A sensible thing to do.

Mr. GRIFFITHS: I can understand that being done on the Eastern railway, but on some of the branch lines and especially on a line of this sort, there would be nothing like the volume of traffic to necessitate the use of heavy rails.

The Premier: The improvement in our railway finances during late years is due to the use of heavier rails and to re-grading.

Mr. Withers: And to the use of heavier rolling stock.

The Premier: Yes; to our ability to haul heavier loads.

Mr. GRIFFITHS: Reference has been made by way of interjection to the distances at which some of the settlers to be served are situated from a railway. I have taken the exact measurements on the map as the crow flies and not allowing for any of the necessary detours. At the Southern Brook end the distances range from 13 to 18 miles, the average being 15 miles. At the Meckering to Dowerin end the average distance is 30 miles. the distances between Dowerin loop and the Eastern railway are 30 to 36 miles. From the interjections that were made one would think the settlers were within comfortable distance of a railway. The member for York (Mr. Latham) asked whether settlers who were 30 miles from a railway were not entitled to some preference over those who were only 15 miles distant. I admit there is a section at one end where the lines converge and the distances are shorter, but that is not the fault of the settlers.

Mr. Mann: How far have the North Baandee settlers to cart into Baandee?

Mr. GRIFFITHS: Mr. Ryan is carting a distance of 21 miles.

Mr. Mann: Some of them are carting 25 miles.

Mr. GRIFFITHS: I am aware of that; some are carting 18, 19, 22 and 23 miles, and the same applies to the settlers at Yorkrakine and Quelagetting. I think I have effectively answered the various points raised during the debate. I am sure the Premier admits that what I say is correct. I am going to call for a division if the voices are not given in favour of the motion. I hope, however, the Premier will agree to the motion, if not exactly in its present form, and that this will be the next railway to be constructed. I have no desire to dictate to the Government as to the time that should be allowed for this work.

Hon. G. Taylor: Leave it in the hands of the Government

Mr. GRIFFITHS: I appeal to the Premier to give some sort of assurance as to what is going to be done, so that I can relieve the minds of those people, who are becoming satiated with this long delay.

Question put and passed.

#### **BILL—SUPPLY (No. 2), £831,000.**

Returned from the Council without amendment.

#### **BILL—CRIMINAL CODE AMENDMENT.**

##### *Second Reading.*

Debate resumed from the 31st August.

**THE MINISTER FOR JUSTICE** (Hon. J. C. Willcock—Geraldton) [5.17]: I congratulate the member for Perth (Mr. Mann) upon the interesting, informative and lucid address he gave to the House when moving the second reading of the Bill. Everyone agrees that criminology is an interesting study, and that it is being studied more and more by a majority of people during these later times. Latterly the study of psychology has directed attention to criminals and to the causes of crime, and now we have reached a state in society when we can to a certain extent diagnose the workings of people's minds, and determine whether they are normal, sub-normal or abnormal, and what the condition of

their mind was at the time they committed the crimes, and further as to the measure of responsibility a person can undertake, having regard to his mental capacity, at the time he committed the crime. In the various crimes that are committed there is no border line or definite partition as to what these crimes are. People who commit these crimes are of various mental capacities. Having reached the stage where we can determine the mental capacity of these people, it seems to me, and I think to most people who have gone into the question, that then is the time to consider the punishment and the responsibility that these people take when they have committed crimes. The vast majority of people do not commit crimes, which suggests that normality means that which the majority of the people do in ordinary circumstances. It follows to an extent that those people who do commit crimes are in many cases, if not in all, subnormal. But the fixation of the responsibility is a very serious problem. Three or four different aspects have to be considered. We have the aspect of the deterrent effect which would be exercised on the minds of the community, or on people whose thoughts may lead them to commit crimes. In these circumstances we have to go into the whole question in order definitely to determine the fixation of responsibility in the case of persons who commit these crimes. This Bill seems to me to cast upon the jury the responsibility of determining as to what amount of responsibility a man charged with murder, which is the only point discussed in the Bill, shall have placed upon him. It would be highly improbable that the jury would be psychological experts in any case, or that they would have come down to the study of psychology and to determining the state of the mind of a man who did commit the crime of murder.

Mr. Mann: They have to take that responsibility now with regard to insanity, under Section 653 of the Code.

**THE MINISTER FOR JUSTICE:** That is after expert evidence has been given in regard to insanity. Because someone says, perhaps counsel for the man who committed the crime, that he is insane, it is not to say the statement must not be backed up by expert evidence.

Mr. Mann: And to the satisfaction of the jury.

The MINISTER FOR JUSTICE: This Bill hardly indicates that that course of action will be taken in this instance. The Bill seems to say that the jury can make up their own minds in regard to the subnormality or the abnormality of the person charged with the crime. This would have to be determined after expert evidence had been given by those who were entitled to give an opinion with regard to the mental state of the person charged. I do not think it is fair for a jury, composed perhaps of sympathetic persons, to determine from the demeanour of the person charged whether he is subnormal or abnormal. That should not be nearly sufficient to give the jury an excuse for bringing in a verdict of this description. The case should be backed up by the evidence of persons who are trained in psychology to be able to give intelligent reasons for saying, by tests or in some other way, that the person is undoubtedly subnormal, and in the circumstances should not have to accept that measure of responsibility that persons of ordinary normal intelligence would have to accept.

Mr. Mann: Suppose counsel for the defence elicited from the witnesses that the individual, as a youth, had been an inmate of an institution, say the Seaforth Home.

The MINISTER FOR JUSTICE: That opens up another question. Whilst medical science itself is of considerable age, the science of psychology is comparatively new.

Hon. Sir James Mitchell: It is a question of the abolition of capital punishment.

The MINISTER FOR JUSTICE: Only in certain circumstances.

Hon. Sir James Mitchell: It would cover everyone.

The MINISTER FOR JUSTICE: No. I will show that it would not do so in any case. The hon. member referred to the Seaforth Home. So far as psychology is concerned, diseases of the mind, which are treated by psychologists and psychiatrists, can be determined on certain methods of training or treatment, and the treatment can go on so that the patient ultimately reaches a greater degree of normality than would otherwise be the case. A medical man can diagnose a disease, or something that is wrong with certain persons, and give certain treatment to that person. In just the same way the psychologist and

psychiatrist, who are experts in their line, can treat persons suffering from mental disorders.

Mr. Mann: You cannot develop a mind beyond its limit.

The MINISTER FOR JUSTICE: No, but the expert can ascertain the weakness of that mind, and by directing attention to that which affects that mind can bring it nearer normality. The same thing applies to physical defects as to mental defects.

Mr. Mann: You can improve both but not beyond certain limits.

The MINISTER FOR JUSTICE: There are no two backbones alike. People have suffered from curvature of the spine. By direct treatment at the hands of people who understand the business, and have a scientific knowledge to enable them to properly deal with that trouble, this very serious disorder has in many cases been almost entirely alleviated, and after some years the persons treated have become almost normal from the physical point of view.

Mr. Mann: Improved, of course, but never made right.

The MINISTER FOR JUSTICE: It is the same thing in regard to mental deficiency. It has been agreed, notwithstanding the remark of the Minister for Lands who has just said that 90 per cent. of psychology is humbug, that a tremendous advance has been made of recent years in that science. It is now agreed that psychological experts can definitely determine the amount of mental capacity enjoyed by various individuals. The member for Perth a fortnight ago referred to tests of psychological experts in regard to recruits for the United States army.

Hon. Sir James Mitchell: We may have to apply the test to members.

The MINISTER FOR JUSTICE: Probably all would get through that test.

Mr. Marshall: With the exception of one.

The MINISTER FOR JUSTICE: It can be determined just what the mental capacity of various people is, and this has been determined. I saw in a recent issue of the "Industrial and Mining Standard" that certain people were thinking of establishing a college for dealing with industrial psychology. I think it was a University professor who said it could be determined with absolute accuracy what the capacity of the mind of



various individuals was, just as easily and accurately as the shop assistant behind the counter can measure up a yard of cloth. That seems to me to be an extravagant claim, just as much as is the claim of some medical men that without the use of X-rays they can definitely and accurately diagnose what disease a man is suffering from. We know the old adage, that when doctors disagree the patient dies. They are not with infallible accuracy able to diagnose disease, any more than psychologists are able to determine the mental capacity of different people. But they can and do determine comparatively accurately the capacity for intelligence on the part of various individuals. This has been going on all over the world, and has been accepted by persons who have given thought to the subject. It is rather late in the day, therefore, for us to disagree with that.

Hon. Sir James Mitchell: Are you in favour of abolishing capital punishment? That is the point.

The MINISTER FOR JUSTICE: In the circumstances set out in the Bill, where it deals with the mental capacity of people, I say yes. The hon. member could not expect me to quote at length from this particular book.

Hon. W. J. George: Do you not believe in the Mosaic law?

The MINISTER FOR JUSTICE: I may have something to say about that later. The Bill says that the mental history of persons charged with this crime shall be obtained. That would be very difficult to do in a comparatively young country like Australia. The majority of members in this Chamber could not give their own genealogical tree for any great distance back. I do not know that there are very many people in Australia who can go back beyond their own grandparents.

Mr. Richardson: Oh, yes, a long way further back than that.

Hon. Sir James Mitchell: Suppose a man charged with murder came from the Caspian Sea, what then?

The MINISTER FOR JUSTICE: It would hardly be possible to trace his antecedents.

Mr. Mann: No, that provision would be used where the evidence was obtainable.

The MINISTER FOR JUSTICE: Yes, the evidence would be helpful if obtainable, but people who were subnormal would not be in a position to give the necessary informa-

tion as ordinary people would be. The member for West Perth (Mr. Davy) referred to the delays that would take place while inquiries were being made regarding the antecedents of a person charged with murder. I do not think anything is contemplated, such as he suggested.

Hon. Sir James Mitchell: But those concerned would insist upon the inquiries being made.

