

if you boil the whole thing down, there is not very much difference between this measure and the Land Regulations we at present enjoy. I firmly believe we have the very best Land Regulations now of all these colonies. If the Premier, with his practical knowledge and skill, would go through these Regulations and amend a few clauses, trimming them up a little, I am quite sure he could evolve such a measure as would commend itself to the good sense, and have perhaps the unanimous support, of this Assembly; and I very much regret he has not seen fit to do it. I am going to conclude by moving a little amendment, which I hope will commend itself to the good sense of the majority of this House; and that is: "That this Assembly, while fully recognising the earnest desire of the Government to facilitate the settlement of the lands and to hasten the development of agriculture, is, however, of opinion, that in view of the difficulties and complications which are certain to follow legislation constituting the State a money lender in aid of any special enterprise, it is desirable to postpone the consideration of this Bill until it can be more clearly ascertained by statistics whether the sale, settlement, and cultivation of the lands in the colony are not already increasing at a satisfactory rate, without having recourse to such doubtful expedients as those proposed by the provisions of this Bill."

MR. HARPER seconded the amendment.

MR. DEHAMEL: As no one seems inclined to speak to this amendment, I beg to move the adjournment of the debate, so that we may have time to consider the effect the amendment may have upon the proposal that it is known it is intended to be moved, namely, that the Bill be read a second time this day six months. I now move that the debate be adjourned until Wednesday next, the 23rd instant.

MR. SIMPSON: I think that at this late hour, and considering the length of the amendment which has just been moved, and which we have not yet seen in print, it would be as well that,—

THE SPEAKER: If the hon. member intends to make another speech, he will not be able to do so, if he makes a speech now.

MR. SIMPSON: I was speaking to the adjournment of the debate.

THE SPEAKER: There cannot be any debate upon that.

Motion for the adjournment of the debate agreed to.

ADJOURNMENT.

The House adjourned at five minutes to 10 o'clock p.m.

Legislative Council,

Friday, 18th November, 1892.

Year Book: distribution of—Kent, Mr. Saville: expected arrival of—Brands and Ear-marks: publication of—Miner's Rights: return of—Companies Bill, 1892: second reading—Adjournment.

THE PRESIDENT (Hon. G. Shenton) took the chair at 3.15 p.m.

PRAYERS.

YEAR BOOK—DISTRIBUTION OF.

THE HON. J. W. HACKETT asked the Colonial Secretary what steps have been taken to distribute copies of the Year Book and Hand Book of Western Australia throughout the Eastern Colonies.

THE COLONIAL SECRETARY (Hon. S. H. Parker) replied: The leading newspapers in each colony have been supplied with a copy of the Year Book, as well as the Stock Exchanges and all leading Clubs. The Government Statisticians and Registrars General in all the colonies have also each had a copy, and 50 copies have been supplied to Sands & McDougall, for distribution in Victoria and New South Wales. In addition to the above, about 50 copies have been distributed to persons applying for them, chiefly people who have seen reviews of the publication in newspapers. Of the Handbook, 250 have been sent to Sands

& McDougall, in Adelaide, Melbourne, and Sydney, for sale.

MR. SAVILLE-KENT—EXPECTED ARRIVAL OF.

THE HON. J. W. HACKETT asked the Colonial Secretary when Mr. Saville-Kent may be expected to arrive in the colony for the purpose of inspecting and reporting on our fisheries.

THE COLONIAL SECRETARY (Hon. S. H. Parker) replied: Mr. Saville-Kent, according to latest advices, will leave London for this colony the last week in December, 1892, or the first week in January, 1893.

BRANDS AND EAR-MARKS—PUBLICATION OF.

THE HON. M. GRANT moved, "That in the opinion of this Council it is desirable that the registration of brands and earmarks in sheep be published in the *Government Gazette*; also, the same with regard to horses and cattle." He said that stray sheep were often found, and there were no means of ascertaining who the owners were unless a list of the registered brands were published in the *Government Gazette*.

THE HON. T. BURGESS, in seconding the motion, said he had observed that during the last two years no returns had been published of the registered brands for stock, or earmarks for sheep, and consequently a considerable amount of confusion had been caused. While on this subject, he might say that he hoped the Government would endeavor to adopt some better mode of registering earmarks for sheep in particular. It was now a difficult matter to know the different earmarks, many persons in some districts having adopted similar marks. Some alteration was especially necessary at the present time, owing to the prevalence of the infectious disease known as scab. There was a method in use in the other colonies which he thought the Government would do well to adopt here. The information was in the hands of the Registrar of Brands and Earmarks, and the whole matter could, therefore, be easily re-organised.

