farther steps then will be necesary it is time to decide upon when the papers are ready.

Question put and passed.

BILL—MARINE INSURANCE.

Received from the Legislative Council, and, on motion by *the Premier*, read a first time.

ADJOURNMENT.

The House adjourned at half-past 10 o'clock, until the next day.

Legislative Council,

Thursday, 15th August, 1907.

The PRESIDENT took the Chair at 4.30 o'clock p.m.

Prayers.

PAPER PRESENTED.

By the *Colonial Secretary*: Report of proceedings under Industrial Conciliation and Arbitration Act, for the year 1906.

QUESTION—AGRICULTURAL RAILWAYS, CONSTRUCTION.

Hon. J. W. WRIGHT asked the Colonial Secretary: What is the name in full of the Engineer for Railway Construction, as from the Minister's previous reply he appears to be the engineer responsible for the grading, etc., of agricultural railways?

The COLONIAL SECRETARY replied: The Engineer-in-Chief, Mr. James Thompson.

BILLS—THIRD READING.

1, Marriage Act Amendment, returned to the Assembly with amendments. 2, Public Education Amendment, *passed*. 3, Permanent Reserve Rededication, *passed*.

BILL—POLICE FORCE (CONSOLIDATION).

Third Reading.

The COLONIAL SECRETARY moved—

That the Bill be now read a third time.

Hon. J. W. LANGSFORD: To what extent was the Police Benefit Fund controlled by the Government? Did the Government contribute to the fund, and was the fund audited by the Government Actuary?

The COLONIAL SECRETARY: The Government controlled the fund to the extent that the trustees were three Government officers—the Commissioner of Police, the Under Treasurer, and the Under Secretary. The fund was made up by contributions from the police officers, in addition to certain fines imposed on the police for misconduct; and the fund was subsidised by the Government to the extent of pound for pound. For the past two or three years the fund had been commented on by the Auditor General in his annual reports, and it had been reported on by the Government Actuary once before he (the Colonial Secretary) took office, and twice since. The Government Actuary reported that the fund was not altogether on a sound basis, because there was not sufficient reserve to insure its solvency in the future. Previous to that, the contribution by the Government was £1,000 a year, and the police force contribution varied from one and a-half per cent. to two per cent. It was so much per month but that was what

it averaged, the contributions being made from the rank of constable right up to the rank of inspector. The monthly contribution had recently been increased on the advice of the Government Actuary to three per cent.; and speaking from memory, the Government would contribute between £1,500 and £2,000. This would put the fund on a thoroughly solvent basis. The contribution the police were asked to make was not higher than the contribution made in the Eastern States. In New Zealand it was higher, while three per cent. was the lowest paid in the other States. The fund was subject to audit every year by the Auditor General.

Question passed.

Bill read a third time, and transmitted to the Legislative Assembly.

BILL—POLICE OFFENCES (CONSOLIDATION).

In Committee.

Resumed from the previous day.

Clauses 78 to 108—agreed to.

Clause 109—Police may demand name and address, and apprehend:

Hon. R. W. PENNEFATHER: This clause, giving the right to any constable between six o'clock at night and six o'clock in the morning to demand without rhyme or reason, for no cause whatever, from any peaceful citizen his name and address, should be deleted. From personal experience he knew that the power had been exercised in a most offensive way. It was a remnant of the olden times when people here were let out on ticket-of-leave or good behaviour. In those days there may have been excuse for the clause, but nowadays we should not have such a provision on the statute-book to remind us of the unpleasant days of the past. It was too great a power to give to any constable.

Hon. M. L. MOSS: This clause should certainly be deleted. With 15 or 16 years' experience in the courts of this State he knew of repeated instances of the unwarrantable action of officious policemen in exercising the power they had under this provision. He agreed it was apparently a remnant of the old convict days of Western Australia, and thought it was just about time the provision was blotted off the statute-book. Without rhyme or reason, as the hon. member said, policemen went up to otherwise peacefully disposed citizens and made this demand, and there were repeated instances of men who had resented this interference and in consequence had been arrested and brought before the police courts and fined up to sixty shillings with imprisonment. No doubt the provision was placed on the statute-book originally with the idea of enabling a constable in a speedy way to obtain the name and address of some person the constable suspected of committing a crime, or of breaking a ticket-of-leave regulation. Whether a similar provision existed in any other State he did not know; certainly there was no such provision in the New Zealand Acts, and he doubted whether they had it in the old country.

Hon. W. Patrick: There certainly was not.

