committee meetings in hotels were prohibited. No doubt town members would support the clause; but in dozens of country places it would cause considerable inconvenience, as candidates would discover too late, in the event of a dissolution in winter time or in wet weather.

MR. G. TAYLOR: Such hardships were felt as keenly in his electorate as elsewhere; but he would vote for the clause, so as to keep as far away as possible from hotels. He had no desire to float into Parliament on "long beers."

THE PREMIER: It was true the clause was more stringent than that in the Electoral Act; and to give time for farther consideration, he moved that progress be reported.

Motion put and passed.

Progress reported, and leave given to sit again.

ADJOURNMENT.

The House adjourned at 11·40 p.m., until the next Tuesday.

Legislative Council,

Tuesday, 8th October, 1901.

Papers presented—Question: Railways (new), Cue-Nannine and Goomalling, Rails wanted—Question: Harbour Dues, Fremantle—Question: Harbour Board, Fremantle—Notice of Motion: Procedure in Absence—Motion: Fremantle Harbour, Free Tug—Public Health Act Amendment Bill, first reading—Roads Act Amendment Bill, in Committee, resumed, reported; Recommittal, division—Dog Act Amendment Bill, withdrawal; No. 2 Bill, first reading—Light and Air Bill, second reading—Divorce and Matrimonial Causes Amendment Bill, second reading, in Committee, to new clause, progress—Summary Jurisdiction (Married Women) Amendment Bill, in Committee, reported—Contractors and Workmen's Lien Bill, second reading (moved)—Roman Catholic Church Lands Bill, report adopted—Probate and Administration Amendment Bill, in Committee to Clause 36, progress—Adjournment.

THE PRESIDENT took the Chair at 4·30 o'clock, p.m.

PRAYERS.

PAPERS PRESENTED.

By the MINISTER FOR LANDS: 1, Returns, Life Assurance Companies Act, 1889. 2, By-laws, municipality of Boulder. 3, Late Assistant Clerk of Courts of Coolgardie, correspondence and papers.

Ordered to lie on the table.

QUESTION — RAILWAYS (NEW), CUE-NANNINE AND GOOMALLING, RAILS WANTED.

HON. R. G. BURGES (for Hon. C. E. Dempster) asked the Minister for Lands: 1, If the Government is aware of the great loss that the country has sustained and is still being put to in the construction of the Cue-Nannine and Goomalling lines of railway, by not being supplied with the necessary rails required for the construction of those lines. 2, If so, what is the loss estimated at? 3, Why were the rails required for the construction of the Goomalling and Cue-Nannine lines not reserved for their completion, instead of being sold to private companies or speculators?

THE MINISTER FOR LANDS replied: 1, Yes. 2, It is not possible to reduce the loss to exact figures, seeing that loss may have resulted to others besides the Government. The Government, however, may have saved money, supposing the lines were nonpaying. 3, The only rails sold since the Cue-Nannine line was authorised were three miles to the Canning Jarrah Timber Company, to enable them to complete certain sleeper contracts in connection with the Menzies-Leonora line.

QUESTION—HARBOUR DUES, FREMANTLE.

HON. H. BRIGGS (for Hon. M. L. Moss) asked the Minister of Lands: 1, The amount of harbour dues paid by the North German Lloyd Company since 1st January, 1901. 2, The amount of harbour dues paid by the German-Australian Company since 1st January, 1901. 3, The number of steamers of each company which have arrived at Fremantle since 1st January, 1901.

THE MINISTER FOR LANDS replied: 1, £600. 2, £1,062 18s. 3, North German Lloyd Company, 20; German-Australian Company, 15.

QUESTION—HARBOUR BOARD, FREMANTLE.

HON. H. BRIGGS (for Hon. M. L. Moss) asked the Minister for Lands: If the Government propose to introduce a Bill during this session to constitute a Harbour Board to control and manage the Fremantle Harbour. If not, what reason is there for delay.

THE MINISTER FOR LANDS replied: The matter is under consideration.

NOTICE OF MOTION—PROCEDURE IN ABSENCE.

HON. R. G. BURGES stated that he wished to move that consideration of motion (notice given by Hon. C. E. Dempster, relating to Government Residence at Northam) should be postponed for a fortnight.

THE PRESIDENT: Rule 72 of the Standing Orders was:—

If a member be not in his place when the notice given by him is called on, or fails to rise and move the same, it shall be withdrawn from the Notice Paper.

This rule might be relaxed with regard to questions; but when it came to notices of motion, it was more questionable whether the rule laid down should not be insisted on.

HON. G. RANDELL agreed with the President in the matter of a motion which was more or less of importance. It was desirable that the member who gave the notice should be present to move the motion, being seised of the arguments and circumstances, and able to place the matter before the House probably in a better form than any member who might take it up for him. From this point of view alone, a member who had given notice of an important motion should be in his place to move it.

THE PRESIDENT: Rule 72 was distinct, and that rule should now operate. The absent member (Mr. Dempster) would have opportunity of moving the motion on a subsequent occasion.

MOTION—FREMANTLE HARBOUR, *FREE TUG.*

HON. R. S. HAYNES moved:

That, in the opinion of this House, it is undesirable that free tug assistance should be farther granted to any mail steamers at Fremantle Harbour, on the grounds that such free tug assistance is unnecessary and interferes with the commercial interests of the mercantile community.

The House should readily agree to the motion. Some time ago the House appointed a committee to inquire into the working of the Fremantle Harbour Department, and although he was not conversant with the whole of the recommendations then made, there did appear to be a whole fleet of Government tugs at Fremantle. There was the "Penguin," there was an old disabled warship, the "Victoria," and other steamers too numerous to mention, all apparently being used as tug boats. No doubt the Government wanted to make Fremantle a safe harbour, and to prevent accidents and shipwrecks; and at first it had been only right that tugs should be provided to bring in the mail steamers. But Fremantle could not be spoon-fed for ever; and it must rely for tugs on commercial men willing to supply them on the usual terms. As many private tugs were now available, it was absurd that these mail boats should be towed in and out free, while shipping merchants' tugs were lying idle at the wharves. There were at present two powerful tug boats in Fremantle Harbour; and the Adelaide Steamship Company was, he believed, about to import a similar boat. He had been informed that Messrs. J. and W. Bateman were importing another. Was it reasonable to have those private tug boats competing against the Government tugs? The Government tugs would have all the best of it; because the men working on them had Government hours, the Government stroke, Government coal, Government pay, and the service was an absolute loss to the State. Apparently free tug assistance had first been offered to the North German Lloyd steamers, which were the first to call. The company were very thankful, and the concession was probably justifiable, because at that time there were no private tugs sufficiently powerful to bring in the steamers. That assistance had, however, been discontinued; therefore why should we continue to assist the other companies? The Messageries Maritimes Company were not assisted; and yet free tugs were granted to the Orient and P. and O. Companies. For this there was no reason. On inquiry

he had ascertained that the North German Lloyd Company spent annually in Fremantle a sum of about £10,000. Without shame it would not be possible to mention how much the P and O. and Orient Companies spent; but anyone could find out. Why should those two companies be spoon-fed, which practically did us little good, while the same assistance was denied to others? Surely the proper course was to withdraw the assistance from all the companies. The mail boats charged sufficiently high rates to inter-State passengers to warrant the boats providing their own tugs; and they were not entitled to any assistance at the hands of this or any other Australian State. Of all the States, this was treated the worst. The mail steamers would carry a person from Brisbane to London for the same price as from Fremantle to London; but let a man travel from Fremantle to Brisbane, and consider the cost of his ticket! On no principle whatever could these free tugs be justified; and a sufficient case had surely been made out to warrant the House in passing this motion, of which he hoped the Government would take notice. It had been moved to strengthen the hands of the Government; for the present Government would surely not have given the concession these companies now enjoyed, though the present Government might not wish to interfere with that concession without a mandate from the House. The minds of the commercial community at Fremantle were greatly exercised over this matter, and business men of the Port had asked him to move as he had done in justification of their rights.

THE MINISTER FOR LANDS (Hon. C. Sommers): The hon. member had hardly shown sufficient reason to induce the Government to depart from the existing custom of giving tug assistance to English mail steamer companies bringing their vessels into Fremantle Harbour. No one would deny the harbour was not as complete as it was hoped to be made; there was a certain element of danger in bringing in large steamers; and it was to induce British mail boats to come in that the tugs were originally offered. It was not evident that such assistance need be continued for any long period; but at present the Government thought it undesirable that it should be withdrawn. He hoped the House would not agree to the motion.

HON. S. J. HAYNES (South-East) supported the motion. That every port and other place in the State should have its just dues be would always maintain; and if the interests of Albany should at some future time be at stake, he would expect other hon. members to mete out fair treatment to that port. With the words that had fallen from the leader of the House he did not at all agree, nor was it obvious how anyone who had listened to the mover could say aught against the motion. The motion presented itself in two aspects: one, that the granting of free tugs was dishonest and unfair to companies competing with the P. and O. and Orient lines. Other steamers apparently received no assistance, while it was given to the English mail steamers, which, perhaps, did the bulk of the trade. A greater piece of dishonesty and injustice was that by this means one port was being treated more generously than the others. Why should Fremantle or any other port be spoon-fed at the expense of the whole population, with a view of attracting steamers? And the reason given in reply was contrary to what had been stated when the mail steamers were originally induced to come to Fremantle. At that period it had been said that Fremantle was a safe and commodious harbour in all weathers, and at all hours of the day and night. That statement had been made, practically, by the Government of the day; yet now the present Government said the reason why the free tugs were offered was that the harbour was unsafe. If that were so, the mail steamers had been induced by false pretences to come to Fremantle. Undoubtedly, however, the steamers were attracted by the commerce of the place, and therefore they should be able to pay the same dues and the same charges as were paid by the boats of other companies.

