

Ayes.  
Mr. Hurt  
Mr. Brown  
Mr. Hamersley  
Mr. W. Hargreaves  
Mr. T. Burges  
Mr. Glyde  
Mr. Monger  
Mr. Randell (Teller.)

Noes.  
The Hon. A. O'Grady  
Lefroy  
The Hon. M. Fraser  
Mr. Crowther  
Mr. Steere  
Mr. Shenton  
Mr. Padbury  
Mr. Gale  
The Hon. H. H. Hocking  
(Teller.)

The voting being equal, the CHAIRMAN gave his casting vote with the Noes.

Amendment thus negatived.

Clause agreed to.

Clauses 4 and 5 agreed to.

Clause 6—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the following words be added to subclause (1): "If at any future time the Supreme Court shall consist of more than one judge, such trial shall be conducted before the Chief Justice and at least one other judge."

Amendment agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that after the words "the judge," in the first line of subclause (3), the words "or judges" be inserted; and after the word "him," in the second line, insert the words "or them."

Amendments agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that after the words "the judge," in the first line of subclause (4), the words "or judges" be inserted.

Amendment agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the words "Chief Justice" in the third line of subclause (5) be struck out, and the words "presiding judge or judges" inserted in lieu.

Amendment agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the words "Chief Justice" in the fourth line from the end of the clause, be struck out, and the words "presiding judge or judges" inserted in lieu; and after the word "his," in the second line from the end, the words "or their" be inserted.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 7 to 32 agreed to.

Clause 33—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the word "is," in the last line be struck out, and the word "are" inserted in lieu.

Amendment agreed to.

Clause, as amended, agreed to.

Preamble agreed to.

Title agreed to.

Bill reported, with amendments.

## CONFIRMATION OF EXPENDITURE BILL.

Third Reading.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) moved that the Bill be now read a third time.

The Bill was read a third time and passed.

## PAPER TABLED.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) laid on the table a copy of a despatch from the Secretary of State to His Excellency the Governor notifying that Her Majesty would not be advised to exercise her power of disallowance in respect of certain Acts passed during the preceding Council.

The Council adjourned at 3 p.m.

## LEGISLATIVE COUNCIL, Wednesday, 8th December, 1875.

Paper Tabled—Supply of Water to Shipping—Revision of Tariff—Pearl Shell Fishery Regulation Bill: second reading: motion for committee stage: in committee—Capital Punishment Amendment Bill: second reading: in committee—Law of Evidence Amendment Bill: second reading: in committee—Protection of Witnesses Bill: second reading—Distillation Act, 1871. Amendment Bill: third reading.

The ACTING SPEAKER took the Chair at 7 p.m.

PRAYERS.

## PAPER TABLED.

The SURVEYOR GENERAL (Hon. M. Fraser) laid on the table a plan showing the position of the mulberry plantation in Perth, and the streets adjacent.

## SUPPLY OF WATER TO SHIPPING.

Mr. PEARSE, in accordance with notice, asked the Surveyor General what steps he had taken to carry out the resolutions of the House with regard to the supply of water to shipping at Fremantle.

The SURVEYOR GENERAL (Hon. M. Fraser) replied as follows:—For supplying of shipping at Fremantle with water, a tank is being constructed by convict labor within the Establishment grounds. This tank, which is of brick lined with cement, has been estimated to hold about 67,000 gallons of water, and will be filled during winter from the rainfall off the roofs of the main building, and the supply kept up during the dry season from wells by means of pumps. The arrival of the ship *Lady Louisa*, with cement required for the completion of the lining to the tank, and with the guttering, pipes, hydrants, &c., necessary for the gathering, conveying, and distributing of the water, will enable the work to be carried on to completion in accordance with the plan which has been approved by this Council.

#### REVISION OF TARIFF.

Mr. HAMERSLEY, with leave, asked for the withdrawal of his notice of motion that a select committee be appointed to consider and report upon the tariff with a view to its revision during the present session of the Legislative Council. Such committee to be appointed as provided by the 69th clause of the Standing Orders.

Motion, by leave, withdrawn.