The MINISTER FOR JUSTICE: Under the provisions of the Criminal Code, unless subnormality amounts to insanity, a man charged with a crime has to accept responsibility. There are three classes of subnormal people. Imbeciles are persons whose mentality is that of a child two years of age. The mentality of idiots is that of a child of about six years. The third class deals with morons who are also referred to as mental defectives and persons who are subnormal. The majority of people coming under the third heading have the mentality of a child up to about 12, and it is impossible to train them beyond that stage. Imbeciles and idiots are dealt with under the Criminal Code, so there is no necessity to refer further to them. Let us consider the position of morons. Science enables us to determine that though an individual has grown to man's estate, he may yet have the mentality of a lad 11 years of age. If it were suggested that we should hang a boy of that age, a thrill of horror would go through the community. People would say it was not reasonable that such a lad, without experience in life, devoid of a knowledge of citizenship or of the duty of one to another, should be seriously considered for a moment as subject to the death penalty.

Mr. Mann: It is not permissible in some countries.

The MINISTER FOR JUSTICE: No. On the other hand, scientists can definitely determine that some adults while not insane, have yet the intellect of a lad of 11 years of age.

Hon. Sir James Mitchell: Are any two brains alike anywhere?

The MINISTER FOR JUSTICE: Perhaps not, but the Leader of the Opposition knows that there are many people, perhaps in his district, of whom it is often said, "He is a bit dopey."

Mr. Mann: Or that he is a shingle short.

The MINISTER FOR JUSTICE: That is another phrase that is often used.

Hon. G. Taylor: I have heard it used in regard to members of Parliament.

The MINISTER FOR JUSTICE: Well, people are not quite right in saying that of members of Parliament! The unfortunate individuals I refer to are not in a mental condition to accept the responsibility of normal citizens. The most important point made by the member for Perth (Mr. Mann) during his speech was that we have these subnormal people in our midst. They can not always be pointed out among the general members of the community. A boy of 11 who is acting in a normal way attracts no attention. He does nothing extraordinary or uncommon. If an adult were to carry on in the same way, he would not attract any great notice, but should such an individual be charged with a crime and it is determined scientifically that his mentality is that of a boy of 11, it seems to me that due consideration should be given to that fact when punishment is under consideration. The most frequent cause of mental subnormality is heredity. In view of the very many instances cited in text-books, we cannot get away from that position. It has been determined that in some families the effect of heredity has been disclosed to the extent of 90 per cent. Thus it will be seen that heredity is a tremendous factor regarding the mentality of some people. Statistics show that 50 per cent. of delinquent children are mentally defective, and that about 25 per cent. of the persons charged with crime are also mentally defective. In these circumstances surely the time has arrived when some discrimination should be shown in favour of people of subnormal mentality. The Government have been giving previous consideration to the position of delinquent children, with the object of preventing them from becoming criminals. We recognise that in order to assist that type of child, a home should be provided where they could receive proper attention and where protection would be afforded not only the child but society as well. They should be saved from the environment that can only mean for them an end in crime.

Hon. Sir James Mitchell: There are two sides to the question.

The MINISTER FOR JUSTICE: Yes. There is this side to it, that unless such persons are detained in a proper home, they will never improve their mental capacity. That is the only way in which they can have some

chance to lead the lives of ordinary citizens. It is necessary that whatever treatment they are to undergo, should be available at a time when it will do them most good.

Mr. Richardson: Prevention is better than cure.

The MINISTER FOR JUSTICE: Quite so. That brings us down to the fact that we want to prevent such individuals being brought into the State. Sterilisation and eugenics have been receiving greater attention during recent years than formerly, and there is no doubt that in the near future some definite steps will be taken along those lines. Dean Inge, who is known in England as "the Gloomy Dean," takes a very pessimistic outlook on the question, for he claims that only mentally defective people are propagating their species to any extent at all.

Mr. Mann: That must always happen.

The MINISTER FOR JUSTICE: Hon. members will agree that birth-control is practised more in the higher classes of society than in the lower classes.

Hon. G. Taylor: Especially in the last 20 years.

Mr. Mann: Statistics prove that.

The MINISTER FOR JUSTICE: And that is why Dean Inge takes such a gloomy view on this question. He says that the people with the least intelligence have the largest families, and that in 200 years' time there will be comparatively few people of high intelligence in the world. Of course, very few agree with that assertion.

Hon. Sir James Mitchell: That has been going on since the days of Rome.

The MINISTER FOR JUSTICE: A recent conference in London discussed the question at great length, and did not support the contentions of Dean Inge. They said that people of tainted stock and subnormal people generally had families only 50 per cent. as large as those of other people. There we have the two distinct views on this question.

Hon. Sir James Mitchell: I have known an awful idiot of a man have a wonderfully clever child.

The MINISTER FOR JUSTICE: That may be. At the same time 60 per cent. of the children of such parents would be subnormal. That fact has been definitely determined.

Hon. Sir James Mitchell: That is only theory.

The MINISTER FOR JUSTICE: The hon. member may say that it is merely theorising, but the fact remains that scientists have disclosed some startling facts as the result of research work. The member for Perth gave remarkable particulars regarding the Jukes family.

Mr. Mann: And I gave particulars regarding a local family as well.

Mr. Thomson: It would have been better had the Jukes family been wiped out at the inception.

The MINISTER FOR JUSTICE: Possibly so. If the question of sterilisation had been considered and applied to their forefathers, it might have been better then. There is a general tendency among such societies to agree that something of the sort must be done if we are to preserve the high intellectuality of the human race. As to criminology, there is a difference between sloppy sentimentality and the Mosaic law.

Hon. W. J. George: It was a very clear, common-sense law.

The MINISTER FOR JUSTICE: It was very clear—an eye for an eye, a tooth for a tooth, and a life for a life.

Mr. Mann: But it was not logical, because one tooth may be better than another!

Hon. W. J. George: But there is only one life.

The MINISTER FOR JUSTICE: Nineteen centuries ago the Christian ideal of forgiveness was introduced, with the theory of turning the other cheek.

Hon. W. J. George: I would like to see you turn the other cheek.

The MINISTER FOR JUSTICE: Notwithstanding nineteen centuries of Christian propaganda, the world has not reached the stage of even partially accepting that theory. Most people term themselves Christians but when it comes to a question of forgiveness or of turning the other cheek, it becomes a matter of preaching, not of practise.

Hon. Sir James Mitchell: They hate each other to the glory of God!

Hon. W. J. George: What is your first impulse if you are struck. Don't you give him the other fist?

The MINISTER FOR JUSTICE: What determines everything is the first law of Nature.

Hon. W. J. George: Yes; self-preservation.

The MINISTER FOR JUSTICE: That is so, and if you get knocked, you retaliate. Although we have had the doctrine before

us for nineteen centuries, the world has not yet reached the stage at which forgiveness follows a blow.

Mr. Panton: There was not much of that to be seen in 1914.

The MINISTER FOR JUSTICE: I think in almost every country laws exist for the punishment of people or to reform people so that they will not again commit serious offences. There should, however, be a means between the two extremes to deal with abnormal people, those people who have not that capacity to think and to accept responsibility. We know that there are many people who are subnormal. The member for West Perth said that a man might commit a robbery and in order to escape being found out he would probably follow up that robbery by murdering the person he robbed, or even murdering a witness of the robbery.

Mr. Mann: He gave only one side of the illustration.

The MINISTER FOR JUSTICE: There is another side, I know, but the Bill does not raise the question of capital punishment in normal cases; it is only when it is possible to prove that a person committing a serious crime was subnormal that the Bill comes into it at all.

Hon. G. Taylor: Like the First Offenders' Act; at the beginning it was intended to apply to juveniles and now it applies to offenders of all ages.

The MINISTER FOR JUSTICE: If the hon. member occupied my position he would see that that was not so. Many first offenders are sent to prison, so much so that the First Offenders Act in respect to criminal offences seems to be a dead letter. The member for Perth told us that all criminals were not normal. I would not go so far as to say that. They may not be in a normal state of mind at the time they commit a murder, but that does not say their mental capacity is subnormal. Of course when an ordinary murder is committed, the offender is generally regarded as not being in a normal state of mind, but then there has to be a decision given by experts to determine whether the subnormality was sufficient to absolve from responsibility the person who committed the crime.

Hon. Sir James Mitchell: That is the case to-day where there is any doubt about a man's sanity.

The MINISTER FOR JUSTICE: Yes. As I have already said, where an individual

can be definitely proved to have been insane there is no more about it.

Hon. Sir James Mitchell: Not necessarily.

The MINISTER FOR JUSTICE: A man may have been proved to have been an imbecile or an idiot. It is important to find out exactly the mental capacity of these people and whether they are normal or otherwise. The Bill does not deal with that aspect at all. If it can be definitely determined that a person committing a crime was subnormal, the principle of the Bill can be brought into play and a decision given. If it is definitely proved that such a person was subnormal, no one would seriously consider inflicting capital punishment.

Hon. W. J. George: Why not sterilise them?

The MINISTER FOR JUSTICE: We know that drunkenness is responsible for an abnormal state, but no one will say that drunkenness is an excuse for crime. Uncontrolled passion is not accepted as sufficient excuse for the crime of murder unless, of course, there be extreme provocation.

Mr. North: Do you think that Rennie's was an abnormal case?

The MINISTER FOR JUSTICE: I have no wish to discuss recent cases because there are other people in that family. I do not know anything about Rennie's mental capacity. There was no law in existence to permit of that determination being arrived at and consequently it was nobody's business. If, however, this Bill becomes law, it will be somebody's business to conduct such an investigation.

Mr. Mann: We do know that his mother was born blind and with a mental affliction.

The MINISTER FOR JUSTICE: At any rate I have no desire to discuss any recent cases. It is sufficient for our purpose, I think, to refer to cases in other countries where the people have no contact with us. As I said, uncontrolled passion is not an excuse for crime. Alienists can determine whether a person is suffering from acute insanity. People suffer from delusions, illusions and hallucinations, and those cases are easily diagnosed and alienists are able to make tests. That is always done. There is another class termed neurotics, people who are temporarily deranged as the result of loss of mental energy through insomnia, worry or complexes by repressed instincts. These people, however, are of a different condition of mind from that possessed by most

people. The mental make-up of people is comparable to the physical ailments of people. There are men who are undoubtedly mad at a certain time, but under treatment they have entirely recovered. Some people who have gone over the border line of sanity at one period of their lives, have absolutely recovered. Such people have been known to commit the crime of murder and after trial have not been convicted because it has been demonstrated that at the time of the commission of the Act they were insane.