HON. R. S. HAYNES: Other English steamers came to the port, and did not receive such assistance.

HON. S. J. HAYNES: All steamers arriving at the port were entitled to be put on the same footing; the present system was a deterrent to trade and commerce; and it was commercially dishonest

to spoon-feed one company while neglecting the others. He did not support the motion because the mail steamers happened to have been removed from the port in his province. On that he made no comment. He supported the motion on the ground that free tug assistance was a gross injustice to the other ports of the State, and a double injustice when steamship companies of equal standing in the commercial world did not receive that assistance.

Hon. D. M. McKAY (North): It was not a wise policy to harass the Government on account of their rendering all possible assistance to mail boats, especially to our own British mail boats coming to the port of Fremantle. When the harbour was completed and the mail boat accommodation well and thoroughly established, it would be time enough for the Government to withdraw the tugs. No doubt the people of Albany and the proprietors of inter-State steamship companies would like to see the mail steamers shifted from Fremantle, but any change would undoubtedly be a national calamity.

Hon. G. RANDELL (Metropolitan): The mover had evidently assumed he would receive for this motion general support; but it was to be hoped he was in error. In the past the Government had been justified, and were now justified, in affording all possible facilities to British mail steamers.

Hon. R. S. Haynes: Spoon-fed companies.

Hon. G. RANDELL: It was necessary to draw a strict line of demarcation between foreign and British steamers, especially when the latter carried our mails; and at present it would be a most unfortunate proceeding for the House to pass the hon. member's motion. The desire of the country was to retain the mail steamers at Fremantle, though all knew there was an earnest desire on the part of inter-State steamship owners to prevent their continuing to call, because it interfered with inter-State trade. Every reasonable encouragement should be given to the P. and O. and Orient steamers to call at the port.

Hon. R. S. Haynes: Hear, hear. Reasonable encouragement.

Hon. G. RANDELL: Up to the present the Government had been fully justified in granting the services of tugs, not because the harbour was dangerous but because it was necessary that every facility should be given the mail boats, so that these should not be detained unreasonably long at the port. All knew that till recently there was scarcely room for the boats to be berthed alongside the quay with sufficient expedition. Moreover, at the beginning there had been no private tugs of sufficient power to do the necessary work.

Hon. R. S. Haynes: At the outset.

Hon. G. RANDELL: And it should be left to the discretion of the Government whether or not the tug service should be discontinued. No doubt when the harbour was completed it would be undesirable to continue that service. All would agree with the hon. member that we should interfere as little as possible with commercial enterprise; and if, as stated, a few firms contemplated the importation of powerful tugs——

Hon. R. S. Haynes: One was on order.

Hon. G. RANDELL: Then when these arrived would be the time to consider such a motion. But at present no movement on the part of the Legislature was more strongly to be deprecated, nor would any create more dissatisfaction in the minds of the directors of the royal mail steamship companies, nor afford a greater prospect of discontented people in the other States succeeding in their endeavours to have mail steamers removed from the port of Fremantle back to Albany. That would be bad. An immense sum of money had been spent in the creation of what he thought he might call a magnificent harbour, or it would be so when the works were completed, and it was the duty of every member of the Legislature and of the community to do his best to encourage ships coming to the port of Fremantle.

Hon. S. J. Haynes: Not on dishonest principles.

Hon. G. RANDELL: One did not see where any dishonesty came in. He hoped the hon. member was not referring to dishonesty by the Government and the people of the State in removing the steamers from Albany to Fremantle.

Hon. S. J. Haynes said he was not referring to that at all.

Hon. G. RANDELL: That change was bound to come sooner or later, under

the altered circumstances. Fremantle was the first port of call to receive steamers from Europe and places between this and the old world. He hoped the motion would not be agreed to, because he believed that if it were, the effect would be very injurious. We had no reason to consider the steamers which were not carrying mails.

HON. R. S. HAYNES: The German steamers carried mails.

HON. G. RANDELL: But not under contract with the Postmaster General. They must take letters, and he believed they got a penny per letter. That was the principle that prevailed all along our coast. Steamers must take letters if requested to do so by the Postmaster General on payment of a penny, and he believed that principle prevailed all over the world; but we should draw a strong line of difference between the mail boats under contract and the accidental, if he might use the term, carriage of a few letters or newspapers by steamers not under control of the Postmaster General. Such steamers sailed when it suited themselves to do so.

HON. R. S. HAYNES: In what other part of the world did companies get free tug assistance?

HON. G. RANDELL: Probably under such circumstances as existed here they would in any part.

HON. R. S. HAYNES: Not in any part of the world.

HON. G. RANDELL: One was not able to quote cases, but he repeated that under such circumstances as existed in Fremantle, the harbour authorities and the Government would do the same as was done in this case.

HON. W. MALEY (South-East): The Albanians were very sorry to lose the mail steamers, but they were doing very well without them, and he thought there was more shipping at Albany now than ever before. Albany would hold its own in any case. An attempt had been made to make a harbour at Fremantle, and it was supposed to have been finished some time ago, but apparently it would be many years before a perfect harbour would be made. In fact it would be impossible to make a perfect harbour, the swinging basin being too small for any great ships. The overflow of Fremantle would have to go to Albany, and he hoped some day to see Western Australia developed and Albany the scene of great commercial life, with its harbour full of ships. If Western Australia was to have great commerce, Fremantle would be far too small to do the trade. There was no great depth of water approaching the port. The tendency was to build bigger vessels, and he read an account of a steamer just launched by the White Star Company which, he was told by a captain, was drawing 38 feet of water. Any vessel drawing 34 feet of water would never get into Fremantle.

HON. R. S. HAYNES: She would not be able to get through the Suez Canal.

HON. J. W. HACKETT: She would not be able to get into Sydney.

HON. W. MALEY: She could not get into Melbourne: he did not know about Sydney. The White Star liners were not likely to call here, nor would other big boats come here if they found that certain lines were subsidised and they themselves were not. If anything would debar Fremantle from being a big port, it was the fact that the Government were discriminating in respect to their dealings with different lines of steamers.

HON. R. S. HAYNES (in reply): One desired to see boats coming to Fremantle. The Hon. G. Randell had made a very weak case when he said that in order to keep the mail steamers at Fremantle it was necessary to give a company free tug assistance. If that were so, he could well understand that the Fremantle harbour was not the success the hon. member would have us believe; but he disagreed with the conclusions of the hon. member altogether. The harbour was quite safe enough, and he had the authority of some of the best captains who ever came into Fremantle.

HON. G. RANDELL: One did not say the harbour was not safe.

HON. R. S. HAYNES: The conclusion arrived at was that we must give these companies free tug assistance because the harbour was unsafe; it was not completed. Did we want to decorate the harbour? If it was safe, it was; if it was not, it was not. Any member who voted against this motion would decidedly condemn the Fremantle harbour as unsafe. [Several MEMBERS: No]. That was the logical conclusion. He did not believe in spoon-feeding any company. If a

company could not exist without getting a few miserable pounds in the shape of free tug assistance, the sooner it went under the better. If we were going to give farther tug assistance, let us employ tugs belonging to private persons; let us not get condemned useless boats from Melbourne and plant them down at Fremantle.

HON. T. F. O. BRIMAGE: The motion should be opposed, for every assistance should be given to the royal mail steamers, particularly those under special contract with the Government. The hon. W. Maley was entirely wrong when he spoke of 38ft. of draught.

HON. W. MALEY: That was not stated by him.

HON. T. F. O. BRIMAGE: There was not, he believed, one vessel which had such a big draught. The deepest water in the Suez Canal was 32ft. The largest White Star liner at present trading to the Australian States only drew 28ft., and she was 12,000 tons burthen. Neither did he agree with the hon. member (Hon. W. Maley), when that hon. member said he did not think Fremantle would ever be a safe port.

HON. W. MALEY: Nothing had been said by him about a safe port.

HON. T. F. O. BRIMAGE said he had been in all the Eastern ports, and he considered that next to Sydney and Hobart, Fremantle was the finest in the Southern hemisphere.

HON. J. M. SPEED (Metropolitan-Suburban) opposed the motion. When we saw the German company coming to Fremantle instead of Albany, and saw two big British companies, supposed to be enterprising, hanging back, we began to wonder whether the British race had the stamina and enterprise which they used to possess a hundred years ago. We began to think it was time to consider whether we should give to people who would not help themselves that assistance which they said they were entitled to. But unfortunately we were in this position, that there was a certain amount of friction as to whether these steamers should come to Fremantle or not, and in order to prevent any excuse being given or any farther application being made for removing the steamers from Fremantle, we must afford those companies every assistance, because it was for the benefit of the State to have them at Fremantle, and we must do our best to keep them there.

Question put and negatived.

PUBLIC HEALTH ACT AMENDMENT BILL.

Introduced by HON. R. S. HAYNES, and read a first time.

ROADS ACT AMENDMENT BILL.

IN COMMITTEE.

Resumed from 2nd October.