THE COLONIAL SECRETARY (Hon. S. H. Parker) said that this matter had been considered by the department of

which he was the official head, and it was brought to his notice a short time ago. The reason that these brands had not been published in the *Gazette* for some years was that it had been found almost impossible to get the necessary type to print them with. Formerly they were published by means of lithography, but this was a very expensive process. In conjunction with the Government Printer, the Registrar had been trying to devise some means by which the brands could be published, and he had also been in communication with the other colonies with a view of simplifying the system in regard to brands, so as to prevent more than one person having the same brand. At the same time it seemed to him that some legislation on the subject would be necessary, and he hoped that before they next met a Bill would be prepared which would not only regulate the matter of brands but also provide that no person should use his neighbor's mark. He had not the slightest objection to the motion.

Question—put and passed.

MINERS' RIGHTS—RETURN OF.

THE HON. J. W. HACKETT moved, "That there be laid on the table a return showing the number of miners' rights issued on each separate goldfield and mining district of the colony for each of the years 1890, 1891, 1892." He said that, as he understood there was no objection to the motion, he would not discuss it, although he hoped that the words "miners' rights" would be taken to include miners' licenses, which was the term used under the Mineral Lands Act, instead of miners' rights.

THE HON. D. K. CONGDON seconded.

THE COLONIAL SECRETARY (Hon. S. H. Parker) said he had no objection to the motion.

Question—put and passed.

COMPANIES BILL, 1892.

SECOND READING.

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that this Bill be now read a second time. He said: This Bill has not been before hon. members for more than two or three days, and the course I suggest is that if, after the explanation I propose to give, it is desired that there should be further time to con-

sider it, we might, instead of reading it a second time, adjourn the debate. The statute under which joint stock companies are regulated in this colony was passed in 1858, and it is known as the Joint Stock Companies Ordinance of that year. With regard to joint stock companies generally (I do not, of course, include mining companies), there has practically been no legislation on the subject since that year. Subsequent to 1858 that Ordinance was altered in one small particular to include insurance companies. In 1888 an Act was passed to regulate mining companies, and which is called the Mining Companies Act of that year. That Act regulates companies associated for the purpose of mining, including what is generally known as no-liability companies. In England joint stock companies have been regulated by statutes from 1862 to last year, and during that period considerable alterations have been made in the law, when contrasted with what is our law, by virtue of the Ordinance I have mentioned. In Victoria, South Australia, and other colonies the law has from time to time been brought up to date, but nothing has been done in this colony. When the question came before the Government as to whether our Joint Stock Companies Ordinance should be amended, so as to make our law analogous to that of the other colonies, it was thought advisable to consolidate the whole of the law. With that view this Bill has been brought in. It purports to consolidate all the law relating to joint stock companies, including mining companies, and the winding up of limited companies, and other matters; and, as will be seen, the Mining Companies Act of 1888 is thus virtually repealed. This Bill has been prepared principally on the lines of the measure introduced into the Parliament of South Australia this year. I do not know whether it has yet become law, but, at all events, this Bill is founded upon it, and accords with it. The South Australian Bill was very carefully prepared and settled for the Government, and, on comparing it, I find that it accords with the English law as amended from time to time from 1862 to 1891. The Bill now before the House may be taken to be a consolidation of the English law in relation to joint stock companies, with the inclusion of the law as regards mining

companies, in addition to which there are some special provisions which are not the law in the mother country. It will be observed that the Act is, for the sake of convenience, divided into 11 parts. It deals with the constitution and incorporation of companies, and their management and administration. Part IV. refers to companies authorised to register under the Act, and Part V. to the winding-up of companies generally. Part VI. deals with the winding-up of unregistered companies; that is of companies which cannot register under the Act. Part VII. contains a provision for striking defunct companies off the register; Part VIII. deals with foreign companies; Part IX. with no-liability companies; and Part X. contains special provisions as to the liability of promoters and directors. These provisions will be found in clauses 221 to 224, and I cannot but help thinking that they will be found to be most salutary. Some of them became law in England in 1867, others only last year, and others are not yet the law there, but are provisions which were contained in a Bill introduced in the House of Lords by the Lord Chancellor some years ago. Although they did not become law, they are nevertheless good provisions, and, having been adopted in other colonies, the Government thought it advisable to introduce them into this Bill. Speaking as to the formation of a company, it will be observed that every prospectus of a company or intended company, and every notice inviting persons to subscribe shares in any company or intended company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the company or intended company, or otherwise, and the number of paid up or partly paid up shares held or to be taken by any promoter, and every other interest of such promoter or any person in trust for him, in the said company or intended company, and any prospectus or notice not containing the particulars aforesaid shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same as regards any person taking shares in such

