Legislative Council,

Tuesday, 3rd October, 1899.

Papers presented Petition, Draft Commonwealth Bill, postponement—Permanent Reserves Bill, third reading—Executors' Commission Bill, third reading—Roads and Streets Closure Bill, third reading—Companies Duty Bill, third reading, Division—Imported Labour Registry Amendment Bill, third reading—Immigration Restriction Amendment Bill, third reading—Public Service Bill, first reading Wines, Beer, and Spirit Sale Amendment Bill, Legislative Assembly's Amendments—Divorce Bill, in Committee, Clause 1, Division, progress—Bills of Sale Bill, in Committee, Clauses 1 to 5, progress—Patents, Designs, and Trade Marks Bill, in Committee, Clauses 1 to new clause, progress Adjournment.

THE PRESIDENT took the Chair at 4·30 o'clock, p.m.

PRAYERS.

PAPERS PRESENTED.

By the COLONIAL SECRETARY: 1. Return of free passes over the Government Railways from July, 1898, to June, 1899, as ordered. 2. By-laws, Municipal Council of Nannine.

Ordered to lie on the table.

PETITION—DRAFT COMMONWEALTH BILL.

HON. A. P. MATHESON moved:

That the consideration of the petition of the Federal League of Western Australia be made an Order of the Day for Thursday, 12th October.

The object was that the consideration of the petition might be taken at the same time as the consideration of the report of Joint Select Committee on the Draft Commonwealth Bill, as it was quite unnecessary to have two debates on the question of federation.

Question put and passed.

PERMANENT RESERVES BILL.

Read a third time, and returned to the Legislative Assembly with amendments.

EXECUTORS' COMMISSION BILL.

Read a third time, on motion by Hon. F. T. CROWDER, and transmitted to the Legislative Assembly.

ROADS AND STREETS CLOSURE BILL.

Read a third time, and returned to the Legislative Assembly with amendments.

COMPANIES DUTY BILL.

THIRD READING.

THE COLONIAL SECRETARY (Hon. G. Randell) moved that the Bill be read a third time.

HON. A B. KIDSON (West): One of the clauses of the Bill would be retrospective, so far back as the 11th July of this year; and he did not know whether hon. members had their attention drawn to this matter, which was worthy of consideration before the Bill was allowed to proceed further. One effect would be that either the Government would be deprived of obtaining the revenue in respect of dividends already declared and paid during the time elapsed since the 11th July, or institutions would be called on to pay the tax in regard to dividends which had already, in many instances, been paid to the persons entitled thereto. In these circumstances, there would be great difficulty in obtaining the payment of these moneys, or the institutions themselves would be called on to pay the money, and these institutions might not have the funds on hand with which to pay the tax. In these circumstances he would like the matter debated at some length in order that the views of the House might be thoroughly elicited. He moved that the Bill be recommitted, with a view to altering the date from the 11th July to the 1st August, so that the retrospective effect of the Bill would only date back to the 1st August. It was clearly an anomaly to make the Bill retrospective to the 11th July when numbers of dividends had been paid since the 1st August, and these dividends had not had the tax paid on them.

HON. F. T. CROWDER: That was the Government's trouble.

HON. A. B. KIDSON: The institutions might be called upon to pay the money, because the dividends might have been paid over to the persons entitled to them; therefore those persons would have got scot-free of the tax. He moved, as an amendment on the motion, that the Bill be recommitted.

THE COLONIAL SECRETARY: The Bill had passed through all its stages, so far, by considerable majorities, and he took it that members had made up their minds. The measure introduced into Queensland was retrospective in its operation—not perhaps to the same extent, but

some considerable time—and the same objection was taken to it there, but a case of this description was something like that of a Customs Bill, which must be retrospective. The reason the time was so long in this case was that the Bill had been delayed in its passage through the two Houses of Parliament. It was unusual to interfere with the financial operations of the Government, and it would be a departure from custom to interfere on this occasion. He did not know whether the hon. member (Mr. Kidson) was in earnest in the matter.

HON. A. B. KIDSON: Certainly.

THE COLONIAL SECRETARY: The difficulty had no doubt been suggested to the hon. member by some of the officers of the institutions operating in our midst. The administration of the measure would be in the hands of the Treasurer, and, although he (the Colonial Secretary) had received no ideas from the leader of the Government in the matter, he felt certain nothing improper or oppressive would take place. He had thought there might be a motion that the Bill be read this day three months or this day six months, moved probably as a joke; but he did not anticipate a reference would be made to any of the clauses of the Bill, which should have been taken exception to previously.

HON. A. B. KIDSON: The point referred to was not noticed by him previously.

THE COLONIAL SECRETARY: The retrospective effect of the Bill had been mentioned, and he himself referred to it in the House. He hoped the hon. member would not press the motion. The Bill had been delayed a considerable time, and it was absolutely necessary it should pass.

HON. A. B. KIDSON: Why was the Bill necessary?

THE COLONIAL SECRETARY: Because the money was wanted to help forward the development of the country.

HON. F. M. STONE (North): The House ought to recommit the Bill, and discuss the time at which it should take effect. If the Bill were to take effect from so far back as the 11th July, we should be getting into terrible trouble. The point referred to had escaped his attention. Not only a company, but trustees, agents, or other persons were liable to a penalty of £5 for every day they were in default. When dividends were paid over by trustees to other persons, the money was never got back, and it would be the unfortunate trustees who would have to pay in relation to the dividend, besides being liable to a penalty. If the Government were so hard up, he would not trust they would not enforce payment of every amount they could get hold of.