Preamble and title—agreed to.

Bill reported with amendments, and the report adopted.

RECOMMITTAL.

HON. R. S. HAYNES moved that the Bill be recommitted for the reinsertion of Clause 10.

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

Ayes	..	...	10
Noes	...	...	9
Majority for	...	...	1

AYES.	NOES.
Hon. H. Briggs	Hon. T. F. O. Brimage
Hon. J. W. Hackett	Hon. R. G. Burges
Hon. R. S. Haynes	Hon. J. D. Connolly
Hon. S. J. Haynes	Hon. D. McKay
Hon. A. Jameson	Hon. W. Maley
Hon. A. G. Jenkins	Hon. G. Randell
Hon. M. L. Moss	Hon. J. E. Richardson
Hon. C. Sommers	Hon. H. J. Saunders
Hon. J. M. Speed	Hon. E. McLarty (*Teller*).
Hon. G. Bellingham (*Teller*).	

Motion thus passed.

THE MINISTER FOR LANDS moved that the Chairman do now leave the Chair for the purpose of considering the Bill in Committee.

HON. R. G. BURGES: A few days ago it had been ruled that an amendment of the sort contemplated could not be moved without notice.

THE PRESIDENT: This was a motion to reinsert a clause.

HON. E. McLARTY: To consider the clause at the present time would be unfair to those opposed to it when the Bill was last in Committee. Apart from the fact that no notice had been given of the intention to recommit, this recommittal would be unfair to members now absent.

HON. M. L. MOSS: How about the division the other night?

HON. E. McLARTY: That had been done in the ordinary course. He moved as an amendment, that the reconsideration

of the clause be postponed till the next Tuesday.

Amendment put and passed, and the reconsideration postponed.

DOG ACT AMENDMENT BILL.

WITHDRAWAL.

Order read, for second reading of the Bill.

THE MINISTER FOR LANDS (Hon. C. Sommers): I desire to move that this Bill be withdrawn. Since the Bill was introduced, a great number of amendments has been found necessary for making the Bill more complete; and for this reason the Bill has been redrafted. By permission of the House, I now move that the Bill be withdrawn, for the purpose of introducing a new Bill.

Motion put and passed, and the Bill withdrawn.

DOG ACT AMENDMENT BILL (No. 2).

Introduced by the MINISTER FOR LANDS, and read a first time.

LIGHT AND AIR BILL.

SECOND READING.

HON. M. L. MOSS (West): The Bill of which I now rise to move the second reading is a small measure, but I think it is, nevertheless, a measure of importance. The right to have light and the right to have air are what are called "easements"; and according to the common law, a right of light or a right of air can be held by the owner of a tenement over the adjoining tenement, only when that right has existed from time immemorial. Time immemorial has been defined—I think the legal members of the House will agree with this—to mean the time in which the memory of man runneth not to the contrary.

MEMBER: That is old English.

HON. M. L. MOSS: That is old English. In England, in the reign of William IV. they passed what is known as the Prescription Act; and it provided that in the case of certain rights a period of years should be fixed, and in respect to rights of light and air a period of 20 years has been fixed. The owner of an adjoining property acquires an absolute right of air to that property after a period of 20 years' use. "Gale on Easements," a well-known work, in dealing with the question of the right of light and air, lays it down:—

> The right to the reception of light and air in a lateral direction (without obstruction) is an easement. The strict right of property entitles the owner to so much light and air only as fall perpendicularly on his land. He may build to the very extremity of his own land, and no action can be maintained against him for disturbing the adjoining property. But it is competent to such neighbour to obstruct the windows so opened by building against them on his own land, at any time during 20 years after their construction, and thus prevent the acquisition of the easement. If, however, that period is once suffered to elapse, his long acquiescence becomes evidence, as in the case of other easements, of a title, by the assent of the party whose land is subject to it.

Instances have occurred in this State and elsewhere of persons erecting a building right up to their boundary line, this building being erected to the height of three or four storeys. Windows are placed in a building on the boundary line overlooking a neighbour's property. It does not suit the owner of that adjoining property at the present time to put up expensive buildings three or four storeys high, and in the course of time this right of the person who put the windows in this high building without any leave or license becomes an absolute right, and precludes the owner of the adjoining land from afterwards erecting a building which may obscure this light. I have always considered that a person who attempts to do that sort of thing should make provision for his own light and air by not building right up to his own boundary line, but by building back some distance from his own boundary line, and obtaining light and air in a manner which to my idea is more consistent with the rights of property than attempting to deprive the owner of the adjoining land of the full benefit of building up to the total extent of his boundary when he thinks fit so to do. The law in America has never been what it is in England, and Gale, treating of it there, says:—

> Although in this country, owing to the great value of land in cities and the small extent of properties, men are tenacious of every ray of light, and go through an immense amount of litigation to assert their right to it, in some of the United States of America (New York, Massachusetts, South Carolina, Maine, Maryland, Pennsylvania, Alabama, and Connecticut) the doctrine of the English law does

not prevail, and a right to light cannot be acquired by prescription or implied grant.

On page 297, one of the celebrated Judges of America, dealing with this question, says:—

> There is, I think, no principle upon which the modern English doctrine on the subject of lights can be supported. It is an anomaly in the law. It may do well enough in England, and I see that it has recently been sanctioned with some qualifications by an Act of Parliament; but it cannot be applied in the growing cities and villages of this country without working mischievous consequences. It has never, I think, been deemed a part of our law; and besides, it would be difficult to prove that the rule in question was known to the common law previous to the 19th of April, 1775.

The common law of England apparently had the force of law in 1775, just about the time of the Americans obtaining their independence; but this law which has been in force in England for many centuries has never been law in America, as is mentioned by that Judge. This state of the law as to the conditions regarding these matters in America seems to me far more suitable for a young country of this kind than the law as it stands at the present time. I do not wish the House to regard this Bill as one for which I deserve much credit. It is a copy of a statute in New Zealand, where it has been in force since 1894. This Bill provides that these rights and privileges, if they are to exist in the future, can only exist by going to the owner of the adjoining land to get a right to obtain light or air in the way I have mentioned; not by a prescriptive right, not by French leave, but by getting the owner to execute some document in writing conferring a right such as at the present time a person requires in America, as I have already indicated. Practically that is what this short Bill does, and the last clause of it, as members will see, repeals the section in the Prescriptive Act: that is a section dealing with the acquisition of those rights after 20 years' user. I am not very anxious to carry this Bill through all its stages in this session. My desire has been to get it published, and we can wait till next session. I think if the House will carry it through the second reading I will not proceed farther with it now. We can leave it before the country for 12 months, and then I will undertake to introduce the Bill during the next session. I think the principle the Bill embodies is an excellent one. It seems to me to be a wrong state of affairs that a person anxious to build on his land at the present time should have a right to go right up to the boundary line and in time acquire rights over his neighbour's property which he does not pay for. The law should be on a better footing, and before a person can acquire rights over my light he ought to be compelled to come to me and make a legitimate bargain, as he would in acquiring other easements such as in connection with a road, for instance.

Hon. R. S. Haynes: He could acquire that by user.

Hon. M. L. Moss: But one has an effective means of barring it. At the present time the law is such that if a man erects a three or four story building, and puts windows in it, getting rights over his neighbour's property, there is no remedy by injunction to stop that. The only way is to exclude the light. It may be extremely inconvenient at the time for persons to put up barriers 50 or 60 feet from the ground. I could give an instance in the town of Fremantle where buildings have been put up four or five storeys with their windows overlooking a neighbour's property. It does not suit the owner of this adjoining property to erect barriers or buildings to obscure light, and in 20 years a person would acquire an indefeasible right to the light and air. It seems to me that the law as it stands in England, and as it has been in England since the coming into operation of the Prescription Act, though perhaps well suited, as Gale lays down, for the requirements of the country at that time, is not suited to this State. And I think it would be advisable to put the law on the footing on which it stands in America, where the Prescriptive Act is never applied, for it was never suited to America's requirements. If we can put our law on the same footing as the law in America by passing this small measure, it will be a good thing. I ask the House to agree to the second reading.

Hon. R. S. Haynes: Why not go on with it, if it is all right?

Hon. M. L. Moss: If it is the desire of the large majority of the House that the question should be gone on with, I shall be quite ready to proceed with it.

At any rate I ask members to assent to the second reading.

HON. R. S. HAYNES (Central): I shall support the Bill, and I think the hon. member (Hon. M. L. Moss) has made out a very good case. I certainly have a decided objection to assisting any person who jumps lands or rights. Mr. Moss has pointed out that you cannot prevent a person acquiring a right by user or prescription to light, because you have to build up a wall and block it up; and any person who did an act like that would be called vindictive. People would not understand that he was simply doing it in the defence of his rights to prevent a person getting an easement over his land, and although the present law may be suited to requirements of old settled countries such as England, I look upon it as a species of robbery, such as jumping lands, by taking possession in consequence of the absence of the owner. I look on persons who do that as thieves. I hope the House will pass this Bill, and I would like to see the hon. member carry it through. I need say nothing farther. I have promised to support the Bill. I have read the measure through, and I am of opinion that it is a good Bill. It is one that does not interfere with the rights of property at all, but protects them, and it is really in favour of the poor man, because if the poor man puts up a house his rights will be protected.

HON. S. J. HAYNES (South-East): I shall support the second reading of the Bill; but I think it would be wise to postpone the subsequent stages.

