

LEGISLATIVE COUNCIL,

Friday, 30th July, 1880.

Approaches to Beaufort Street Railway Bridge—Balances unpaid on Tillage and S.O. Leases—Geraldton and Northampton Railway: Vote of £17,000—Courts of Criminal Sessions at Albany and other districts—Destructive Insects and Substances Bill: in committee—Police Ordinance, 1861, Amendment Bill: third reading—Public Officers Act, 1879, Amendment Bill: third reading—Sandalwood Bill: in committee—Wines, Beer, and Spirits Sale (Consolidation) Bill: second reading—Transfer of Land Act, 1874, Amendment Bill: second reading; in committee—Adjournment.

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

PRAYERS.

APPROACHES TO BEAUFORT STREET
RAILWAY BRIDGE.

MR. SHENTON, in accordance with notice, asked the Colonial Secretary whether it is the intention of the Government to make any improvements in the approaches to the railway bridge in Beaufort street, Perth, as also to the railway cutting in Stirling street. As long ago as March last, before leaving for England, he (Mr. Shenton) as Chairman of the City Council had interviewed Governor Ord and the Commissioner of Railways on this subject, and he was assured that something would be done to improve these very dangerous approaches. But on his return to the Colony, a few days ago, he found that nothing whatever had been done in the matter. These approaches and cuttings were neither creditable to the Administration that sanctioned them, or to the city whose streets they had mutilated.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy), in reply, said, "The Commissioner of Railways would be glad to make some improvement in both the approaches to the Beaufort Street Bridge and the level crossing at Stirling Street, if permission could be obtained from the City Council to alter the level of Wellington Street, and prison labor could be given for this purpose. The gradients in both cases not exceeding the limits of general railway practice, no allowance for such an alteration was made in the estimated cost of the Eastern Line."

BALANCES UNPAID ON TILLAGE AND
S. O. LICENCES.

MR. MARMION, in accordance with notice, asked the Commissioner of Crown Lands "To lay on the Table of the House a return showing the amounts due to the Colony on 31st December last, on account of tillage leases unpaid, and balance due on special occupation leases and licences unforfeited." In the other Colonies, where the system of deferred payments obtained, it was the practice to publish with the usual quarterly statements of the public revenue and expenditure, a return showing the amount owing under that system, and he had noticed that in some of the Colonies very large sums indeed were due to the Government in respect of these deferred payments. He regarded the amounts thus due in the light of assets, and he thought it was very desirable that the House, especially in the face of our present liabilities, should be informed what was owing to the Government under this head.

THE COMMISSIONER OF CROWN LANDS (Hon M. Fraser) said the return asked for was in hand, and would be laid on the Table of the House in the course of a few days.

GERALDTON AND NORTHAMPTON
RAILWAY: VOTE OF £17,000 FOR
COMPLETION.

MR. MARMION, pursuant to notice, asked the Colonial Secretary "To lay upon the Table of the House a statement showing in detail the items and amounts comprised in the estimate of the Director of Public Works, by which he arrived at the sum of £17,000, which amount was in consequence of such estimate included in Loan Bill, 1878, as the balance required to complete the Geraldton and Northampton Railway." Hon. members were aware that there was a great deal of haze surrounding the estimates and figures connected with this "unhappy" railway (as it was called). Estimate after estimate had been furnished, purporting to show what it would cost to complete, and Loan Bill after Loan Bill had been passed, based upon those estimates. Yet they did not seem to have arrived at the end of the chapter, and it appeared to him they were never likely to do so. He thought

possibly the return which he now asked for might throw some light on the subject, and show how the error—for there must have been an error in the Commissioner's estimate—occurred. If hon. members would look at the report of the Commissioner on the public works in progress during 1877-8, they would observe in the fourth paragraph an extraordinary error, which strange to say had not, so far as he was aware, been previously noticed. The Commissioner said; "The Geraldton and Northampton Railway was authorised in 1873, and a contract taken for its construction by Mr. Palmer in 1874. The total amount raised by loan for this work (including a telegraph line) was £115,000,"—which was perfectly correct, so far. But—

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy): I am sorry to interrupt the hon. member, but his question is quite explicit and intelligible enough without his entering upon a review of the Commissioner's report, and I am quite prepared with an answer to it.

MR. MARMION: If I were to stop now, it would make the matter look really worse than it is.