Hon. M. L. MOSS objected to the provision because of the officious instrument it was in the hands of an inexperienced constable. We would not be doing wrong in putting it out of the statute-book altogether.

Hon. W. MALEY: There might be some reason for the inclusion of this provision though it might have been somewhat differently worded. It was clearly reasonable to give the power to the constable to demand the name and address of any person unknown to him whose behaviour was suspicious.

Hon. W. Patrick: The previous clause covered that.

Hon. W. MALEY: Provided there was a clause covering what was absolutely necessary power for the police to have, this clause should be struck out.

Hon. H. BRIGGS supported the proposal to strike out the clause.

Hon. S. J. HAYNES; The clause seemed a remnant of the old curfew-bell days which there was no necessity for at present. He also had seen cases of this power being used in an indiscreet manner. The time was arrived when the provision

should be deleted from the statute-book. Under the other clauses of the Bill the police had ample powers to deal with any person who might be suspected.

The COLONIAL SECRETARY: Possibly the clause would go out of the Bill, without interfering with the carrying out of the law, but he was not certain that the police would have sufficient power under the previous clause, if this clause were deleted. The law had been in force since 1892. [*Hon. M. L. Moss*: And for years before, the 1892 Act being merely a consolidating measure.] The clause previous to the one under discussion appeared only to apply to persons loitering, to the unisance of persons passing by. In a comparatively deserted street, the chances were that a constable would not have sufficient power to demand the name of the person unless the clause in the section under discussion were passed. No great hardship would be inflicted on a man to ask him to give his name; nevertheless the amendment would not be opposed.

Hon. M. L. MOSS: On numerous occasions at Fremantle he had been present at the police court when persons were charged with breaches of this provision, and he had heard the magistrate ask the defendant why he had not given his name to the constable. The reply frequently was that he was ignorant that such a law existed. Then followed a fine of 40s. The provision did not exist anywhere else in Australia, he believed; and it was little wonder that people coming here were unaware that they could be compelled to give their names to a constable. One was particularly struck by the fact that in England the one desire of a policeman appeared to be to give every assistance he possibly could. The control of the traffic by the police and the assistance given by members of the force in England were famous throughout the world; but it was very different in Australia, where a policeman seemed to think it was his duty to interfere with people instead of assisting them. Of course there were many discreet and prudent men in the force, but on the other hand very many constables were indiscreet and imprudent.

Hon. W. PATRICK was not aware until now that such a provision existed, and if a policeman had asked him for his name he would have refused to give it. It appeared now that he would have been liable to three months' imprisonment for such offence. He supported the amendment.

Amendment passed, clause struck out.

Clauses 110 to 113—agreed to.

Clause 114—Taking dogs into Public Gardens:

Hon. R. W. PENNEFATHER: It was possible for the clause to work very offensively. For instance, a person might in all innocence go into public gardens and be followed by a dog, and for that would be liable. To avoid hardship he moved an amendment—

That in line 3 after "suffer," the words "for an unreasonable time" be inserted.

The result of this amendment would be that an offence would be committed if a man allowed his dog to remain for an unreasonable time in public gardens. Under the clause as it stood two offences were created, the first being, to take a dog into the gardens, and the second, to allow it to remain there. [*The Colonial Secretary*: What was the definition of "reasonable time?"] That would depend on the circumstances. It was a question of discretion for the justices.

Hon. S. J. HAYNES: The clause was a just and reasonable one, because dogs were a nuisance in public gardens and were liable to do much damage there. The first offence under the clause was to take a dog into the gardens and the second to allow it to remain. The owner of a dog should remove it at once from the gardens and the question of "reasonable time" did not come into the matter at all. An offence was committed by the mere fact of taking a dog into a garden. He approved of the clause as it stood.

Hon. W. MALEY: The clause was divided unnecessarily into two parts, and if the word "or," which joined those two parts, were replaced by the word "and," it would be an improvement, for the offence then would be the taking of a dog into the gardens and allowing it to remain there. If the clause were not amended a man would be committing

an offence by unwittingly taking a dog into public gardens.

Hon. M. L. MOSS : Was this provision contained in other Police Acts?

The Colonial Secretary : The clause in the Bill was an exact copy of Section 63 of the Act of 1892.

Hon. M. L. MOSS : When repeating an enactment which had been in force for many years we should pause before objecting to it, but it seemed to him that it was a very clumsy provision. The position was that even if a man were not the owner of the dog, he could under the Act be proceeded against for not removing it. That was a very absurd position to place anyone in.