company on the faith of such prospectus, unless he shall have had notice of such contract, shares, or interest. This has been the law in England since 1867. Then again (and I am speaking particularly of these sections, because they are the principal alterations in the law of this colony), where, after the passing of this Act, a prospectus or notice invites persons to subscribe for shares in or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director or provisional director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue or misleading statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless certain things be proved. Then there are some sub-sections which limit the liability of directors and promoters under certain circumstances. Again it will be found that in order to preserve the liability of directors and promoters who issue prospectuses, a copy of the prospectuses must be deposited with the Registrar, so that it may always be available for perusal by any person who may feel himself aggrieved by any prospectus. Then it is provided that any director or promoter by reason of his having authorised the issue of the prospectus, has become liable to a penalty, shall be entitled to recover contribution from his co-directors. There are other provisions in this statute with regard to promoters and directors which have been deemed necessary, but which I can better refer to when the Bill goes into committee. I need only say now that the care of the Government has been to see that every due provision has been inserted so as to guard the public against being improperly

mulcted of their moneys. With regard to foreign corporations there are also some special provisions. As hon. members are aware, at the present time, with the exception of life assurance companies, there is no law which regulates or provides for the registration of foreign companies, their office or their attorney. With regard to life assurance companies, provision is now made by statute that an attorney must be appointed and that a copy of the power of attorney must be deposited with the registrar, so that proceedings may be taken against him, as if he were the company. In the Bill now before hon. members, there are similar provisions respecting foreign corporations. Those corporations which are now carrying on business will have to comply with the Act within twelve months after it becomes law. At the expiration of this period every foreign corporation will be compelled, by power of attorney under its common seal, to appoint some person in the colony, either generally or in respect of specified matters, to act as its attorney, and it shall, by such power of attorney, empower the same person to sue and to be sued. Then there is a declaration to be made and endorsed by the manager or attorney of the fact that the company is incorporated in accordance with the law of the country where it is so incorporated. It will have to be further declared that the seal affixed to the power of attorney is the common seal of the company, and it provides that the declarations shall be made before a notary public, British Consul, or other person lawfully acting. Then the attorney so appointed shall deposit, in the office of the registrar, the power of attorney, with the said declaration endorsed thereon or annexed thereto, and a certified copy of the certificate of incorporation of the company, or a document of similar effect, or the act of incorporation of the company. Of course those provisions are to enable persons to sue in the colony without proving the act of incorporation, and it is declared specially by this Act that this declaration, and the copy of certificate of incorporation shall be deemed as against the company *prima facie* evidence of its incorporation.

THE HON. J. W. HACKETT: How will this affect the recent Act dealing with life assurance companies?

THE COLONIAL SECRETARY (Hon. S. H. Parker): It does not affect them. They are exempt from the operations of this Bill entirely. In regard to life assurance companies, it was thought unwise to allow them to register under the provisions of this Bill, because their business is so different from that generally carried on by joint stock companies, and if a local company of this character desired to commence operations it was considered that it would be better for them to have a private Act of incorporation. Banks, also, do not come under the operation of this Bill; but with the exception of these two businesses—banking and life assurance—all joint stock companies incorporated for the purpose of carrying on business in the colony will be dealt with under this Bill. Banking institutions were excluded under the Joint Stock Companies Ordinance of 1858. I believe one or two fire insurance companies were registered under the Ordinance, and they may, if they deem it advisable, register under this Bill; but life assurance companies will not be able to. Referring again to foreign companies, the 197th clause makes the acts of the attorney binding upon the company, and the 198th clause provides that every power of attorney granted by a foreign company which shall have been deposited in the office of the Registrar shall, so far as practicable as between the company, its successors, and assigns on the one hand, and any person dealing with the attorney thereby appointed on the other hand, continue in force, notwithstanding the revocation of such power, or the winding up, or dissolution of such company, until written notice of such revocation, winding up or dissolution, signed by the said attorney, or by an attorney appointed by the company in his place, shall have been filed at the office of the Registrar. And then clause 199 prohibits a company from carrying on operations for more than six months after the death of the attorney, or for more than one week after the revocation of his appointment. Again, a foreign corporation must give notice of the situation of its office or place of business, and if any change takes place such must be notified in the *Government Gazette*. Then certain penalties are provided in the event of non-compliance with the statute. And