HON. W. T. LOTON (Central): No valid reason was shown for making the Bill retrospective. The leader for the Government in this House said the measure was something like a Tariff Bill; but such was not the case, for it was perfectly well known that when a Tariff Bill was introduced it took effect straight away. This Bill had been hanging on for something like two months.

THE COLONIAL SECRETARY: The people had had warning.

HON. W. T. LOTON: But some members had not noticed that the measure would be retrospective. The retrospective clause was not one of the main principles of the Bill; but it was important. Surely the Government were not so hard up that it was requisite to go back during the past three months for taxation. If they were, the finances were much worse than the public generally were led to believe.

THE COLONIAL SECRETARY: It was more the principle than anything else.

HON. W. T. LOTON: The principle of the Bill was a bad one, and he should vote against it. Scarcely a member of the House was in favour of the present Bill.

HON. A. P. MATHESON: Why did members vote for it?

HON. W. T. LOTON: To a certain extent, members were hand-tied if not tongue-tied. It was a case of either throwing out the whole Bill or passing it. The Bill was most unfair in many respects.

HON. A. P. MATHESON (North-East): The Bill was absolutely ridiculous. As a matter of principle, he felt bound to oppose retrospective legislation. People made their arrangements on the basis of existing legislation, and Parliament had no right to upset principles accepted up to the date the Bill became law. In this case it was particularly absurd. The

moment the Bill became law every company, every agent, would be liable to a penalty of £5 per day from the date of the distribution of the dividend paid since July 11.

THE COLONIAL SECRETARY: As to the fines which had been referred to, he did not think there was the slightest probability of their being inflicted. He was not prepared to say the Bill was an unfair one, but he admitted it was unequal possibly in its operation, because it touched incorporated companies and did not touch other companies which were not incorporated. That was the only defect he could see. Members had voted for the Bill with their eyes open.

HON. F. T. CROWDER (South-East) said he was not prepared to vote for the recommittal of the Bill. He had been entirely against the Bill on the second reading, and did not believe in it at all; but the measure had been carried by a large majority. The retrospective nature of the Bill was one reason which had induced him to oppose the measure; but seeing that the Government had a majority of 14 to 6, which majority the Government seemed to be able to summon whenever they liked, he was not going to oppose the Bill further. All over England and Australia it was known that this Bill would have this effect, and it was made retrospective for the reason that companies could declare a dividend and in some way might get out of paying the tax. We were told the Government wanted the money, and he believed they did. From the way hon. members were kept in the dark, he was sure there was something which we ought to know. By altering the date, something like £25,000 would be taken from the Government, and this money, except a small amount from the Western Australian Bank, would come from England from gold-mining companies. If there was to be any trouble over this measure, let the Government take the responsibility and fight their own battles.

HON. J. W. HACKETT (South-West) said he was against the recommittal, not that he liked the Bill, for he had expressed himself plainly about it when a new clause was added limiting the operation of the measure to three years. He could not get it out of his mind that the objection now raised, if a valid one, ought to have been taken by members who had shown interest in the measure, but whose interest did not seem to lead them to the length of reading the clauses. This matter ought to have been discussed in Committee, when the Colonial Secretary would have been prepared to argue it. If the clause were altered, he did not know what companies might do, and he was with Mr. Crowder in believing that companies had quite sufficient ingenuity to arrange, if they could, that only a small proportion of what they ought to pay to the exchequer should be paid. On the strength of the money to be obtained from this tax, the Estimates had been framed, and if the money was taken away the House would disarrange the Estimates, the deficit would be increased, and, as far as he could see, no good would be served. The hardship to which Mr. Stone had referred would be a hardship if the Government enforced the penal clauses, but he understood the Government did not intend to do so, and he did not think the Government dare do so.

HON. F. M. STONE: Many trustees would have to pay money out of their own pockets if the Bill was passed as it stood.

HON. J. W. HACKETT: If that were so, then the matter could be brought up next session, and members would know how to deal with the subject; but he hoped nothing so dishonest as suggested would be attempted. Looking at both sides of the question, the bitterness of debate had passed, and there was no need to disgorge portion of it now.

HON. F. T. CROWDER: The Bill had been forced down members' throats.

HON. A. B. KIDSON (in reply): It was extraordinary that every member who had spoken declared the Bill was a bad one, yet in the same breath those members said they intended to vote for the Bill. He could only congratulate those members on the action they had taken, because it showed what strong supporters they were of the present Government. One member after another had stated that the Bill was a bad one, that it was inequitable, and that the taxation was wrong.

THE PRESIDENT: The hon. member had not the right of reply.

Amendment put, and division taken with the following result:—

Ayes	...	...	5
Noes	...	...	10
Majority against	...		5

AYES.	NOES.
Hon. A. B. Kidson	Hon. H. Briggs
Hon. W. T. Loton	Hon. F. T. Crowder
Hon. A. P. Matheson	Hon. C. E. Dempster
Hon. E. McLarty	Hon. J. W. Hackett
Hon. F. M. Stone (*Teller*)	Hon. A. G. Jenkins
	Hon. D. McKay
	Hon. C. A. Piesse
	Hon. G. Randell
	Hon. J. E. Richardson
	Hon. W. Spencer (*Teller*)

Amendment thus negatived.

Bill read a third time, and *passed*.

IMPORTED LABOUR REGISTRY AMENDMENT BILL.

Read a third time, on motion by Hon. F. M. Stone, and transmitted to the Legislative Assembly.

IMMIGRATION RESTRICTION AMENDMENT BILL.

Read a third time, on motion by Hon. F. M. Stone, and transmitted to the Legislative Assembly.

PUBLIC SERVICE BILL.

Received from the Legislative Assembly, and, on motion by Colonial Secretary, read a first time.

WINES, BEER, AND SPIRIT SALE AMENDMENT BILL.