Hon. G. RANDELL : The provision was absurd, and the words "or shall suffer any dog to remain in any such garden" should be struck out. A man might take a dog into a public garden innocently but he would not be likely to allow it to remain there for a length of time. The difficulty would be removed by striking out those words.

Hon. R. W. PENNEFATHER withdrew his amendment, and moved that the following words be struck out, "*or shall suffer any dog to remain in any such garden.*"

Hon. J. A. THOMSON : Surely all public gardens had by-laws, and they were sufficient to prevent people from taking in dogs. Nearly all public gardens had by-laws at the entrance, and in every case there was one by-law that dogs should not be admitted.

The COLONIAL SECRETARY : There was nothing very objectionable in the clause, and it would be better not to strike out the words suggested. It was a greater offence to suffer a dog to remain in a public garden. Nowadays persons were very fond of taking dogs everywhere, and as gardens were kept up at the public expense for the pleasure of the people, dogs should not be allowed to romp about in those gardens and destroy them. There was the offence of knowingly taking a dog into a garden, but the greater offence was suffering that dog to remain.

Hon. G. RANDELL : This was certainly an absurd provision to be in any Act ; because a man would not allow his dog to remain in a garden, or if he did, those controlling the garden could seize the dog.

Hon. C. SOMMERS : Dogs were really a nuisance in or out of a park. It would be well to allow the clause to go through as printed. It was not easy to capture a dog, and if the clause was rather stringent it was better to have it so, because dogs were the cause of more accidents than anything else. The clause should be passed to prevent dogs being taken into public gardens.

Hon. S. J. HAYNES : The clause should remain as printed. There were two offences under the provision, that of a person knowingly taking a dog into a garden, and secondly, suffering the dog to remain there. The clause was reasonable.

Hon. J. A. THOMSON: Was it possible to move a farther amendment that the clause be struck out ?

The CHAIRMAN : The member could vote against the clause.

Hon. J. A. THOMSON: Every public park had published by-laws, and according to those by-laws it was an offence to take a dog into a park. The Public Parks Act gave the trustees power to make by-laws.

Hon. G. Randell : There was no control over some of the parks.

Hon. J. A. THOMSON : There would be trustees for all public parks.

Hon. S. J. Haynes : But there were many small parks for which there were no trustees.

Hon. M. L. MOSS : Mr. Thomson was right to a certain extent. The gardens under the control of municipal councils had the power to make by-laws and probably the King's Park board and the Zoo trustees had power to make by-laws ; but there were many parks which had no trustees and therefore no by-laws applying to the parks. Mr. Randell's amendment had a great deal to recommend it.

Hon. E. McLARTY : The clause was not necessary. There were a great many dog fanciers who thought that dogs had a perfect right to accompany them into a drawing-room, and these persons did not care what destruction the dogs caused.

People did not realise what destruction a dog could do in a garden.

Hon. J. W. LANGSFORD: The clause should stand as printed. Up to the present session Bills had references in the margin as to where the provisions were taken from; this session such information was not given in the marginal note. As to the clause a man might unknowingly take a dog into a garden, but if he allowed the dog to remain there after being informed of it, he was liable to a penalty.

Hon. R. W. PENNEFATHER: The clause was far too wide, and did not express what was intended. It was not intended to make it an offence against a person who was not the owner of a dog, and the clause said "any person who knowingly took a dog into a garden." It was never intended that the general public should be liable.

Hon. M. L. MOSS: The difficulty might be overcome by inserting after "or" in line 3, the words "or having brought a dog into any such garden shall suffer the dog to remain in such garden." It was not intended to make any member of the general public become liable, but under the clause, although a person was not the owner of a dog and suffered it to remain in a garden, he would become liable.

Second amendment by leave withdrawn.

Hon. M. L. MOSS moved an amendment that the following words be inserted after "or"—*"having brought a dog into any such garden."*

Amendment passed; clause as amended agreed to.

Clauses 115 to 144—agreed to.

Clause 145—Apprehension of offenders:

Hon. W. PATRICK: Was Subclause 2 a new provision, "Any person, whether police officer or not, may arrest" (etcetera)?

The COLONIAL SECRETARY: It was taken from the Police Act of 1892 in part, Sections 43 and 47, and the third from Section 435 of the Criminal Code.

Hon. M. L. MOSS: Would the Minister agree to postpone this clause, which he desired to look into?

Clause postponed.

Clauses 146 to end—agreed to.

