

expressed his surprise that the House had not been consulted in the matter.

The motion was agreed to.

#### AUDIT BILL.

MR. STEERE obtained leave to bring in a Bill to regulate the receipt, custody, and issue of the public moneys, and to provide for the audit of the public accounts.

The Bill was read a first time, and ordered to be printed.

#### ADDRESS IN REPLY TO THE GOVERNOR'S SPEECH.

At half-past twelve o'clock, the House adjourned, and Mr. Speaker and the other members present proceeded to Government House to present the Address in Reply to His Excellency's Speech, as ordered the previous day.

On their return,

MR. SPEAKER announced to the Council that the Address to His Excellency the Governor had been presented in accordance with the Resolution of the House, and that His Excellency had been pleased to reply, as follows:—

“MR. SPEAKER AND GENTLEMEN OF THE  
“LEGISLATIVE COUNCIL,—

“I thank you for your Address in reply to my opening speech, and for your congratulations on my return to Western Australia.

“I thank you also for the promise of your co-operation in all matters tending to the advancement of the Colony, and have no doubt that the attentive consideration which I am sure you will bestow on the questions which come before you will result in liberal and beneficial legislation.”

The Council adjourned at half-past twelve o'clock, p.m.

#### LEGISLATIVE COUNCIL,

Friday, 23rd July, 1880.

Amendment of Standing Orders as to the sitting days of the Council—Excess Bill: first reading—Real Property Limitation Bill: first reading—Shipwrecked Colonial Seamen Bill: second reading: in committee—Destructive Insects and Substances Bill: second reading: in committee—Census Bill: third reading—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

#### PRAYERS.

#### AMENDMENT OF STANDING ORDERS.

MR. STEERE, in accordance with notice, moved, that the second Standing Order be amended, with a view to make Thursday the only morning sitting in the week, instead of having two morning sittings. He believed it was the wish of the House—at any rate of hon. members on his side of the House—that the sittings should be in the evening, which was much more convenient to those engaged in business than morning sittings. He understood it was the intention of the Colonial Secretary to substitute Wednesday instead of Thursday for the day of sitting; and if hon. members were agreeable, he (Mr. Steere) had no objection to offer to Wednesday being substituted.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) thought Wednesday would be a more convenient day than Thursday to have a morning sitting, and for that reason he would move, as an amendment, that the Standing Orders be amended accordingly.

MR. S. H. PARKER pointed out that Wednesday would be a very awkward day for the legal gentlemen who were members of the House, as the Supreme Court usually sat on that day.

The amendment, by leave, withdrawn, and the original question put and passed.

#### EXCESS BILL.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy), in accordance with notice, moved the first reading of a Bill to confirm the expenditure for the services of the year 1879, beyond the grant for that year.

Bill read a first time.

**REAL PROPERTY LIMITATION ACT—  
REPEAL BILL.**

Mr. BURT, in accordance with notice, moved for leave to bring in a Bill to repeal "The Real Property Limitation Act, 1878."

Agreed to.

Bill read a first time and ordered to be printed.

**SHIPWRECKED COLONIAL SEAMEN  
BILL.**

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) moved the second reading of a Bill to provide for the relief and return to Western Australia of shipwrecked colonial seamen. The hon. gentleman said the measure was introduced at the request of the Imperial Government. No provision at present existed for the relief, and return thence, of distressed colonial seamen shipwrecked in England; and, as British seamen distressed through shipwreck in the Colonies are sent home at Imperial expense, it would appear only right that colonial seamen becoming distressed by shipwreck in the United Kingdom should be relieved and sent home at the expense of the respective Colonies to which they belong. The Bill provided that the Board of Trade, or the Shipwrecked Mariners Society, should be authorised to relieve and send home any distressed seamen belonging to this Colony, when satisfied that such seamen could not find means to provide for themselves by working their passage; and that the reimbursement of the expenses so incurred by the Board of Trade or the said Society should be guaranteed by the Colonial Government.

The Bill was read a second time, and passed through Committee, without discussion.

**DESTRUCTIVE INSECTS AND  
SUBSTANCES BILL.**

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy), without comment, moved the second reading of a Bill for preventing the introduction and spread of insects or of matter destructive to vegetation.

Mr. STEERE said he did not intend to oppose the motion for the second reading of the Bill, but intimated his

intention of moving certain amendments in it when the House came to consider it in Committee.

The motion for the second reading was then agreed to, and the Bill committed.