LEGISLATIVE ASSEMBLY'S AMENDMENTS.

Schedule of eight amendments made by the Legislative Assembly considered.

IN COMMITTEE.

No. 1, Clause 2, line 1, after "defendant" insert the words "sets up as a defence, but":

Hon. F. M. STONE moved that the amendment be agreed to, as it made the clause a little clearer.

Question put and passed.

No. 2, Clause 2, line 6, strike out "shall" and insert "may" in lieu thereof:

Hon. F. M. STONE moved that the amendment be agreed to. It gave a discretionary power to the magistrate to dismiss a case.

Question put and passed.

No. 3, Clause 2, lines 7 and 8, strike out the words "if they think the purchaser falsely represented himself to be a *bona fide* traveller, it shall be lawful for the justices to," and insert the word "shall" in lieu thereof:

Hon. F. M. STONE moved that the amendment be agreed to. If a person at the hearing of the case was proved to be not *bona fide*, it was compulsory, according to the amendment, for the magistrate to order a prosecution.

Question put and passed.

No. 4, clause 3, strike out the clause:

Hon. F. M. STONE moved that the amendment be agreed to. It was proposed to strike out clause 3 and insert a new clause in lieu thereof. According to the clause in the Bill as it left this House, no female was allowed to be employed after 11 p.m. on a week day, but under the clause as inserted by the Legislative Assembly no female was allowed to be employed for more than 54 hours in a week, and was not allowed to be employed on Sunday, Christmas Day, Good Friday, or after 12 o'clock at night. That, he thought, would meet the case.

Question put and passed.

No. 5, clause 4, strike out the clause:

Hon. F. M. STONE moved that the amendment be agreed to. He did not think it advisable to adhere to the clause as passed.

Question put and passed.

No. 6, and the following new clause, to stand as clause 3:—

See South Australian Act, 43 and 44 Vict., No. 191.—The delivery to any person of any liquor by a licensed or unlicensed person, or by the owner or occupier of any licensed or unlicensed house or place, or by his or her servant or other person in any licensed or unlicensed house or place shall be deemed to be sufficient *primâ facie* evidence of money or other consideration having been given or exchanged for such liquor so as to support a conviction, unless satisfactory proof to the contrary be given.

Hon. F. M. STONE moved that the amendment be not agreed to. The clause was almost word for word the same as clause 78 of the principal Act, which enacted that the mere delivery of liquor was *primâ facie* evidence of sale, and the onus of proof that there was no sale was thrown on the licensee.

Question put and passed, and the amendment not agreed to.

Amendments 7 and 8—agreed to.

Resolutions reported, and report adopted.

A committee consisting of Hon. F. M. Stone, the Colonial Secretary, and Hon. A. B. Kidson, drew up the following reason for disagreeing to amendment No. 6:—"The proposed new clause is already enacted by Section 78 of the principal Act."

Reason adopted, and a message accordingly transmitted to the Legislative Assembly.

DIVORCE BILL.

IN COMMITTEE.

Clause 1—Divorce in what cases:

THE COLONIAL SECRETARY: The feeling of the Committee was that only one of the grounds named in the Bill should be allowed to stand. He therefore moved that Sub-clause *b* be struck out.

HON. J. W. HACKETT: A large proportion of members were against the three grounds mentioned in this clause being imported into our law; but in the course of discussion on the second reading of the Bill, he undertook to agree to Sub-clause *a*, if Mr. Stone would abandon Sub-clauses *b* and *c*, and to that request he (Mr. Hackett) was under the impression the hon. member assented.

HON. F. M. STONE: Not a word was said by him.

HON. J. W. HACKETT: The hon. member made no remarks in reply, on the second reading, and one took it for granted that the arrangement commended itself to Mr. Stone. The hon. member, in the course of his speech, said he was prepared to expunge Sub-clause *c*, which was the ground of insanity, and asked the Committee to pass the clause dealing with adultery. This was supposed to be the House of caution and care, and yet hon. members were asked to take this plunge before the Bill had been accepted or approved by another place. The Committee ought to be as careful as possible, because every step which this Committee took would be sure to be added to in another place, therefore we should look at the matter carefully and critically, and minimise as much as possible this great departure from our law and the Imperial law. The Bill was at variance with the Imperial law; but it was not at variance with the law in some of the other colonies. It introduced a wholly new principle into the Imperial system of divorce, and it was inadvisable to make that breach wider than was absolutely necessary in the circumstances. Whenever it was our fortune, or misfortune, to enter the federal bond, the question of divorce would be one of the very first matters taken in hand by the Federal Parliament, and we could surely wait for that time, which might be near or far, in order to take this most serious plunge. If we agreed to desertion as a ground for divorce, we gave away the whole case, not of this Bill, but of another Bill which was so repugnant to hon. members, and which we had before us last session. If the Committee granted divorce for desertion, how could we logically, on any ground of reason, make a pause before going the whole length of the legislation which had been accepted in some of the Eastern colonies? If the Committee allowed divorce for desertion, why refuse it for insanity? Almost every other ground which was alleged in the Bill of last session would come under the same category. Insanity was for life, desertion was only for seven years, yet the hon. member was not prepared to grant divorce for insanity. The same might be said of a man convicted of a criminal offence, and who might be sent to prison for many years: that was a reasonable ground set out in the Bill of last session, but it had been expunged from this Bill. If it was reasonable to grant divorce for desertion, why not for insanity? and why not for conviction and a sentence extending over seven years or more? Desertion, serious as it might be, was a very small offence in the eye of the wife, compared with other acts of which a man might be guilty. A habitual drunkard exhibited an example to the children which, of all things, must be one that told on a mother's heart. That ground was not contained in the present Bill. Why did the hon. member excise that ground? Why should a wife be compelled to live with a husband guilty of revolting practices? and there were numbers of such cases.

