# Legislative Council,

*Thursday, 16th August, 1894.*

Defence Forces Bill: third reading—Bankers' Books Evidence Bill: committee.

THE PRESIDENT (Hon. Sir G. Shenton) took the chair at 4·30 o'clock p.m.

PRAYERS.

## DEFENCE FORCES BILL.

### THIRD READING.

This Bill was read a third time and passed.

## BANKERS' BOOKS EVIDENCE BILL.

### IN COMMITTEE.

Clause 7—"Court or Judge may order inspection:"

THE COLONIAL SECRETARY (Hon. S. H. Parker): I have since our last meeting considered the amendment proposed by the hon. member for Albany (Hon. S. J. Haynes). I have also conferred with the hon. gentleman, and I have agreed to accept the amendment with certain alterations. If, therefore, he will withdraw his original amendment, I will substitute another which I think will be more suitable.

THE HON. S. J. HAYNES: I beg leave to withdraw my amendment.

Amendment, by leave, withdrawn.

THE COLONIAL SECRETARY (Hon. S. H. Parker): I move, in line 6, the insertion of the following words "by delivering a copy of the order to an officer of such Bank at the principal or branch office having the custody of the book of which inspection is desired."

Question put and passed. Clause as amended agreed to.

The remaining clauses were passed and the Bill reported.

## ADJOURNMENT.

The House at 4·45 o'clock p.m. adjourned until Wednesday, August 22, at 4·30 o'clock p.m.

# Legislative Assembly,

*Thursday, 16th August, 1894.*

Yilgarn Railway Contract and Bonus—Defence Forces Bill: first reading—Expenditure of Loan Money on Goldfields, &c.—Contract for Construction of Mullewa-Nannine Telegraph Line—Small Debts Ordinance Amendment Bill: second reading—Registration of Births, Deaths, and Marriages Bill: second reading—Marriage Bill: second reading—Adjournment.

THE SPEAKER took the chair at 4·30 p.m.

PRAYERS.

## YILGARN RAILWAY CONTRACT AND BONUS.

MR. JAMES, in accordance with notice, moved that all papers in connection with the following matters be laid upon the table of the House:—

1. The conditions of contract for the construction of the Yilgarn railway.

2. Correspondence in connection with the taking over of the line in sections, or the waiving of that right.

3. Correspondence and agreement (if any) relating to the payment of the bonus.

It might be in the recollection of members that he asked a question a few days since with reference to this matter, and he understood from the answer then given that this line was to have been taken over by the Government as each section was completed, but that that right had been given up by the Government in favour of a stipulation for the completion of the whole line at an earlier date than the time fixed by the contract. He wanted to know what time was gained by that arrangement; and he wanted to know why, after the Government giving up this valuable right of taking over the line in sections, they paid the contractor (or had agreed to pay him) a bonus of £2,500, when the line was not completed? The Government must have known, when they gave up the right of taking over the line in sections, that by so doing they had delayed the completion of the line? [THE PREMIER: No, no.] Was it not notorious that the contractor, instead of hastening the completion of the line and handing it over, had been making a lot of money for himself by running trains along it?

Of course, he did not believe all he heard, but it was rumoured that the line was not well constructed, and they were told by the Government that it was not yet completed, although a bonus was paid (or was to be paid) for completing the line by the 30th June last, and although the Government had taken over the line. He had pointed out to the Commissioner of Railways the nature of the information he wanted, as he would understand there would be some difficulty in complying with the terms of the motion as it stood.

THE PREMIER (Hon. Sir J. Forrest) said it was all very well for a member who had only been recently elected to a seat in the House to put down a motion asking for this information; but those who were in the House last session knew all about it. The action of the Government in this matter was based upon a resolution of the House. The contractor, under the original contract, had until December this year to finish his contract and open the line, but it was represented by members that it would be a great advantage to the country if the line could be opened for traffic right through to Southern Cross at an earlier date; and it was understood that the contractor was willing, upon certain conditions, to expedite the work and to have the line opened for traffic six months sooner than he had agreed to do it. Eventually it was agreed that, in consideration of his not having to open the line in sections, and also in consideration of a bonus of £2,500 (agreed upon by the House last session), the contractor was to have the line ready for opening for through traffic by the 30th June. That arrangement was made with the contractor, not only with the full concurrence of that House, but, he believed, to the satisfaction of everyone in the colony; because they all felt that the Coolgardie goldfield having been discovered, it was of the utmost importance that the line should be pushed through to Southern Cross as soon as possible. Not only did the contractor succeed in having the line opened for traffic by the 30th June, as agreed upon; he had opened it four months sooner, and, for all practical purposes, made it available for traffic.

MR. JAMES: Why didn't the Government take it over?

