

be passed by this House declaring their seats vacant.

MR. C. H. RASON (Guildford): In consequence of the information just given to the House, I beg to move that the seats of the hon. member for Coolgardie (Mr. Morgans), the hon. member for Toodyay (Mr. Quinlan), the hon. member for Perth (Mr. Wilson), the hon. member for North Murchison (Mr. Moorhead), and the hon. member for Murchison (Mr. Nanson) be declared vacant.

MR. W. B. GORDON (South Perth): I second the motion.

Question put and passed.

#### ADJOURNMENT (RE-ELECTIONS).

MR. RASON moved that the House at its rising do adjourn until Tuesday, the 17th of December.

Put and passed.

The House accordingly adjourned at 6-21 o'clock, until Tuesday, the 17th December.

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## Legislative Council,

Tuesday, 17th December, 1901.

New Member (West Province)—Privilege: Ministerial Vacancy (objection)—Adjournment.

The PRESIDENT took the Chair at 4-30 o'clock, p.m.

#### PRAYERS.

#### NEW MEMBER (WEST PROVINCE).

The PRESIDENT reported the return of election writ issued by him for the vacancy in the West Province (Hon. M. L. Moss having accepted the portfolio of Colonial Secretary), and that Mr. Robert Laurie had been duly elected to the vacancy.

MR. LAURIE (introduced by Hon. H. Briggs) having taken the oath and subscribed the members' roll, took his seat.

#### PRIVILEGE—MINISTERIAL VACANCY.

HON. R. S. HAYNES (Central) said: Before the business is proceeded with, I desire to draw the attention of the House, as a matter of urgency and privilege, to an existing breach of Section 43 of the Constitution Act. I may say at once that the matter is perfectly clear, and practically admits of no argument. The only question will be what course the House will adopt, if any of its rights or privileges are invaded. By Section 5 of the Constitution Act 1899, it is enacted:

The Legislative Council shall consist of thirty elected members, who shall be returned and shall sit for electoral provinces as herein-after stated and defined.

At the present time there are thirty elected members of the Legislative Council. There is no vacancy. There was a vacancy, but that has been filled. By Section 43 it is enacted:

There may be six principal Executive offices of the Government liable to be vacated on political grounds, and no more.

And by Sub-section 3 it is enacted:

One at least of such Executive offices shall always be held by a member of the Legislative Council.

At the present time there are thirty members, and one of the principal offices of the Executive is not held by a member of the Legislative Council; therefore directly the House met to-day there was a breach of Section 43 of the Constitution Act.

HON. J. M. SPEED: What is the meaning of "may be six principal Executive offices?"

HON. R. S. HAYNES: There may be six, or there may be less, but at all events one member of the Executive must be a member of this House. On that point there can be no doubt whatever. The words are too clear to admit of argument; consequently we have a House of thirty members, one member of which should be a member of the Executive; but to-day we have no member of the Executive amongst us, and that is a continuing breach of the Constitution Act. It will continue until the office is filled. I submit, with great respect, that the

House cannot, in the circumstances, proceed with any business, and that the House should not permit such a state of things to exist; because it is a clear and unqualified invasion of the privileges of this branch of the Legislature, and of the privileges of every member of it. It is an invasion that the House should at once resent. Perhaps it may be thought by some hon. members that there is nothing in having a member of this House in the Executive; but that is not so. The Constitution Act was clearly drafted, and it was especially indicated that at least one member of the Government should be in this House; since, otherwise, we would be simply a House sitting without any means of direct communication with the Governor. The reason why it was provided that a member of this House should be a Minister is, clearly, that under the constitutional law this House should have means of interrogating a Minister, and of bringing any matter before him, and, if necessary, means of asking the Minister or demanding of the Minister that he should lay before the Governor any grievance we might have. The rule is well laid down in Anson on the Constitution, volume 2, page 123. It is there stated :

The Prime Minister is the channel of communication between the collective Cabinet and the Crown; but every Minister has a right, as a confidential servant of the Crown, to state the business of his department in the Royal presence, without the interposition of the Prime Minister.