Hon. G. Taylor: At football matches sometimes the spectators go to such extremes as to lead you to believe that they are not all right.

The MINISTER FOR JUSTICE: Even there sometimes people are not in a normal state of mind and they seem to glory in the fact that someone is getting badly bumped about. Speaking generally to the Bill, I am not opposed to it; I am prepared to support it, but I consider that the testimony of some of our experts in the Government service should be obtained before we pass the measure into law. For instance, the views of Dr. Bentley might be secured regarding the principles of the Bill. We have also in the State a psychologist in the person of Miss Stoneman. This lady, who has been in Western Australia for two years, has devoted a great deal of time to the study of the question. Her views also should be sought respecting the principles outlined in the Bill. I think she should be able to give interesting information to members.

Hon. G. Taylor: You need not look at me.

The MINISTER FOR JUSTICE: I was rather looking at the Leader of the Opposition who has expressed grave doubts regarding the capacity of people who have studied the question. There is no doubt that experts are able by tests to determine the abnormality or sub-normality of different persons. I have not had the opportunity to discuss the matter with the experts, but that no doubt can be done before the Bill becomes law. It would be a good thing if the Bill were discussed week by week for several weeks, for in that way some interest in it would be created. It requires a great deal of consideration. We need information on the subject from all sources and the more information we can get the more likely are we to arrive at a proper decision. The opinions I have expressed are entirely my own. I have given some thought to psychology; I have

read something about it, but the more one reads on the subject the more one is impressed with what has been done and what is being done. My attitude on the Bill has no reference whatever to the Government viewpoint. This is certainly not a party measure, and the Bill should by no means be dealt with on party lines. We ought to get down to real tinctacks on it, obtain all the information available, and then deal with the measure in the light of reform. I hold strongly that a jury should not be called upon to come to a decision without first hearing expert evidence.

Mr. Thomson: That practically applies to this House. Members of this House also should have expert advice before being asked to arrive at a decision on the Bill.

The MINISTER FOR JUSTICE: Our decision will be only as to the nature of the law. I do not know whether members of this House generally have given any degree of study to psychology. That science has come very much to the front in recent years. It is not a subject one takes in the ordinary school curriculum. Unless one has a natural bent towards the study of psychology, one is not likely to have given it much attention. The probabilities are that comparatively few members of the House have given it much thought or study.

Hon. G. Taylor: Some people are natural psychologists.

The MINISTER FOR JUSTICE: That is so. I do not think the members of a jury are likely to be sufficiently trained in the science of psychology to determine such a question off their own bat. Experts should give evidence regarding mental capacity, and then the jury, after to some extent studying the demeanour of the accused and any other relevant facts, could come to a decision. They should, however, have definite evidence as to mentality from persons qualified to give such evidence.

Hon. Sir James Mitchell: Might not that be considered as applying to all crime? Might it not be asked whether a man should be imprisoned if not responsible?

The MINISTER FOR JUSTICE: That is rather a different matter. However, if people charged with offences of this kind can prove that they were subnormal to the point of irresponsibility at the time the crime was committed, still they should be placed under restraint.

Hon. Sir James Mitchell: That is another matter.

The MINISTER FOR JUSTICE: Yes. In the case of ordinary crime, the person is placed under restraint; but in the case of murder the guilty person is not merely placed under restraint but has his life taken from him. The crime of murder, attended by capital punishment, is in a different category from ordinary crime, to which capital punishment does not apply.

Hon. G. Taylor: Why should a man's liberty be taken from him if he is not sane?

The MINISTER FOR JUSTICE: If a man is in such a condition of subnormality that he commits crime, he should be placed under restraint, either in an asylum or in an institution for defectives. However, as regards the subnormal offender, the law as it stands says to him, "We will not give any consideration to the fact of your subnormality, but will make you take the full measure of responsibility applying to an absolutely normal person who commits the crime of murder." We must see that subnormal people who commit crimes are placed in such a situation that at all events they cannot repeat their crimes.

Hon. G. Taylor: The surest way of achieving that is to put them to death.

The MINISTER FOR JUSTICE: That view is very old-fashioned.

Mr. Mann: On that argument one should get rid of half the patients at Claremont.

The MINISTER FOR JUSTICE: During the time I have taken up on this Bill I have endeavoured to keep to its principles and not wander away to talk about capital punishment, the necessity for it, and whether it should be abolished.

Mr. Thomson: Still, the Bill means abolition.

The MINISTER FOR JUSTICE: No, it only means the abolition of capital punishment in the case of persons undoubtedly subnormal. That is the whole principle of the Bill.

Mr. Thomson: And that is the law.

The MINISTER FOR JUSTICE: No.

Mr. Thomson: Yes, if a man is proved to be subnormal.

Mr. Sampson: It is not in the Criminal Code, but it is practised.

The MINISTER FOR JUSTICE: Who is to decide whether a man is subnormal, and how far his subnormality extends? If his subnormality is not apparent to the ordinary lay mind, no notice is taken of it.

Mr. Thomson: If it is not apparent to the lay mind at present, how is it to become apparent through the Bill?

The MINISTER FOR JUSTICE: Experts would be called in, and by series of tests they would demonstrate definitely the accused person's mental capacity. The member for Perth (Mr. Mann) gave the history of our present definition of insanity, which he said was laid down by some English judges as far back as the year 1843. He added that there has been no variation in the definition since. Notwithstanding all the advances in the science of psychology, that definition of nearly 100 years ago remains unaltered. The Criminal Code says that a man must be absolutely insane in order to be acquitted on the ground of insanity. But what about the hundreds of people on the border line, or in the border land?

Mr. North: People not officially insane.

The MINISTER FOR JUSTICE: The alienist would not say such people were insane, because they have some measure of sanity.

Hon. Sir James Mitchell: Is a man sane only when he does right?

The MINISTER FOR JUSTICE: When sane men do wrong, they must take the full responsibility of their actions. However, this Bill deals with people not dealt with in the Criminal Code at all. The member for Perth expressed the opinion that all criminals are subnormal—a view with which I do not agree at all.

Hon. G. Taylor: No. That is all moonshine.

The MINISTER FOR JUSTICE: The member for Perth said almost every murderer was subnormal.

Mr. Mann: I said, not normal.

The MINISTER FOR JUSTICE: The hon. member said murderers were sufficiently sub-normal to come within the scope of the Bill. I entirely disagree with that opinion, but I do maintain that there are experts who can determine the measure of sub-normality.

Hon. G. Taylor: The sub-normality ought to be determined before the murder takes place.

The MINISTER FOR JUSTICE: If people are subnormal to such an extent that they may commit murder, they are apprehended and placed under restraint. I have seen, in the streets of Perth people

whose very appearance denoted they were not of a high order of intelligence. One sees such people walking about the streets.

Hon. W. J. George: Why allow that class to go on breeding?

The MINISTER FOR JUSTICE: That interjection raises an issue not contemplated by the Bill, and I shall not pursue it. Perhaps the hon. member interjecting will join a eugenic society, or propose something in the nature of sterilisation.

Hon. W. J. George: Sterilisation should have been introduced hundreds of years ago.

The MINISTER FOR JUSTICE: We have not yet a sufficient volume of public opinion behind any agitation for eugenics or sterilisation to ensure legislation on those subjects. The fetish of personal liberty may even ruin humanity's future. Eugenic societies send out missionaries, and these have done a great deal of propaganda work; but as yet no country in the world has been induced to legislate on the subject. Notwithstanding that the hon. member, as the result of his vast experience and knowledge, has determined that such a thing should exist, he cannot find a sufficient number of people sharing his opinion in any one country to ensure the passing of a law to that effect.

Hon. W. J. George: That is the curious feature. We breed from our best animals, and yet the human being, the highest of all, we allow to breed promiscuously.

The MINISTER FOR JUSTICE: I shall not enter on a discussion of eugenics or sterilisation or methods of preventing the propagation of the unfit.

Hon. W. J. George: But you must agree that I am right.

The MINISTER FOR JUSTICE: Yes, I will agree to that.

Hon. W. J. George: Now you are sensible.

The MINISTER FOR JUSTICE: I do not think my agreement with him will get the hon. member much further. If he succeeds in capturing a great mass of public opinion, he may be able to influence legislation. However, during the last 10 minutes I have been discussing something entirely outside the purview of the Bill. I set out determined to deal with that matter only.

Hon. Sir James Mitchell: Only during the last 10 minutes have you been dealing with the Bill.

The MINISTER FOR JUSTICE: That is not my view. The question before the House refers to people charged with capital offences, and the Bill declares that there should be a determination made regarding their mental capacity, and that if they are found to be definitely subnormal the jury should have a right to find so and that then the last penalty of the law should not be exacted in the case of such person. I will not go any further. I support the Bill.

*Sitting suspended from 6.15 to 7.30 p.m.*

MR. BROWN (Pingelly) [7.30]: I listened carefully to the speech of the member for Perth (Mr. Mann) when he introduced the Bill. I cannot support him. I admired the excellent manner in which he placed the Bill before members, and the trouble he went to to furnish evidence to us. He quoted various authorities on criminology, but, in my opinion, he looked in only one direction. It was, towards the ultimate goal of abolition of capital punishment. If the Bill be agreed to, it will complicate the position and mix things to such an extent that no jury dealing with a murder charge will know where they stand. The member for Perth carried his arguments back to the Creation. He quoted Adam and Eve, who, he said, had two sons. Cain and Abel. Cain slew Abel and there was only Cain left. Had Cain been hanged, I do not know where we would all be!

The Premier: That is why you should be in favour of the abolition of capital punishment.