THE PREMIER (Hon. Sir J. Forrest): They could not take it over, under the contract, until December. But the contractor had been able—no doubt in his own interest, not only in the interests of the public, but also to his own pecuniary advantage; he hoped so, at any rate—to have the line ready for traffic four months earlier than the time fixed upon by the agreement of last year. Surely it was far better for the colony that they should have made this arrangement with the contractor, rather than let him carry on his contract in a leisurely way, and not have the line opened for traffic until the end of this year? The Government were not at all eager to make this deviation from the original contract, and both the Engineer-in-Chief and the Commissioner were averse to making it. He saw, from the "Votes and Proceedings," that on the 16th August last year, a question was put to the Government by the hon. member for Northam,—"Whether the Government had come to "any arrangement with the contractor "for the Yilgarn railway for the open-"ing of the first 70 miles for general "traffic?" Replying, on behalf of the Commissioner, he then said: "No ar-"rangement has yet been come to. The "Government find it difficult to fix upon "a basis for arrangement that would "provide for present requirements, while "sufficiently protecting the interests of "the colony in the future. It is very "difficult to interfere with an existing "contract in the way desired. The "Government is, however, willing to "make an arrangement if it can be done "without too much cost and risk." Eventually an arrangement was made, and a very satisfactory one for the colony, because they had been able to have the immense traffic to these goldfields carried over this line since February last, instead of having to wait until December. He was glad to have the opportunity of making these remarks, and he should be glad if the hon. member would sift the matter to the very bottom, because it had been insinuated that the Government had done something they ought not to have done. The Government had done nothing in the matter that was not in the best interests of the country.

MR. JAMES said his idea in moving for these papers was to sift the matter to

the bottom, as the Premier suggested. No one blamed the Government for encouraging the early completion of the line, but some doubt existed in the minds of the public as to why the bonus was practically paid to the contractor when the line was not yet completed. Some people thought the line was not completed because the contractor was too anxious to look after his own interests, and to make profit for himself out of the line by running it himself.

THE PREMIER (Hon. Sir J. Forrest): My friend the Commissioner explained that the other day.

MR. JAMES said no reasons were given, and he was anxious to ascertain what the reasons were which actuated the Government in giving up a valuable right—the right to have the line opened in sections, as completed—and also in paying a bonus for the early completion, when, according to their own account, the line was not yet completed.

THE ATTORNEY GENERAL (Hon. S. Burt) said the hon. member seemed to forget that these reasons had already been given only the other day in reply to a question from the hon. member himself. The hon. member asked, on August 2nd, why the Government did not take over this railway in sections as completed? The answer then given was: "Because it was desired to materially hasten the opening of the railway, as a whole, for traffic to the goldfields"—that was one reason—"and because it was found that this could best be obtained by pushing on with all the essential works on the railway as a whole, rather than by completing each individual section,"—that was another reason. Then as to the bonus. The reply which the hon. member received to his question was: "No bonus has as yet been paid to the contractor, but a bonus of £2,500 will be so paid shortly, being, in the opinion of the Government, quite equitably due, as the line was opened for traffic to Southern Cross some months sooner than the date agreed upon, thereby, in the opinion of the Government, quite counter-balancing its not being entirely completed by the time agreed upon; in fact it was considered that the contractor carried out his agreement in the spirit of it, if not to the very letter of it." These were the reasons which had induced the Government to do what they did; yet the hon. member said they had given no reasons. He should like to know what would have been said if the Government had delayed the traffic through to Southern Cross by telling the contractor not to hasten the work if he thought it would jeopardise the completion of the line by the 30th June?

MR. ILLINGWORTH thought that in the interest of the Government itself, as well as for the satisfaction of the country, there ought to be some further explanation vouchsafed by the Government as to their dealings with the contractor in this matter. What was weighing on his mind, and on the public mind, was that an agreement having been entered into, and a bonus offered for the completion of the line by the 30th June, this agreement, so far as the contractor was concerned, was not carried out, for the line was admittedly not completed to this day. The public did not object to the bonus being paid to the contractor. What they objected to was for the Government to have taken over the line before, when the contract was not finished. That was the point upon which he wanted an explanation, for the Government's own sake and for his own satisfaction. It was understood by many people that, the Government having taken over the line, all the unfinished part of the contract would have to be completed at the expense of the Government. [THE ATTORNEY GENERAL: Not at all.] Then why was the bonus paid before the work agreed upon was completed, and when was the work to be completed? If the Government paid the contractor his bonus, having already taken over the line, what security had they that the line would ever be completed according to contract?

THE PREMIER: We have a large amount of retention money on hand; about £16,000.

MR. MORAN said the people for whom this line was made, and those hon. members who were moving in the matter in that House, were certainly not in accord. It seemed to him that some members were anxious to represent the whole colony. So far as the opening of this Yilgarn line was concerned, the people on the goldfields clamoured for the Government to have it opened as soon as possible. They did not trouble themselves when the line would be finished

according to the strict letter of the contract, and the last grain of sand placed alongside the last sleeper; what the public wanted was to have the line opened for traffic. The contractor, if he wished, might have hampered the traffic on that line for months longer than he did, and the Government could not have touched him; and this small bonus of £2,500 was paid to him, or was going to be paid to him, for getting the work so advanced as to admit of the opening of the line some months before he agreed to do so, thus conferring a great benefit upon the public. As to the Government taking the line over before the contract was quite completed, contracts were usually taken over subject to the work being completed to the satisfaction of the parties concerned, and a sum of money was generally held in hand to ensure this being done. The Government appeared to have done so in this case. On the whole, he thought that all this hubbub about this matter, coming from the quarter it did, was uncalled for. The people for whom this railway was made were very glad the line had been opened, and there would have been a loud outcry if the Government had placed any obstacle in the way of its being opened at as early a date as possible, whether the contract was quite finished or not. He did not know why the hon. member for East Perth should have moved in this matter, or why the hon. member for Nannine should be so eager to support him. He should have thought that the member for the district concerned might be given a prior right to move in matters concerning his own district? But it gave these members a chance for airing themselves, and perhaps it was as well they should do so, so that, if they did find a few mares' nests during the session, they should get the credit of their discovery.