HON. M. L. MOSS: The Bill does not affect acquired rights.

HON. S. J. HAYNES: A right is not acquired until after 20 years. The measure would apply more particularly to places like Perth and Fremantle; therefore it is important for members to know more about the buildings and erections in those cities, and it is necessary to watch the interests that might be involved. Take the case of a place where a person has put in windows and enjoyed the right of light.

HON. M. L. MOSS: What right have they?

HON. S. J. HAYNES: Assuming they do, and they are robbing their neighbour, that property may be sold to a creditor, and with regard to the Prescription Act that creditor is not the first robber, at any rate.

HON. R. S. HAYNES: He has no acquired rights.

HON. S. J. HAYNES: He has no acquired rights. However, I point out that this measure may affect rights.

HON. R. S. HAYNES: They are not rights at all. You can block them out.

HON. S. J. HAYNES: Say an easement has been enjoyed for 19 years, and this Bill is passed, if you stop it at once there is no right acquired. In the circumstances, it might lead to extortion and undue demands. I quite agree with the principle of the Bill, and shall support the second reading; but I think it would be wise were this Bill postponed for another session, so that those enjoying these rights and easements, or the use of them, may be able to take the steps necessary for their own protection. One portion of the Bill which Mr. Moss did not explain was Sub-clause (*b*) of Clause 2. This Bill apparently provides that prescription shall be abolished, and that one cannot by a grant gain a right to light or air for a longer period than 21 years. But if a grant can be effected for 21 years, why not make it for 99 years, or in perpetuity?

HON. M. L. MOSS: Twenty-one years is quite long enough.

HON. R. S. HAYNES: To make the period longer would depreciate the value of the adjoining land.

THE MINISTER FOR LANDS (Hon. C. Sommers): I approve of the principle of the Bill, and also of the suggestion of Mr. Moss that every publicity should be given to its provisions before it be passed. Mr. S. J. Haynes has pointed out that it is a novel measure by which existing interests might be affected; and in order that people may have an opportunity of considering it, I would suggest that it be left over till next session. I hope the House will agree to the second reading, with the understanding that the Bill go no farther.

HON. G. RANDELL (Metropolitan): I think the House may congratulate Mr. Moss on the very intelligible way in which he has introduced this measure. [MEMBERS: Hear, hear.] I think there is nothing objectionable in the Bill; and I do not believe anyone has a right to acquire property without giving value for

it. There are, no doubt, many instances in Perth in which such rights as those mentioned in the Bill have been acquired, which rights the Bill will not affect. I cannot see that any harm will result from the Bill, or that it will do any injury or injustice. Still, at the same time I agree that Mr. Moss is wise in promising that if the second reading be assented to, he will postpone the Bill till the next session, in order that the public may become acquainted with its provisions. Of course there is no hurry, though some possible claimant may perhaps be on the verge of the 21 years.

Hon. R. S. Haynes: Then he should not get the right.

Hon. G. Randell: I thought the term was to be 20 years.

Hon. R. S. Haynes: It is really 20.

Hon. G. Randell: I think hon. members will concur with Mr. Moss if he proceed as far as we have suggested, and then let the Bill be left over till next session. There will be no harm in such an infinitesimal delay. I heartily concur with the principle of the Bill, which is just and right.

Question put and passed.

Bill read a second time.

DIVORCE AND MATRIMONIAL CAUSES AMENDMENT BILL.

SECOND READING.

Hon. M. L. Moss (West): I rise with pleasure to propose that this Bill be now read a second time; and I think it a matter of great urgency that this amendment of the law should be made. I do not think there should be a moment's delay in altering that which has been regarded for a very long time in this community as a regular blot upon our statute book. I think it fair to say that nearly every member of Parliament, when on the hustings, has pledged himself to do his best to alter what was a glaring inconsistency in the law relating to divorce. Every hon. member, I am sure, knows that a husband is entitled to present a petition for divorce against his wife, on the ground that the wife has, since the celebration of the marriage, been guilty of adultery; but to the disgrace of our statute book, the same right is not given to a woman whose husband has been guilty of the same offence. I say it is a scandal that a woman is compelled to prove, in addition to the adultery, cruelty, and cruelty of such a nature as would justify the court in granting her a judicial separation; or she has to prove desertion without reasonable excuse for two years and upwards. I need do no more in passing than remind hon. members that in nearly all the Australian States the grounds for obtaining divorce have been very much simplified; that desertion for three years, habitual drunkenness, and a sentence of seven years' imprisonment, have been made grounds of divorce. That is the law in New South Wales and Victoria, though I am not proposing anything so drastic here. But I say we should endeavour to blot out one terrible inconsistency on the statute book, and make it law that the wife can obtain a divorce against her husband if he be guilty of the same offence which gives that right to the husband. In moving a Bill of this kind dealing with the divorce law, I am reminded of reading the remarks of the late Mr. Justice Maule when sentencing a prisoner in England for the crime of bigamy. The man was charged with bigamy, and it was very conclusively proved that his wife had gone away, and was living in adultery with another man; and the Judge said to the prisoner, after the jury had convicted him: "This is a sad case. I understand that your wife has run away: that is your defence. She has been guilty of adultery, and you would be entitled to get the marriage dissolved." This, I may explain, was before the present Divorce Act came into force in England; and the roundabout procedure through which a man had to go in England was that he first had to bring proceedings known as a "crim. con." action, and to recover damages for the wrong done. In the next place, he had to get what was then known as a divorce *a mensa et thoro*, which was the same as our present judicial separation. Then he had to go to the House of Lords, and get a Bill through making his divorce something recognised by the law. Judge Maule went on to tell the prisoner: "You should have gone through all those formalities, and that would have cost you £500, £600, or £1,000. But let me tell you there is not one law for the rich and another for the poor," and his honour

very sternly sentenced the prisoner to 15 minutes' penal servitude. Now it is necessary to tell the House a story of that kind to let hon. members understand what was the law regulating divorces in England at the time it was altered into the form in which it at present stands in our statute book; and of course I admit that the present divorce law here was a great reform as compared with the tremendous obstacles placed in the way of a person endeavouring to get relief in those bygone times. But this divorce law, which has been in force in this country since 1863, and in England I think since 1857, is to my mind very much out of date. I should be glad to see the reform brought about in this country which has been achieved so long ago in Victoria and in New South Wales.

HON. R. G. BURGES: The churches are all against it there.

HON. M. L. MOSS: I know perfectly well it would be hopeless for any private member to try to carry through a measure similar to the Victorian or the New South Wales Acts. Nothing else, perhaps, than making it a Government measure would put it on the statute book. Consequently, as the question of divorce becomes one of the 39 matters referred to the Federal Parliament, I think it would be very imprudent even for the Government to attempt a reform in the direction I have indicated.

HON. D. M. McKAY: Then why are you doing it?

HON. M. L. MOSS: But I certainly think that so far as the Bill before the House is concerned, we shall be wanting in our duty if we agree to perpetuate for another moment that which has so long been a disgrace and a scandal to the State. Holding those strong opinions, I have pleasure in moving the second reading.

HON. D. McKAY (North): I do not object at all to the purpose of the Bill; but I do object to interfering with the marriage law as it at present stands. The other States are undoubtedly beginning to find out their mistake in allowing such laxity to be introduced into the divorce law. I do not think I can support this Bill.

Question put and passed.

Bill read a second time.

IN COMMITTEE.

Clauses 1 and 2—agreed to.

New Clause:

HON. M. L. MOSS: Last session, on motion by Mr. R. S. Haynes, the House agreed that the Judges should be approached with the idea of reducing the fees payable to the Government on divorce proceedings. A common law case, involving many thousands of pounds, could be tried for an expenditure of £2 in fees paid to the Government. He did not know whether these divorce fees were fixed at the time when the Judges' salaries were partly paid from fees, but he was not exaggerating, he thought, when he said that the disbursements to the Government came to £25, and that was altogether opposed to our ideas of administration of justice. Magna Charta laid down that we should not sell justice; but it seemed very much like it to make a charge of £25 for court disbursements in connection with these proceedings. It was not fair to the people who had to pay it. The law was a quite sufficient luxury at the present time without the Government coming in, in these proceedings, and demanding £25.

HON. R. S. HAYNES moved as an amendment that the following be added to the Bill as a new clause:

That the fees payable to the Court for judicial separation or dissolution of marriage shall not exceed the sum of £2.

An action in the Supreme Court would cost about 15s. or 16s. to £1, and the case would occupy thrice as much time as a divorce case, which did not occupy more than 20 minutes, yet the disbursements to the Government in a divorce case were £25. To file an affidavit in a divorce case cost 5s., whereas in another case the charge was 1s. There was no principle upon which this should be tolerated. The House had already approved of a resolution, but the Government had ignored it.

THE MINISTER FOR LANDS: What the fees charged now were was a point on which he was absolutely in the dark.

HON. R. S. HAYNES: About £25.

THE MINISTER FOR LANDS: The reduction was not opposed by him. It had been truly said that the law was a luxury, but he hoped the hon. member would not press this amendment at the

present time. The clause might stand over.

HON. R. S. HAYNES: The Bill could be recommitted. There was a resolution passed two years ago.

THE MINISTER FOR LANDS: The amendment required a little farther time for consideration, and he hoped the hon. member would not ask for it to be passed through to-night, so that one might have an opportunity of consulting the Government with regard to the matter.