POINT OF ORDER.

MR. BROWN rose to a Point of Order. He thought it was very desirable that the point should be settled once for all—whether a member had a right to enter upon an explanatory statement when putting a question like this. He would like to have the Speaker's ruling on the subject. So far as precedent established a right, and so far as that House was concerned, a member had a perfect right to make a statement such as that which the hon. member for Fremantle was making, in explanation of the question which he had put. But it was clear from the wording of their Standing Orders that it was not the privilege of a member to enter upon an explanatory statement when putting a question, beyond such simple explanation as was necessary to elucidate his meaning. At the same time, it had been the practice in that House for members to deal at length with the subject to which their question related, and he had noticed particularly

that in the House of Commons the same course was followed, and that members when they put questions to Ministers proceeded to explain their reasons for putting them. He thought, however, it was very desirable, when a Point of Order of this kind was raised, that members should be authoritatively informed by the Speaker what was the extent of the privilege they were entitled to when putting questions to members of the Government.

THE SPEAKER said: On referring to *May*, I find it laid down that questions put to Ministers of the Crown "should be limited, as far as possible, to matters immediately connected with the business of Parliament, and should be put in such a manner as not to involve opinion, argument, or inference; nor are any facts to be stated, unless they be necessary to make the question intelligible."

MR. MARMION: That's exactly my object.

THE SPEAKER: The hon. member will please confine his statement to as few words as possible, and not travel beyond the fair bounds of explanation.

MR. MARMION, continuing, said the figures he had quoted from the Commissioner's report were, so far, correct. The total amount raised by loan for the railway (inclusive of the telegraph line along it) was £115,000, as stated by the Commissioner. "And"—the Commissioner continued—"up to the end of April there has been expended £125,129 19s. 11d., leaving an available balance of but £870 0s. 1d." That, clearly, was an error. Whereas only £115,000 had been raised by loan, there had been expended £125,000, and still (so it was alleged) there was a balance of over £800 unexpended. It was evident the Commissioner had omitted to take into account the sum of £11,000 raised for the purposes of telegraph extension, and possibly he had based his estimate of the amount which would be required to complete the railway, under this erroneous impression.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said the Director of Public Works would be requested to furnish the statement asked for by the hon. member.

COURTS OF CRIMINAL SESSIONS AT ALBANY AND OTHER DISTRICTS.

MR. S. H. PARKER, in accordance with notice, asked the Acting Attorney General "Whether the Government had taken into consideration the Ordinance to make general provisions for the trial of criminal offences at Albany and other remote Districts of the Colony, with a view to its amendment, as promised at the last Session of Council?" It would be in the recollection of hon. members that at that Session he (Mr. Parker) had introduced a Bill to amend the Ordinance in question and to extend its provisions. But the Bill was opposed by the Government on the ground of the late period of the Session at which it was introduced. The Attorney General, however, promised that during the recess the question would receive from the Government that consideration which its importance warranted, and, if forced to the conclusion that such a measure would subserve the interests of justice, they (the Government) would be prepared at the next Session of Council to introduce a Bill for that purpose. He now wished to know whether the Government had given the subject their consideration as promised.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) replied that the matter had entirely escaped his recollection. His memory was a blank on the subject, and owing to the late period at which the official report of the debates—the compilation dignified by the name of *Hansard*—was published, and owing to a change of Administration, and there being no memorandum on the subject, the Government had done nothing in the matter. If, however, the hon. member would address him privately on the subject, he would be happy to forward his views in any way he could.

DESTRUCTIVE INSECTS AND SUBSTANCES BILL.

This Bill was further considered in Committee.

Clause 3, sub-section 5 (reverted to): "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 the provisions of this Act."

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) now moved that the words "in his judgment" be struck out—an amendment which he understood would be accepted by hon. members, who considered that the clause as it stood vested the Governor with too arbitrary a power.

MR. BURT said the amendment would not in any way remove the objections which he had to the clause, and he would move, as a further amendment, that it be struck out altogether. The object he and those who supported him had in view was to prevent the Governor in Council having the power to withhold compensation, and to vest such power in the bench of magistrates,—which appeared to him to be the proper tribunal for such purpose, as each party could then be heard. He thought it was too arbitrary a power altogether to place in the hands of the Governor. It must be borne in mind what a serious loss it would be to a man to have his whole crop destroyed, and then be deprived of any compensation. It might be a crop of wheat, affected by red rust—for no one knew what a "destructive insect" meant, within the meaning of the Act; and how would the Greenough farmers like to find out some day that all their crops had been ordered to be destroyed, and then, upon the report of some policeman, possibly, be disallowed any compensation?