MR. R. F. SHOLL said the hon. member who had just sat down talked as if this railway was built simply for the benefit of the people of Southern Cross and Coolgardie. He (Mr. Sholl) thought it had been built for the benefit of the whole colony. He did not blame the Government for taking the line over so long as they safeguarded themselves, as no doubt they had done.

MR. COOKWORTHY thought that hon. members opposite were confounding the reasons why this bonus was offered. If he remembered rightly, it was not offered for the completion of the line by the 30th June, but for opening it for traffic. The Government and the House, and also the people of the colony, were very desirous of hastening on the opening of the line to the goldfields, and the contractor could have delayed that work, if he liked, until next December, if the Government had not entered into some arrangement with him.

Motion put and passed.

## DEFENCE FORCES BILL.

Received from the Legislative Council, and, on the motion of the PREMIER, read a first time.

## LOAN EXPENDITURE ON GOLDFIELDS.

MR. R. F. SHOLL, in accordance with notice, moved for a return showing—

1. The amount expended up to the 31st of July out of the £70,000 raised by authority of Loan Bill, 1891, for development of Goldfields and Mineral resources.
2. The works upon which the money has been expended; and the amount expended upon each separate work.
3. The unexpended balance, if any, on the above date.

Motion put and passed.

## MULLEWA-NANNINE TELEGRAPH LINE.

MR. R. F. SHOLL, in accordance with notice, moved that the conditions of contract (or a copy thereof) entered into between the Government and the contractors of the Mullewa-Nannine telegraph line be laid upon the table of the House.

Question put and passed.

## SMALL DEBTS ORDINANCE AMENDMENT BILL.

### SECOND READING.

THE ATTORNEY GENERAL (Hon. S. Burt): In rising to move this Bill I do not think I need say very much, because it deals with a dull subject, and deals almost entirely with the procedure of our Local Court. I am glad to say that the Act which was passed (I think) about 1863 has answered our purpose up to the present time, without any amendment whatever. That being so, there must be something in its provisions suit-

able to our circumstances, administered, as it is, not only in the centres of population, but all through the colony. This Bill makes provision for facilitating the working of the Court in some small matters only. Section 4 of the Bill deals with a matter of some importance. It provides that a plaint may be entered within the district where the defendant resides, or within the district where he resided within six months before the time of action, or within the district where the cause of action arose, either wholly or in part. The only alteration in the present law is that the summons may be issued in a district in which the cause of action only partly arose. Sometimes an objection is taken to an action because the cause of it did not arise wholly in the district where the plaint was entered. This will remove that objection. It is the law in force in England, and has been in force for the last 30 years, and I believe the alteration meets with the general concurrence of the profession. The Bill deals with several small amendments, conferring jurisdiction by consent being one of them. There are cases in which a magistrate may hold that he has no jurisdiction to try an action, but Clause 5 provides that if both parties to the action are agreeable, the magistrate shall have jurisdiction, and he will not only be empowered to try the action, but also to award costs. That, also, is a provision of the Imperial Act. An alteration is also made in respect of the procedure regulating appeals. Under the powers given to the Supreme Court and the rules made under those powers, appeals from the Local Court are sent up to the Supreme Court by means of the notes of the magistrate who tried the case, in lieu of a special case being stated; therefore, the procedure in the Local Court Act is not at present applicable, and, as a matter of fact, is not acted upon. Therefore, we repeal it, and substitute the practice which obtains. The old practice is abrogated, and the new practice established. That is the meaning of Clause 8. Again, there is no provision in our present Local Court Act allowing parties to proceed where service cannot be effected, though such a provision exists in the Supreme Court. If a plaintiff wants to bring an action in the Small Debts Court, and the defendant keeps away in order to defeat personal service of the summons upon him, you cannot at present bring him to book until you catch him. The 9th section provides that personal service may be dispensed with, upon satisfying the magistrate that the defendant is keeping out of the way in order to evade service. At present no one but the bailiff of the Court can serve a summons, but we now provide that the plaintiff himself may do so, or his solicitor, or the solicitor's clerk, the same as in the case of a writ in the Supreme Court. In Perth there are unfortunately so many summonses to be served from the Small Debts Court at times, that the bailiff cannot get through them, and, with the leave of the magistrate, we now propose to allow the plaintiff to serve the summons if he likes, or his solicitor. At present when a bailiff does serve a summons, the service must be proved by affidavit before the magistrate can proceed to try the case. In this Bill we propose that the service may be proved by a mere endorsement on a copy of the summons by the bailiff. The present practice gives rise to some inconvenience. The bailiff may be engaged in another case, and you may not be able to obtain this affidavit, which at present is the only way of proving service of a summons. Now we propose that the proof may be made by an endorsement. The Bill provides a severe punishment in the event of a bailiff falsely endorsing a summons. Then again, in these small debts cases, where summonses are served, a good deal of inconvenience and unnecessary trouble is caused to merchants, storekeepers, and others, by their being compelled to bring their books and vouchers into Court in order to prove their case up to the hilt, although there may be no appearance on the part of the defendant. Even in the absence of the defendant they have to prove their case before they can get a judgment. We propose to do away with that. I have never yet come across a case where a defendant would be prejudiced by non-appearing, simply through inadvertence. When he does not put in an appearance, it is done intentionally; and what is the use of compelling plaintiffs to bring all their books and vouchers into Court and go through a lot of formality to prove their case when there is no defence at all set up? As I said, we propose to do away