SIR GEORGE SHENTON: It was hardly fair to press this clause now, no notice having been given of it, and this was rather an important measure.

HON. R. S. BURGES moved that progress be reported.

Put and passed.

Progress reported, and leave given to sit again.

SUMMARY JURISDICTION (MARRIED WOMEN) AMENDMENT BILL.

IN COMMITTEE.

Clause 1—agreed to.

Clause 2—Amendment of 60 Vict., No. 10, Section 2:

HON. S. J. HAYNES: Perhaps he had had as much practice under this Act as most members in the State, and he could only say it had worked very efficiently. It had been a great relief to women who had been ill-used and brutally treated by their husbands, and the amendment proposed was one that would tend to the usefulness of the Act. It would give the poor a speedy mode of extricating themselves from trouble and suffering, and in many cases pretty well starvation, by enabling them to get protection against their husbands.

Clause put and passed.

Preamble and title—agreed to.

Bill reported without amendment, and the report adopted.

CONTRACTORS AND WORKMEN'S LIEN BILL.

SECOND READING (MOVED).

HON. J. M. SPEED (Metropolitan-Suburban), in moving the second reading, said: Hon. members will remember that last year I brought into this House a Bill practically on similar lines to this, but the House then, through want of consideration or misapprehension—no doubt I myself was not able to give the matter the full explanation required—threw out the Bill. That was the fate the Bill met with the first time it came before the Legislative Council in New Zealand. I do not know that it will be necessary for me to go at length into the provisions of the Bill. If the second reading be passed, I will ask that the Bill be referred to a select committee. The objects of the Bill are to make better provision to secure payment of money due by contractors to workmen, a right of lien being given. It is possible for workmen working for a contractor or sub-contractor to obtain a lien directly and indirectly over the property which is the subject of the contract. Farther on the measure deals with a question more especially affecting workmen, that is to say workmen and smaller employers. The Bill provides for a lien upon chattels in the shape of machinery and other things. We know that under the common law if a man has a boiler taken to his yard, and he does any repair to it, it cannot be removed from the yard until payment be made; but if, on the other hand, he goes to the place where the boiler is, which is more expensive, and does the work there, he has no prior claim upon that boiler. It seems a most absurd position for the law to be in, but that is the position, and this measure is introduced in order to try to do away with that difficulty. It gives the worker or smaller employer the possession of the chattels until he receives payment. The Bill is practically based upon a Bill that has been in force for 30 years in Ontario, Canada. I saw Dr. Montague in reference to the Bill about a fortnight ago, and he assured me it had worked most satisfactorily there, and that the people did not look upon it in any way as a workers' Bill in that State. They looked upon it as a necessary provision for the protection of the contractor and worker. Dr. Montague is a member of the Privy Council, and has held a prominent position in the Dominion Government. We have his opinion upon this as being a necessary and proper measure to be enforced in the State, and I think even those members in the House who are conservative will, before they condemn a measure of this kind, at least pause and allow every opportunity to be given for it to be properly

discussed. So far as New Zealand is concerned, when the measure was brought in there first it was, as I say, thrown out by the Legislative Council. The Council at that time was, and is now, absolutely a nominee Council, elected for life, and not, as members are here, elected by the people. They were perfectly free in their ideas, and after they had thrown out the measure the first session, when it was brought before them on the second occasion men like Mr. Downie Stewart and others who had very conservative ideas, and yet were very capable, admitted that with certain alterations made by Mr. Reeves, the Bill, if it did very little good, would do no harm. That was the worst that was said against it then, and after a considerable amount of discussion it was referred to a select committee. That select committee reported favourably on it, and the measure afterwards passed into law. The provisions with respect to sub-contractors were, I believe, inserted by Mr. Reeves at the special request of the traders in New Zealand, who had this Bill before them. They stated that whatever effort might be made to prevent sub-contracting, it was impossible to do it, and unless there was some provision they did not think they would be properly safeguarded. I have seen several of the leading contractors in Perth, and in accordance with their wish I have altered this Bill as compared with the New Zealand measure. I have reduced the time in which claims can be made, and instead of having the amount to be retained by the owner fixed at one-fourth as in New Zealand, the amount has been altered to one-sixth. However, if I am to go into the Bill clause by clause it will take a considerable time. The objection that was taken when Mr. Reeves introduced the measure into the House of Representatives in New Zealand was its prolixity. He said:

> If you want a Bill which will protect the contractor as well as the workman you must have a Bill that is prolix, but if you want only to protect the worker without protecting any one above him, I can introduce a short Bill of half a dozen clauses.

"But," he said, "I believe in giving fair-play to all classes of the community." Consequently he introduced the Bill in its present shape, which is, I believe, practically based upon the existing Act in Canada. I move the second reading.

THE MINISTER FOR LANDS (Hon. C. Sommers): Mr. Speed desires that this Bill should go to a select committee; but I think it only right to say that I intend to oppose the Bill. If the House carry the motion for a select committee, well and good; but even if it be carried, when that select committee's report is presented, it must not be taken for granted that I will agee to the second reading. The Bill is very far-reaching in its effect. At this stage I will not say more. Perhaps we had better test the feeling of the House as to whether it should go to a select committee.

HON. W. MALEY (South-East): It is my intention to oppose the Bill. If it is to operate on the lines pointed out by Mr. Speed, then if you employ a person to repair a boiler in your back-yard, and he is to come in and take possession of the boiler, if the yard is not large he will have possession of the yard.

HON. J. M. SPEED: He does not take possession of the boiler.

HON. W. MALEY: If you give people one right to which they are unaccustomed, they will soon take other rights.

HON. S. J. HAYNES (South-East): I think this is a Bill which will have to be very carefully looked into. In a country like this it goes a little too far; and I doubt very much whether for such a Bill the time is ripe. I think the more light that can be thrown upon it the better, and therefore I should prefer to see the second reading postponed, even before the motion is put that it be referred to a select committee. I have had time merely to glance through it, but I can see it alters present legislation very materially; and I can see many instances in which it would be very detrimental to the interests of both employer and employee. I for one think that the trend of modern legislation is in many ways going too far; and that instead of protecting the worker and putting him on a better footing than that on which he stood before, its only effect is to surround the employer by so many conditions and difficulties that the employer has to consider very carefully whether any of his enterprises can be accomplished. I should give the workman every reasonable protection.

HON. J. M. SPEED: And the contractor, too, is protected under the Bill.

HON. S. J. HAYNES: The contractor, too. But the Bill seems to alter the law very materially; and I think it one of those Bills which would be better postponed to another session.

HON. M. L. MOSS moved that the debate be adjourned for a week.

Motion put and passed, and the debate adjourned.

ROMAN CATHOLIC CHURCH LANDS AMENDMENT BILL (PRIVATE).

HON. R. S. HAYNES, who had brought up the report of the Select Committee, now moved that it be adopted.

Question put and passed.

At 6·25, the PRESIDENT left the Chair.

At 7·35, Chair resumed.

PROBATE AND ADMINISTRATION AMENDMENT BILL.

IN COMMITTEE.

Clauses 1 to 9, inclusive—agreed to.

Clause 10—Real and personal estate to be assessed:

HON. G. RANDELL: Explanation was desirable in regard to the word "retainer," in the second line of Sub-clause 2. Say, for instance, a member of a legal firm was appointed executor or administrator, did this sub-clause mean that any other member of the firm might be retained?

HON. M. L. MOSS: No. At the present time an executor or administrator who was a creditor of the deceased had a right to be paid his debt in priority to other creditors. He might pay his own debt in full whilst other creditors might not get 6d. or 1s. in the £. This had been altered in nearly all other States.

HON. A. JAMESON moved as an amendment that after the word "executor" in line 1 of Sub-clause 2, "or administrator" be inserted.

Amendment put and passed.

HON. M. L. MOSS: Apparently this sub-clause contradicted the Settled Lands Act of 1892, and the Trustees Act passed last session. Section 23, Sub-section 2, of the latter Act provided that trustees might lease or let any real estate for a term not exceeding seven years, on such terms and conditions as they thought proper.

HON. R. S. HAYNES: Every executor was not a trustee.

HON. M. L. MOSS: By Section 3 of the Settled Lands Act of 1892, any will was a settlement under the Act; and a trustee under the Settled Lands Act had certain powers of leasing; so had a life tenant. There would evidently be the difficulty that while under the Settled Lands Act the trustee under the settlement, and the life tenant, had power to lease; and while under the Trustees Act the trustee was given this power, by this Bill the executor was given a power entirely new, the power to lease in addition to the powers previously mentioned, and altogether contrary to the Settled Lands Act. There would thus be three or four different sorts of people entitled to exercise these powers of leasing at one and the same time.

HON. R. S. HAYNES: Evidently the Settled Lands Act dealt with trustees only. An executor might have absolutely no interest in the estate; but if he took from the estate, he apparently became a trustee, and the Trustees Act would apply.

HON. J. M. SPEED: The Bill overlapped all those Acts.

HON. R. S. HAYNES: No; an executor, without such a measure as this Bill, would have no power unless he were also a trustee.

HON. M. L. MOSS: Why not put this provision in the clause, to the effect that the executor must get power from the court?

HON. R. S. HAYNES moved that the consideration of Sub-clause 3 be postponed till the end of the Bill.

Motion put and passed, and the sub-clause postponed.

Clauses 11 to 13, inclusive—agreed to.