Mr. BROWN: It amounts to this. that we are all descendants of Cain, and, therefore, are the descendants of a murderer. If that be so, it perhaps explains why we have murderers in our midst to-day. I was impressed by the speeches of two lawyers in the House, the member for West Perth (Mr. Davy) and the member for Claremont (Mr. North). I always look upon speeches delivered by lawyers with a great deal of suspicion. We know lawyers can construe things in whichever way they like. In fact, the member for Claremont said that he admired the speech of the member for West Perth, but pointed out that he could have made an equally good speech in favour of the Bill instead of against it. I believe those two members spoke from the dictates of their hearts—

The Premier: On this occasion.

Mr. BROWN: I believe that, because they were not speaking in a court of law. They were not defending some person against some charge. They realised that they were speaking about a Bill to amend our existing criminal law. What is wrong with the Criminal Code so far as it relates to capital crimes? I maintain every criminal is given a fair deal. We have trial by jury, and it is the duty of a jury to decide whether a person is guilty or not.

Hon. Sir James Mitchell: It is a rotten system.

Mr. BROWN: A lawyer who is defending a person always looks for some loophole. If the case is governed by circumstantial evidence, he will do his utmost to find some loophole. If the evidence is clear against his client, the lawyer has only two defences to fall back upon. He must claim either that it was an accident, or that the prisoner was insane. Every lawyer will try to ascertain whether insanity had made its appearance in his client's family at some time or other. I mention trial by jury, because I consider that every prisoner will receive justice under the British system.

The Premier: Sometimes they get more than a fair deal.

Mr. BROWN: In civil cases it is recognised as advisable to have a special jury comprising men who understand something about the subject involved. I understand that in criminal cases, and more particularly where murder charges are concerned, no particular qualifications are necessary for jurymen. Whatever occupation a jurymen may follow, the jury as a whole are regarded as infallible. Then again counsel have the right of challenge. A lawyer defending a person charged with murder will scrutinise the physiognomy of each jurymen. If a man is hard featured, the lawyer will challenge him. If he is a soft-looking sort of chap, the lawyer says, "That is the man for me." When a case is going against him, the lawyer will plead pathetically and talk about the sweetheart, the wife, or the mother awaiting anxiously the result of the trial. If there is any possibility of leniency being shown towards an accused person, a jury will always adopt that course. Take the detective who arrests a man charged with a capital offence. The officer may have considerable trouble in sheeting home the charge. When in the wit-

ness box. he will leave no stone unturned to show that the accused person is guilty. Then again if a prisoner has no means, the Crown will always supply him with counsel for his defence.

Mr. Mann: Very cheap and inferior as a rule.

Hon. G. Taylor: Yes, very inferior.

Mr. BROWN: At any rate, if the prisoner's friends have no money the Crown will always make a lawyer's services available.

Mr. Mann: In some instances prisoners can conduct their defence better themselves, without the aid of such lawyers.

Mr. BROWN: That proves that no insanity can be urged respecting those prisoners.

The Premier: No mental deficiency there.

Mr. BROWN: The duty of the Crown Prosecutor is to adduce evidence to show that the prisoner is guilty, while it is for the prisoner's counsel to find some loop-hole that will enable a verdict of not guilty to be returned. I will give some real instances to show what has happened. I will not mention any names, but just say what happened. I will mention several cases to prove that the persons concerned were decidedly not insane. Suppose two or three men are doing something illegal. They go into the bush and take a gun with them. They do not think they are going to commit murder or any illegal action, but they simply have the gun with them for their protection. All at once they find themselves surrounded by police. While the officers are some distance off, the men shoot them. Perhaps that is not murder in the first degree, but it is murder. There is no question of insanity about the persons concerned. They took the gun to defend themselves and, if necessary, intended to use it. In such circumstances those men should pay the extreme penalty of the law. Police officers are human beings. It is their duty to defend us, for they are the guardians of the law and they should be protected. If men, for the sake of little worldly gain, will deliberately shoot others, they should pay the extreme penalty of the law. By no stretch of imagination can such men be said to be insane. Yet if we amend the Criminal Code as the member for Perth suggests, what will the lawyers do? They will look round for some sign of insanity in the accused men's families, and if they can find some such evidence, juries will have no alternative but to bring in a verdict of man-

slaughter or, at any rate, a strong recommendation to mercy. It may be said that in speaking thus, I am displaying no charity and no humanity. I am one of those who believe in the old law of an eye for an eye and a tooth for a tooth. That is a hard thing to say, but protection must be afforded the community. We have young girls and innocent people who sometimes have to travel long distances. They must be protected from villains such as the men I have been referring to. If there is no legal deterrent and such men know that they will not have to pay the extreme penalty, they will be prepared to accept the small risk and go on with the crime. Take another instance. A man planned to stick up a bank. He did not intend to commit murder, but he took a revolver with him. He waited for a suitable opportunity to enter the bank, but he was met with resistance at the hands of the officials. He realised that he would have to defend himself if he wished to get any cash and he did not hesitate to shoot the officials. That man was guilty of murder. It was premeditated. He intended to stick up the bank and he had a revolver for no other purpose than to defend himself.

Mr. Withers: That was self-defence, not premeditation.

The Premier: What else could the man do when he was attacked!

Mr. BROWN: He was after the money.

Mr. Sleeman: But you said the men who went in the bush did not display premeditation.

Mr. BROWN: The crimes I have referred to were premeditated and they were not the acts of insane men. I believe the member for Perth knows a great deal more about criminology than I do, but I guarantee he will acknowledge that many of the men charged with murder have put him at his wits' end to sheet the charges home to them. There was no insanity where those men were concerned. Then see how juries adopt a merciful view! I have in mind a case where a man was shot in a ballroom. A young woman was jealous because the man was paying attention to another young woman. She left the ballroom, got her revolver, returned to the ballroom, and shot the man.

Mr. Withers: Do you think she was normal?

Mr. BROWN: Most decidedly she was. There was no getting away from it.

Mr. Mann: Did you know the lady?



Mr. BROWN: I said I would not mention any names.

Mr. Mann: If you knew the lady, you would not allege that she was normal.

Mr. BROWN: A tenderhearted jury, after counsel for the defence had put up a strong plea on behalf of the girl, brought in a verdict of not guilty! They did not bring in even a verdict of justifiable homicide!

The Premier: How can you say she was not mentally affected? Do you know the circumstances?

Mr. BROWN: Perhaps not all of them.

Mr. Mann: If you knew the lady, you would not allege that she was not mentally deficient.

Mr. BROWN: I read the evidence and I do not think it was alleged for one moment that she was mentally afflicted.

Mr. Richardson: She was quite normal afterwards.

Mr. Mann: She was never normal in her life.

Mr. BROWN: No man wishes to be on a jury to deal with a murder case and if there is any chance of clemency, a jury will always extend that clemency. For that reason, in a trial by jury, there is no danger that any insane person will have to pay the extreme penalty of the law. On the definition of insanity our medical authorities, eminent writers, all hold different opinions. How, then, is the ordinary layman to say what insanity really is? Taylor in his "Principles of Medical Jurisprudence" says—

In some trials there has been a tendency to rely upon hereditary predisposition as almost the sole proof of insanity in the criminal. In the case of Christiana Edmunds, convicted of the crime of poisoning on an extensive scale, no evidence of intellectual insanity or of homicidal impulse could be found. There was a motive, an endeavour to fix the crime upon others, great skill in its perpetration, concealment with a full knowledge of the consequences of the act and of the punishment attached to it, and an endeavour to avoid this punishment by a false plea of pregnancy. In short, the conduct of the woman throughout was that of a sane criminal. The jury found her guilty; but in consequence of proof furnished that many members of her family had suffered insanity in some form, it was supposed that there might be some latent degree of insanity in her case, not discoverable by the ordinary methods of examination. This led to the commutation of her sentence.

Mr. Mann: Would you agree with that decision?

Mr. BROWN: No, certainly not. The writer says there were no signs of insanity.

Mr. Mann: But other members of her family were insane.

Mr. BROWN: She was not.

Mr. Mann: How do you know?

Mr. BROWN: If we were to look at it that way, the majority of us would be in the lunatic asylum. Here is another instance—

In the case of Arthur O'Connor, who made an attempt on the life of the Queen in 1872, hereditary taint was one of the strongest points put forward in the defence, but it failed to satisfy the court, and the prisoner was convicted. In the opinion of Tuke, this youth was so far insane as to render him irresponsible for the daring act. This kind of evidence has been frequently rejected in other cases. Opinions vary very materially as to the degree of weight to be attached to family history in considering the possibility of a criminal being insane; but all are agreed that if it be the only element of suspicion in the case it is an extremely weak piece of evidence. It would be a most dangerous doctrine to consider a criminal insane because some of his relatives had shown instability of mind. It is most necessary to prove also some insanity in the personal history. Nevertheless attempts are frequently made to get a criminal off on this ground alone.

That is exactly what would happen if these amendments were put into our Criminal Code. Any counsel defending a prisoner would work for his life on these amendments. Another writer says—

A late writer on the subject defines insanity as being a manifestation of disease of the brain characterised by a general or partial derangement of one or more faculties of the mind, and in which while consciousness is not abolished mental freedom is perverted, weakened, or destroyed.

On the subject of delusions one writer says—

If delusions were a test of insanity, one-half the world would be trying to put the other half into the lunatic asylum.

A man with delusions gets a certain fixed idea in his mind, but nevertheless he is far from being insane. Then there are the paranoics. Medical testimony has proved that a paranoic has no disorder of the mind. Yet many paranoics have been confined in the asylum for the whole of their lives. A paranoic is mad on only one point.

The Premier: But surely that is a disorder of the mind!

Mr. BROWN: This writer says no. Coming to imbeciles and idiots, we find that an idiot rarely commits murder, for he has not the brain power to plan the deed. Usually he is a harmless imbecile. It is possible that he has inherited his complaint. Most of our medical men say that many of our diseases

are not inherited. At one time we were led to believe that tuberculosis was inherited, that if the parents were consumptive the children also would be consumptive. But medical science has proved that if a child be taken away from the risk of infection, he may grow up to be perfectly normal and healthy. One writer says that very often the cause of insanity is intemperance, or, alternatively, marriage with near relatives. Certainly strong intoxicating drink has a lot to do with insanity. Frequently crimes are committed when the criminal is under the influence of strong liquor. Inter-marrying also leads to insanity. Our law provides that first cousins may marry, but medical testimony says it is not desirable, and that possibly children will show an idiotic strain. If we could pass a law forbidding the marriage of near relatives we should be doing a lot of good for mankind. Some writers have said that imbeciles or idiots are usually sterile, but I have here a writer who says it is possible for an insane person to have sane progeny. So we see that insanity is not always inherited. It is well known that a wise man sometimes has a very foolish child, and that, on the other hand, a dull, stupid man may be blessed with a bright child. The hon. member, when moving the second reading, declared that nearly every criminal is insane. I cannot agree with that.