with that. As is the case in the Supreme Court, the plaintiff will take his judgment without proving his case at all if there is no appearance by the defendant, and the magistrate is satisfied of the service of the summons. Then, again, with regard to the taxation of costs. At present the law provides that the magistrate of the Court must himself tax the costs, but in practice this is found very inconvenient. The costs in these small debts cases are very low, and fixed according to a regular scale, and as a matter of fact it is the clerk who generally taxes them. Elsewhere the clerks of the Court attend to the taxation, and we now provide that it shall be so here. The parties, however, may appeal against the clerk's taxation. We also provide that a Judge of the Supreme Court may, upon the application of either party in an action in a Local Court, order the attendance of a prisoner as a witness. I do not suppose it often occurs that a man wants a person in custody to give evidence for him: but it has occurred, and it may occur again, and we provide for it in this Bill. So far, I think, these are little alterations in the present law which no one can possibly object to. They place the procedure on simpler and safer ground. Now we come to the question of attachment for debts. Under the present Small Debts Court Act debts cannot be attached. If you obtain judgment against a defendant, and you cannot find anything to realise upon, though you may know that a third party owes him a sum of money sufficient to meet your claim, you cannot attach that money. We propose to alter that. We here provide, as in the case of a Supreme Court action, that the plaintiff may summon any third party who owes the defendant a debt, and make him show cause before the magistrate why that debt should not be applied in satisfaction of the plaintiff's claim. We have adopted the same procedure here—though we have shortened it and cheapened it—as is adopted in the Supreme Court, where a plaintiff obtains judgment and he cannot find anything to realise upon. This matter, which is of some importance, is dealt with in the clauses numbered from 16 to 25, occupying about half the Bill. I think this will be a privilege which the trading community of Perth, at any rate, will be thankful to obtain, and I see no reason, myself, why this process of attachment should not be allowed in the Local Court. The next section deals with the question of vacation. We propose that a vacation shall be observed in every Local Court of the colony from the 20th December to the 18th January, annually. The magistrates of these Courts in Perth and Fremantle complain very loudly that while everybody else in the community are holiday making, they are compelled to be in attendance at these Courts, and are pestered with applications to put off cases until the holidays are over, and, as a matter of fact, no business is actually done, and the Courts may as well be closed. I think there can be no objection to this short vacation of about a month annually during the holiday season. If we have these Courts open all the rest of the year, I think we may well give the magistrates and their clerks a little holiday during the vacation. The last section of the Bill deals with sittings of the Court falling on a Bank holiday. In some districts the Local Court sits on a Friday, and when it falls on Good Friday, a lot of machinery has to be put in motion, such as a proclamation in the *Government Gazette* under the hand of the Governor-in-Council, to put off the sitting until some other day. Or the usual sitting day may fall on Easter Monday, or it may fall on a Christmas Day, or some other holiday, and the same formality has to be observed—another big proclamation putting off the sitting until some other day. We now propose to settle this matter once for all by providing that in the event of any sitting of a Local Court falling on a Bank holiday the Court shall sit on the following day. I have not included public holidays, because I think all our public holidays are observed as Bank holidays in this colony. I don't know about the races; I think they generally fall within the period fixed for the vacation; if they don't, they ought to, and no doubt the Turf Club will arrange their fixtures accordingly, so that our magistrates may not miss the races. I have now gone through the Bill, and I ask the House to read it a second time.

MR. JAMES: There can be no question that everything embodied in this Bill is required, but I think considerably more is required, when it is borne in mind

that the Small Debts Act in force dates so far back as 1863. I think the foundation of that ancient Act was the English Act of 1848 or 1854, so that our existing law is, to say the least of it, somewhat out of date at present. I shall be glad if the Attorney General in dealing with this Bill will follow the good practice he adopted in connection with the Friendly Societies Act, and embody in the Bill all the latest legislation that is applicable to the colony, so as to bring it as near up to date as possible. In one respect the Local Courts of this colony are distinguished from similar Courts in any other Australian colony, or in England, and that is, there are no means for obtaining jurymen at these Local Courts. Elsewhere, in Courts exercising similar jurisdiction, juries are allowed; they are generally limited to five. The result is that these Courts are popularised. The advantage of having a jury would be that it would attract to these Courts litigation that does not go there now, but to the Supreme Court, with the result that litigation is made much more expensive than it need be. Another thing in regard to which the position of this colony is unique is this: in England and in the other colonies, Local Courts are presided over by trained lawyers, so that litigants, however small their disputes may be, have the opportunity of having them settled by a professional man. That is not the case here; in fact, it could not be the case, the expense would be so great. But I should like to see some provision made in the Bill, so that parties may have the right of applying, in a summary manner, for a new trial, before a Judge in chambers. I do not suppose there would be many such applications, but I think everyone should have the right, if he wishes, of having his legal troubles settled before a legal man, and I think it would be acceptable to the public. I should, also, have been glad if the Attorney General had been able to extend what is known as a default summons, to meet cases involving a smaller amount than £20. Unless the person on whom a default summons is served intimates to the Court that he intends to defend, you need not go to the expense of bringing your witnesses into Court to prove your case against a man who does not intend to defend the action. At present you have to have all your witnesses present; and I should have been glad if the Bill had provided for extending the principle of default summons in this direction. [The ATTORNEY GENERAL: It does so.] I am glad to hear that from the Attorney General, because, in my opinion, it does not. In all cases here you must take your witnesses to Court; though you need not take your books and vouchers to prove your case in detail. But that is not a default summons, which avoids the necessity of calling your witnesses. Another useful provision which I hope the Attorney General will insert, is some more simple method of removing a judgment. If you want to touch a man's land now you have to go to the Supreme Court,—you cannot do so by any process of the Local Court. You get your judgment, you issue an execution, a return is made "no goods," you have to make an affidavit, you have to get a writ of *certiorari*, and you may then get your judgment into the Supreme Court. All that unnecessary formality might be avoided by obtaining a certificate of the judgment from the clerk of the Local Court, accompanied by an affidavit from the party, and taking it to the Supreme Court. I also hope that when the Attorney General gets this Bill through, he will promptly set to work to get some new rules published. The present rules are those which were in force in England in 1848, about fifty years ago; and they are all out of print now. What is of more importance than that is that something should be done to reduce the fees in our Local Court. At present the fees are scandalously high. If you want to sue for anything over £10 you have to pay £1 8s. before you can lay your claim. The fees here are higher than they are in any other part of Australia, and much higher than they are in England. This Bill being before us, I should like to see another important alteration of the law introduced. I should like to see a provision inserted providing that a debt below £20 should be barred within twelve months. This would compel creditors to sue for their small debts promptly. At present if a man owes another £10 the debt may hang over for six years before it is barred. I think that, in case of petty debts like that,