**IN COMMITTEE.**

Clause 1—"Power to Governor to make orders for preventing the introduction into Western Australia of insects or of matter destructive or prejudicial to vegetation:"

Mr. BURT said it might be owing to defective hearing, but, though he had listened with some attention, he had not heard the hon. gentleman who moved the second reading offer any explanation as to the object of the Bill, or afford the House any indication whatever of its design. He thought it was quite time that question was asked, and that some information as to the intentions of the Government in introducing the measure should be vouchsafed to the House.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) was glad the hon. member had reminded him of this omission, which was quite an inadvertence on his part. Some time ago, the Government received an official communication from Sir Bartle Frere, the Governor of the Cape Colony, in which the importation of vines into that country was, under certain conditions, prohibited—a precautionary measure which, in the interest of the Colony, it was deemed desirable by the Cape Government to adopt. On receipt of this communication, the Governor here, upon inquiry, discovered that he had no power to adopt a similar course, should it be deemed expedient to prohibit the introduction of destructive insects, or of diseased vines or other plants; whereupon His Excellency advised the framing of the present Bill to meet the difficulty.

The clause was then agreed to.

Clause 2—"Power to Governor in Executive Council to make orders for preventing the spread of destructive insects or matter. Any such order may direct or authorise the removal or destruction of any plantation or crop on which any such insect or matter is found, and may impose penalties for offences against the order not exceeding £10 for any offence, to be recoverable

"with costs on summary conviction before two justices of the peace."

MR. STEERE said there could be no doubt that the duties imposed upon justices by this Bill would be very novel to them, whether they be stipendiary or honorary magistrates. But he observed, from some of the clauses of the Bill, that it was proposed to invest the Resident and Police Magistrates with full and unaided power to execute the orders made by the Governor in pursuance of the provisions of the Bill; whereas in the clause now before the House no less than two justices of the peace sitting together could adjudicate, in the case of a violation of the Act. This appeared to him to pre-suppose on the part of the Government that stipendiary magistrates were endowed with superior intelligence to honorary justices. He would move, as an amendment, that the words "two Justices of the Peace," in the 30th line, be struck out, and the words "a Resident or Police Magistrate and one other justice of the peace or before any other two justices" be inserted in lieu thereof.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) said that in framing the Bill he had simply adopted the form prescribed and usually followed in these cases, as regards giving two justices of the peace the power vested in a stipendiary magistrate. By the local Ordinance 27th Vict. No. 17, the powers exercisable by two honorary justices were vested in the Government Residents alone, and he did not think much harm was likely to be done by entrusting such men as Messrs. Loftie, Slade, Eliot, Hare, Cowan, Pearce Clifton, Fairbairn, and Octavius Burt with such powers. There was nothing very extravagant, he thought, in giving these gentlemen, who usually sat alone and unaided, the powers generally exercised by two justices of the peace. As to taking any disparaging view of the ability and intelligence of the honorary magistrates, or of their integrity he was by no means disposed to do so. Moreover, if the case to be adjudicated upon should be one of any importance, there was nothing to prevent all the justices of the peace in the neighborhood taking their seats on the bench; the Bill merely fixed the minimum number of justices empowered to impose a penalty under the Act.

There was another local Ordinance (14 Vict., No. 5, section 32) introduced for the benefit of the public, which empowered a magistrate situate more than fifteen miles from another justice to sit and to adjudicate alone and unaided. The amendment proposed by the hon. member for the Swan violated the principle which governed the provisions of the two local Ordinances referred to, and virtually repealed them. It was moreover a slur upon the Government functionaries. Surely in matters of this sort, the Resident Magistrates, who were persons selected for the position by reason of what he might even venture to call their intellectual superiority—at all events, were gentlemen who had more time and leisure at their disposal to qualify themselves for the discharge of their functions than the majority of honorary justices had; and surely in a simple matter like this, these gentlemen might safely be entrusted with the powers proposed to be vested in them under this Bill. A Resident Magistrate was not merely a Government servant; he was a conspicuous public functionary, and, necessarily, discharged the duties of his position with greater deference to public opinion than ordinary magistrates could be expected to do. Sometimes they heard—he had heard it lately—of magistrates who sat in petty sessions, coming into court with their votes in their pockets—

MR. STEERE: Name.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): I wish I could name; I would get him instantly struck off the roll. It is seldom one hears such a charge made against a Resident Magistrate; and if those functionaries were to make a blunder, or to exhibit anything like partisanship, they would very soon be told of it, and in very forcible language. The House must also bear in mind that every single one of these magistrates is now in telegraphic communication with Perth, and therefore in a position to obtain information as to his proper course of proceeding. Moreover, as I have said before, any magistrate, no matter who he is, may, if he choose, take his seat on the bench beside the stipendiary functionary, and perhaps encumber him with his assistance in the dispensation of what he calls, and what

is intended to be, justice. I think it would be invidious, to say the least, in this particular case, to divest the Resident Magistrates, as is contemplated in the amendment, of the powers now entrusted to them under the local Ordinances referred to.