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) maintained that the Bill in its present form would prevent the Governor from acting in an arbitrary manner; it was no autocratic or capricious right that was vested in him, and, as he had said the other night, any power entrusted to the Governor under the Act would be exercised judicially. A complainant would not be deprived of his right to be heard before the Executive Council,—which he might say, was, after all, the highest court of appeal in the Colony. The Governor could not affect a man's civil rights without hearing him in his defence.

MR. MARMION suggested that the right of withholding compensation might be vested in the arbitrators.

Mr. BROWN said that, in countries possessing Responsible Government, the Governor was vested with much greater power in matters of this kind than it was proposed to entrust to the Governor here; and if it was found more desirable in practice in those colonies to leave such questions to the discretion and common sense of the Governor, than to endeavor to meet every possible contingency by an Act of Parliament, he did not think they would be doing very wrong in following such a precedent. He thought, however, that the right of appeal ought to be granted to any proprietor who conceived himself aggrieved by the decision of the Governor in Council, though he should be sorry to see the Executive Administration brought into conflict with the Supreme Court. He understood that there were cases in which the decisions of the Executive were not final, and in which an appeal to the Supreme Court was allowable.

Mr. BURT said he never heard of such a thing as an appeal from the decision of the Executive Council to the Supreme Court.

Mr. BROWN said if that was the case,—and he was prepared to accept the dictum of so eminent a member of the bar as the hon. member for the Murray—he would withdraw his support from the amendment proposed by the Colonial Secretary.

Mr. STEERE said that, for the same reason, he also would oppose that amendment, if there was to be no appeal from the ruling of the Executive Council in the matter.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said—that being the case, he would withdraw his amendment, and move that Progress be reported, and leave obtained to sit again. When he submitted his amendment, it was on the understanding that it would have been supported by the hon. members who had just spoken. He certainly would be opposed to leaving the matter in the hands of arbitrators. Possibly hon. members were not aware what a very costly luxury arbitration was; and perhaps it would tend to open their eyes, when he informed them that the fees paid to arbitrators were—for each sitting of three hours' duration, five guineas to each arbitrator; anything over three

hours, seven guineas each; and anything beyond that, nine guineas each.

Progress was then reported, and leave given to sit again.

THIRD READINGS.

The Police Ordinance, 1861, Amendment Bill, and the Public Officers Act, 1879, Amendment Bill, were read a third time and passed.

SANDALWOOD BILL.

The Order of the Day for the further consideration of this Bill in Committee of the whole Council being read,

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) moved, that the Speaker do now leave the Chair.

Agreed to.

IN COMMITTEE.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said when the Bill was considered in Committee the other day, Progress was reported in order to enable some hon. members to frame certain amendments which they proposed to introduce into the Bill. He was now informed that the contemplated amendments had not yet been drafted, and, in order to afford further opportunity for doing so, he would now again move that Progress be reported and leave be given to sit again another day.

Ordered.

WINES, BEER, AND SPIRIT SALE (CONSOLIDATION) BILL.

Mr. BURT, in accordance with notice, moved, the second reading of a Bill to consolidate and amend the laws relating to the licensing of public houses and the sale of fermented and spirituous liquors. The main object of the Bill was to consolidate, rather than amend, the existing enactments dealing with this subject, and he believed such a measure would be both useful and acceptable. The amendments proposed to be effected were very limited, and comparatively unimportant, the principal one dealing with the transfer of licenses under the Act. At present, a licensee was privileged to sell liquor during the period intervening between one licensing day and another, but the certificate did not issue for about three