creditors ought to be compelled to sue within twelve months from the contraction of the debt. It does not follow that you must collect the money within twelve months; but the debt ought to be adjudicated upon. I think that would be legislation in a very useful direction. There is another useful provision which exists, I believe, in New South Wales, which provides that when a debt due to a baker, or a butcher, or a grocer is recovered in the Local Court it shall have priority over any existing bill of sale. A bill of sale is there held to be no bar or protection against the claim of a butcher, or grocer, or baker, who supply people with the actual necessaries of life. These little shopkeepers cannot afford to lose the small amounts due to them, and they never think of going to see whether there is a bill of sale in existence against every customer they serve. That is a provision I should like to see adopted here. I hope, as this Bill goes through committee, that any amendment suggested by members on this side of the House will not be met in any party spirit. I hope we shall all be allowed to do our best, in our own small way, for the purpose of improving the Bill and extending its usefulness. I know that, as a rule, the efforts of the Attorney General cannot be improved upon; but even Jove himself sometimes nods, and it is possible that the learned Attorney General may.

THE ATTORNEY GENERAL (Hon. S. Burt): I can promise the hon. member that any amendment he puts on the notice paper will be considered in no party spirit so far as we are concerned. I think the hon. member has had proof of that in connection with another Bill in which he took a very active part. But we do not want too many new-fangled notions, such as limiting the recovery of debts to twelve months, sprung upon us. We first want to know what the public feeling is. We do not want principles inserted in our statute book of which the country has heard nothing whatever about. I do not think that novel ideas of that sort are ripe for legislation, and, so far as I am concerned, I am not going to assist the hon. member in getting them on our statute book the moment they are mooted.

Motion put and passed.

Bill read a second time.

## REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES BILL.

### SECOND READING.

THE ATTORNEY GENERAL (Hon. S. Burt): I hope the House will not think me tiresome, for this is really a duller Bill than the last. As we propose dealing with the marriage laws it has been thought advisable to have this Bill to regulate the registration of births and deaths, as well as marriages. It does not alter the law very materially, but gives more time for registration. Numbers of people are coming here from the other colonies and elsewhere, and our Registrar General has been requested by nearly all the colonies to bring our law more into accord with the law there on this subject of registration. At present the time allowed for registering births in this colony is much shorter than in the other colonies. I saw the other day where the parent of a child had been reported for not having it registered within a month; everywhere else the time allowed is sixty days, and we propose to extend the time here the same as it is in other places. Provision is also made in the Bill with regard to births and deaths occurring at sea, and we propose establishing what is called a marine registry here. We also deal with the registration of officiating ministers. At present there is no power to cancel the registration of a minister's name. Once registered it is difficult to get him off the register. Of course, he can only be put off when he ceases to officiate as a minister altogether, or where he has been guilty of some irregularity, or impropriety, or offence which necessitates his removal off the register. There is not much alteration made in the present law except in regard to the points I have named. We have made particular provision as to the registration of marriages, which was somewhat involved in the old law. Every marriage must be registered immediately after its celebration by the officiating minister or district registrar, who have to make a copy of the marriage certificate in triplicate—one to be given to the parties who are married, one for the district registrar (to be forwarded by him to the Registrar General), and the third to be kept by the officiating minister himself or the registrar before whom the marriage was celebrated. I do not think there is very much that is new in the

Bill, but I think it is an improvement of the present law, and a good accompaniment to the Marriage Bill which I propose to ask the House to read a second time presently. I now move the second reading of this Bill.

Motion put and passed.

Bill read a second time.