MR. S. H. PARKER pointed out that one of those Ordinances (the 27th Vict., No. 17) specially contemplated such an amendment as that submitted by the hon. member for Swan. It empowered a stipendiary magistrate to exercise the power of two honorary justices, in all matters with respect to which there was "no express enactment to the contrary"—clearly indicating that it was in contemplation that cases might arise in which it would not be expedient that the Resident Magistrates should exercise such power. He did not think there was any intention on the part of the mover of the amendment to cast any slur upon the paid magistrates; but, on the other hand, it appeared to him (Mr. Parker) that the Government members opposed the amendment because they had no faith in the intelligence and integrity of the non-stipendiary justices, who, it was insinuated, might possibly come to adjudicate upon a matter with their votes already in their pockets. He was not a justice of the peace himself, but there were members in the House who were, and it would be for them to resent this imputation cast upon their body. He would support the amendment if only out of deference to the honorary magistrates.

MR. MARMION was afraid the object aimed at by the hon. member for the Swan would not be attained by the amendment. The hon. gentleman's intention, no doubt, was to prevent what he assumed might sometimes happen—an unintentional act of injustice being committed towards the owners of plantations in carrying out the provisions of the Bill; and he (Mr. Marmion) thought it would be necessary to provide that no less than three justices should be entrusted with the power contemplated in the clause under consideration. His own experience in magisterial matters was not extensive, but he thought it would be found, as a rule, that where an honorary justice sat with a stipendiary magistrate, the former, in the event of a

difference of opinion, would bow to what he regarded as the superior knowledge and experience of the latter. If he did not do so, what was there to be gained by having only two justices on the bench—the Resident being of one opinion and his honorary colleague of another. Who was to decide between them? As to what fell from the hon. gentleman opposite (the Attorney General) with respect to honorary justices of the peace, he (Mr. Marmion) did not suppose the hon. gentleman meant exactly what he said.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): Every word of it.

MR. MARMION: At any rate, it could hardly be intended as a slur upon the whole magisterial body.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): On the whole body! Certainly not.

MR. MARMION was inclined to think that in this as in other matters they might trust to the intelligence and integrity of the Resident Magistrates, who, if they did not possess a superior knowledge of the law and a more intimate acquaintance with its administration than the honorary justices could be expected to have, certainly ought to do so, seeing that they were paid for it—which, one would think, ought to be regarded as a voucher of superior knowledge if not of superior intelligence.

MR. STONE was sorry to have to differ at this early stage of the Session from the hon. member for the Swan, whose amendment was one which he could not support. He thought it would be a great mistake. It was not even suggested that it would be of any practical advantage, and the amendment appeared to be put forward merely upon sentimental grounds. Very often considerable difficulty was experienced in getting honorary justices to act, and much inconvenience and hardship might result if the Resident Magistrates were debarred from acting alone. Although the amendment—which aimed at preventing the stipendiary magistrates from so acting under the present Bill only—was thus limited in its scope, still it could not be denied that, if adopted, it virtually affirmed the principle of the desirability of always associating an

honorary justice with the Resident Magistrates, in the administration of the law. No doubt, the effect of a difference of opinion between the two would be, as pointed out by the hon. member for Fremantle, namely, that the unpaid magistrate would, out of courtesy, give way to the other, who, as chairman, would really be the arbiter.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake)—referring to what had fallen from the hon. member for Perth (Mr. Parker), with reference to the Ordinance 27th Vic., No. 17, contemplating such an amendment as this—pointed out that, so far as the present Bill was concerned, the amendment undoubtedly violated the principle of the Ordinance in question. It should also be borne in mind that the Resident Magistrates were also the magistrates of the Local Court, where they sat alone and unaided, with powers to deal with cases involving much larger sums than the amount of the fine provided for in the clause of the Bill now under consideration. In a trivial matter like this—where £10 was the maximum penalty—surely it could not be regarded as necessary, or indeed desirable, that these magistrates should be hampered with the assistance of any justice who might happen to be able to attend, and who might—and who would, in all probability,—be unacquainted with the facts of the case.