HON. F. M. STONE: She could get a divorce under the present law for that.

HON. J. W. HACKETT: Some of the revolting practices, and he would not particularise them, were not covered by the existing law. There was a certain

number of revolting practices specified in the law, but there was a far larger number of more revolting cases of which the law took no cognisance, and these were not set out as grounds for divorce. If the Committee granted divorce for desertion, we at once opened the door as wide as we possibly could, and every other cause followed naturally. If we granted divorce for desertion, to be consistent we should have to grant it for dozens of other causes, finally winding up with the last cause which was adopted in America in many States—incompatibility of temper. When two parties could not dwell together for the best purpose for which marriage was intended without violating the true marriage bond, it was a matter for consideration whether that ground was not one which should not be allowed for divorce. For his part it seemed to him that cause was stronger than desertion. A woman would often gladly allow a man who was repulsive to her to leave her in peace. To the man who offended a woman, and, what was still more serious, set a bad example to the children, a woman would extend no mercy. These were merely samples of what might happen if the hon. member insisted on including the ground of desertion. We could not logically stop short of these other grounds. On the ground of adultery, numbers of commentators and Scripture writers were agreed that divorce was permitted by biblical law.

HON. F. T. CROWDER: When the Bible was written, it was not reckoned that husbands would run away from their wives.

HON. J. W. HACKETT: Husbands and wives were about the same in the days of the Bible as they were now. The two thousand years which had elapsed had not altered humanity.

HON. H. BRIGGS: All the commentators did not agree about adultery.

HON. J. W. HACKETT: That was so. A large number of these writers might agree to the grounds for divorce which he had instanced, but all of them did not admit that divorce should be granted on the ground of adultery. Persons had accepted the bond, and it was their duty to make the best of it; and, without going into the province of morals, he was certain that if they did so each would obtain his or her reward. Probably the highest of all discipline was that of husband and wife. He appealed to the Colonial Secretary to strike out subclause *b*, and hoped the hon. gentleman would further move to strike out Subclause *c* also.

HON. F. M. STONE: The argument adduced by Mr. Hackett was that if we granted divorce on the ground of desertion we should also grant it for other causes mentioned in the Bill introduced last session; but he (Mr. Stone) hoped to convince members there were much stronger reasons why we should grant a divorce for desertion than for many of those other causes mentioned in the Bill of last year. The law already recognised that in cases of desertion a man or a woman could marry, and if they married they were not punished; but if a woman married because a man assaulted her, or was a drunkard or lunatic, she committed bigamy, and was liable to punishment for it. The law made a distinction between cases of desertion and many other things mentioned in the Bill of last year. Members had made objections to many of the clauses of the Bill introduced last year, and he (Mr. Stone) thought it would be better to introduce a Bill more acceptable to members. If a wife had been deserted by her husband for seven years, she was entitled under the law to get married and could not be prosecuted; and why should we not go a step further and enable that woman to get a divorce, so that the children of the second marriage should not be illegitimate? Under the present law we punished the children. A woman whose husband had not been heard of for years and years married again in all good faith.

HON. J. W. HACKETT: There would be two fathers in the same family. A woman would have two families.

HON. F. M. STONE: Mr. Hackett was in favour of granting divorce on account of adultery, and in such a case as that there might be two fathers.

HON. J. W. HACKETT: Let there be as few cases of disgrace as possible.

HON. F. M. STONE: If a woman had been deserted by her husband for 12 or 15 years, without hearing a word from him, and she had worked to provide for herself and children, what disgrace was it

to her to marry an honourable man when she had the chance?

HON. J. W. HACKETT: It was disgracing the children.

HON. F. M. STONE: We disgraced the children because of the present law, and what was required was to pass a measure whereby the children of the second marriage should be legitimised. He knew that in scores and scores of cases women had an opportunity of marrying. Some did not marry, but others took the risk. He had had cases in which women had come to him and said "I thoroughly believe in my heart that my husband is dead. What am I to do?" The reply had been, "You can marry again, and you will not be prosecuted; but the law is that if your husband turns up, any children born to you will be illegitimate and your marriage will be void." The existing state of affairs should be remedied, and that was why he was so earnest in wishing the Committee to pass the sub-clause. There were several things for which a wife would be entitled to divorce, and in those cases there would be more disgrace attaching to it than would attach in the case of desertion, because in the case of desertion a woman subsequently married believing her husband was dead. As to Sub-clause *c* he had not such strong feelings as in regard to desertion, and he left it entirely to the Committee. He felt strongly in relation to desertion, because he had seen the present law work such cruelty. He had seen case after case where a wife should be allowed to marry and where she had married, but she had done so in fear and trepidation, almost, of the husband turning up at any time. He did not think if we passed the clause relating to desertion, we would be doing away with any of the solemnity of the marriage tie now existing. It was argued that, if we allowed divorce to be easy, persons would enter the marriage state easily; but he was sure that not a person who came to be married thought about divorce.

HON. F. T. CROWDER, in supporting the retention of the sub-clause, said he knew of a case in which a woman who had five children was deserted by her husband, and that woman had to keep herself and the children for eight years. To all intents and purposes, the husband was dead to her. A man in a good position offered the woman marriage, and after being deserted for nine years the woman married. As soon as the husband found his wife was married to a wealthy man, the husband came back and commenced to levy blackmail. There were many cases such as this. It did not follow that because we acted justly in some cases, therefore we were going to drag the divorce law of this colony through the mire as it had been done in America.

HON. D. McKAY: And Victoria also.