New Clause—Right to claim trial by jury:

Hon. M. L. MOSS moved the addition of a new clause in three parts: firstly, providing the right of an accused person to be tried by a jury if charged with an offence (not an assault) rendering him liable to three months' imprisonment; secondly, providing a form of words to be addressed to the defendant asking if he desired to be so tried; thirdly, these provisions not to apply to a child unless the parent or guardian is present in court. [See Notice Paper No. 14.] The mover said he would have preferred this amendment to be moved in connection with the Justices Act, as then it would apply to offences within the purview of courts of summary jurisdiction. An enormous number of offences dealt with under the present Bill were such as ordinarily formed the subject of indictment; and when one noted the enormous extent to which the Bill invaded trial by jury, and remembering the fact that we had in this State unfortunately many magistrates who were unfitted to be entrusted with the enormous power of sending a person to prison for twelve months, the need of some provision such as the amendment made would be recognised. The amendment embodied no new principle, because it had been the law in Great Britain since 1879 that any person charged with an offence for which the full term of imprisonment exceeded three months had the right to demand to be tried by a jury. We might well copy that legislation, and give to persons charged under this Bill with serious offences what any person living in another part of the British dominions had a right to expect, the right to be tried by a jury. Since 1879 this had been the law in England; it was the law in some of the Eastern States, and for many years the law in New Zealand. The Bill affected multitudinous offences involving twelve months' imprisonment. Summary trial was granted for offences in the nature of stealing. Offences termed "cheating" were created, which were simply obtaining goods or money by false pretences.

The penalty for being in the unlawful possession of property was a short method of punishing a man for stealing, but the onus of accounting for the possession of the property rested on the accused. Instead of the ordinary rule of law being here applied, that a man be held innocent till he is proved guilty, the prisoner must satisfy the magistrate as to how the goods came into the prisoner's possession. Many English Judges said they viewed with great alarm the attempted innovations on the right of trial by jury; hence in the English Summary Jurisdiction Act of 1879, equivalent to our Justices Act, the necessary provision was inserted. The Perth *Daily News* supported the new clause; and all must agree that a man charged with a serious offence involving more than three months' imprisonment should have the right to go before a jury. The constitution of juries in civil trials might be improved; but in criminal cases, if our jury system failed it failed by occasionally allowing the guilty to escape. Seldom did a jury's prejudices lead it to convicting improperly. Trial by jury was a safe method when a man's liberty was in peril, and we could do no better than follow what had been the law of the old country for the last 27 or 28 years. Mr. Sholl seemed to think this method was not suitable to the circumstances of the country; but the prisoners would not necessarily come to Perth for trial. They could be tried either at a circuit court, or at the quarter sessions held at nearly all centres such as Bunbury, Albany, Geraldton, Cue, Wyndham and Roebourne. True, these quarter sessions were presided over by magistrates, and against this he (Mr. Moss) had complained till he was tired; but there were juries. Far better have the opinion of twelve men than—he said it with regret—the opinion of some magistrates presiding in our police courts. It was high time the magistracy was put on a better footing. In the centres where the courts were presided over by professional men matters were satisfactory; but outside, one feared men were sometimes sent to prison on very insufficient evidence, on which no jury would convict.

The COLONIAL SECRETARY opposed the new clause. We could not take too much precaution to secure to every prisoner a fair trial; but the Act the hon. member referred to as the law in England since 1879 could scarcely apply to this State. Mr. Sholl had said, ours was a country of great distances, sparsely populated; and we must consider the question of expense in conducting trials. The amendment would add considerably to the expense of administering the criminal law. Common juries now cost from £5,000 to £6,000 a year; that expense would be increased, and one or two additional Judges would probably be needed for the trial of prisoners. An offence which involved three months' imprisonment need not be very serious, and such offences magistrates were quite competent to try. In most cases the accused had a right of appeal. By Section 183 of the Justices Act, 1902, this right was given to any person summarily convicted and sentenced to imprisonment without the option of a fine, or to a fine exceeding £10. That any gross injustice had been done by magisterial sentences did not appear. If magistrates erred at all, they erred on the side of leniency. Certainly they might make mistakes, but so did juries. If every petty offender liable to three months' imprisonment could demand a trial by jury, some of the trials would cost hundreds of pounds. Past experience did not warrant our altering the law to the extent proposed. In the metropolitan area the expense of the trials would not be so great, as the prisoners could be tried where the offences were committed.

Hon. M. L. Moss: And the poor wretch in the back country had to put up with all the inconveniences of a trial at a distant centre.

The COLONIAL SECRETARY: To bring a prisoner from the back country would be expensive, and all such prisoners would elect to go to a jury. A guilty man would seek all possible tribunals before giving in. It was easier to convince one man out of twelve than to convince a magistrate.