Mr. STEERE said he had heard nothing to induce him to change his opinion as to the expediency of the amendment. It might be a trivial matter, and it might be that Resident Magistrates were often called upon to deal with cases of greater public importance in some respects; at the same time it could not be gainsaid that the matters which they would be required to adjudicate upon in connection with this Bill were matters with regard to which a stipendiary magistrate (who might be new in office) was not as likely to be acquainted with as the justices living in the neighborhood, and possessing a special knowledge of all the circumstances of the case. The hon. gentleman opposite (the Acting Attorney General) had stated that all the Resident Magistrates in the Colony were now in telegraphic communication with head quarters. He would ask—In communication with whom? Why, with the

Government, who would tell them what to do. He (Mr. Steere) so far from regarding the circumstances of these magistrates being in a position to communicate with the Government by telegraph as a public benefit, considered it was a great pity that such a means of communication was at their disposal. The result was that the magistrates now frequently did not exercise their own judgment, but relied and acted upon the instructions given them by the Government at Perth, to whom they were constantly telegraphing for advice. He thought this was a practice calculated to detract considerably from the efficiency of these magistrates, tending as it did to destroy all feeling of self-reliance, and of confidence in their own unaided judgment.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake): So far as my experience goes—and I think I know pretty well what is sent up—the magistrates telegraph to head quarters merely with respect to technical questions of law, and not for advice as to how, or for whom, they shall decide a case. I think the hon. member has gone rather too far in dropping an innuendo that these magistrates give their decisions in accordance with the directions of the Government.

The House then divided upon Mr. Steere's amendment, when there appeared

Ayes	...	...	7
Noes	...	...	8
Majority against	...	...	1

AYES.	NOES.
Mr. Burt	The Hon. G. W. Leake
Mr. Grant	The Hon. M. Fraser
Mr. Higham	Mr. Brown
Mr. Hamersly	Mr. Marmion
Mr. S. H. Parker	Mr. S. S. Parker
Mr. Venn	Mr. Randall
Mr. Steere (Teller.)	Mr. Stone
	The Hon. E. T. Goldsworthy (Teller.)

The amendment was therefore negatived.

Mr. BURT moved that the word "two," in the 30th line, be struck out, and the word "three" be inserted in lieu thereof.

#### POINT OF ORDER.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake) rose to a Point of Order. The hon. member was

virtually moving the same amendment as had just been negated.

THE CHAIRMAN OF COMMITTEES ruled that the Committee having decided that the words Mr. Burt proposed to amend should stand part of the clause the hon. member's amendment was out of order.

The clause was then agreed to as printed.

Clause 3, sub-section 1—"Compensation (which shall be made out of the General Revenue of the Colony) for plantation and crop on which insect or matter in any stage of existence or development is found, shall not exceed one-half of the value of such plantation or crop."

MR. BURT pointed out that the main principle, and, in fact, the substance of the Bill was centred in this clause, which empowered the Governor to make or to withhold any compensation for the destruction of vineyards or other plantations. The other clauses of the Bill were only its skeleton. By the sub-section now before the Committee, it would be observed that the compensation to be awarded in the case of the removal or destruction of a diseased crop, or a vineyard, was limited to one-half the value of such crop or vineyard. Now it might happen that a man's vineyard might become affected without his knowledge, and without his fault, and it seemed very hard that when this man's property was destroyed, he should only get one-half its value, by way of compensation. Suppose some Government Officer was appointed (as was contemplated in another sub-section of this clause) to carry out the provisions of the Act, and he entered a man's vineyard, and there discovered some solitary destructive insect (even if it were the aphid) of whose existence the owner of the land had no knowledge, the result would be that the proprietor of the vineyard would lose his entire crop, and possibly have his vineyard destroyed in the bargain; yet the compensation which he would be entitled to receive would only be one-half its value. If a man's property came to be thus destroyed for the benefit of his neighbours and the public generally, he (Mr. Burt) failed to see why the public should not be called to compensate the owner the fair value of the

property so destroyed. He would therefore move that the words "one half" be omitted. The sub-section would then read thus "the compensation shall not exceed the value of such plantation or crop."