HON. F. T. CROWDER: If the Committee were going to leave the Bill as it stood, then in all fairness a law should be passed that all children born in wedlock were legitimate. There were many cases in which a woman had a perfect right to marry, and the present Bill would not open the door to divorce on easy grounds. All that he desired was to legitimise the children that were born of the marriage, and it was on behalf of the children that he appealed. The children suffered, not through any fault of their own, or any wickedness on the part of the mother, because a woman often had the right to marry again.

HON. C. E. DEMPSTER: The Bill would be productive of more good than evil. There were thousands of cases that could be cited, in which such a Bill as this would do a great deal of good. The Bill would not cause many separations to take place, as was suggested. In Sub-clause *c*. it would be advisable to extend the term of lunacy from three years to seven years.

Amendment put, and a division taken with the following result:—

Ayes...	...	...	9
Noes...	...	...	7
Majority for	...	...	2

AYES.	NOES.
Hon. H. Briggs	Hon. C. E. Dempster
Hon. J. W. Hackett	Hon. A. G. Jenkins
Hon. A. B. Kidson	Hon. A. P. Matheson
Hon. W. T. Loton	Hon. J. E. Richardson
Hon. D. McKay	Hon. H. J. Saunders
Hon. C. A. Piesse	Hon. F. M. Stone
Hon. G. Randell	Hon. F. T. Crowder (*Teller*).
Hon. W. Spencer	
Hon. E. McLarty (*Teller*).	

Amendment thus passed, and Sub-clause *b* struck out.

HON. F. M. STONE (in charge of the Bill) moved that progress be reported.

Motion put and negatived.

THE COLONIAL SECRETARY moved that Sub-clause *c* be struck out.

HON. F. T. CROWDER: If the term of lunacy was extended from three years to seven years, he would support the sub-clause. If a man was in an asylum hopelessly mad, and pronounced by the Court incurable, the woman had a perfect right to marry again.

HON. C. E. DEMPSTER supported the extension of the time to seven years during which a person had been insane, as a ground for divorce.

HON. J. W. HACKETT: The hon. member (Mr. Crowder) was clearly not content with desertion, and wanted to open the whole field of causes such as were now in existence in the Eastern colonies.

HON. F. T. CROWDER: The hon. member had no right to say that.

HON. J. W. HACKETT: The hon. member's action would open the field of causes for divorce. The ground which the hon. member advocated, of granting divorce for insanity, opened the whole field of possible causes for divorce; and once the Committee granted insanity as a ground, and desertion also, we would open the field for divorce for innumerable causes. As to insanity, no one knew what was curable insanity or not. Seven years was no criterion whatever, nor was ten years.

HON. F. T. CROWDER: If a man came out of an asylum after ten years, had he a right to live with his wife?

HON. J. W. HACKETT: The same argument would apply if a man came out of an asylum after twelve months' incarceration. What was incurable insanity had never been decided. It was one of those mysterious diseases, the cause of which was hidden.

HON. F. T. CROWDER: But the decision was within the discretion of the Court.

HON. J. W. HACKETT: There was one great difficulty as to insanity, that the decree was pronounced in the absence and the ignorance of the person affected by it. Hon. members would remember the case of Sir Charles Mordaunt, cited in this House, in which it was supposed the wife had committed adultery while insane. The decree of insanity might be pronounced in the absence of the person affected, and the person would be ignorant of the result. On the simplest grounds of humanity and justice, insanity should not be a ground for divorce.

THE COLONIAL SECRETARY: Mr. Crowder was under the impression that this clause stated it was within the discretion of the Court as to whether the person insane was curable or not. The clause stated nothing of the kind.

HON. R. S. HAYNES: A suggestion had been made that progress should be reported, and personally he was always agreeable, when an hon. member had been defeated on a question, to allow the matter to stand over, so that the member could reconsider his position; but if members refused to report progress, he would vote with the hon. member, Mr. Stone.

HON. J. W. HACKETT: Why should progress be reported?

HON. R. S. HAYNES: It might be that after the question had been discussed further, the member in charge of the Bill might see some reason for withdrawing the measure. He was strongly in favour of the Bill so far as desertion was concerned, though opposed to it as to granting divorce on the ground of insanity. If he were pressed now to vote on the present question he would vote in favour of the measure standing as at present. If hon. members would consent to progress being reported, he would hold himself clear to vote with the hon. member. If there were no compromise, he would take his stand. If we found that a catch vote had been taken this afternoon, it would be easy to re-commit the Bill and have the question threshed out. It would be better to consent to progress being reported. It was possible that when the matter again came before the Committee, all would be agreed, and it was much better to practically agree to a measure than to have a division.

HON. J. W. HACKETT: The reason he was in favour of settling the clause at once was that Mr. Stone, in speaking on the second reading of the Bill, said he was not prepared to press Sub-clause *c*.

HON. F. T. CROWDER: Mr. Stone said he would not press it so hard.

HON. J. W. HACKETT: Mr. Stone said he was prepared to let that go. As to insisting on any action, he (Mr. Hackett) had no intention to do so.

THE COLONIAL SECRETARY: A vital sub-clause had been struck out of

the Bill, and the majority of hon. members were opposed to the sub-clause now before the Committee. Mr. R. S. Haynes used the words "snatch vote"; but if the hon. member had any impression of that sort, he could assure him there had been no snatch vote.

HON. R. S. HAYNES: No such impression was held by him.

THE COLONIAL SECRETARY moved that progress be reported and leave asked to sit again.

Motion put and passed.

Progress reported and leave given to sit again.

At 6·30, the PRESIDENT left the Chair.

At 7·30, Chair resumed.

BILLS OF SALE BILL.