## MARRIAGE BILL.

### SECOND READING.

THE ATTORNEY GENERAL (Hon. S. Burt): I have now to ask the House to agree to the second reading of a Bill to amend the law relating to the celebration of marriages. This subject, to some of us, is an interesting subject,—to the younger members of the House particularly; to the other members, perhaps, not so interesting. The present marriage law of the colony is contained in three Acts, and it is somewhat involved—I may say very much involved—and ministers newly arrived in the colony find considerable difficulty in understanding what is to be done. This Bill repeals the old law and re-enacts it with amendments. We here set out plainly who are the persons authorised by law to celebrate marriages, and also the time and place when and where marriages may be celebrated, and the manner of celebrating them. Then we deal with offences against the law, and with miscellaneous subjects which in the old Acts are jumbled together anyhow. They are now dealt with in an intelligible way. Part I. of the Bill is preliminary and explanatory. Part II. sets forth the persons who are authorised to celebrate marriages, namely, a minister of religion, ordinarily officiating as such, and duly registered, or the district registrar of the district wherein the marriage is celebrated. No marriage may be celebrated except in a church (which includes a cathedral or chapel), or a place of public worship duly registered for the purpose, or the district registrar's office, or such place as the Governor may authorise by special license. The Bill also provides that no marriage shall be celebrated before 8 o'clock in the morning, or after 4 o'clock in the afternoon. If you have to deal with a cathedral, church, or chapel belonging to one of the long-standing and recognised organisations, there is no difficulty; but when you come to deal with newly established denominations, having no churches or chapels of their own, we require them to register their place of worship before they can celebrate marriages in them. We do not propose to charge a fee for registering these buildings, but I think it is very necessary they should be registered. That is a provision which, I think, exists everywhere else. If you look through the three Marriage Acts now in force, it will take you a long time to find who are legally entitled to celebrate marriages, and the time and places where they may be celebrated. Here you have it all in two or three sections. As to the manner of celebrating marriage, the Bill provides that the declaration upon oath of the parties to the marriage shall be endorsed upon the back of the register or certificate to be retained by the person officiating at the marriage. We also make provision, in the case of marriages after banns, that the usual notice shall be published within the district wherein each party to the intended marriage resides. At present, supposing a man resides at Roebourne, he may have his banns published there, and then run down to Albany and marry a lady there next week. I take it that if there is any object in publishing banns at all, or in giving notice at a registrar's office, it is to let the public know that A and B are to be joined in matrimony; but if a person can give notice, or have his banns published, say at Roebourne, and then run down to be married at Albany, and no notice or banns published at Albany, the object of the Bill is defeated. Therefore we provide that if the parties reside in different districts, the banns or notice must be given in each district. Then there is a provision with regard to marriages by a registrar. The registrar, too, must have seven days notice posted in his office, in the district where the man and the woman respectively reside. The third form of marriage provided for is by special license, granted by the Governor. A fashion seems to be growing to obtain the Governor's license to get married, thus doing away with the usual formalities as to banns and notices. I think that is a practice that ought to be restricted. I think it is advisable that people should be married in their own churches or chapels, if they have one: or, if they won't do that, there is the

registrar for them; and, if they want to be married by special license from the Governor we are going to make them pay £10 for that license in the future. Elsewhere they have to pay a considerable sum for these special licenses. I do not see why a person who wants to get married should put the Governor and Executive Council in motion for his delectation, without paying anything for it. Generally speaking there is no particular reason why a man should not wait and give the required seven days notice to the registrar, or have his banns published; but there may be some exceptional cases where a strict compliance with the provisions of the Act in that respect may entail hardship and great inconvenience to the parties, and, in such a case, a special license may be granted without payment of any fee. The parties may, perhaps, reside at such a distance from a church or chapel, or any place of worship, or from a registrar's office, that the expense of celebrating the marriage in that way may be both onerous and burdensome; and, if that is proved to the satisfaction of the Governor, a special license may be obtained without payment. But where no such special circumstances are present, a fee of £10 must be paid, and that money goes into the public Treasury. Some gentlemen import their intended wives, I believe. They come out here, and, dropping upon a good thing on the goldfields, perhaps, they send for the young lady, or the girl they left behind them, and immediately she lands at Albany they want to get married. They will not wait to have the banns published, or to give the required notice; in such cases we propose to make them pay £10 for their special license. The Bill next deals with offences, and there are penalties provided for infractions of the law. I think I have now explained fairly well what the intention of the Bill is. I have sent copies of the Bill to the heads of the various religious denominations that I know of, and no doubt some of them may communicate with me, or with some member of the House who will represent their views. Some of them have done so already. I now ask the House to agree to the second reading.

MR. RANDELL: I think it is very desirable that the marriage laws of the colony should be brought together and consolidated in one Act, as I know that considerable difficulty has been experienced by ministers newly arrived in the colony in making themselves acquainted with the provisions of our marriage laws. I think the marriage laws of any country should be as simple and as inexpensive as possible; and I am not quite prepared to say that I am able to give my assent to all that is in the present Bill. One point that I think may be fairly considered is, whether the time for the celebration of marriages might not be extended. The time fixed by the Bill is between 8 in the morning and 4 in the afternoon. I believe that in the other colonies marriage may take place at any hour. That, no doubt, is very convenient for working men and others who have not the opportunity always of leaving their work, and some of them can ill afford to do so. They want every shilling they earn for their household conveniences. I think all the State has to concern itself about is that there are no clandestine marriages. I was told by a gentleman recently that he had celebrated marriages often under circumstances where it would have been a hardship if they had to be celebrated before 4 in the afternoon; and I shall propose in committee that the hours be extended from 8 a.m. to 8 p.m. I do not think there can be any reasonable objection to that. With regard to special licenses, I do not see why, under ordinary circumstances, people should not pay a fee for such licenses; but I am glad to see that provision is made in the Bill for remitting the fee under special or extraordinary circumstances.