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): I can quite agree with much that has fallen from the hon. member, but the House must bear in mind that the remedy contemplated in this Bill is what a surgeon would call a heroic remedy—the cutting off of a limb to save the whole body. I think I may very fairly state that the Bill is directed against one insect in particular,—the *phylloxera vastatrix*, which, I believe, has actually ruined one-sixth of the vineclad area of France. And if the owner of a plantation is so negligent as to allow the spread of this most destructive insect, to the imminent danger, not only of his neighbors' vineyards, but of all the vine plantations in the Colony, all I can say is, he ought to share with the public the onus of such neglect. He is equally benefited with the public by the steps taken to prevent the spread of the insect, and why should he be exempted from bearing his share of the loss? As to any public functionary, entrusted by the Government to carry out the provisions of the Bill, destroying the whole of a man's vineyard because he finds a solitary aphid upon a solitary plant, I think that is entirely beyond the scope of the wildest conjecture; for we must bear in mind that the heroic remedy here provided is not to be resorted to except under the direction of a stipendiary magistrate, and it can hardly be supposed that a magistrate acting in the interest of the Government, or, in other words, in the interest of the public, would recklessly subject the general revenue of the Colony to such a drain as would be made upon it in many cases by the total destruction of an entire vineyard. Where precautionary measures, in the public interests, are entrusted to the Governor in Executive Council, to be exercised merely in case of emergency, as is contemplated here, surely we may place such power in His Excellency's hands with a reliance and a sure expectation that the public funds will be dealt with as leniently as possible.

The amendment proposed by Mr. Burt—that the words "one-half" be struck

out—was then put, and a division being called for, there appeared an equal number of votes for and against the amendment. The following is the division list:

Ayes	...	...	8
Noes	...	...	8
AYES.		NOES.	
Mr. Grant		The Hon. M. Fraser	
Mr. Hamersley		The Hon. G. W. Leake	
Mr. S. H. Parker		Mr. S. S. Parker	
Mr. Randall		Mr. Brown	
Mr. Shenton		Mr. Higham	
Mr. Steers		Mr. Marmion	
Mr. Venn		Mr. Stone	
Mr. Burt (Teller.)		The Hon. E. T. Goldsworthy (Teller.)	

**THE CHAIRMAN OF COMMITTEES** gave his casting vote with the Ayes, and the amendment was therefore carried.

**MR. BROWN** then moved, That the words "three-fourths" be inserted in the blank caused by the omission of the words "one-half." The hon. member thought that in the interest of the public revenue—in the interest of the taxpayers of the Colony—some limit ought to be placed upon the amount of compensation to be awarded in these cases. Surely it was not to be expected that an owner, through whose neglect or carelessness a vineyard became within the scope of a remedial measure of this kind, should be allowed to go scot free, while the public had to be taxed to compensate him to the full value of the property. The principle had been recognised everywhere that where, in the interest of the public, it is found necessary to destroy property, the State should not be expected to provide that the full value of such property should be paid out of public funds. In the neighboring Colonies, for instance, when dealing with scab in sheep—and a very respectable local journal had done him the honor of admitting that, if he possessed any qualification at all for a representative, it was his qualification to speak on the subject of scab—the precautionary regulations in force rendered the destruction of an infected flock, under certain circumstances, compulsory, in the interests of the public, also that the State should compensate the owner; but not to the full value of the flock—nothing of the kind. The reason for that was obvious, and it was but fair and right that the person through whose negligence or carelessness the sheep

became infected should bear a portion of the loss, as well as the general body of taxpayers. He hoped hon. members would support the amendment now before the Committee, limiting the amount of compensation to three-fourths of the value of the property destroyed.

**MR. BURT** pointed out that the clause as it now stood did not in any way fix the compensation to be paid in all instances at the full value of the crop or plantation destroyed; it merely gave a discretionary power to the appraisers to give a man the full value, if they thought he was fairly entitled to such consideration. He (Mr. Burt), however, was not inclined to oppose the amendment, for it was his intention to move that the Act should not come into operation for twelve months, in order that in the meantime they might have an opportunity of seeing the scope and the effect of the orders which were to be prepared by the Governor in Council in this matter.