now, sir, with regard to no-liability companies. These are companies formed by a number of persons for the purpose of carrying on mining operations, but they do not bind themselves to contribute one farthing to the capital of the concern, unless they think fit to do so—in fact there is no liability upon them to pay any calls. It was thought that these companies should comply with the provisions of the Bill as to untrue statements in the prospectus and in other matters, and hence they have been brought under it. In consequence of this there are only to be found a few clauses relating to these companies, and these principally refer to calls. The Bill provides when calls shall be made, the notice which is to be given, and for the forfeiture of the shares in the event of the calls not being paid. There is very little alteration in the law as it stands at present. The Mining Companies Act of 1888, however, does not provide for the disposal of shares which become forfeited, and which are not sold. This Bill provides that if the shares are not sold they shall become the absolute property of the company, and that whenever any forfeited shares shall have been sold at public auction, or shall have become the property of the company, the directors may issue new scrip certificates in respect of such shares, which shall bear upon the face thereof the words “Issued in lieu of forfeited share scrip.” Then it is further provided that the acceptance of a share in a company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in liquidation or otherwise in respect thereof, or any contribution to the debts and liabilities of such company, and such person shall not be liable to be sued for any such calls or contributions; but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid. These are virtually the only provisions which apply exclusively to no-liability companies, and as far as I can see they are all that are necessary. The existing no-liability companies will be wound up under the provisions of this Bill in the same way that other companies will be wound up, the distinction between winding up a no-liability company and an ordinary company being that in the case

of the former the liquidator will not have the power to make calls on the shareholders.

THE HON. J. W. HACKETT: Can mining companies now in existence take advantage of the new clauses in this Bill?

THE COLONIAL SECRETARY (Hon. S. H. Parker): They can take advantage of the forfeiture clauses.

THE HON. J. W. HACKETT: Is that specially provided in the Bill?

THE COLONIAL SECRETARY (Hon. S. H. Parker): The Bill applies to all companies.

THE HON. J. W. HACKETT: Has it a retrospective effect?

THE COLONIAL SECRETARY (Hon. S. H. Parker): It applies to companies in existence as well as to those which may be established in the future. With regard to joint stock companies, it will be observed that by this Bill any five or more persons associated for any lawful purpose may form an incorporated company. In England the number is seven, but in the other colonies five has been fixed, and that number has been thought to be ample here. The requisites of the memorandum of association are virtually the same in this Bill as under the Ordinance of 1858, and the Mining Companies Act of 1888. There is, however, one difference with regard to mining companies. Under the present law there must be a declaration that 5 per cent. of the capital has been paid up, and this has been omitted in this Bill. It is a provision which is practically inoperative in the present Act, for in a great many cases it is evaded, and persons who make the declarations, as a rule, find their consciences very elastic. It has been also omitted in the other colonies, and, after all, 5 per cent. is so small that it is really no protection at all. Persons who do business with such companies should protect themselves by not dealing on the credit system. Another special provision is introduced into this Bill which is not the law here now, and it is that a limited company may be formed without limiting the liability of the directors. I do not suppose that many companies will be so formed, but they may be under this Bill. The mode of preparing and registering articles of association I need not refer to, because it is virtually the same as now