Mr. Mann: Not insane; I said, not normal.

Mr. BROWN: Under the Bill, if it can be proved to the jury that the accused was not normal, the jury would have no alternative to finding him not guilty. The hon. member would abolish capital punishment. He says it is no deterrent to crime, but I say that it is. For every offence in the Criminal Code there is provided a penalty. Why did we put those penalties there, but as a deterrent?

Mr. Mann: Do you believe in revenge?

Mr. BROWN. I say the law must be vindicated. In my own district a man who had robbed somebody was reported to be on the road. A policeman went after him, but the robber took out a revolver and shot him.

The Premier: Well, we have capital punishment. If it is a deterrent, how is it that it did not protect the policeman?

Mr. BROWN: I say that man was normal. He was an old man and he did not care. He took his chance of shooting the policeman and getting away.

The Premier: But the capital punishment did not deter him.

Mr. BROWN: On the other hand, the shooting was not premeditated. The policeman came on the robber unawares, and the shooting was unpremeditated.

The Premier: But you said a little while ago that a man who sets out on a robbery, and arms himself with a revolver, premeditates murder.

Mr. BROWN: There are degrees of murder. Those other men in the bush did not set out with the intention of shooting the police, but the police came on them and they made up their minds not to be taken.

Mr. Sleeman: When did they make up their minds not to be taken?

Mr. Mann: Capital punishment did not prevent that shooting.

Mr. BROWN: They thought to cover up their crime.

Mr. Mann: Every case you have quoted is in my favour.

The Premier: Yes, every one of them.

Mr. BROWN: I say capital punishment is a deterrent.

Mr. Richardson: Else why have we the penalties?

Mr. BROWN: That is what I say; why have them if they are not a deterrent? If a child does wrong, the father gives him a thrashing, and it is a deterrent to the child. So, too, one can make a dog do certain things, because the dog has been trained and he knows that if he does not do those things he will be punished. I read of a case in Queensland where a man committed a horrible crime. And the remark he made was, "Well, one thing, we have no capital punishment here." In France, where they abolished capital punishment, they found it necessary to reinstate it. In America, one of the most civilised nations of the earth, capital punishment is an institution.

Mr. Mann: Not in every State.

Mr. BROWN: In America two men committed a murder. The evidence was not quite clear. Fresh evidence was adduced and the case went on for seven years. Eventually it was proved beyond doubt that the men were guilty, and so the law had to take its course.

Mr. Mann: Do you approve of that?

Mr. BROWN: Yes.

Mr. Mann: Approve of hanging a man after seven years?

Mr. BROWN: It took seven years to sheet home the crime.

The Premier: I have very little faith in any law that occupies seven years in its process.

Mr. BROWN: Something must be radically wrong. When a period of seven years elapsed, political influence or something else must have been brought to bear. Perhaps there was some strong organisation responsible for it about which we know nothing.

Mr. Mann: You assume everything against and nothing for.

Mr. BROWN: I know of a case in which leniency was extended to a murderer who was sentenced to imprisonment for life. I believe in extending mercy and clemency, but sometimes after a prisoner has been released he has gone elsewhere and committed another murder.

Mr. Marshall: There is one case in which a man was released and committed a second murder in this State.

Mr. BROWN: Well, that is not right.

Mr. Marshall: That man committed two murders and then died a natural death.

Mr. BROWN: Then he was a lucky man.

Mr. Withers: Perhaps other people were lucky in that he died so soon.

Mr. BROWN: Yes. It is not the law that keeps people in order. I believe there is such a thing as religious faith and that if men and women would obey the Ten Commandments there would be no occasion to remind them that they must obey the law of the land.

Mr. Marshall: I bet you have not kept the Ten Commandments throughout your life.

Mr. BROWN: Religion does much to keep people in the proper path.

Mr. Richardson: What would you do with a fellow that did not obey the Ten Commandments?

Mr. BROWN: I do not wish to prolong my remarks. I am as desirous as is any man of extending mercy to a wrong-doer.

The Premier: I should not like to be brought before a court with you on the bench.

Mr. BROWN: Whenever I have sat on the bench I have extended clemency wherever I possibly could. Once it was my unpleasant duty to have to try a man who belonged to one of the most brilliant families in Australia. He was a lawyer, but had sunk so low through drink that he was struck off the

roll of practitioners and was brought before me as a vagabond. I had no alternative to giving him a month's imprisonment. That man was not insane.

Mr. Panton: Did you give him a month in gaol or in hospital?

Mr. BROWN: In gaol, but it was really to enable him to recuperate. He was in a state of delirium tremens and was making himself a general nuisance. When sober he was an intellectual man of great capacity with whom it was treat to converse.

The Premier: And that was the remedy—to send him to gaol!

Mr. BROWN: That man would never have thought of committing a murder.

The Premier: I should not have been surprised had he committed a murder when he came out.

Mr. BROWN: I think the month's imprisonment did him a lot of good, because he has never been seen since.

Hon. G. Taylor: Why? Did you do away with him altogether?

Mr. BROWN: The discussion is not one that should provoke merriment. Parliament is the supreme power in the land and can decide for or against the infliction of capital punishment. That is a very serious matter. Probably I am one of the old fashioned sort that believe in an eye for an eye and a tooth for a tooth.

Mr. Mann: Do you?

Mr. BROWN: Yes, because I believe that if I do wrong I shall be punished. I should be very sorry to think that capital punishment had been abolished. I fail to see that any prisoner does not get fair play. No jury would commit a man for murder if there was any doubt as to his sanity. The jury would give him the benefit of the doubt and add a strong recommendation to mercy.

**HON. SIR JAMES MITCHELL** (Northam) [8.5]: I think we have heard sufficient to justify my suggesting that the Minister might, if he wishes to achieve his object, have the Bill re-drafted, acting on the advice of the specialists available to him. If the Bill goes to the vote no doubt it will be carried, and it would be a great pity to pass it in its present form. I shall certainly vote against it in its present form. I believe in capital punishment; I consider it necessary that we should provide for it. The member for Perth, however, does not go so far as to ask for the abolition of capital punishment, though if the Bill be passed it

is pretty certain that no one will ever be hanged. If we are to continue the system of trial by jury, it is sufficient for a jury to find an accused person guilty or not guilty. It should be for someone else to say whether there are extenuating circumstances that might eventually result in his being released. Nowadays very few men are hanged that do not thoroughly deserve it because every sentence is reviewed before being confirmed. The Premier knows how carefully the death sentence is reviewed. If there is any suspicion of mental trouble the convicted man is subject to scrutiny by medical officials. Everyone is most anxious to find an excuse if there be a legitimate excuse. If we are going to alter the law, we should exercise the greatest possible care, and I do not think we shall be exercising proper care if we pass the Bill as it stands. I say that especially for the benefit of those who believe in the abolition of capital punishment. There is no need to deal with the matter hurriedly. While I was in power I was too often faced with the responsibility of saying whether a man should be hanged. I believe in capital punishment and I believe that the law should be carried out by any Government. I cannot see how any Government could escape its responsibility to give effect to the law of the land. If there be a majority who are of opinion that we should alter the law, let us exercise due care. Let us do it on the best advice available to the Government. The Minister has told us there are some officials in the department who can give good advice and whose advice he has not so far been able to obtain. Let him get that advice and then re-draft the Bill or bring down a fresh one to attain the object that so many members desire. It would be a pity if that were not done. We ought to show mercy so far as we are justified in doing it. I am certain there are people in prison to-day, young people and particularly first offenders, who might well be released.

Mr. Mann: There was a case in the Supreme Court last week. A man was tried for an offence for which he was liable to 14 years' imprisonment, and the Government Psychologist proved that the man had only the mentality of a boy of nine.

Hon. Sir JAMES MITCHELL: I do not know that I was much impressed by the evidence that official gave. There are offenders for crimes other than that of mur-

der who might well be released. I refer to first offenders, some of whom have received comparatively long sentences. No good can result from keeping them in prison. The mere awarding of the sentence in itself was sufficient punishment, but we leave them in gaol and say nothing about them. There have always been cases of that description and there always will be. I should like the Minister to investigate cases of that kind.

The Minister for Justice: I do not want to be made a court of appeal.

Hon. Sir JAMES MITCHELL: I hope the Minister will not shirk the responsibility of doing it.

The Minister for Justice: The responsibility has been placed by Parliament on the courts.

Hon. Sir JAMES MITCHELL: That is so, but the Crown is also permitted to determine whether a convicted person should be detained or not. When members are so anxious to protect people who have been convicted of murder, they might well go further and see what can be done for those who have been imprisoned for minor offences. Some years ago men were hanged for comparatively trivial offences. At one time the law provided that a man who stole an ox, a horse, a sheep or a goat must be hanged. I should like to point out how necessary it is to be careful when amending the law. When the demand for the abolition of capital punishment for trivial offences was conceded, it was intended to exclude the offence of stealing animals, but by an oversight the goat was not removed from the schedule, with the result that a man was tried for stealing a goat and the court had no option to passing sentence of death. That occurred after the law had been amended. Therefore we should be careful before we alter our law. It is of no use to expect to find the mental equipment of each individual precisely the same. I suppose no two persons are equal mentally and neither are they actuated by similar motives. I cannot see that any good will come from discussing the Bill further. I hope the Minister will agree with me that it needs to be re-drafted. I do not think anyone would agree that juries should have anything more to do with cases than to find a man guilty or not guilty. Some other authority should deal with the questions raised in the Bill we are now considering.