**MR. BROWN** pointed out that the Bill provided that every order made under this Act shall be laid before the Legislative Council within ten days after the next sitting of the House, so that the Governor was not the only one who was to have a voice in the matter. It was true that the House would not have the power to amend such orders; at the same time it was within its power and its province to bring a very strong pressure to bear, to pass a Bill to repeal the Act altogether. The Governor, if he chose, might of course veto such a Bill; but this playing at cross-purposes was not in harmony with the sentiment which found expression in the speech with which the Session was opened, and also in the course of debate, with respect to the exercise of a cordial feeling between the Executive and the representatives of the people. At any rate, if they were not going to repose some confidence in the Governor, in the belief that the orders which His Excellency would frame would be such as that House itself would have made, after due consideration, they had better not have the Bill at all. To tell the truth, he (Mr. Brown) thought there was hardly any necessity for such a measure, and the discussion it had already evoked he could only regard in the light of "much ado about nothing."

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake): Perhaps it may be so, for at this moment we enjoy a perfect immunity from the Colorado beetle or the *phylloxera vastatrix*; but who is to say how long the Colony is to enjoy that immunity? The *phylloxera vastatrix* has already been introduced into the Colony of Victoria, as also the Cape, where every stringent precautionary measure has been taken by Sir Bartle Frere's Government to prevent its spread.

**MR. STONE** thought it would be well that hon. members should bear in mind that, if they were going to allow people the full value of their crops or plantations, they should be actually offering a premium to the owners to get disease introduced into their vines. There were many proprietors in the Colony, no doubt, who would be glad to get rid of their vineyards at their full value; and this consideration, he thought, was a strong objection to the previous amendment proposed by the hon. member for the Murray (Mr. Burt), and to the clause as it now stood affected by that amendment. He was therefore glad that the hon. member had expressed his intention of not opposing the amendment now before the Committee.

The amendment submitted by Mr. Brown was then put and carried.

Clause 3, sub-section 4—"The Governor in Executive Council may require (if he shall think fit) the value of the crop to be ascertained by any public officer, or by arbitration."

**MR. STEERE** moved an amendment, to strike out the words "by any public officer," and to add the following words to the sub-section:—"By one competent person to be appointed by the Governor and one by the owner of the plantation, or crop; any difference of opinion between such arbitrators to be determined by an umpire to be appointed by themselves, or, in case they shall not agree in such appointment, by the Governor."

**MR. BROWN**, in seconding the amendment, said he regarded the arrangement proposed in the Bill as a very arbitrary one, and he would be prepared to go still further than the amendment went, and render it optional with the owner, as well as the Government, to require the valuation to be made by arbitration, if he so wished.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake): Let me for a moment assume the functions ascribed to the hon. member for the Swan, as the vindicator of the public purse. It is proposed that the Governor in Executive Council may require the value of a crop to be ascertained by any public officer or by arbitration, and it is now proposed to strike out the words "public officer," and to require the ascertainment of the valuation to be made by arbitration—a competent man on one side, and a competent man on the other side, and a competent umpire in the middle. But, having had some experience of the ravages on the public purse resulting from this mode of procedure as regards compensation in connection with railway claims, I think I may ask hon. members to agree with me that, on the score of economy, at any rate, it would be preferable to leave the valuation in the hands of one trustworthy person,—even though such person should have the misfortune to be a public officer. If this amendment is adopted, it will practically amount to this—you may possibly prevent the Governor from appointing the most skilled and the most experienced, and therefore a most fitting person to ascertain the value of a crop; and, instead of that, we are to have two valuers, one selected by the Government and the other nominated by the owner of the property. These valuers, excellent and honest men no doubt, will go to work, each at five guineas a day, and more guineas for the umpire; and then we shall have another species of the *phylloxera vastatrix*, in the shape of legal practitioners, appearing on the scene, with their very agreeable bills of costs, and committing further ravages on the public purse. In short, we should then require something like another loan to provide for the claims made in respect of compensation and costs. I do think a simple matter of this sort might be safely left in the hands of the Governor in Council, who, it will be borne in mind, is only to act in case of emergency. It may be depended upon that a man of ability will be provided to do what is required, and I think it would be wrong to fetter the hands of the Governor, as it is proposed to do, in the appointment of a valuator, and to require the



Government, in all cases, to proceed by arbitration. I have the authority of the most experienced judges in England for saying that arbitration is, to say the least, an expensive mode of settling disputes. And especially is this so when (as would be the case here) the public purse is left open for the arbitrators to dip into, to its fullest extent, and thus to provide board, lodging, and washing for themselves and their families, for an unlimited period of time. If there was such a public officer as a Government Botanist, he undoubtedly would be the proper person to refer the question of compensation to; and there can be little or no doubt that ample justice would be done to all parties, and that an inexpensive mode of ascertaining the value of a crop would be obtained. I really do submit, in the interests of the taxpayers of the Colony, that the amendment of the hon. member for the Swan should be rejected.