MR. ILLINGWORTH: I must say that when I read this Bill I did so with very great dissatisfaction and disappointment. It appears to me that the object of the Bill is to make marriage difficult. The Bill is so utterly at variance with what I have been accustomed to elsewhere that I fail to understand it. It may be because I have been used to other conditions, but certainly it came upon me with somewhat of a shock. I refer more particularly to Clause 6, which provides that no marriage may be celebrated except in a place of public worship or before the registrar. It seems to be assumed in this Bill that the great mass of people in this colony

who get married look upon marriage as a sacrament; but members must be aware that there are many people who look upon marriage as a civil contract. I do not quite look at it in that light myself; nor do I take the higher ground that it is distinctly a sacrament. I think we should extend the provisions of the Bill in this respect, and not confine marriages to churches and chapels, or places of public worship. There happens to occupy a seat in this House an hon. member who has conscientious objections to the religious body he is connected with possessing a building of their own for public worship. The hon. member is not present this evening; if he were, I have no doubt he would take this ground. There are other people in this land who have no places of worship in any building that would come under the denomination of a church, chapel, or cathedral. There are our friends of the Jewish faith. They have no synagogue here yet. Why should people who have these religious convictions, and who desire to be married after the manner of their own Church, be compelled to make their marriage a civil contract, because not having a synagogue of their own, they must go to the registrar?

THE ATTORNEY GENERAL: (Hon. S. Burt): The Bill does not apply to Jews at all, nor to Quakers.

MR. ILLINGWORTH: I was not aware of that. Some of those to whom my remarks apply are neither Jews nor Quakers. Supposing there is a congregation of people who meet for public worship in the Temperance Hall?

THE ATTORNEY GENERAL (Hon. S. Burt): They have only got to register it as a place of public worship.

MR. ILLINGWORTH: That is a point I wanted to be clear about. But why limit marriages to places of public worship? In Victoria the larger portion of marriages takes place in private houses. The minister goes to a private house, and the marriage is there celebrated; and the very fact that a majority of marriages are celebrated in this way is a proof of the convenience of the practice. The Attorney General may shake his head; the fact remains the same. In Victoria people can be married anywhere they please. So long as we prevent clandestine marriages, why compel people to go to a church or registered place of worship? Surely no marriage can be clandestine that is celebrated in people's own homes, surrounded by their own relatives and friends, in the presence of their own minister. As I have already said, why should a person who has conscientious objections to going to a church or a place of worship be compelled to go there if he wants to get married?

THE ATTORNEY GENERAL: He can go to a registrar.

MR. ILLINGWORTH: But why compel him to take that course?

THE ATTORNEY GENERAL: Where would you have him go?

MR. MORAN: Make it a canvas tent.

MR. ILLINGWORTH: Why should you compel him to go to a place of worship, or make marriage to him simply a civil contract? This is the legislation of Might, and not of Right.

THE ATTORNEY GENERAL: It is the legislation of other countries.

MR. ILLINGWORTH: It is not the legislation of Victoria, because I have had to do with many marriages, myself, that have taken place in private houses. The hon. member for Yilgarn suggests a tent. Yes; where are you to get your church upon a new goldfield? I am an advocate for providing every opportunity for people to become united in the bonds of matrimony, so long as it is not done clandestinely.

MR. MORAN: Legalise marriage under a gum-tree.

MR. ILLINGWORTH: Why not, so long as there is nothing clandestine about the union? Surely a marriage under the canopy of heaven is as valid and binding as a marriage anywhere else, so long as the ceremony is legally performed? Restrictions such as are contained in this Bill are wholly unnecessary in my opinion. Here is another point: the Attorney General says that so long as a building is registered as a place of public worship, marriages can be celebrated within that building. Must the building be devoted exclusively to public worship, or may it be a building that is ordinarily used for other purposes, but occasionally for public worship? The Town Hall, for instance, where religious services are occasionally held? Then, again, I find that notices have to be given in the district where each party resides. If a gentleman living in Perth

desires to marry a lady living in Albany the banns must be published in both places. Why? These banns have to be published on three consecutive Sundays before the marriage can take place; or, if before a registrar, seven days' notice must be given. In the present condition of this colony there are large numbers of young men coming here from other parts, many of them leaving young women to whom they are engaged, behind them; and, after a while, they are in the habit of sending for their intended wives. The young lady leaves her home and her friends, and lands at Albany, and she must wait there or some other place for seven days, without a friend or an acquaintance, before she can get married even before a registrar. Her plighted husband is prepared to marry her and provide her with a home there and then; but, no, she must wait, a stranger in a strange land, for a week before the marriage can be celebrated. Is there any justice, or any righteousness, or any honourable purpose to be served by such a condition as that?

THE ATTORNEY GENERAL (Hon. S. Burt): It will never happen.

MR. ILLINGWORTH: It has happened under the present Act, and, so far as I can see, it will happen under this. It may be said you can get a special license from the Governor. If a young man goes to the Governor and tells him that his *fiancée* has arrived at Albany, it is said the Governor would give him a special license to get married at once. Admitting that the Governor would grant a license, why should I insult or intrude upon the Governor in a matter of this kind? Surely, if I want to make an honourable union with a lady I ought to be allowed to do so without going to the Governor? It serves no useful purpose all these restrictions. They can do no possible good, and must prove a source of irritation to many people. Clause 7, again, provides that no marriage shall be celebrated before 8 a.m. or after 4 p.m.