#### PEARL SHELL FISHERY REGULATION BILL.

##### Second Reading.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) in moving the second reading of a Bill to make further provision for the regulation of the pearl shell fishery on the north-west coast, said that the object of the measure was to render it lawful for the Governor in Executive Council from time to time to make regulations with regard to the mode in which, the times at which, and the circumstances under which, diving operations shall be carried on; also to frame regulations with regard to the persons whom it shall be lawful to employ in diving for pearl shells, and with regard to the accommodation afforded in the ships to be employed in connection with the fishery, and the number of persons to be carried in the same. One of the main objects of the Bill was to put an end to the existing practice of employing natives and Malays to dive for shells on Sunday, regardless of their physical or moral welfare. In the interests of humanity, and with a view to ensure a more proper observance of the sanctity of the Sabbath, the Government had, in consequence of representations made to them with

regard to the practices obtaining at the fishery, felt it a duty to introduce a measure of this nature.

Mr. RANDELL expressed his entire sympathy with that portion of the measure which proposed to give to the Governor certain powers with reference to the observance of a proper observance of the Sabbath. He could quite understand that almost everyone would be in favor of the adoption of some steps to check the existing practice of Sunday diving, and he would be pleased to see the provisions of the Act extended to Shark's Bay, where, he had been informed, similar evil practices prevailed. He had heard of unfortunate natives and Malays who had been engaged six days in the week in diving operations, being compelled by their employers on the seventh to gather firewood. Such instances of avarice, cupidity, and tyranny as these should no doubt be stopped, and effectually stopped, too. He was one of those who believed that a due observance of the Sabbath as a day of rest was calculated to promote the happiness and well being of a community. "Six days shalt thou labor and do all that thou hast to do" was a commandment delivered to mankind by One who careth for their happiness. He was therefore very pleased to learn that the Government were about to interfere with the view of ensuring a more proper observance of the Sabbath as a day of rest among the benighted beings employed in diving operations at our north-west fisheries. On sanitary ground he was also in favor of the regulations which it was proposed to be framed by the Government in Council for the provisioning of vessels engaged in the industry, and the accommodation afforded those on board such vessels. But, while possessing every confidence in His Excellency's sound judgment and high sense of justice, he did think that, when it was proposed to place in His Excellency's hands uncontrolled power to regulate the size and the furniture of vessels to be employed in the prosecution of pearling operations, and the actual mode in which such operations shall be conducted, they were giving very unlimited and somewhat vaguely-defined powers to the Executive. He would venture to suggest that the consideration of the Bill should be postponed for a few days, in order to enable the Government to bring forward something more definite with regard to the nature of the regulations which it was proposed to frame in accordance with the provisions of the Bill.

Mr. T. BURGESS concurred in the belief that too much power would be placed in the hands of the Executive by the Bill before the House, and he thought it would be expedient

to limit such power, or at any rate to define it with greater exactitude than was here done. While quite prepared to support any measure calculated to protect those persons engaged in pearling operations, he failed to see any stronger necessity for legislating with regard to the observance of the Sabbath at the pearl shell fishery than in any other part of the colony. He did not see much difference between diving on Sunday, and driving sandalwood teams and wool teams on that day; but, while it was now proposed to put an end to the first-named practice he did not hear of any effort in the same direction made to suppress the equally objectionable practice of driving teams on Sunday. The Bill appeared to him to savor of class legislation, and he would beg to move—not, however, in any factious or obstructive spirit—that it be read that day six months.

Amendment not agreed to.

The Bill was read a second time.

Motion for Committee Stage.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) moved that the Bill be now considered in Committee of the whole Council.

Mr. BURT said it certainly did appear that it was proposed to give somewhat too uncontrolled power to the Executive, and he would suggest that the full extent of the power with which it was deemed expedient to invest the Governor in this matter should be defined in a schedule appended to the Bill. For himself, he had not much faith in sumptuary legislation; the spirit of the age was opposed to it. He was no upholder of those who could not rest satisfied unless it were put in their power to dispose of the time of every one who did not happen to think as they did, and to regulate their neighbour's conduct for a seventh part of the week. He did not mean to say that there was no semblance of warranty under the surrounding circumstances for interfering with the hours of labor of those engaged in diving operations; on the contrary, he believed that, on sanitary grounds alone, it was expedient that some regulations should be framed and enforced for the protection of such persons, and that they should at any rate have one day of rest in the week, be it Sunday or any other day.