IN COMMITTEE.

Clauses 1 and 2—agreed to.

Clause 3—Application of Act:

HON. R. S. HAYNES (in charge of the Bill) moved that in line 1, after "sale," the words "and debenture" be inserted; that in line 5, after the word "sale," the words "or debenture" be inserted.

Amendments put and passed, and the clause as amended agreed to.

Clause 4—agreed to.

Clause 5—Interpretation:

HON. A. B. KIDSON: A very important innovation had been introduced into the second paragraph, which made all agreements by parole subject to the Bill. Complications might arise in regard to the transfer of chattels. Take the sale of a few sheep, cows, or horses, which usually took place on an ordinary sale note or word of mouth: it would be necessary, under the Bill, to register that agreement as a bill of sale. He suggested that the clause be postponed.

HON. C. A. PIESSE: In the interpretation of "contemporaneous advance," it said a bill of sale should be void against the trustee in bankruptcy if it had been executed within six months; but Clause 32 said that if the bill of sale had been executed within three months it should be void.

HON. R. S. HAYNES: At this stage he intended to move that progress be reported.

HON. A. B. KIDSON: The interpretation of "apparent possession," which was most important in connection with the point he had raised as to the difficulty of registration, did not explain his objection.

HON. R. S. HAYNES asked hon. members to file any amendments they had with the Clerk before next Saturday, so that there might be an opportunity of considering them. He had several amendments to make, but they were not serious; and after he had explained the Bill more fully, on the different points, very little alteration would be necessary in the measure. He moved that progress be reported.

Progress reported, and leave given to sit again.

PATENTS, DESIGNS, AND TRADE MARKS BILL.

IN COMMITTEE.

Clauses 1 to 8, inclusive—agreed to.

Clause 9—Application and specification:

HON. F. M. STONE moved that after the word "manner," line 3, of Sub-clause 1, there be inserted, "and must be accompanied by a statement of address in Perth for the reception of notices." If the clause were left as at present, patent agents might work applications from England, any of the other colonies, or from outside the colonies altogether, and it was certainly advisable that an address should be given in Perth for the reception of notices.

Amendment put and passed, and the clause, as amended, agreed to.

Clause 10—Reference of application to examiner:

HON. F. M. STONE moved that the word "shall," after "Registrar," line 1, be struck out, and "may if he thinks fit" be inserted in lieu thereof. Under the clause as drawn, it was compulsory on the Registrar to refer every application to an examiner; but there were many cases in which it would not be necessary to go to an examiner, and it was advisable to give the Registrar discretionary power.

THE COLONIAL SECRETARY: It was desirable that every case should be transmitted to the expert officer of the Patent Office. The Registrar was the head of the department, but was not an expert in patent law, and an expert would

be employed as an examiner. He (the Colonial Secretary) had received no word from the Registrar himself that he desired any alteration of the description proposed. He was told the clause was in the English Act, word for word, although taken at present from a Queensland source. He believed it was also the law in Canada, where inventions had been carried on to a large extent. It was anticipated, too, in the Australian colonies. We had only to cast our minds back to what we read from time to time to find there was a large amount of inventive talent in this colony, which we should desire to encourage, and over which we should have as much control as possible. It was desirable that patents should be referred to the examiner in all cases, for the sake of the safety of the person who applied, and of the Government, who, to a certain extent, would become responsible for the patent when it was issued; and, if the examination was not made by the expert officer, the document in some cases might probably not be of any value.

HON. F. M. STONE: The Registrar had been seen by him as to this amendment, and that officer was in favour of it. The clause was not introduced for the purpose of giving the Registrar more power, but to simplify the measure and make it work better than it would if we made it compulsory to refer every patent to an examiner. It was no use to put our patent officer on the same footing as the English patent officer, for in England they had a great number of patents examined. In the patent office here there was a gentleman quite competent to ascertain whether the nature of the invention had been fairly described, and the application, specification, or drawing prepared in the prescribed manner, and whether the title sufficiently indicated the subject matter of the invention. If any very important patent had to be dealt with, it would then be for the Registrar, if he had any doubt about it, to refer it to the examiner. There were some very small patents, and, if we were to refer every application to an examiner, it would be necessary to have machinery for the purpose of carrying that out. He believed that in Queensland they had eight examiners. In England they had a great number, and in New York 300. So we must be careful what we were doing. He did not wish to discredit the gentleman who drew this Bill, but that gentleman had no experience whatever in a patent office. He (Mr. Stone) had seen the Registrar and the gentleman who was in every way qualified to carry out this clause and they thought it would be better to simplify the clause if possible, and that it was also desirable to effect the alteration on the score of expense.

THE COLONIAL SECRETARY (Hon. G. Randall): The hon member, Mr. Stone, had not proved his point. He (the Colonial Secretary) had received a copy of the Act from the Registrar that afternoon with various amendments he had suggested, and that proposed by the hon. member did not find a place amongst them. It was hardly right that the Registrar should have gone behind the back of the Government and given to an hon. member instructions, and not have informed the person who had charge of the Bill to carry it through the House.

HON. F. M. STONE: The Registrar had been seen by him.

THE COLONIAL SECRETARY: The passing of the amendment would not effect any saving in regard to the trouble, difficulty, or cost. An examiner was already appointed, and he would be one of the officers of the department; and so far as he had heard no hint had been given that more than one would be required. He did not know the amount of business transacted in the Patent Office here, but it was something considerable. The Registrar had the superintendence of the whole department, and could not give his attention to matters laid before him in regard to patents. He had no technical knowledge except what he had obtained whilst head of the department, and with his other duties he could not be expected to give his time to this. There was a gentleman in the office for the purpose of examining. "Small" and "large" were convertible terms; for what might appear a very small matter might prove to be a large affair, involving important consequences to the patentee and the public generally. He hoped members would allow the clause to stand.