Consequently our Minister has a right of audience with His Excellency the Governor without the interposition of the Premier. That is undoubtedly a very great right which is vested in us. At the present time that right is taken away. If it be taken away for an hour, it may be taken away for a day; if taken away for a day, it may be taken away altogether. Moreover, this will or may be used hereafter as a precedent, that it is not necessary for the conduct of business and for the Constitution of the country that a member of the Cabinet need be in the Upper House. I say we are faced by a direct violation of the Constitution; and it is laid down by all the text-writers on law that any person who violates any section of an Act of Parliament is liable, upon indictment for a misdemeanour, to

be prosecuted and imprisoned for 12 months. There is no provision made for a breach of the Constitution Act; but where an Act directs a certain thing, any person breaking the law or responsible for the breach of the law by disregarding the direction is liable to indictment. I desire to draw the attention of the House to the fact that the business of the courts is to guard carefully the Acts of Parliament, and to see that the Acts of Parliament are properly carried out. I say we have here a breach of the Constitution, an infraction of our rights, and an invasion of our privileges. We are sitting to-day for the first time since the Legislative Council has been established without a Minister in our midst, and without any vacancy.

HON. R. G. BURGESS : No.

HON. R. S. HAYNES : I say, for the first time without a Minister in our midst.

HON. R. G. BURGESS : I say, no.

HON. R. S. HAYNES : I say we are sitting improperly. I suppose the present breach of the Constitution Act will serve as a precedent. I do not know whether the attention of the House was drawn to the point on a previous occasion; but it is a clear and distinct breach of the Constitution Act. It is a clear invasion; there can be no dispute about it; and it may be later used as a precedent for carrying on the business of the country without a Minister in the Legislative Council at all. Let us view the position we are in. Let us assume that there is a dissolution of the Lower House. What then will happen? It will be unnecessary to appoint a member of this House a Minister of the Executive Council until the Lower House meets again, which may not be for one month, or two months, or three months—I do not care what the length of time may be—and during the whole period of such adjournment this House would be without a Minister, and one member of the Executive need not necessarily—I will not say would not necessarily, but need not necessarily—be a member of this House. This constitutes a breach of the Constitution Act, against which I protest most strenuously, and with all the force at my command. I care not who is responsible; but I protest against this breach of the privileges of the House, and I desire that at all events my protest should

appear in *Hansard*. At the same time I do hope that every member of the House who sees that there is a breach of the Constitution will express his opinion on the matter; and I hope that not only shall we protest, but that some member of the House will later move a motion desiring that the attention of the other branch of the Legislature and the attention of His Excellency the Governor be drawn to the breach. You, Mr. President, have always been foremost in defending the privileges of this House; we have been fortunate in having you as the guardian of our privileges; but I feel that on an occasion like this the President of the Legislative Council should not be left to take the initiative, since it is his duty to keep himself as far aloof as possible from political struggles. I feel that you, sir, are not at this moment called on to interfere. Whilst fully recognising that in other respects the privileges of the House are entirely safe in your hands, I think it is the right and the duty of the House to assert its privileges on this occasion.

HON. S. J. HAYNES (South-East): I join with the Hon. R. S. Haynes in protesting against what seems to me an undoubted breach of the privileges of this House. The hon. member has laid the position down very clearly, lucidly, and fully; and I really cannot add anything to what he has said. Any remarks I could offer would be mere repetition. The position is perfectly clear; and it seems to me that there has been a breach of the Constitution Act, and that if we do not protest we shall not be doing our duty as members of the House, and shall not be guarding the trust reposed in us by those who returned us. I concur with everything that has fallen from the Hon. R. S. Haynes, and I join in his emphatic protest against a clear breach of the Constitution Act.

HON. R. S. HAYNES (Central): As there is no business before us, I move that the House do now adjourn.

HON. J. M. SPEED: Is the House in existence without a Minister?

HON. R. S. HAYNES: Oh, yes. I suppose we can fix some time for the adjournment.

HON. W. MALEY (South-East): I second the motion. It appears to me

that we are quite in the dark as to the intentions of the Government; and I do not know what we need wait for.

THE PRESIDENT: I have had handed to me by Mr. Randell a letter from the Hon. A. E. Morgans, the Premier, which reads as follows:—

Colonial Secretary's Office,  
Perth, 17th December, 1901.

The President, Legislative Council.

Sir,—I have asked Hon. George Randell, M.L.C., to represent the Government in the Legislative Council pending the appointment of a successor to Hon. M. L. Moss, Colonial Secretary, who—as you are aware—has lost his seat at the recent election.