Mr. Mann: It is the function of a jury to say whether an accused person is sane or not.

Hon. Sir JAMES MITCHELL: I do not think it is. A jury of course can bring in a recommendation to mercy. If members seriously contemplate placing on the statute book a law of this kind, they should consider it well and see that the proper authority to consider the evidence of mentality or sanity undertakes that responsibility. I think everyone will agree that is right. The hon. member who has just spoken assured us that trial by jury is not very satisfactory. We ought not to rely too much on juries. In any event, we might feel thankful to Mr. Whitbread, or whoever it is that is responsible for the non-publication of the newspapers at this moment, that this debate is not being published. I hope it will not be necessary to discuss this matter at any great length. Apparently the Minister does not intend to oppose the Bill.

Mr. Mann: He is supporting it.

Hon. Sir JAMES MITCHELL: Before he allows it to pass I hope he will have the clauses redrafted, and put into better form. It would be wrong to allow the Bill to become law in its present form. I believe in capital punishment. There may be certain circumstances to consider in connection with it. I am not going to vote for the Bill in its present form. It would be wrong to ask the House to vote upon it now. One can understand the member for Perth presenting such a Bill. He came to me with a deputation some four years ago, after a crime had been committed and the murderer was about to be hanged. He led a large deputation protesting against capital punishment. I told the people at the deputation that I believed in capital punishment, and that if they wanted the law altered they should endeavour to secure an amendment of it. They could not effect any amendment to the law in time to save the man who was under sentence, but they could ask Parliament to consider an amendment to the Act. I believe that was the first suggestion that the Act should be amended. The Government must carry out the law as they find it on the statute-book. It is their duty to do so. If the House expects them to do otherwise, it is a foolish House. If members desire to abolish capital punishment, they should not agree

to its being done under this Bill. I hope the Minister will agree, since he is going to support the Bill, to have it redrafted.

The Minister for Justice: I said I would support it on my own responsibility. I do not accept any responsibility for the Government or anyone else.

Hon. Sir JAMES MITCHELL: The Minister has enough to answer for without answering for his colleagues. I appeal to him in this matter. He is charged with a certain amount of responsibility.

The Minister for Justice: I have given the House the benefit of whatever I know about it. Members can make up their own minds.

Hon. Sir JAMES MITCHELL: If the thing has to be done, this is not the best that can be done. It is not the best way to carry out what it is desired to accomplish, and the Minister knows it. It is his responsibility. I cannot see how he can object to improving the Bill. The member for Perth has no right to object to that being done. It would not be much use objecting if the Minister agreed that the matter should be adjourned so that it might receive further consideration.

Mr. Mann: That is a good way of shelving the proposition.

Hon. Sir JAMES MITCHELL: We should not in this casual fashion place such a proposal upon the statute-book. It would be a scandal to do so. The Minister did say that something better could be done, and that he had not time in which to consult the officials of the department who are capable of giving advice. It will be the Minister's trouble if a crime is committed. He must face his responsibility. When it comes to a question of administering the law, the trouble will be his. If he has the law altered in this fashion I pity him. I hope no crime will be committed to-night or to-morrow. No objection can be raised to the Minister delaying the matter and giving it further consideration.

On motion by Mr. Marshall, debate adjourned.

## **BILL—ELECTORAL ACT AMENDMENT.**

*In Committee.*

Resumed from the 1st September; Mr. Lutey in the Chair; the Minister for Justice in charge of the Bill.

Clause 9—agreed to.

Clause 10—Rolls for district and subdivisions:

Hon. Sir JAMES MITCHELL: What does the Minister mean by the words "surname, christian, or other names"?

The Minister for Justice: That means the names of electors. No explanation is required. It is also intended to cover hyphenated names.

Hon. Sir JAMES MITCHELL: The Bill also provides for a separate roll for each subdivision of a district. In subclause 5 it says there may be a separate roll for any district as a whole for the purpose of elections for the Assembly.

The MINISTER FOR JUSTICE: Owing to the boundaries there may be two or three subdivisions. In a place like Leederville there would probably be three subdivisions. Then there would probably be also three supplementary rolls. With six rolls to handle one can imagine the chaos the officials would find themselves in at election time. For convenience at elections we may amalgamate all these rolls and save this chaos and delay. Portion of Leederville is in the division of Perth, another is in the division of Fremantle, and a small portion is in the Kalgoorlie Federal electorate. The hon. member can, therefore, see the difficulty that would be created if the rolls were not amalgamated.

Hon. Sir James Mitchell: It would only be a subdivision of our own district?

The MINISTER FOR JUSTICE: That is so. All six subdivisions can be amalgamated for convenience at election time. That is particularly necessary in the case of electorates containing a large number of electors.

Hon. Sir JAMES MITCHELL: This is left to the sweet will of the Minister. We had enough of Ministers at the last elections. If there are rolls for every subdivision, there must be a complete roll. This would be wanted just as much for Fremantle as for Leederville.

The MINISTER FOR JUSTICE: In the Kimberleys there is a Federal subdivision of Derby, Wyndham and Broome. In the Broome electorate there would hardly be one person from either Wyndham or Derby, and it would not be necessary to amalgamate the rolls.

Hon. Sir James Mitchell: Take Kalgoorlie.

The MINISTER FOR JUSTICE: There are no special subdivisions there, for the electorate is wholly within the Federal division. In these circumstances, the boundaries are co-terminous. For the sake of convenience at election time we are printing amalgamated rolls except in places where the Federal divisions coincide with our own.

Hon. Sir JAMES MITCHELL: I do not see why the Minister should have to decide this question, which is obviously one for the Chief Electoral Officer. In the Bill the Minister carefully removes the Chief Electoral Officer from the administration of the Act, and proposes, by various amendments, to do the work himself, either through regulation or through proclamation. The Minister ought to keep as far away as possible from the administration of the Act. He should merely see that the measure is properly administered, and leave it at that.

The Minister for Justice: That has been done.

Hon. Sir JAMES MITCHELL: No, it has not.

Hon. G. Taylor: It can hardly be said after the last general election.

Hon. Sir JAMES MITCHELL: The Minister should not interfere unless the Act is not being properly administered.

The Minister for Justice: In this case the Minister would decide whether the expenditure was necessary. Some electoral officers might be absolute enthusiasts prepared to incur any expense.

Hon. Sir JAMES MITCHELL: They could not spend money without Ministerial approval.

The Minister for Justice: And that question is bound up in the deciding of this matter.

Hon. G. Taylor: The Chief Electoral Officer would hardly indulge in wasteful expenditure.

Hon. Sir JAMES MITCHELL: I view with some alarm the substitution of "Minister" for "Chief Electoral Officer" in all the amendments proposed. The Act, of course, provides for the printing of rolls and supplementary rolls. It would be better to strike out "Minister" and insert "Chief Electoral Officer" in every case. I hope the Minister will agree to that course as regards this clause, at all events.

The Minister for Justice: I very seldom have anything to do with the Electoral Department. I try to stay away from it.

Hon. Sir JAMES MITCHELL: I hope the Minister will continue to stay away from it. The Chief Electoral Officer would decide whether certain action was necessary; and if he did so decide he could go to the Minister for approval of the necessary expenditure.

The MINISTER FOR JUSTICE: The Government decided on the policy of having the joint rolls system. I gave the Parliamentary Draftsman no instruction to insert "Minister" or any other person. The Government simply decided in favour of the principle of amalgamated rolls and the Parliamentary Draftsman was instructed to draft a Bill giving effect to the Government's intentions. If the Bill were amended as desired by the Leader of the Opposition, the Chief Electoral Officer would still have to come to the Minister for authority. I am not in the least concerned whether "Chief Electoral Officer" appears, or "Minister." However, neither the Chief Electoral Officer nor anyone else can print rolls without obtaining authority to print.

Hon. Sir James Mitchell: Do not you think the Chief Electoral Officer should be held responsible in this matter, and not you?

The MINISTER FOR JUSTICE: If the Opposition Leader desires to introduce that kind of thing into the Bill, I am not greatly concerned about it. The result will be absolutely the same whatever wording is adopted. The suggested alteration would make no difference in regard to the printing.

Hon. Sir JAMES MITCHELL: I move an amendment—

That in Subclause 5, line 3, "Minister" be struck out, and "Chief Electoral Officer" inserted in lieu.

The MINISTER FOR MINES: I hope the amendment will not be carried. If the Leader of the Opposition were on this side of the Chamber he certainly would object to the Chief Electoral Officer or any other departmental head having authority to incur expenditure without the Minister's consent.

The Minister for Justice: It could not be done.

The MINISTER FOR MINES: If the amendment is carried, such power will be conferred on the Chief Electoral Officer. That is my only reason for objecting to the amendment.

The Minister for Justice: The Chief Electoral Officer cannot spend money without Ministerial approval.

The MINISTER FOR MINES: I do not know what the Opposition Leader has in his mind.

The Minister for Justice: Neither do I.

Hon. Sir James Mitchell: I will soon tell you.

The MINISTER FOR MINES: I wish the hon. gentleman would do that instead of continually throwing out innuendoes. The hon. gentleman has not yet said anything definite in support of the amendment. The Government must have control of the expenditure of public money in this State.

Hon. Sir JAMES MITCHELL: It is quite enough for the Minister for Mines to speak for himself, without speaking for me. Under Section 26 of the principal Act supplementary rolls must be printed and in the hands of the electoral officer in each district as often as is considered necessary by the Chief Electoral Officer. The Bill substitutes the Minister for the Chief Electoral Officer. The administration of the Electoral Act should be vested in some authority quite apart from other officials, and the Act should be administered in some other way.

The Minister for Justice: By the Chief Justice?

Hon. Sir JAMES MITCHELL: No, not by the Chief Justice. Up to now, the rolls have been printed by the Chief Electoral Officer.

The Minister for Justice: They are printed because the Statute requires that they shall be printed by a certain time.

Hon. Sir James Mitchell: I thought the Minister for Justice was with me regarding my amendment.

Mr. LINDSAY: I am inclined to think some alteration is necessary. In the past there has been something wrong.

The Minister for Justice: That is because the electoral officers have been too independent.