Clause 14—Interests of husbands and wives in estates of the other of them:

HON. R. S. HAYNES: At present, if a husband died, the wife was entitled to one-third of the real and personal estate, and the children to two-thirds. By the Bill, it was proposed to give £500 out of the estate to the wife, and to leave the children without anything; for as most intestate estates were not worth more than £500, and the clause would practically mean leaving the children penniless.

HON. A. JAMESON: The same provision existed in England.

HON. M. L. MOSS: The mother was the best person to hold the property.

HON. R. S. HAYNES: The relations existing between husband and wife in England were not the same as were often found in this State. Many people here had come from the Eastern States, and had forgotten that they had marital engagements on the other side. In one instance, a man had died intestate, and three wives had claimed the estate. The clause should be postponed. Was the husband or the wife entitled to the £500 before the creditors were paid?

HON. A. JAMESON: No; out of the net value.

HON. R. S. HAYNES: Better let the estate go to the children, of whom the wife was by law the guardian.

HON. T. F. O. BRIMAGE: Which wife?

HON. R. S. HAYNES: That was for the hon. member to say. There were many instances where a wife had taken out an administration of the estate, and then married a young man who had frittered away the estate and left the children penniless. The principle was wrong. He moved that the consideration of the clause be postponed till the end of the Bill.

HON. M. L. MOSS supported the clause, which, although new in this State, was the law in several other States of Australia. In the smaller States, the ordinary rule under the Statute of Distributions had been followed, namely a third to the wife and two-thirds to the children. But in applying for a grant of administration, it was the duty of the wife to procure two sureties to the satisfaction of the Master of the Supreme Court that the estate would be properly administered. It was now difficult to get suitable sureties, and under the Bill it would be still more difficult, for the sureties must in every case satisfy the Master that they were worth the amount of the bond. It would therefore be hard for a poor woman to get bondsmen. When, however, the whole £500 went to the widow, the court would probably dispense with a bond.

HON. R. S. HAYNES: True.

HON. R. S. HAYNES said he would withdraw the motion.

Motion by leave withdrawn.

HON. S. J. HAYNES: The clause as it stood was one with which he was rather impressed. Where an estate was small, being worth something like £500, in 90 cases out of 100 the widow was the best person to have the money. Where a widow took out administration she had to get bondsmen. A £200 bond was approved and executed. A widow had to take a third herself, and two-thirds for her children, but the greater part of the children might be young. The husband might have been cut off suddenly, and she had the training and education of the children to attend to. In order to carry out that under the existing law, she would have to go to the Court and get authority.

HON. R. S. HAYNES: Not necessarily; she was the natural guardian and could use the money,

HON. S. J. HAYNES: Not beyond one-third; if so the bondsmen were liable. He had never known a case where the bondsmen had been attacked, because the persons who set the law in motion were these infants, and even if the money had been frittered away by the mother, they would hardly bring her name before the public in order to punish the bondsmen who perhaps had generously come forward at a critical time. In some instances there might be a bad mother or widow, and that woman might marry and her husband might get rid of the money. At the present time the State ran the risk of bondsmen not having sufficient to answer the demands of those who took action, or the bondsmen might be out of the State or even out of Australia. The clause in this Bill would work well, and it would be much better than was done at the present, for now the widow, the administratrix, actually used the money without the authority of the law, taking French leave with it, and it would be much more desirable that the law should be as set forth in this clause.

HON. R. S. HAYNES: As to the question of giving security, he was prepared to say that where a widow was applying for administration of an estate of £500 the Court might dispense with that security, but he was certainly not prepared to go so far as to say that where a man died worth, say, £450—probably a life policy of £300 or £400—and left three or four infant children,

the widow should be able to take that money and put it into her own pocket and treat her children as she liked; putting them into an orphanage if she liked, and clearing off with some fellow to the other States. That had been done many a time.

HON. S. J. HAYNES: It was very exceptional.

HON. R. S. HAYNES: The hon. member (Hon. S. J. Haynes) had been living where everybody was moral. He (Hon. R. S. Haynes) had seen dozens of such cases; he had known flagrant, villainous, atrocious cases of mothers leaving their children to be supported perhaps by a friend, and the children eventually drifted into an orphanage, or, if they were older than that, they might meet with a worse fate than going to an orphanage.

HON. S. J. HAYNES: Widows very often over-rode the law now.

HON. R. S. HAYNES: There were some safeguards. It frequently happened that a woman was left a widow when she was from 30 to 40 years of age, and how many were there who would waylay a woman who had that amount in order to have a trip to England, where they would leave her!

HON. D. McKAY: The clause should be opposed. In regard to the children nothing should be left to chance, but it should be made a certainty.

HON. M. L. MOSS: Mr. R. S. Haynes had said he would dispense with the bond in the case of an estate of £500. The bond, however, was the only security that existed that the wife would use only one-third for herself, and give two-thirds to the children. The total amount the widow was entitled to use was one-third of £500, for the purposes of herself and family.

HON. R. G. BURGES: She could get power from the Court to use the other.

HON. M. L. MOSS: Of course she could, but it meant an expenditure, at a low estimate, of £10 to £15 every time one went to the Court; and before Judges would permit money to be appropriated out of the two-thirds for the children, a strong case would have to be made out. Generally speaking, a widow left with children acted properly and honestly, and did not go off marrying some young fellow. While under the Bill it was proposed to give the wife the opportunity of taking the £500 legally, at present she was taking it illegally. Moreover, the provision would only apply in the case of intestates. There was nothing to prevent a man who could not trust his wife, by making a will, from cutting her off with the proverbial shilling.

HON. A. JAMESON: The sum might be amended without the principle being altered. The amount might be £250, £300, or some other sum instead of £500, if the Committee thought such alteration desirable. What the House really had to decide now was the principle of the measure, whether they approved or did not approve of the widow having £500, or the whole going to the children.

HON. G. RANDELL: The clause was not elastic enough. He had thought over these matters through circumstances which from time to time had come under his notice, showing the evils which had arisen with respect to the property of a person who died intestate; and the only possible way to meet every case would be for the court to have power to intervene. The court should apportion the property equitably. If there were any children, why should the husband or the widow have the £500 at his or her absolute disposal. Mr. Haynes's remarks were justified by experience. Such cases were more numerous than might be imagined. Sub-clause 2, regarding divisibility amongst the next of kin, was unsatisfactory, and grossly unjust. The wife or the husband might be the person who had accumulated the property, and why should the next of kin, who might be utterly unworthy, get the estate? In the event of there being some reason for this, the court could equitably apportion the assets. He moved that the farther consideration of Clause 14 be postponed till the end of the Bill.

Motion put and passed, and the clause postponed.

Clauses 15 to 24, inclusive—agreed to.

Clause 25—Bond to be executed:

HON. R. S. HAYNES: The West Australian Trustee Company were specially exempted. Another Clause, 42, allowed the Court to give remuneration to any person appointed an executor, on passing his accounts within the time limited, on all assets collected by him, in

the same way as if he were an administrator. A Bill to that effect had been passed by this House, but had been thrown out in another place. The trustee company appeared to hold a unique position. They seemed to be favoured in Bills of this sort; and surely their name should not appear in Acts of Parliament. Why not add his (Mr. Haynes's) name to those exempted from the necessity of providing bondsmen?

HON. M. L. MOSS: There might in future be other trustee companies.

HON. G. BELLINGHAM: Strike out the clause.

HON. R. S. HAYNES: Surely this made the measure a private Bill. If another trustee company started, were they to get a similar Bill passed, and not only that, but to object to Clause 42, allowing remuneration to an administrator—a clause with which every lawyer was in accord, though few lawyers could act as administrators without regretting their so doing. He moved that all the words after "Majesty," in line 3 of Subclause 2, be struck out.

HON. A. JAMESON: The Bill referred to a private Act, 56 Vict., No. 223, under which the trustee company had deposited £5,000 in the Treasury as security, and therefore occupied an exceptional position.

HON. J. W. HACKETT: The clause ought to be allowed to stand. Any company which acquired rights such as those possessed by this company had to obtain a private Act. There was no law in our State as far as he knew which enabled such companies to be chartered or incorporated by Act of Parliament. The provisions were so important, so numerous, so essential to the good of the public that they could hardly be put in a general form. A company which applied for the right of administering an estate had to comply with requirements and precautions of a most stringent character to protect the public against such company in the discharge of its duties. The company had to pay a deposit of £5,000.

HON. R. S. HAYNES: Not one-fifth sufficient: the amount was grossly inadequate.

HON. J. W. HACKETT: If the Court considered an amount grossly inadequate, the Court could order that the bond should not be accepted. A bond for the Western Australian Executor and Agency Company, Ltd, was only to be accepted where the Court was of opinion it should be accepted, and the sum might be £5,000, £10,000, £20,000, or any other amount. He was afraid this amendment was only leading up gradually to Clause 42 of this Bill, to which he was opposed. Under the Trustees and Executors Act the company was confined to a charge of 2½ per cent. for administration.

HON. R. G. BURGES: What about the other charges? Had the hon. member had anything to do with them?

HON. J. W. HACKETT: An administrator would get not only all the costs out of pocket and all the charges the hon. member was so indignant about, but get 5 per cent. if Clause 42 were passed.

HON. R. S. HAYNES: That was not so.