HON. W. T. LOTON: It had been pointed out that the Registrar, even if competent, would not have time to examine into these matters; and, as a per-

son was employed at present to do this particular work, we should be going on really sound lines if we passed the clause as it stood.

Amendment put and negatived, and the clause passed.

Clauses 11 to 13, inclusive—agreed to.

Clause 14—Power to refuse patent where it appears that the invention is not new:

HON. F. M. STONE moved that the clause be struck out. This clause, which was not taken from the English Act, proposed to refer all applications to a patent examiner, who had to report as to the following points: (*a*) that it is not novel; (*b*) that the invention is already in the possession of the public, with the consent or allowance of the inventor; (*c*) that the invention has been described in a book or other printed publication published in Western Australia before the date of the application, or is otherwise in the possession of the public; (*d*) that the invention has already been patented in Western Australia. The clause was known as the "novelty" clause, and if we passed it one examiner would not be able to carry out the work intended, but the Government would have to appoint a number. If the examiner reported that the invention was not novel, it was a guarantee to the man applying that it was not new. Under the English Act, if it were proved that the invention was devoid of novelty, then the patent was void; so there was no necessity to refer the application to the examiner to report on it, because if the examiner reported that the invention was novel and at some future time it was discovered that it was not novel, the patent could be set aside. The Bill gave a sort of false guarantee. We could not do better than follow the English Act. If we followed the Queensland Act we should require a number of examiners. There were eight examiners in Queensland, and 300 in America, and after all, going to an examiner did not give any benefit to the inventor, because the invention could be upset if it was discovered not to be novel. Under the English Act the patentee obtained a patent at his risk, and with no guarantee from the Government that it was novel. He moved that the clause be struck out.

THE COLONIAL SECRETARY: Sir Samuel Griffiths, when moving the second reading of this Bill, in the Queensland Parliament, said that under the present law, if it was reported to the Registrar that an invention in respect of which a patent was applied for was not new, but was perfectly well known, he was nevertheless not concerned with that. All that he had to do was to see that the specification properly described the invention, and if it did so, he had to pass it on to be granted, although he might know perfectly well that the patent would be void when it was granted. The idea of the framers of the Bill in Queensland was to give a protection, not only to the person who was applying for a patent, but to the public; and, when the Government had refused a patent because the application was not for a new invention, a good act was done to all concerned. All an examiner had to do was to pass a patent on to the Registrar, who had to recommend that the patent be granted. There were many other ways in which this would be a protection. It would prevent a man coming into the colony and trying to get an invention for something which was patented in another part of the world; and in another case a man might spend a considerable time in inventing, or following up an invention, and unless he took the precaution to search the records of the Patents Office, he might find that his patent had been patented in some other part of the world.

Amendment put and negatived, and the clause passed.

Clause 15—agreed to.

Clause 16—Advertisement on acceptance of complete specification:

THE COLONIAL SECRETARY moved that between "the" and "*Gazette*" in line 2, the word "Government" be inserted.

Amendment put and passed, and the clause as amended agreed to.

Clauses 17 to 23, inclusive—agreed to.

Clause 24—Amendment of specification:

HON. F. M. STONE moved that the clause be postponed. He had a number of amendments to make in this clause, and the better way would be to draw up a new clause and submit it to the Committee.

Motion put and passed, and the clause postponed.

Clauses 25 to 70, inclusive—agreed to.

Clause 71—Advertisement of application:

THE COLONIAL SECRETARY moved that in line 3, between "the" and "*Gazette*" the word "Government" be inserted.

Amendment put and passed, and the clause as amended agreed to.

Clauses 72 and 83, inclusive—agreed to.

Clause 84—Fees for registration, etc.:

THE COLONIAL SECRETARY: In this clause the words "Governor-in-Council" were used. He had intended to move, wherever these words appeared in the Bill, that the words "in Council" be struck out. These words had appeared in several clauses previously.

THE CHAIRMAN: The Bill would have to be recommitted for that purpose. If the words were struck out of the first clause in which they appeared, afterwards they could be taken as consequential amendments.

Clause put and passed.

Clauses 85 to 105, inclusive—agreed to.

Clause 106—Penalty on unauthorised assumption of royal arms:

HON. R. S. HAYNES moved that the clause be postponed. He wished to carry the clause a little further, in view of the fact that the Royal Arms were used on prospectuses of mining and other companies. The Australian coat of arms was used by tradesmen on their bills, although it was unauthorised. Medals were issued by agricultural societies and tradesmen put the medal on their bills as an advertisement. He would like to see the use of medals which had been won at exhibitions protected, because in some cases a tradesman advertised a medal as having been won at an exhibition, whereas it was not so won.

Amendment put and passed, and clause postponed.

Clauses 107 and 108—agreed to.

New Clause:

HON. F. M. STONE moved that the following be added, to stand as Clause 50:

The inventor of any improvements in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may, either for or without valuable consideration, assign to the Colonial Secretary, on behalf of Her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Colonial Secretary may be a party to the assignment.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Colonial Secretary on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret, and otherwise shall be valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Colonial Secretary for the time being.

(3.) Where any such assignment has been made to the Colonial Secretary, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Registrar his opinion that, in the interests of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Colonial Secretary so certifies, the application and specification or specifications, with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Registrar in a packet sealed by authority of the Colonial Secretary.

(5.) Such packet shall, until the expiration of the term, or extended term during which a patent for the invention may be in force, be kept sealed by the Registrar, and shall not be opened save under the authority of an order of the Colonial Secretary or of the Attorney General.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Colonial Secretary to receive the same, and shall, if returned to the Registrar be again kept sealed by him.