weeks after the application for a license was granted. The licensing courts were held on the first Monday in the months of September, December, March, and June, but the certificates were not granted until the first day of the following months respectively, so that in the case of a transferee, a period of about three weeks elapsed during which the transferee could not legally exercise the rights and privileges of the original licensee. The present Bill remedied that, and proposed that the Resident Magistrate for the district, on application by the proposed transferor and transferee, might at any time transfer the license of any licensee to the appointee of such license holder, by an endorsement upon the license, for which it was proposed that a fee of £2 should be paid. That being done, it was provided that the appointee should, until the first day of the month following the next quarterly meeting, possess all the rights of the original licensee, and be subject and liable to the same obligations and penalties. Some alteration was also proposed with regard to the temporary licences, which it was intended might in future be granted by a Resident or Police Magistrate at any time, instead of, as at present, at the holding of a court of petty sessions or licensing meeting, only. The Bill, as originally drafted, also proposed dealing with the legality of cheques being taken by a publican in payment of account; but on re-consideration, and seeing that the Bill was merely intended to consolidate the existing enactments, without introducing any new features involving any important principle, he proposed expunging that part of the Bill. If, however, any other member chose to bring forward an amendment, in favor of legalising a custom that was of daily occurrence, namely, the taking of bank cheques in payment for hotel bills, he would be quite prepared to support such a proposal.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): I have great pleasure in rising to second the motion for the second reading of this Bill, and, in doing so I may state that, in my opinion, the Legislature, the public, the magistracy, and very certainly myself, owe a very considerable debt of gratitude

to the hon. member for the care and the assiduity with which he has condensed what I may call the voluminous enactments scattered through the statute book with reference to the licensing of public houses, and the sale of fermented and spirituous liquors. The hon. member must have expended a considerable amount of time indeed, in the preparation of this measure, and it affords me great gratification in supporting him. In doing so, I have to make one or two remarks with respect to the Bill. It will be observed that it is substantially a new measure—although in reality its object is to consolidate a number of enactments already in force; and inasmuch as that new measure embodies matters of finance, I am instructed on the part of the Government to waive any objection that might otherwise be taken to a measure of this character being introduced by a private member. It is not competent, I believe, for hon. members, other than members of the Government, to introduce a Bill involving money questions; but the Government, as I have just said, is prepared in this instance to waive any objection on that score, for the hon. member who compiled the Bill, I say again, has placed the House and the country under very great obligations to him.

MR. STEERE: I would not have risen at all, except for the statement just made by the hon. gentleman opposite, who designated the Bill as a money Bill. How in the name of fortune he can call a licensing Act a money Bill, I cannot comprehend. The hon. gentleman is right enough in saying that members on this side of the House have not the right to initiate any measure incurring the expenditure of public money; but I cannot conceive what expenditure of public money the present Bill involves.

THE ACTING ATTORNEY GENERAL, (Hon. G. W. Leake): The Bill, I understand, imposes some pecuniary considerations, in respect of transfer fees, and I was apprehensive that there might be some technical objection to such a measure being brought forward by a private member. I should be very sorry indeed that such a useful enactment should be impaired by any technicality.

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

ordered to be considered in Committee on Friday.

TRANSFER OF LAND ACT, 1874, AMENDMENT BILL.

MR. BURT, pursuant to notice, moved the second reading of a Bill to facilitate the mortgages to Benefit Building Societies under the Transfer of Land Act (38th Vict., No. 13), and to further extend the provisions of that Act. The hon. member said the main object of the Bill, as its title implied, was to afford building societies an opportunity of sharing with others the benefits of the existing enactment, by enabling the trustees, in case of necessity, to take mortgages on property already under the operation of the Act. The present form of mortgage, as prescribed by the Act, was not applicable to such mortgages, and it would therefore be necessary to alter the form, in order to enable them to participate in the provisions of the Act. He found that in the other Colonies the same difficulty had been discovered, and had been removed in the manner in which it was here proposed to do so. He need not point out to the House how desirable it was that every encouragement should be given to these useful societies, calculated as they undoubtedly were to facilitate the acquisition of real property. The benefits conferred not only upon the laboring classes, but upon others, by the institutions established at Perth and Fremantle—especially the former, which had been much longer established than the kindred society at Fremantle—were too well known to need any comment on his part: and he did not suppose anybody would attempt to deny the wisdom and the expediency of encouraging such societies, by removing any doubt that might exist, or any difficulty there might be felt, as regards the trustees taking mortgages upon property. Another provision made in the Bill was to extend the application of the Act to persons claiming a title to land under the statute of limitations, so as to enable property so acquired being brought under the operation of the Act. With a view to render the Act as self-supporting as possible, it was proposed that, upon the registration of such property, the ap-