Mr. LINDSAY: I complained about the rolls of my electorate to the Chief Electoral Officer, and he told me he had nothing to do with the matter. Since the election 560 new names have been placed on the Toodyay rolls and 258 struck off. Those things should have been done before the election instead of after. The Toodyay rolls were an absolute scandal.

The Premier: In what way?

Mr. LINDSAY: They contained 1,200 names of non-residents.

The Minister for Justice: There ought to have been prosecutions.

Mr. LINDSAY: Since the election, over 500 names have been put on the rolls, possibly as the result of information I gave as to people off the rolls.

The Premier: The closing of the rolls had been advertised for a month, and those people had every opportunity to get on.

Mr. LINDSAY: It is not right that the Minister should provide money for some electorates, and not for others, to have the rolls put in proper order.

Mr. SAMPSON: On the Swan rolls there are hundreds of names of people who have either left the district or died years ago, though the names of persons who die are generally struck off. If the carrying of the amendment would mean that there would no longer be control of rolls, a great advantage would be achieved; but that is no reflection whatever on the Minister. If an officer is in charge of the Electoral Department, he should surely have the right to say when the rolls should be printed.

The Premier: Sometimes officers in charge of departments are not too brilliant, you know, and sometimes they want instructions. In fact, one sometimes gets damned fools in charge of offices.

Mr. Richardson: Put them out!

Mr. SAMPSON: There was considerable delay in the issue of rolls at the last general election, and that delay made great difficulties for those who were contesting seats. If this will get over the difficulty, it may remove the complaints about the dreadful condition of the rolls.

Amendment put and negatived.

Clause put and passed.

Clause 11—New rolls :

Hon. Sir JAMES MITCHELL: The clause sets out that new rolls shall be prepared when directed by proclamation. What is the object of the proclamation?

The MINISTER FOR JUSTICE: Our legislation provides that rolls shall be printed within a certain time, and subsequently supplementary rolls are issued. Now it is proposed that there shall be a joint roll. Should there be a Federal election, a clean roll will be required and a proclamation will be issued enabling the roll to be printed.

Hon. Sir James Mitchell: But that has nothing to do with us.

The MINISTER FOR JUSTICE: But we will have to bear our share of the expense, because it will be the only roll in existence.

Hon. Sir James Mitchell: Will the roll be printed only when the proclamation is issued?

The MINISTER FOR JUSTICE: No, but it would be ridiculous if the Federal roll were printed and three or four weeks afterwards we had to issue a supplementary roll containing six or seven names.

Hon. Sir James Mitchell: Of course it is necessary at any cost to have decent rolls.

The MINISTER FOR JUSTICE: And we will have them.

Hon. Sir James Mitchell: But it seems ridiculous to require a proclamation before new rolls can be printed.

The MINISTER FOR JUSTICE: It must be remembered that we are adopting the Federal roll, and the ordinary procedure will have to be followed. If we are to have an election and want a clean, up-to-date roll printed, a proclamation will be issued and the roll printed. The Federal roll will be the roll and anyone entitled to be on our roll will be on the Federal roll. This matter will be administered by the Federal authorities and anything we require will be attended to by our State officers.

Hon. Sir James Mitchell: I thought we were going to adopt their roll altogether.

The MINISTER FOR JUSTICE: What will happen will be that the Federal roll will be the basis for the new roll, and anyone entitled to be on the State roll will be transferred to the Federal roll.

Hon. Sir JAMES MITCHELL: Does this mean that the Federal roll will be printed to suit our boundaries? Northam, for instance, is a small part of the Federal Swan electorate. Will there be a roll for Northam included in the Swan roll but separate?

The Minister for Justice: Yes, and that will be the roll you will work on.

Hon. Sir JAMES MITCHELL: Then why do we want to print the roll? As I understand the position the Federal Department will prepare the roll and that will be the roll we will use. There will be only one claim card and one roll.

The Minister for Justice: That is what I have already explained.



Hon. Sir JAMES MITCHELL: Nothing can be done outside that.

The Minister for Justice: Except that we can print our roll, bringing it up to date for a State election.

The Minister for Mines: If we are to have an election, the State has the right to bring the Federal roll up to date. It may be 12 months old.

Hon. Sir JAMES MITCHELL: No, we will not have that right, because the roll will be up to date.

The Minister for Justice: But it will not be printed every day.

Hon. Sir JAMES MITCHELL: Then if an election were to take place a month or two after we had agreed to this arrangement, we would have a roll printed from the Federal roll.

The Minister for Justice: That is the position.

Mr. SAMPSON: Do I understand that rolls will be printed somewhat after the style of the City Council rolls? They have separate rolls for the wards and then a comprehensive roll, with all the names in alphabetical order, for the mayoral election.

The Minister for Justice: There will be no subdivisions in the roll except where they do not coincide with the Federal boundaries.

Mr. SAMPSON: As this matter is to be administered by the Federal authorities, is there any possibility of our electoral officers being dispensed with?

The Minister for Justice: I have already explained all that.

Mr. RICHARDSON: I would like to be clear about the position. The Subiaco electorate has portions of the Fremantle and Perth divisions within its boundaries. Will the rolls prepared by the Commonwealth show distinctly the position regarding Subiaco?

The CHAIRMAN: That question was dealt with under Clause 10.

Mr. RICHARDSON: I do not think it was explained definitely.

The Minister for Justice: Yes, it was.

Hon. Sir JAMES MITCHELL: I hope the Chief Electoral Officer will be told that the compulsory enrolment clauses must be enforced without reference to the Minister. In this State the great majority of those who should be enrolled, have not been prosecuted. The Federal Government makes no bones about prosecution.

The Minister for Justice: And the Federal authorities will have charge of this Act, and they will see to it.

Hon. Sir JAMES MITCHELL: But there are two sets of officers referred to, our own electoral officers and the Federal electoral officers. If the Federal officers enforce compulsory enrolment, that will get over our trouble. Great dissatisfaction was occasioned during the last State general election because certain electorates were canvassed and others were not.

The Premier: If we are to have a satisfactory roll, it must be kept up to date from day to day.

Hon. Sir JAMES MITCHELL: That is so. I hope the Minister will see that the electoral officers responsible for the enforcement of the compulsory enrolment provisions do their duty.

Mr. BROWN: From the standpoint of country members, this is the most unsatisfactory clause in the Bill. Everybody is supposed to be enrolled, but it is not done. Thousands of people in the country districts never read the papers.

The Premier: It is easy to see that.

Mr. Panton: Don't you send out copies of "Hansard"?

Mr. BROWN: No.

Mr. Panton: Then you ought to.

Mr. BROWN: It is astonishing how many people in the country districts are not on the roll. In thickly populated towns a house to house canvass is carried out, but that is impossible in the country. Then there are on every country roll dozens of names that have no right to be there. It is unsatisfactory that the member for the district should have to attend to these things. The police have to call on every householder, and I fail to see why it could not be arranged for the police to place on the roll every person over 21 years of age. The cost would be money well spent. Political parties do a lot of canvassing, but they put on the rolls only the names of those who will support them. It would be much more satisfactory if the police looked to the checking of the rolls.

Clause put and passed.

Clause 12—Additions, etc., to new rolls:

Hon. Sir JAMES MITCHELL: It is here provided that the registrar, upon receipt of a new roll, shall make additions and alterations. Of course he will receive

the new roll from the Federal officials. He himself is a State official.

The Minister for Justice: No.

Hon. Sir JAMES MITCHELL: Oh yes, he is.

The Minister for Justice: He is not.

Hon. G. Taylor: Will the registrar in each district be Federal?

The Minister for Justice: Yes. It is all the responsibility of the Federal Government. They will pay the salaries and control the officers.

Hon. Sir JAMES MITCHELL: Then who will be our registrar?

The Minister for Justice: The returning officer at an election will be a State official. However, this has nothing to do with elections, but only with the rolls.

Hon. Sir JAMES MITCHELL: We are not rescinding our own Act; we are merely amending it. Under our Act the registrar is a State official.

The Minister for Justice: But this part of the Bill will take the place of the corresponding part of the Act.

Mr. Withers: And it will be a great relief to those civil servants who have to carry out the duties of district registrars.

Hon. Sir JAMES MITCHELL: I think this means that the registrar is our own official.

The Minister for Mines: It is to be a Federal roll. How, then, can our officer touch it?

The Minister for Justice: I have said repeatedly that this is a Federal matter, to be controlled by Federal officials.

Hon. Sir JAMES MITCHELL: Under our Act the registrar is a State officer. It is quite possible that the Minister in printing the Bill has confused the two officials. I am quite sure the officer referred to in the clause is a State officer.

The Minister for Justice: He is not a State officer.

Hon. Sir JAMES MITCHELL: Will the Minister inquire about it?

The Minister for Justice: Yes, but I am positive already.

Hon. Sir JAMES MITCHELL: Of course our officials cannot touch the Federal roll. That would not be right. All I want the Minister to do is to inquire as to whether the registrar is our own official.

Clause put and passed.

Clause 13—agreed to.

Clause 14—Printing of rolls:

Hon. Sir JAMES MITCHELL: The Minister takes power here to say whether the rolls shall be printed.

The Minister for Justice: If the Federal officer fails to print the rolls, someone here will have to take the responsibility.

Hon. Sir JAMES MITCHELL: If the Chief Electoral Officer does not do his duty, the Minister can suspend him; but there is no one to suspend the Minister if the Minister does not do his duty. The less the Minister has to do with the control of electoral matters, the better. The Minister knows of deliberate breaches of the Act at the last elections, yet there have been no prosecutions.

The Minister for Justice: I do not know.

Hon. Sir JAMES MITCHELL: Well the Minister ought to know, for I have sent in certain names to the department.

The Minister for Justice: I am quite sure the department carries out its duties, but I have not heard anything of this.

Hon. Sir JAMES MITCHELL: One thing the Minister did was a bit unfair. He canvassed a certain electorate, but refused to canvass others. Of course in some electorates, when things are a bit disturbed, it is necessary to have certain electorates canvassed. There was no such necessity this time. Yet the Minister went far afield canvassing electorate while passing over others.