HON. J. W. HACKETT: As the law stood at present an administrator got all his costs out of pocket and various other charges which a solicitor knew how to make pretty severe, and if this amendment and Clause 42 were passed he would get in addition 5 per cent. out of the value of the estate.

HON. R. S. HAYNES: That was absolutely wrong.

HON. J. W. HACKETT: The hon. member would find it difficult to prove it was wrong. If the hon. member could show it was wrong, he would remove one of the most serious difficulties.

HON. R. S. HAYNES: A solicitor could not charge costs unless the will allowed him to do so.

HON. J. W. HACKETT: The hon. member moved the omission of this clause, with a view of preserving Clause 42. He hoped the matter would be looked into very seriously. Whatever we might say against the Trustees and Executors Company, that company was at all events a refuge to which we might apply if dissatisfied with lawyers or administrators. It was curious that he (Hon. J. W. Hackett) had an almost unanimous chorus of lawyers against him.

HON. M. L. MOSS: One did not avoid lawyers by going to the Trustees, Executors, and Agency Company.

HON. S. J. HAYNES: It was unfair to say that one went to the Trustees Company and did without lawyers. One did nothing of the sort.

HON. J. W. HACKETT: It had not been stated by him that the company could do without lawyers. The company had to do with solicitors as well as had anybody else. Nevertheless he believed that if this amendment and Clause 42 were passed, estates would be seized hold of by solicitors who would not only charge the costs out of pocket and have various pickings——

HON. R. S. HAYNES: What were "pickings"?

HON. J. W. HACKETT: The hon. member knew too much about the subject.

HON. R. S. HAYNES said he had proved less wills than any other solicitor practising in Perth.

HON. J. W. HACKETT: The hon. member would have abundance of them if this were passed. As he had said, the Trustee and Executor Company could only charge a maximum of 2½ per cent.; but, under the clause we were leading up to, solicitors could charge 5 per cent. We knew what would happen, and we knew who would grow fat and healthy as the result of such legislation.

HON. A. G. JENKINS: Why should the Trustee Company have a monopoly?

HON. J. W. HACKETT: They had no monopoly. We would discuss this when we came to Clause 42. If we could be assured that every administrator would be subjected to the same conditions as the Trustee Company, those who were living now and would have to die some day might feel some assurance that their estates would be equitably and properly administered.

HON. M. L. MOSS: When Mr. Hackett talked of "pickings" and the almost disreputable conduct that went on in a solicitor's office——

HON. J. W. HACKETT said he must ask that these words be withdrawn. All he knew was that his hon. friends got fat, whatever it was that made them so.

THE CHAIRMAN: The hon. member should withdraw that expression.

HON. M. L. MOSS: There was nothing to withdraw. The hon. member imputed that this clause was opposed by lawyers on account of "pickings" they anticipated. So far as he was concerned—and he believed he was speaking for others—such an imputation was unwarranted and unjustified. So far as the clause affected the Trustee Company's Act he had no desire to disturb any vested interest, but he quite agreed that £5,000 was an insufficient amount for such a company to provide for the purpose of giving proper security in the case of administration of these estates. Having had some experience of the method in which not only this Trustee Company but other trustee companies in Australia had administered estates, that was the least possible way he would dream of having his property administered in, or advise others to have their property administered in. These companies were guided by a hard, fast, and strict rule, by the letter of the will or statute of distribution. Their one desire was to go on and realise. They realised without using half the discretion that would be exercised by a private executor or administrator, and whilst they followed the will to the letter they might act in such a way as would be entirely prejudicial to the best interests of the estate and those who were to benefit under the will and distribution.

HON. A. JAMESON: It was a mistake to suppose there was only £5,000 as security on the part of the Trustee Executor and Agency Company. If one looked at Section 8 of the private Act it would be found that £5,000 had to be vested in the Treasurer, but by Section 9 the whole of the capital of the company could be called upon. We had always been very careful in this House with vested interests, and we did not want to see them disturbed.

HON. R. S. HAYNES: With vested interests he did not wish to interfere, but he did not believe in making our statute book an advertising medium for anybody. If the trustee company wanted their name in the Bill, let it appear in a private Bill. It was said the company had deposited £5,000 with the Treasury; but they might have 20 estates of £5,000 each to administer. Dr. Jameson said the company had £20,000 of capital, of which £9,000 was paid up; but one might call and call again for the balance. This was but a small company as compared with the Trustees Executors and Agency Company Limited of Melbourne. Where were now the directors of that company?

HON. M. L. MOSS: Far, far away.

HON. R. S. HAYNES: If in this State, they would be constituents of the hon. member interjecting. Mr. Hackett had said the court could order that a bond be taken from the trustee company. But who would make such application to the court? Who was in a position to say for how much the company were liable?

HON. G. RANDELL: The court would make the order without any application.

HON. R. S. HAYNES: Nonsense!

HON. J. W. HACKETT: Was that a sound argument?

HON. R. S. HAYNES: Decidedly. The so-called safeguard to the public did not exist. He protested against the statute book being made an advertising medium, like the *West Australian*.

HON. A. JAMESON: The subscribed capital of the company was £50,000, of which £29,000 had been paid up, whilst the balance could be called up when required. Regarding the words, "unless the court otherwise orders," the court would make an order if the position of the company were doubtful. There was an annual audit of the company's accounts.

HON. J. M. SPEED: Regarding this trustee company, people here were in the same position as were the Melbourne public prior to certain discoveries. However much confidence people might have in the present directors of the company, times might change. As for the auditing, unless that were done by Government auditors, there was no proper guarantee to the public. When the company took charge of estates, they were practically dealing with the rights of the people; and if they sought special rights such as this Bill proposed to grant, the company must allow public auditors to investigate their affairs at times when the company did not expect such investigation. Such a safeguard should be demanded.

HON. G. RANDELL: The deposit made by the company with the Treasurer was now £15,000, and was in such a tangible form that there could be no doubt about the security. To ask for a larger deposit from a small company would be unreasonable. In case of necessity, the court could order a further bond to be given.

HON. R. S. HAYNES: That was never done. In one State, probate had been given of a will before the testator had died

HON. G. RANDELL: That was an exceptional case. The term "monopoly" was inapplicable to the trustee company. Strictly, a monopoly meant letters patent granted by the Crown, excluding other people from participation in certain privileges. But the company was liable to rivalry and competition at any time, there being nothing to prevent the flotation of half-a-dozen trustee companies.

HON. M. L. MOSS: Nevertheless, the company was very nearly a monopoly. The last speaker contended that the words, "the court may otherwise order," would be an absolute safeguard to the public. But the granting of probate and administration was always an *ex parte* matter. There were not two sides represented, and the court never would otherwise order. There would be nobody to object to the bond as being insufficient.

HON. W. MALEY: In trusting a lawyer rather than a company, one was dealing with a person; whereas a company had neither a body to be kicked nor a soul to be damned. The manner in which a legal member (Mr. Hackett) had attacked his own profession was surprising. We were not to call upon the company because they were a weak, struggling company and the only company in the State. We were to trust them without a bond, because they were not wealthy. Whether, however, a company was rich and dishonest or poor and honest, it should be called upon to put up a bond. If protection was required, he did not see why the Trustee Executor and Agency Company or any other company should be excluded.

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

Ayes	9
Noes	9
	0

AYES.	NOES.
Hon. J. W. Hackett	Hon. G. Bellingham
Hon. A. Jameson	Hon. J. D. Connolly
Hon. D. McKay	Hon. R. S. Haynes
Hon. E. McLarty	Hon. S. J. Haynes
Hon. G. Randell	Hon. A. G. Jenkins
Hon. J. E. Richardson	Hon. W. Maley
Hon. H. J. Saunders	Hon. M. L. Moss
Hon. C. Sommers	Hon. J. M. Speed
Hon. T. F. O. Brimage (*Teller*).	Hon. R. G. Burges (*Teller*).

THE CHAIRMAN gave his casting vote against the amendment.

Amendment thus negatived.

HON. R. S. HAYNES moved that progress be reported.

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

Ayes	...	...	8
Noes	...	...	10
Majority against		...	2

AYES.	NOES.
Hon. G. Bellingham	Hon. T. F. O. Brimage
Hon. R. G. Burges	Hon. J. D. Connolly
Hon. R. S. Haynes	Hon. J. W. Hackett
Hon. S. J. Haynes	Hon. A. Jameson
Hon. A. G. Jenkins	Hon. D. McKay
Hon. W. Maley	Hon. E. McLarty
Hon. M. L. Moss	Hon. G. Randell
Hon. J. M. Speed (*Teller*).	Hon. H. J. Saunders
	Hon. C. Sommers
	Hon. J. E. Richardson (*Teller*).

Motion thus negatived.

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

Ayes	...	...	10
Noes	...	...	9
Majority for		...	1

AYES.	NOES.
Hon. J. W. Hackett	Hon. G. Bellingham
Hon. A. Jameson	Hon. J. D. Connolly
Hon. D. McKay	Hon. R. S. Haynes
Hon. E. McLarty	Hon. S. J. Haynes
Hon. G. Randell	Hon. A. G. Jenkins
Hon. J. E. Richardson	Hon. W. Maley
Hon. H. J. Saunders	Hon. M. L. Moss
Hon. Sir George Shenton	Hon. J. M. Speed
Hon. C. Sommers	Hon. R. G. Burges (*Teller*).
Hon. T. F. O. Brimage (*Teller*).	