THE ATTORNEY GENERAL (Hon. S. Burt): What is it in Victoria?

MR. ILLINGWORTH: Any time you like, and anywhere.

THE ATTORNEY GENERAL (Hon. S. Burt): It is not Victorian law you are quoting.

MR. ILLINGWORTH: I am quoting Victorian practice, at any rate.

THE ATTORNEY GENERAL (Hon. S. Burt): It is not according to law.

MR. ILLINGWORTH: It may not always be according to law. As a matter of common practice, a minister, properly registered, can marry anywhere and at any hour of the day or night in Victoria. Why make this distinction here? Surely marriage is as good at 6 o'clock in the morning as at 8 o'clock; and as binding at 9 o'clock at night as at 4 o'clock in the afternoon? Then, why make this distinction? There is nothing to be gained or served by it. A young lady who wants to be married comes up from Bunbury—that is an argument that will touch the Premier—and arrives in Perth at a quarter past 4 in the afternoon, and she must remain in Perth until next day, because the Marriage Act says she cannot get married after the clock strikes four. Is it not absurd? If there is any legislation that has an element of absurdity about it, this is it. Why such restrictions should be made upon persons who desire to contract an honourable engagement passes my comprehension. Then, again, there are such things as marriages upon a death-bed. One of the parties may be *in extremis*, and while somebody is running about for the Governor, to get a special license, the young lady dies. If there was anything to be gained by fixing the hour I could understand it, but, when it simply creates unnecessary and irritating difficulties, I see no justification for it. Surely a marriage law that, in Victoria, has worked satisfactorily for over a million people, and which, in practice, operates well, ought to be good enough for Western Australia? Restrictions are put in the Bill for no earthly purpose but to annoy and irritate people; and I hope that in committee we shall have some amendments made in the Bill. Unless there are going to be some cardinal amendments in committee, I shall be obliged to vote against the second reading of the Bill. Clause 13 provides that the banns of marriage must be published for three consecutive Sundays in a church or place of worship within the district wherein each party to such marriage respectively resides. There is such a thing as love at first sight, and one of the parties may have occasion

to leave the colony, or leave the district, immediately. There is no chance for an honourable marriage under this Bill in such a case as that. In olden times, in Victoria, when a ship arrived with a hundred or two of young ladies, gentlemen used to go on board the moment the ship anchored, select their future wives, and get married on the spot, in the captain's cabin, after which the happy couples went up the country. There is no chance in this Bill for that kind of thing. It is not a Bill to facilitate marriage, but a Bill to hinder, and worry, and annoy people bent upon honourable unions. When banns have to be published, the parties must wait three weeks before they can be united. The lady or gentleman might change her or his mind within that time. I call it a useless annoyance. I say that a marriage by a duly registered minister ought to be allowed to take place anywhere and at any time. This lengthy notice required under the Bill will be a source of worry and annoyance to young ladies coming here from the other colonies, or from England, to get married. I say it is a cruel thing to any young lady who has left home and friends behind her, and come here amongst strangers, to compel her to wait at a hotel for a week, or three weeks, before she can possibly get married. Unless I can have some assurance from Ministers that they are prepared to alter the Bill somewhat upon the lines I have indicated, I shall feel it my duty to oppose it at every stage.

MR. MORAN: It really is a bore to have to listen to the tales of woe and blighted love which the hon. member for Nannine has inflicted upon us. The hon. member has done a great deal, in my opinion, to discourage young people from keeping their engagements, when he talks of the terrible annoyances they will be subjected to if they are intent upon committing matrimony in this colony; and if hereafter it should be found that I am the victim of a breach of promise action, I shall certainly look to the hon. member for the damages. The hon. member's sympathies are entirely with the young woman; he says nothing about the unfortunate young man, who in my opinion requires as much protection as we can possibly surround him with. I do not think this Bill provides more protection than any susceptible young man ought to have who is bent upon matrimony. I think the Government are to be congratulated upon bringing in such a Bill. Seeing the boom that is taking place in gold-mining, and in other directions, I have no doubt there will be a big stroke of business done in the marriage line, especially if we follow the suggestions of the hon. member for Nannine, and allow the knot to be tied in a tent or under a gum-tree, at any hour of the day or any hour of the night.

THE ATTORNEY GENERAL (Hon. S. Burt): Of course, any reasonable suggestion offered from any part of the House will be considered by the Government. The hon. member for Nannine certainly holds very broad views on this question of marriage. I would point out that in this Bill we are not altering the marriage law so much as consolidating what we have already on the statute book. It may not be always convenient, perhaps, to have a marriage celebrated in a church, or chapel, or registered building; but, I think a special license would generally meet such cases. If it can be shown that it would not, we can deal with the matter in committee. The same with regard to the hours fixed for the celebration of marriages. But, I certainly am not going to support the abolition of fixed hours altogether, nor encourage hasty marriages. I may say that one minister of religion has called upon me already, and pointed out that in his opinion the notice required under the Bill is too short. He mentioned a case where a young lady arrived here and wanted to be married right off the reel. He objected to it, and it afterwards turned out that she was already married. I think many ladies will thank the House for passing a Bill like this to protect them. We want to impose some restrictions, surely, and not permit marriages to take place anywhere and everywhere, and at any time, at a moment's notice.

Motion put and passed.

Bill read a second time.

## ADJOURNMENT.

The House adjourned at 6·30 p.m.