**MR. STEERE:** The hon. gentleman has pleaded hard to have this matter left in the hands of the Governor in Executive Council; but, according to my experience, the Governor in Executive Council here is simply the Governor himself, and we are asked to leave the valuation of people's crops and plantations in the hands of a public officer to be appointed by the Governor. I should like to know what the owners of property who claimed compensation in respect of lands resumed for the purposes of the Eastern Railway would have received if the valuation had been left to the Government valuers? And I wonder what other persons having claims against the Government would have received if the decision were left to public officers? Very little, I am afraid—nothing at all, probably. Regard being had to past experience in these matters, I should be very sorry indeed to leave the owners of crops and plantations, claiming under this Bill, to the tender mercies of the Governor in Executive Council, whoever they might be.

**MR. S. H. PARKER** proceeded to prove, by reference to the return appended to the official report of the Director of Public Works, that the allegations made by the Attorney General with respect to the arbitrators employed in connection with the claims made by

the owners of land which had been taken for railway purposes were unfounded. So far from committing ravages upon the public purse, and providing board, lodging, and washing for themselves and their families at the public expense, the expenses of the arbitrators had (with two exceptions only) to be paid by the claimants.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake) said his remarks were intended to apply to the expense of a tribunal, and not to individual arbitrators. Inasmuch as, under the Bill before the House, the Government, or rather the public, must pay the compensation money awarded in consideration of the destruction of crops, he thought it a very reasonable proposal indeed, that, if they could ascertain the loss sustained by any less expensive process than arbitration, they should do so.

**MR. STONE** said no doubt the Bill had been framed with a view to save expense, but a principle was imported into it with which he could not agree, namely, that the party who was to pay the compensation money (the Government) should appoint its own valuator from among its own officers, whereas the other side would be unrepresented. He therefore felt inclined to support the amendment of the hon. member for the Swan.

**MR. BURT** thought he could detect the "cloven foot" in a remark that had incidentally fallen from the Attorney General, who spoke of a Government Botanist as the proper person to appoint as valuator. He could easily fancy a sum of £500 placed on the Estimates for 1881, for the salary of such an officer as that referred to by the hon. gentleman; and he would like to know which would be the cheaper for the country in the end—to refer these claims to arbitration, or to appoint a Government Botanist at £500 a year. The day for referring such matters as these to the Governor in Executive Council had gone by. Arbitrators were, perhaps, expensive articles at times; but as a rule the parties who submitted their disputes to them, got what was fair and just, and that, too, speedily, a result that could not always be guaranteed at the hands of any Governor—he referred

to no one in particular—or the Executive Council. He intended to support the amendment.

MR. RANDELL said that, like the hon. member for the Murray, he thought he could detect in the Bill as it stood, the germ of what might develop into another full-blown public department, and he did not think this was the time for creating fresh departments, when they had a deficit of £80,000 staring them in the face. He should certainly vote for the amendment, as he thought the clause as now worded might operate very injuriously as regards the interests of the owners of plantations or crops. He supposed they all had every confidence in the present Governor; but they might not always have an administrator having the same character for thrift and prudence. Indeed, they had not to go far back into the history of the Colony for a reason to sustain them in that view; and it was the duty of that House to protect the interests of all classes, and to see that a fair amount of compensation was given to people whose property was sacrificed for the public benefit.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) said he never intended that a Government Botanist, at £500 a year, should be appointed to carry out the provisions of the Bill. He had merely said that, if we had such an officer, he would be the proper person to whom to refer the claims for compensation.

The amendment was then put and carried, on the voices.

MR. BROWN then moved a further amendment, namely, That the following words be added to sub-section 4: "And the owner of the plantation or crop may require that the value of the crop shall be determined by arbitration." This would give the proprietors of crops and plantations the same right as the Government, which he thought was but fair and proper.

Agreed to without discussion, and sub-section amended accordingly.