The Minister for Justice: No; wherever a canvass was made the same procedure was followed as was followed when the hon. member was Premier.

Hon. Sir JAMES MITCHELL: I do not think so.

The Minister for Justice: Well, I had it from the Chief Electoral Officer.

Clause put and passed.

Clause 15—Inspection of rolls:

Mr. SAMPSON: Copies of the roll are to be obtainable at post offices and other places and at a price to be fixed. I know it is not customary to state the price in the measure, but it should be possible for electors to get copies without incurring excessive cost. Has the Minister decided what the charge shall be?

The Minister for Justice: We have the experience of the last 25 years. The Federal Government charge 6d. for a roll, and I suppose it will still be the same.

Mr. SAMPSON: For a divisional roll 2s. 6d. was charged.

The Minister for Justice: But a subdivisional roll costs only 6s.

Clause put and passed.

Clause 16—Officers and others to furnish information:

Hon. Sir JAMES MITCHELL: This is a good clause except that no penalty is provided. I move an amendment—

That the words "Penalty: Ten pounds" be added.

In Clause 23 a penalty of £10 is provided.

The Minister for Justice: This clause merely provides that certain officers shall furnish information for the preparation of the roll.

Hon. Sir JAMES MITCHELL: There should be a penalty, because the information should be made available by the people mentioned.

The Premier: There is no comparison between this clause and Clause 23.

Hon. Sir JAMES MITCHELL: It is far more important than Clause 23.

The Premier: No; Clause 23 deals with an officer who receives a claim and neglects to enrol the claimant.

Hon. Sir JAMES MITCHELL: What is the use of this clause if there is no penalty attached to it? Boardinghouse-keepers and hotelkeepers should be compelled to give the information.

The Minister for Justice: They have to submit returns now.

Hon. Sir JAMES MITCHELL: I adhere to the amendment, which I consider absolutely necessary.

Amendment put and negatived

Mr. SAMPSON: Officers of local authorities, amongst others, are required to furnish information necessary for the preparation, maintenance or revision of rolls. That will represent additional work for local authorities, who already are overworked.

Hon. Sir James Mitchell: They need not furnish the information. There is no penalty.

The Premier: Your leader would fine them for not doing a job when you say they are already overworked.

Mr. SAMPSON: Some consideration should be given to the local authorities before they are called upon to do the work. The Government have cut down the very small subsidy of £300 to £140

Mr. Heron: That does not come under this clause.

Mr. SAMPSON: Yes; the local authorities have to supply certain information. Road board secretaries are continually supplying information to Government departments and additional labour is necessary to carry out the work. That means the ratepayers have to pay for the work, which is unfair to the local authorities. It would not be so bad if the original subsidy were restored, but it seems likely that even the existing subsidy will be abolished.

The MINISTER FOR JUSTICE: Regarding the absence of a penalty mentioned by the Leader of the Opposition, the parent Act states that for any contravention not otherwise provided for the punishment shall be a fine of £50. If certain obligations are cast on officials and they contravene the Act, that penalty would apply.

Hon. Sir James Mitchell: You are not abolishing that provision?

The MINISTER FOR JUSTICE: No.

Hon. Sir JAMES MITCHELL: I am satisfied with the Minister's explanation, so long as people understand they will be under a penalty if they do not furnish the information required.

Clause put and passed.

Clause 17—agreed to.

Clause 18—Claims for enrolment or transfer of enrolment:

Hon. Sir JAMES MITCHELL: Subclause 1 provides that the qualification for enrolment is residence for one month, but Subclause 7 states that the validity of any enrolment shall not be questioned on the ground that the person enrolled has not lived in the district or subdivision for a month. The clause obviously needs some attention.

The MINISTER FOR JUSTICE: I noticed that point and made inquiries about it. Subclause 1 conflicts with the Federal Constitution and in order to overcome it, Subclause 7 has been inserted. The Chief Electoral Officer states—

As Subclause 7 is inconsistent with Subclause 1, it has been ascertained that under the Commonwealth Franchise Act, 1902, now embodied in the Commonwealth Electoral Act, 1918-25, a person, not otherwise disqualified, is entitled to Commonwealth enrolment after six months continuous residence in Australia. Consequently the provision in the Commonwealth Electoral Act for residence of one month in a subdivision, while highly con-

venient and almost essential for administrative purposes, cannot over-ride the Franchise Act provisions.

Hon. Sir James Mitchell: We shall not have the measure at all if we have to include that provision.

The MINISTER FOR JUSTICE: The Chief Electoral Officer continues—

Naturally the residential qualification of one month in a subdivision is, for all practical purposes, always adhered to, and indeed it would be difficult to keep the rolls in some semblance of order unless we had some such provision, and in the experience of the Commonwealth Electoral authorities, the number of such cases is so small as to be practically negligible.

Hon. Sir James Mitchell: Under this you could stuff any roll you liked quite legally.

The MINISTER FOR JUSTICE: Not at all.

Hon. Sir James Mitchell: Of course you could.

The MINISTER FOR JUSTICE: I queried the provision, just as the hon. member has done.

Hon. Sir James Mitchell: What is the use of going through the farce of saying a man must live in a district for a month, and then that he need not?

The MINISTER FOR JUSTICE: It is necessary to overcome the provision in the Federal Constitution that provides for six months' residence before a claimant can be enrolled.

Hon. Sir JAMES MITCHELL: I hope no member will agree to this provision, which really means that no residence qualification whatever will be necessary. It is farcical to provide that a man must live in a district for a month and then to say that he need not live in a district for a month.

The Minister for Justice: He might be enrolled, but he cannot make a claim to be enrolled. Once he is enrolled, his enrolment cannot be objected to.

Hon. Sir JAMES MITCHELL: If he likes to apply for enrolment, he might be enrolled even though he had been in the district for only an hour.

The Minister for Justice: He must make a declaration that he has been in the district for a month.

Hon. Sir JAMES MITCHELL: But his name would be on the roll.

The Minister for Justice: He would be fined for making a false declaration.

Hon. Sir JAMES MITCHELL: But you would not prosecute.

The Minister for Justice: Yes, we would.

Hon. Sir JAMES MITCHELL: How many people were prosecuted at the last elections? There are hundreds of names on the rolls that should not be there.

The Minister for Justice: No, there are not.

Hon. Sir JAMES MITCHELL: People impersonate and do all sorts of things, and there is no prosecution.

The Minister for Justice: You have an awful idea of some people. There may be one or two silly people who would do it, but I do not know anything about them. If they do they are liable to be fined. In every case that is brought under the notice of the department a prosecution ensues.

Hon. Sir JAMES MITCHELL: I know this has occurred. The Premier could give the Minister the name of one offender. The electoral office does its best to get proof but cannot get it. I could quote cases, and other members could do so. This clause means that no enrolment can be questioned on the score of want of residence.

The Minister for Justice: A man has to sign a declaration to get on the roll.

Hon. Sir JAMES MITCHELL: Then this is useless.

The Minister for Justice: It is a formal thing put in to conform to the Federal Constitution.

Hon. Sir JAMES MITCHELL: What have we to do with the Federal Constitution?

The Minister for Justice: We are adopting the provisions of the Federal Act.

Hon. Sir JAMES MITCHELL: We are not going to accept this part of the Federal Act. If this is agreed to persons will be enrolling who have not lived in any district for a month, and no such enrolment can be questioned.

The Minister for Justice: They can be prosecuted for making a false declaration.

Hon. Sir JAMES MITCHELL: It should be necessary for a man to live in a district for a month before he could be enrolled.

The Premier: A person takes a risk of prosecution.

Hon. Sir JAMES MITCHELL: But he is never prosecuted. Why should we make ourselves ridiculous and say that a person shall live in a place for a month, but that if he can sneak his name upon the roll no one can say him nay? This is too much to ask us to swallow. It is far worse than the nomad business, which is rotten enough.

The Premier: There are only 190 of those who come under the nomad provisions.

Hon. Sir JAMES MITCHELL: I know this is a painful subject for the Minister.

The Minister for Justice: That is less than one in a thousand electors.

Hon. Sir JAMES MITCHELL: I want to see Subclause 7 struck out.

Mr. J. H. SMITH: Will the Minister explain Subclause 3? It says "no person is entitled to have his name placed upon any Assembly roll, other than the roll for the district or subdivision in which he lives." This means that the regulation brought in last year as to nomads is of no consequence.

The Premier: That regulation is not inconsistent with this subclause.

Mr. J. H. SMITH: It will seriously affect surveyors, shearers and other people who constantly move from place to place. There are two survey hands on the roll for Nelson, but under this clause they will not be allowed to remain on it because the Nelson district will not be their home.

The Premier: The place where a man lives is his home. Those two hands will be secure.

Mr. J. H. SMITH: I look upon this as a defect in our Act.

Progress reported.

*House adjourned at 9.38 p.m.*

## Legislative Council,

*Thursday, 15th September, 1927.*

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

### BILL—NORTHAM MUNICIPAL ICE WORKS ACT AMENDMENT.

Read a third time and passed.

### BILL—JUDGES' SALARIES ACT AMENDMENT.

*Second Reading.*

Debate resumed from the previous day.

HON. E. H. HARRIS (North-East) [4.36]: I was prompted to move the adjournment of the debate on this Bill last evening by the Chief Secretary's reply to an interjection.

The Chief Secretary: I made a mistake.

Hon. E. H. HARRIS: The reply was to the effect that the Bill affected only the salaries of the four judges. I had an idea that it also affected the salary of the President of the Arbitration Court. I have since looked up the statute and found that my impression was correct. Following up the error or omission regarding the salary of the President of the Arbitration Court, I am prompted to inquire whether it is the Government's intention to increase correspondingly the salaries of the laymen associated with that tribunal.

Hon. J. Ewing: They are not judges, are they?

Hon. E. H. HARRIS: No; but if I quote to the hon. member what has been embodied in the Industrial Arbitration Act Amendment Act of 1925, it will make the position perfectly clear. Section 48 provides—

The tenure of office of the President shall be the same as in the case of a Judge of the Supreme Court, and he shall be entitled to all