Mr. MARMION opposed the Bill, in the belief that it would be inexpedient to place such powers as were contemplated by the clause under consideration in the hands of the Governor. He would not give way to any man in his respect for His Excellency and the

members of his Executive; he had entire confidence in their integrity and their good-intentions. But it must be admitted that they could not possibly be well-acquainted with the various circumstances surrounding the prosecution of the industry of pearling, and for that very reason were liable to frame such regulations for controlling the operations of those engaged therein as might tend to hamper and harass an industry that was daily becoming of greater importance. The Bill appeared to him objectionable in its present shape, and he would suggest that its consideration be postponed until next session, when the Government might be prepared with some well digested measure having the same object in view. To that end, he would move, as an amendment, that the Bill be considered in Committee that day six months.

Mr. T. BURGESS seconded the amendment. He could not support the Bill in its present form, however desirable and expedient some of its provisions were.

Mr. BROWN said no doubt the time had arrived for legislating on this subject, and the only divergence of opinion appeared to be whether the power to frame the proposed regulations should be vested in the Governor or in the Legislative Council. For himself he considered it would be extremely unwise on the part of the House to attempt to frame such regulations. The Executive were in a better position to ascertain the requirements of a remote settlement than individual members could possibly be.

Amendment not agreed to.

In Committee.

Clause 1 agreed to.

Clause 2—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that after the words "pearl shell," in the fourth line, the words "maybe or" be inserted; and after the word "shall" in the fourth line, the word "not" be inserted.

Amendments agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the words "size of" in the sixth line, be struck out; and to insert the words "accommodation to be afforded in".

Amendment agreed to.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the word "furniture and," in the sixth line be struck out.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 3 and 4 agreed to.

New clause—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved the insertion of the following additional clause:—"The third section of The Pearl Shell Fishery Regulations Act, 1873, is hereby amended by inserting, after the words "other person shall" and before the word "employ," in the second line, and after the words "other person who shall" and before the word "employ" in the sixth line, the words following (that is to say): "carry to sea or;" and by adding to the said section the proviso following (that is to say): "Provided always that no person shall be liable to be punished under this section for carrying any aboriginal native to sea without entering into an agreement and having the same endorsed pursuant to the provisions of this Act, if he can shew to the satisfaction of the said Justices that he carried such native to sea with the consent of such native, and solely for the purpose of bringing him with all convenient expedition before a Justice of the Peace or police constable or other person duly appointed by the Governor to endorse agreements made under this Act, with a view to entering into an agreement with such native and having it endorsed pursuant to the provisions of this Act."

New clause agreed to.

Preamble—

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) moved that after the word "therein," in the third line, the words "and to amend the Pearl Shell Fishery Act, 1873," be inserted.

Amendment agreed to.

Preamble, as amended, agreed to.

Title agreed to.

Bill reported, with amendments.

#### CAPITAL PUNISHMENT AMENDMENT BILL.

Second Reading.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved the second reading of a Bill to enable the Governor to cause Aboriginal natives condemned to death to be executed in the district where they committed the outrage for which they had forfeited their life. The object of this measure was to strike terror into the heart of other natives who might be collected together to witness the execution of a malefactor of their own tribe, and it was hoped that the deterrent influence of such a scene would act effectually in the prevention of crime amongst the Aborigines. The Bill had been framed in no vindictive spirit, but in the

belief that it would operate beneficially by possibly preventing the committal of outrages by natives,—as well *inter se* as upon whites.

Mr. BROWN hailed the introduction of such a measure with every satisfaction. It had been a desideratum for years past, for there could be no doubt that the execution of a native in the district where an outrage was committed and in the presence of his own tribe must have a deterrent effect upon those who witnessed the execution. The Bill had his cordial support.

Mr. T. BURGESS believed that if a measure of this nature had been introduced years ago it would have prevented many a deplorable outrage in the northern districts as well as in other parts of the colony.