Clause 3, sub-section 5—"Governor in Executive Council may withhold compensation, if, in relation to the plantation or crop, the owner or the person having charge thereof has in his (the Governor's) judgment done anything

"in contravention of, or failed to do any thing in compliance with this Act:"

MR. S. H. PARKER moved, That this sub-section be struck out. If it remained part of the Bill, they might as well have saved their breath in discussing the best mode of procedure with respect to ascertaining the value of a crop, for this section empowered the Governor to withhold any compensation that might be recommended, either by the valuers, or by arbitration. As a matter of fact, he was free to confess that, speaking generally, and without reference to anybody in particular, he had very little confidence in Governors, whether in Executive Council or out of it; and, if they allowed this sub-section to remain, they might as well strike out altogether the clauses relating to compensation.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) thought the hon. member for Perth had conceived a very low estimate of a Governor's intelligence and of his sense of justice. The power which it was here proposed to entrust to the Governor in Council was no more than that which was vested in a judge—a discretionary power, to be judicially exercised, and not whimsically or capriciously. There might be cases in which the owner of a crop or plantation may have so acted as to disentitle him to any compensation; and he thought it would be well that some provision should be made for dealing with such a case. Could it be said in this age, would any man in his right mind hazard the assertion, that a Governor, acting by and with the advice of his Executive Council, would, through some freak of fancy or foolish whim, actually withhold compensation from any person fairly entitled to it? He thought the House might at any rate repose that much confidence in the integrity of any Governor.

MR. BURT said the Acting Attorney General had told them that the Governor would exercise this power judicially, and not of his own mere motion. But when a judge or a court acted in a judicial capacity, it was usual that either side should be represented and heard. No such provision was made here, and an owner was debarred altogether from any opportunity for showing cause why the compensation awarded to him should be withheld. He thought this was a defect

in the Bill which ought to be remedied. It appeared to him that the proper tribunal to vest this power in was not the Governor in Council, but the magistracy. Any disputed case would then be heard in public, and both parties concerned would have an opportunity of being represented and heard.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake) said he would be glad to assist hon. members in the framing of an amendment that would meet the wishes of the House in this respect, but he would be sorry to see the section struck out altogether.

**MR. S. H. PARKER** said his only objection to the clause was the fact that it placed too arbitrary a power in the hands of the Governor.

**MR. MARMION**: How would it be to give the aggrieved person the right of appeal to the Supreme Court?

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake): A very admirable suggestion.

On the motion of the Colonial Secretary, Progress was then reported, and leave given to sit again.

#### CENSUS BILL.

Read a third time and passed.

The House adjourned at ten o'clock, p.m.

### LEGISLATIVE COUNCIL,

*Monday, 26th July, 1880.*

Abstract Returns of Revenue and Expenditure for 1879—Appropriation of Loan of £200,000—Imperial Buildings handed over to Colonial Government—Wines, Beer, and Spirit Sale (Consolidation) Bill: first reading—Transfer of Land Act, 1874, Amendment Bill: first reading—Police Ordinance, 1861, Amendment Bill: second reading; in committee—Public Officers Act, Repeal Bill: second reading; in committee—Shipwrecked Colonial Seamen Bill: third reading.

**THE SPEAKER** took the Chair at seven o'clock, p.m.

PRAYERS.

#### RETURNS.

**MR. STEERE**, in accordance with notice, moved for the following returns: (1)—A return showing what portion of the £200,000 Loan has been transmitted to this Colony; how much has been spent for works for which an appropriation was made under the Loan Act; and what amount now remains in the banks to the credit of the public account. (2)—The abstract returns of the revenue and expenditure for the past year. (3)—A return of all the Imperial buildings that have been made over to the Colonial Government during the last five years.

**THE COLONIAL SECRETARY** (Hon. R. T. Goldsworthy) said the returns asked for would be laid on the Table as soon as they were prepared.

#### WINES, BEER, AND SPIRITS SALE (CONSOLIDATION) BILL.

**MR. BURT**, in accordance with notice, moved for leave to introduce a Bill to consolidate and amend the laws relating to the licensing of public houses, and the sale of fermented and spirituous liquors.

Motion agreed to.

Bill read a first time.

#### TRANSFER OF LAND ACT, 1874, AMENDMENT BILL.

**MR. BURT**, in accordance with notice, moved for leave to introduce a Bill to facilitate mortgages to Benefit Building Societies under the "Transfer of Land Act, 1874," and to further amend the said Act.

Motion agreed to.

Bill read a first time, and ordered to be printed.

#### POLICE ORDINANCE, 1861, AMENDMENT BILL.

**THE ACTING ATTORNEY GENERAL** (Hon. G. W. Leake), in accordance with notice, moved the second reading of a Bill to extend the powers of Justices with reference to punishment for disorderly conduct. The hon. gentleman said the facts that had led to the introduction of the Bill were, shortly, these; if hon. members would refer to the twelfth section of the Police Ordinance they would find that the section provided