Clause thus passed.

Clause 26—Penalty of bond:

THE MINISTER FOR LANDS moved that progress be reported.

HON. R. S. HAYNES: Fifteen minutes had not elapsed since a similar motion had been put.

THE CHAIRMAN: True. The motion was out of order.

HON. R. S. HAYNES: The clause commenced, "Every bond shall be in a penalty equal to the amount under which the property of the deceased is sworn." A penalty bond ought to be double the amount of the bond; whereas here the penalty bond was equal to only half the amount of the estate. He would vote against the clause.

HON. A. JAMESON moved that "equal to," in line 1, be struck out and "double" inserted in lieu.

HON. W. MALEY opposed the amendment. Apparently an attempt was being made to double the advantages of the trustee company. It was now proposed that every bond was to be in a penalty double the amount under which the property of the deceased was sworn. If this were passed, he would vote against every remaining clause in the Bill.

HON. J. M. SPEED: With regard to small estates of £100 or £200, the clause might be left as it stood; for where the executors were not men of means, there would be great difficulty in executing bonds.

Amendment put and negatived.

HON. M. L. MOSS moved that after the word "the," in line 1, the word "gross" be inserted. In the administration of an estate there might be £500 or £600 worth of property and £300 or £400 worth of debts. In returning the statement to the court, the amount of the debts was deducted and a bond entered into for say £200, which bond would be a smaller amount than the amount of the debts. It was important that the bond should be in a sum equal to the gross value of the estate.

HON. R. S. HAYNES moved that progress be reported.

HON. M. L. MOSS: And leave asked to sit again.

HON. R. S. HAYNES: No. That he would not move.

POINT OF ORDER.

HON. J. W. HACKETT rose to a point of order. A motion for reporting progress must be put without discussion; therefore it was necessary to allow an amendment to be moved if the House did not agree with the hon. member's motion that progress be reported without leave being asked to sit again, else Mr. Haynes would have to ask permission of the House to add those words to his motion. The hon. member's course practically amounted to an interruption of the business of the House.

THE CHAIRMAN: A motion might be made during the progress of the Committee that the Chairman should report progress and ask leave to sit again.

HON. R. S. HAYNES: But that was not the motion he had moved.

HON. J. W. HACKETT: If Mr. Haynes moved that the Chairman do report progress, without adding to the motion the usual words, "and ask leave to sit again," and if that motion were carried, the Bill would be dropped.

HON. R. S. HAYNES: True.

HON. J. W. HACKETT: That motion or a similar motion could not be moved until 15 minutes had elapsed, so that the hon. member, by moving that motion at the psychological second of the clock, could always introduce a motion that the Chairman leave the Chair, and keep us debating, and then when that 15 minutes had expired he could move that progress be reported without asking leave to sit again, and we might be kept going the whole evening. There must be some power in the Chair to take the sense of the House as to whether leave was to be asked to sit again or not.

HON. R. S. HAYNES: It was laid down clearly in *May*.

THE CHAIRMAN quoted the following from *May*:—

> It is the practice for members who desire to close the sitting of a committee, to move that the "Chairman do report progress, and ask leave to sit again," in order to put an end to the proceedings of the committee on that day, this motion, in committee, being analagous to that frequently made at other times, for adjourning the debate. A motion, "That the chairman do now leave the chair," when carried, supersedes the order of the day for a committee, and converts it into a dropped order; as, when the Speaker resumes the chair, no report whatever is made from the committee.

HON. J. W. HACKETT: Was it in order to move an amendment that the Committee report progress, without asking leave to sit again?

THE CHAIRMAN: When a motion to report progress was made, it ought to be with the words, "and ask leave to sit again."

HON. J. W. HACKETT: That was all that was wanted.

HON. A. G. JENKINS: As the motion was not in order, he begged to move, "that the Chairman do now leave the Chair."

HON. J. W. HACKETT: And ask leave to sit again.

HON. A. G. JENKINS: No.

HON. J. W. HACKETT: The Chairman had ruled that these words must be added, if the House so desired.

HON. A. G. JENKINS: *May* did not say so.

THE CHAIRMAN: The ruling just given was made on 352; that the motion must be that the Chairman report progress and ask leave to sit again.

HON. R. S. HAYNES: Mr. Jenkins had now moved on 354, "that the Chairman do now leave the Chair."

HON. J. W. HACKETT: That was Mr. R. S. Haynes's motion.

HON. R. S. HAYNES: No.

Motion (that the Chairman do now leave the Chair), put.

HON. J. W. HACKETT: Was the Chairman going to enforce the ruling or not, that if the Committee desired the words "and ask leave to sit again" to be added, those words should be added.

THE CHAIRMAN: Under 352 he ruled that the words ought to be "that the Chairman report progress and ask leave to sit again." Those words "ask leave to sit again" ought to be included.

HON. A. G. JENKINS: Under 354 he had moved that the Chairman do now leave the Chair.

HON. R. S. HAYNES: That must be put without discussion.

Motion—that the Chairman do now leave the Chair—put, and a division taken with the following result:—

Ayes	...	...	7
Noes	...	...	11
Majority against		...	4

AYES.	NOES.
Hon. G. Bellingham	Hon. T. F. O. Brimage
Hon. R. G. Burges	Hon. J. W. Hackett
Hon. J. D. Connolly	Hon. S. J. Haynes
Hon. R. S. Haynes	Hon. A. Jameson
Hon. A. G. Jenkins	Hon. E. McLarty
Hon. W. Maley	Hon. M. L. Moss
Hon. J. M. Speed (*Teller*).	Hon. G. Randell
	Hon. J. E. Richardson
	Hon. H. J. Saunders
	Hon. C. Sommers
	Hon. D. McKay (*Teller*).

Motion thus negatived.

DEBATE RESUMED.

HON. J. M. SPEED: One wanted to know with regard to these small estates whether the member in charge of the Bill was prepared to suggest any amendment by which the present hardship would hereafter be done away with.

HON. A. JAMESON: The clause would be supported by him entirely as it stood.

HON. J. M. SPEED: That was to say this Bill was not going to give any assistance in the way of simplifying the law.

HON. M. L. MOSS: What did the hon. member suggest?

HON. J. M. SPEED: The suggestion by him was that the amount of the bond

should be very much less in the case of an estate of £100 or £200, or that even in the Court of Probate there should be no bond at all.

HON. A. JAMESON: The court might dispense with a bond. The matter lay with the court in this case, and we could not get a better power than that. It was impossible to lay down a hard-and-fast rule as to how much the bond should be.

HON J. M. SPEED: The court could not exercise any discretion. If an estate went into court, the court had to ask that a bond should be given, but in some States in estates of the gross value of £200 there would be no necessity for a bond. He did not see why a bond should be necessary where an estate was £200, or one might say £100. It was very often a difficult thing to get a bond. Very often expenses in these small estates were as large as those in relation to a big estate.

HON. M. L. MOSS: If the hon. member looked at 24 Victoria, No. 15, he would find that no administration could be granted without a bond being entered into. Clause 26 of this Bill was a great reform upon that, because the court might dispense with one or more sureties to any bond. He had no doubt that where an estate was very small and there were no debts, the court would dispense with any bond at all.

Amendment (Mr. Moss's) put and passed, and the clause as amended agreed to.

Clauses 27 to 35, inclusive—agreed to.

Clause 36—Special letters of administration if executor or administrator not within jurisdiction:

HON. R. S. HAYNES: Suppose an executor happened to be out of the State, in Melbourne, any creditor could apply to the court for special letters of administration, and no notice whatever of the application would be given to the executor. What then became of the probate? True, on his return, the executor might apply to the Court to rescind such special grant.

HON. M. L. MOSS: By Clause 32, the executor had power to appoint an attorney.

HON. R. S. HAYNES: The Bill was being rushed through, and if passed as it stood a mess would result. If this were attempted, he would place a number of amendments on the Notice Paper.

THE MINISTER FOR LANDS moved that progress be reported, and leave asked to sit again this day week.

Motion put and passed.

Progress reported, and leave given to sit again.

ADJOURNMENT.

The House adjourned at 9·50 o'clock, until the next day.

Legislative Assembly,

Tuesday, 8th October, 1901.

Election Return, North Perth—Petitions (2): Coupon System of Trading—Petition: Coal Mines Regulation Bill—Papers presented—Revenue and Expenditure, Statement by the Treasurer—Question: Railway Workers' Hours—Question: Railway Refreshment Room—Question: Boulder Railway, Barrier System—Question: Railway Administration, Departmental Files—Fourth Judge Appointment Bill, second reading—Criminal Code Bill, in Committee, reported—Excess Bill (1900-1), first reading—Industrial and Provident Societies Bill, second reading resumed, concluded—Workers' Compensation Bill, in Committee; Count-out—Adjournment.

THE SPEAKER took the Chair at 4·30 o'clock, p.m.

PRAYERS.

ELECTION RETURN, NORTH PERTH.

THE SPEAKER announced that he had received a return to the writ issued for the election of a member to serve in the Legislative Assembly for the Electoral District of North Perth, in the place of Mr. Richard Speight, deceased; from which return it appeared that Mr. George Frederick McWilliams had been duly elected.

DR. MCWILLIAMS then subscribed the oath, and signed the members' roll.

PETITIONS—COUPON TRADING.

MR. W. F. SAYER presented a petition signed by residents of Cottesloe, and a similar petition signed by residents of