(7.) On the expiration of the term, or extended term, of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Colonial Secretary to receive it.

(8.) Where the Colonial Secretary certifies as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the specification or specifications, the application, specification, or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Registrar, and

such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Colonial Secretary.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Colonial Secretary has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Colonial Secretary may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Colonial Secretary, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

The object of the clause was that any invention relating to improvements in instruments or munitions of war, could be assigned to the Colonial Secretary for the benefit of the Government. This was copied from the English Act.

HON. J. W. HACKETT: Why the Colonial Secretary, and not the Minister in whose charge the Bill would be?

HON. F. M. STONE said he did not care what Minister was mentioned, nor did he care whether the clause was accepted. He simply moved it for the benefit of the Government.

THE COLONIAL SECRETARY: There was no objection to the clause, as he could not see that it would do any harm or good. He would suggest that the word "Minister" be inserted in place of "Colonial Secretary," because the Attorney General would probably administer the Bill. He also suggested that the proposal stand as a sub-clause to Clause 49.

HON. F. M. STONE: It was a clause by itself, in the English Act.

HON. R. S. HAYNES said he would rather retain the words "Colonial Secretary" than have "Minister" inserted, because, as had been pointed out, the Attorney General would probably administer the Act, and if the Attorney General made as good a "fist" of this Bill as he had done in drawing Bills in general, we would be making a mistake.

THE CHAIRMAN: The hon. member must not make allusions of that kind.

HON. R. S. HAYNES: What he wished to refer to was the way in which Bills were drafted. If the Bills had been sent down properly drafted, he would withdraw his remarks; but, if not, he would not do so.

THE CHAIRMAN: The question related to carrying out the provisions of the Bill. The hon. member was going rather too far.

HON. R. S. HAYNES: There was a right on his part to express an opinion as to the way in which Bills were drafted.

THE CHAIRMAN: What he (the Chairman) was referring to was not the way in which Bills were drafted. The hon. member had a perfect right to express an opinion as to the way in which Bills were drafted.

HON. R. S. HAYNES: It would be better if the administration of the measure were vested in the Colonial Secretary.

THE COLONIAL SECRETARY: The measure was a legal one, and the Colonial Secretary could not administer it.

HON. F. M. STONE: Under the English Act the Minister who administered it was the Principal Secretary of State for the War Department. The clause had reference to the defence of the colony, and what had the Attorney General to do with that? We could not do better than follow the English plan, and let the measure be administered by the Minister of Defence.

THE COLONIAL SECRETARY: Let the word "Minister" be substituted for "Colonial Secretary."

HON. F. M. STONE altered the clause, substituting "Minister" for "Colonial Secretary."

Clause, as altered, put and passed.

Progress reported, and leave given to sit again.

ADJOURNMENT.

THE COLONIAL SECRETARY moved that the House at its rising do adjourn until the 17th October.

Put and passed.

The House adjourned at 8·55 until the 17th October.

Legislative Assembly,

Tuesday, 3rd October, 1899.

Midland Railway Company, Joint Committee, extension of time—Constitution Acts Amendment Bill, Recommittal; Amendment, plural voting, Points of Order, Division; also, Schedule 2; reported—Dentists Act Amendment Bill, second reading—Agricultural Bank Act Amendment Bill, in Committee, Clauses 1 to end, reported—Adjournment.

The SPEAKER took the Chair at 4·30 o'clock p.m.

PRAYERS.

MIDLAND RAILWAY COMPANY, JOINT COMMITTEE.

EXTENSION OF TIME.

MR. ILLINGWORTH asked the indulgence of the House to extend the time for bringing up the report of the Joint Select Committee. He moved that the time be extended another fortnight. It had been impossible to get a meeting of the committee, so many of its members being engaged on other committees.

THE PREMIER: This committee had been in existence a long while, and he would like to know whether anything had been done. If the committee had set to work, he would be glad to consent to an extension of time; but if nothing had been done by the committee, it would be well to discharge the order. Was there any hope of the committee being able to sit?

MR. ILLINGWORTH: The committee would be able to present a report in a fortnight.

Question put and passed.

CONSTITUTION ACTS AMENDMENT BILL.

On motion by the PREMIER, Bill recommitted for amendments in certain parts.

RECOMMITTAL.

Clause 23—Qualification of electors:

MR. LEAKE (Albany), in accordance with notice, moved that in Sub-clause 1, all words after "registered" be struck out.

MR. VOSPER: Was it competent to deal with other clauses prior to this one?

THE CHAIRMAN: Not now, no notice having been given.

MR. LEAKE: The object of the amendment was to abolish plural voting. The Bill as drafted recognised what most people would admit was a pernicious practice, which had prevailed in this country far too long, a practice whereby one man might exercise a vote in each one of the 44 electorates in the colony; and the object of the amendment was to put a stop to this, and to affirm the principle that it was sufficient for one person to have one vote. The amendment aimed at the abolition of plural voting; but if that were thought by the majority of the committee to be too drastic a proposal at present, he would be prepared, by way of compromise, although he was in favour of the abolition of plural voting——

THE PREMIER: Had the hon. member always been of that opinion?

MR. LEAKE said he would be prepared, by way of compromise, to permit one person to have one vote for his manhood or residence, and another vote for his property; but, in any event, the elector should be asked to say for which portion of the country he would vote. This question was considered in a casual way during the progress of the Bill in Committee, and an amendment was sprung on the House, when few members were present, and without the proper notice or consideration which an amendment of such importance required. The difficulty was to find any justification for maintaining the principle of plural voting;