I have the honour to be, sir,  
Your obedient servant,  
A. E. MORGANS, Premier.

I may say I recognised at the outset that the Legislative Council has nothing before it. I understand it is the wish of the Premier that I should leave the Chair until later in the evening, when we shall be in a position to ascertain what arrangements have been made in another place. I understand from Mr. Randell that all the Premier has asked him to do is to move the adjournment of this House to such a date as may be decided on by another place.

HON. R. S. HAYNES: That brings into view the object of my remarks.

THE PRESIDENT: This is only formal business. My own idea is that not even formal business can be done until a member of this House has been appointed to a seat in the Executive. I suggest that I leave the Chair until we ascertain what has been done in another place.

HON. R. S. HAYNES: Then, with the consent of my seconder, I ask leave to withdraw my motion for the adjournment of the House.

Motion by leave withdrawn

THE PRESIDENT: I shall leave the Chair until half-past 5 o'clock.

At 4:48, the PRESIDENT left the Chair.

At 5:30, Chair resumed.

THE PRESIDENT: I will leave the Chair till 20 minutes to 8.

THE PRESIDENT again left the Chair, and resumed it at 7:40.

## ADJOURNMENT.

HON. G. RANDELL: I move that the House, at its rising, do adjourn until to-morrow evening at half-past seven o'clock.

HON. R. S. HAYNES: May I take it that to-morrow's meeting is intended to be only a formal one?

HON. G. RANDELL: Yes; no business will be done.

THE PRESIDENT: I think hon. members may take it that there will be no business.

Question put and passed.

The House adjourned accordingly at 7.45 o'clock, until half-past seven the next evening.

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## Legislative Assembly,

Tuesday, 17th December, 1901.

Ministerial Re-elections, etc.—Papers presented—Railway Workshops at Midland Junction, Report—Government Intentions: Statement by the Premier; Motion for Adjournment, debate, division—Adjournment.

THE SPEAKER took the Chair at 4.30 o'clock, p.m.

## PRAYERS.

### MINISTERIAL RE-ELECTIONS, Etc. (5 SEATS).

The SPEAKER announced the return of writs issued for elections to the seats for Coolgardie, Toodyay, Perth, Murchison, and North Murchison, by which it appeared the following had been elected:—Coolgardie, Mr. A. E. Morgans; Toodyay, Mr. T. F. Quinlan; Murchison, Mr. J. L. Nanson; Perth, Mr. W. M. Purkiss; North Murchison, Mr. J. B. Holman.

The new members having been introduced, took the oath of allegiance and signed the members' roll.

## PAPERS PRESENTED.

By the PREMIER: 1, Transcontinental Railway, Report on preliminary examination of country between Kalgoorlie and Eucla, by Mr. Muir; 2, Goldfields Regulations (new).

Ordered to lie on the table.

### RAILWAY WORKSHOPS AT MIDLAND JUNCTION.

#### REPORT OF SELECT COMMITTEE.

MR. GEORGE brought up the report of the Select Committee appointed to report on the arrangements for constructing and fitting up the new Workshops at Midland Junction, and moved that it be printed. This was an urgent matter, owing to the long adjournment of the House; and if there were any means by which the House could immediately express an opinion upon the report, such means should, in the interests of the country, be adopted.

THE SPEAKER: The House could not be called upon to express an opinion on a report which hon. members had not yet seen. The report could at once be printed, after which it could be considered.

Report received, and ordered to be printed.

### GOVERNMENT INTENTIONS.

#### STATEMENT BY THE PREMIER.

THE PREMIER (Hon. A. E. Morgans): I think the time has now arrived when Ministers should make some statement to the country through this House, as to what are our intentions with reference to the Government of this State in the immediate future. Since last we met in this House, we Ministers have faced our constituents; and hon. members are already aware from the newspaper reports that some of my colleagues were unfortunately defeated at the polls, that two of my colleagues lost their positions as members of this House—[MR. LEAKE: Hear, hear]—and one his position as a member in another place. But so far as the Government are concerned, they do not look upon these as ordinary defeats.

MR. GREGORY: Moral victories!

THE PREMIER: And I will explain why we do not look on them in that light. We look upon the loss of the two Assembly seats as a victory for the