plicant should contribute a sum not exceeding one half-penny in the pound on the value of the land, in aid of the assurance fund, and, further, a duty of one per cent. also upon such value. The Bill he believed was one that would commend itself to the majority of hon. members, and he would now move that it be read a second time.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) said he intended to oppose the further progress of the Bill. He did so on the ground that it was wholly unnecessary. The measure was introduced, avowedly, for the purpose of facilitating mortgages to building societies under the Transfer of Land Act; but he submitted that such societies were, as regards mortgages, precisely upon the same footing as any other body of persons who were carrying on operations in the Colony. The reason assigned for introducing the Bill was the allegation that the form of mortgage under the Act was inapplicable to these societies. If hon. members would look at the form of mortgage given in the eighth schedule of the Act, as prescribed by the 73rd section, they would observe that it was merely declaratory, and they would find on reference to the 121st clause that the forms contained in the several schedules of the Act may be "modified or altered in expression to suit the circumstances of every case." The 94th section further provided that "every covenant and power to be implied in any instrument by virtue of the Act may be negated or modified." So that, in reality, there was no necessity for any special legislation to render the form of mortgage applicable to building societies. He submitted that a mortgage to such a society was precisely analogous to a mortgage to a Bank, or any other similar institution—a mortgage to the trustees to secure an unascertained but fixable amount; and there was no necessity whatever to do anything more than to observe the form given by the Act, modifying it according to the circumstances. He submitted this with all due deference to those hon. members, his professional brethren in the House, all of whom he believed were opposed to him in this view of the matter. He hoped, however, to be fortunate enough to meet with some support from other

hon. members; but, whether he did so or not, he would divide the House on the question, even if his were the only dissentient voice. As to the other proposed amendment embodied in the Bill,—with reference to claiming title under the statute of limitations—he maintained that such a provision was equally superfluous with the other. He therefore objected to the Bill altogether; he objected to it as a measure which, if passed, would encumber the statute book with an entirely needless enactment. For that reason, he would move, as an amendment on the motion for the second reading, that the Bill be read that day six months.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) seconded the amendment, which was negatived, upon division, there being—

Ayes	5
Noes	15
Majority against ...			10

AYES.	NOES.
The Hon. R. T. Golds-	Mr. Burt
worthy	Sir T. C. Campbell
The Hon. M. Fraser	Mr. Carey
Mr. Burges	Mr. Crowther
Mr. S. S. Parker	Mr. Grant
The Hon. G. W. Leake	Mr. Hamersley
(Teller)	Mr. Higham
	Mr. Marmion
	Mr. S. H. Parker
	Mr. Randell
	Mr. Shenton
	Mr. Steere
	Mr. Stone
	Mr. Yenn
	Mr. Brown (Teller)

The Bill was then read a second time, and committed.

IN COMMITTEE.

The several clauses of the Bill were agreed to without discussion, and the Bill was reported.

The House adjourned at half-past nine o'clock, p.m.

LEGISLATIVE COUNCIL,

Monday, 2nd August, 1880.

Roads Loan: correspondence with Secretary of State—
Coastal Steam Service: correspondence between
the Government and the settlers of the Southern
Districts—Audit Bill: second reading; referred to
Select Committee—Adjournment.

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

PRAYERS.

ROADS LOAN: CORRESPONDENCE WITH SECRETARY OF STATE.

MR. CAREY, in accordance with notice, moved, "That an Humble Address be presented to His Excellency the Governor, praying that he will be pleased to direct to be laid upon the Table of this House a copy of all correspondence which has taken place between the Local Government and the Secretary of State for the Colonies relative to the Roads Loan, other than that submitted to the Legislative Council during the Session of 1878,—Council Paper No. 12." It would be in the recollection of hon. members that Governor Ord, two Sessions ago, caused to be laid on the Table certain Despatches which had passed between His Excellency and the Secretary of State on the subject of raising a loan for road construction, and that in the scheme submitted by the Governor for controlling the expenditure of the money it was proposed that the number of the District Roads Boards should be reduced to five, corresponding with the five centres of population, and that to these five Boards should be committed, with such professional assistance as they might require, the duty of seeing to the due execution of the works approved by the Central Board. This proposal, however, was not carried out, and he thought it would be of interest to the House and to the public to know whether any further correspondence on the subject had taken place between the Local Government and the Secretary of State. There existed in the country districts a wide-spread feeling adverse to the manner in which the roads loan was now being expended, and this feeling was shared in by the