prevails, but I may say that there are certain provisions contained in this Bill with regard to the adoption of articles of association. Persons who have agreed to become members of a company may before incorporation pass a memorandum with or without articles not inconsistent with this Act for the purposes of the company, or alter any such memorandum or articles already passed, at a meeting to be convened for that object. This is not the law in England, although it is part of the Act of South Australia, and, I believe, of Victoria also. Then this Bill contains special provisions as to how contracts on behalf of companies may be made, varied, or discharged, and it also provides when bills of exchange and promissory notes shall be deemed to have been made or endorsed on behalf of any company. There is a further provision taken from the Imperial Act of 1862 to the effect that the Governor of the colony may appoint one or more competent inspectors to examine into the affairs of a company, and report thereon in such manner as the Governor may direct. This is a provision to protect the shareholders against the directors. Not less than one-fifth of the shareholders may go at any time to the Governor—which means the Governor-in-Council—and ask him to appoint inspectors to enquire into and report on the state and condition of the Company. Before appointing such, the Government must, however, be satisfied that they have good reason for requiring the investigation. It is also provided that all officers, and agents of the company shall produce all books and documents in their custody for examination by the inspectors. There is another power given in this Bill, which is taken from the 53-4 Vic. Cap. 64, under which the memorandum of association with regard to the objects of the company may be altered. To some companies this may be a useful provision, and therefore it has been deemed well to insert it in this Bill. Provision is also made by which a company may, by special resolution, increase its capital by the issue of new shares, or by the consolidation and division of its capital into shares of larger amount than its existing shares. On the other hand there are further provisions taken from the Acts of the Imperial Legislature, under which a company may

reduce its capital, but if such be done the company must add the words "and reduced" to its name for a certain time. Power is also given to the Registrar to strike defunct companies off the register. Certain companies we know have exhausted their capital and ceased work, but their names still remain on the register, and this Bill provides that the Registrar, after giving certain notices, may strike the company off.

THE HON. J. W. HACKETT: Who puts the Registrar in motion.

THE COLONIAL SECRETARY (Hon. S. H. Parker): Section 195 refers to this, but it does not provide who shall put him in motion. He may move himself on any information he may gain by hearsay, or at the express request of a shareholder or other person. It will be observed also that this Bill contains provisions for winding up what are called unregistered companies. I do not know, sir, that at this stage it is advisable for me to enter more fully into details. Perhaps I should have confined myself more to the principle of the Bill than to the details, but at the same time it is a lengthy Bill, and an important one, and hence I have thought it better to allude to some of the principal alterations contemplated; and having done so, I ask hon. members, if they are satisfied with my explanation, to affirm the second reading, although, as I said before, I shall have no objection to the adjournment of the debate, if hon. members wish it. In fact I shall be glad to see hon. members take an interest in this Bill, and discuss it, because I have no doubt the more we look into the matter the better we shall be able to make the law, and any suggestion for alterations hon. members will find I will most heartily receive. I now move the second reading.

THE HON. J. W. HACKETT: I move, sir, that the debate be adjourned. The Bill is a lengthy one, and it would have been almost impossible to digest it within a reasonable space of time without the information which has been afforded by my hon. friend. It must be remembered, too, that this is the only Bill of any importance that will come before us in the first instance, and hence, as there is a certain amount of honor involved, we should certainly do our best with it. I therefore move the adjournment of the debate until the next sitting of the House.

Question—that the debate be adjourned—put and passed.

ADJOURNMENT.

The Council, at 4.15 p.m. adjourned until Tuesday, 22nd November, at 3 o'clock p.m.

Legislative Assembly,

Monday, 21st November, 1892.

Report of Select Committee: Perth Gas Company's Act Amendment (Private) Bill—Running of Engines, &c., upon completed Sections of Yilgarn Railway—Obtaining and Carrying out Judgments in the Warden's Court, Kimberley—Land Regulations Amendment Bill: committee—Public Health Act Further Amendment Bill: second reading—Message from the Governor: Resignation of Sir James G. Lee Steere as Member of Federal Council—Constitution Act Amendment Bill: second reading—Adjournment.

THE SPEAKER took the chair at 7.30 p.m.

PRAYERS.

REPORT OF SELECT COMMITTEE—PERTH GAS COMPANY'S ACT AMENDMENT (PRIVATE) BILL.

MR. CANNING brought up the report of the select committee on this Bill.

Report received, and ordered to be printed.

RUNNING OF ENGINES, &c., UPON COMPLETED SECTIONS OF YILGARN RAILWAY.

MR. TRAYLEN, in accordance with notice, asked the Commissioner of Railways whether the contractor for the Northam-Yilgarn Railway would be allowed to run his engines, trucks, material, water-tanks, and all necessaries from Northam free of charge over completed sections of the line? If not, what would be the schedule of charges? And