Mr. PADBURY expressed his hearty concurrence with the object of the Bill. He would even go farther than was contemplated by its framers, for not only, as regarded the native criminals of the north-west settlement, would he have them executed in that district, but he would have them tried there as well. He would invest the Resident Magistrate and a common jury with the power to deal on the spot with capital offences committed by these natives, as such a course would result in an immense saving to the colony, while at the same time there would be no miscarriage of justice.

Mr. MARMION feared that the public execution of a native in the presence of the tribe to which he belonged would lead to retaliation on the part of the culprit's friends and relations. The revengeful nature of the Aborigines was notorious, and it was quite possible that instead of a public execution being likely to deter other natives from committing capital offences it might actually tend to the committal of retaliatory outrages. In return for our *lex scripta* the Aborigines might give us a spice of their *lex talionis*.

The Bill was read a second time.

In Committee.

The Bill passed through Committee without discussion.

#### LAW OF EVIDENCE AMENDMENT BILL.

Second Reading.

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved the second reading of a Bill to amend the law of evidence, by enabling natives to be admitted, under certain circumstances, to act as interpreters without taking the usual oath. The law at present only dealt with natives giving evidence as witnesses, and

did not apply to Aboriginal interpreters. In a recent case heard in the Supreme Court, he had tendered a native as an interpreter, but objection was taken by counsel to the native acting in that capacity unless it could be shown that he believed in the doctrines of Christianity and the sanctity of an oath. The objection was allowed by the Chief Justice, as the existing Ordinance only provides for the affirmation of natives giving direct personal evidence, and not to native interpreters. The present Bill had been introduced to remedy that defect, and apparent anomaly.

The Bill was read a second time.

#### In Committee.

##### Clause 1—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the words "or court and jury, as the case may be," in the eighth and last lines, be struck out.

Amendment agreed to.

Clause, as amended, agreed to.

##### Clause 2—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the words "or court and jury, as the case may be," in the 11th and last lines, be struck out.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 3 agreed to.

New clause—

The ATTORNEY GENERAL (Hon. H. H. Hocking) moved that the following stand as clause 1, the interpretation clause:—

The word "court" shall include any person or persons having by law authority to administer an oath.

New clause agreed to.

Preamble agreed to.

Title agreed to.

Bill reported, with amendments.

#### PROTECTION OF WITNESSES BILL.

##### Second Reading.

The ATTORNEY GENERAL (Hon. H. H. Hocking), in moving the second reading of a Bill for the protection of witnesses, said it had been found expedient for the due administration of justice that persons giving evidence in any trial in the Supreme Court should be compellable to speak the truth and the whole truth and should not be able to excuse themselves from doing so by alleging

that the answer to any question put to them would criminate them. The Bill before the House provided for such cases, and would no doubt commend itself to the consideration and support of hon. members. It was proposed that when a witness called to answer any interrogatory should decline to do so on the ground that his answer would criminate himself, the Chief Justice should be empowered to grant the witness a certificate which might be pleaded in bar to prosecution arising from any criminatory admission made in evidence. It was not intended, however, that such certificate should be pleadable in bar of any indictment or information brought against the witness for perjury.

The Bill was read a second time.

#### DISTILLATION ACT, 1871, AMENDMENT BILL.

##### Third Reading.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) moved that the Bill be now read a third time.

The Bill was read a third time and passed.

The Council adjourned at 10.30 p.m.

#### LEGISLATIVE COUNCIL, Thursday, 9th December, 1875.

Paper Tabled—Wines, Beer, and Spirit Sale Act, 1872, Amendment Bill: Message from the Governor, No. 1—Crews of Coasting Vessels Discipline Bill: first reading—Closing of Streets in Perth Bill: second reading: in committee—Pearl Shell Fishery Regulation Bill: motion for third reading—Third Readings—Protection of Witnesses Bill: in committee

The ACTING SPEAKER took the Chair at 12 noon.

PRAYERS.

##### PAPER TABLED.

The ACTING COLONIAL SECRETARY (Hon. A. O'Grady Lefroy) laid upon the table a copy of the agreement made between the Government and the owners of the steamer *Georgette* with reference to the steamer postal contract.