Hon. W. MALEY supported the amendment, if only for Mr. Moss's concluding

remarks as to justices. Influence was no doubt brought to bear on every Government to secure the appointment of J.'sP. He knew of unworthy appointments, neither creditable to the Government nor satisfactory to the people who had to suffer. An old friend of his, a worthy man but not fit to be a justice, was appointed; whereupon the resident magistrate remarked that the man would do to count dogs' tails. The Government could not be too cautious in giving such men power to imprison for twelve months.

Hon. R. W. PENNEFATHER: The main point was that the Bill would enable certain cases to be summarily disposed of by justices, which cases were now indictable, the defendants being entitled to trial by jury. Thus the Bill sought to make an inroad on that privilege on which everyone should look with a jealous eye, the privilege which had its origin in Magna Charta. More especially should trial by jury be preserved when a man's liberty was in question. The Bill sought to substitute the words "summary jurisdiction" for "indictable offences," so as to enable justices to decide such cases without sending them to a higher court. The onus of convincing the House that the change was desirable rested on those who sought to alter the existing law. The Colonial Secretary should justify this change by something more than a mere saving of money in the administration of justice, that being the lowest ground to urge in objecting to a right of appeal.

The Colonial Secretary: The argument was not that there would be a saving, but that the new clause would cause additional cost.

Hon. R. W. PENNEFATHER: The difference was not apparent, because the new clause would cause some addition in the cost of administering justice. As regarded the power of justices, the Bill would extend their power of committal under summary jurisdiction from 3 to 12 months; and this was a great increase of power to confer on justices, especially in districts remote from populous centres. Where a magistrate filled the two positions of resident medical officer and magistrate, as was generally the case, justice could not be administered in remote parts of the State with the same degree of responsibility as in a metropolitan district. A resident magistrate in a district remote from Perth might be dispensing medicine in one part of the day, and dispensing justice in another part of the day. If a resident magistrate so situated got an idea that a certain man in that small community was a bad fellow, a bias being thus formed against him, that resident magistrate would have the power under this Bill to sentence such person to 12 months' imprisonment on a charge that could be dealt with summarily. This aspect of the Bill was a serious matter to consider. We should not give magistrates of this class more power in administering justice summarily than they had now. The new clause proposed by Mr. Moss was sound in principle, and should be agreed to, seeing that this provision of the right of trial by jury in such cases had been in existence in England since 1879. It had been said that because we had a scattered community in this State, the people did not require the same right of appeal to a jury in cases of summary jurisdiction. More tyranny might exist in scattered communities than in populous centres, because in scattered communities there was no check exercised by newspapers, nor any check by a powerful public opinion. It should be remembered that the same magistrate who convicted under summary jurisdiction in a district remote from a populous centre, would also be the chairman of quarter sessions and would sit on the same case when it came up for trial by jury. A couple of magistrates well qualified could perform all the judicial duties necessary on the North-West coast, and their appointment for this purpose would give immense satisfaction to the people there.

Hon. M. L. MOSS: The whole cost of jury trials in the State, Crown prosecutions and including witnesses' fees, involved an annual expenditure of some £6,000; and he believed that if the reform proposed in the new clause were adopted, the extra cost might be £1,500 per annum and would not exceed £2,000.

This reform would put the administration of justice on a better footing throughout the State, and in his opinion no expense would be too great to ensure that justice should be administered thoroughly, as compared with the fact that perhaps a score of men in a year were put in prison unjustly. What a dreadful thing for a man to be subjected to a term of six months' imprisonment by an inexperienced magistrate, on testimony which a professional Judge would not listen to for a moment. Such things could not happen in a metropolitan district, because public opinion and the vigilance of the Press would prevent such scandals. But in communities remote from the centre there was no Press to expose these wrongs, and magistrates who had no proper training for the administration of justice should not be allowed to go on committing men to prison under summary jurisdiction, without the right of trial by jury. The right of appeal as it existed at present was an absolute barrier to a man in trying to get justice ; for there was first the right of appeal by way of re-hearing, secondly the right of appeal by case stated. As to appeal by way of re-hearing, a man who had been fined £10 or sentenced to a term of imprisonment had that right ; and the re-hearing would be not on the evidence, but on the magistrate's imperfect notes of evidence taken, also the prisoner appealing must give security for costs of the appeal, which would in no case be less than £25. That form of appeal in a district away from a populous centre would be heard by the same magistrate who had convicted in the court below ; and as it would be an appeal from his own judgment previously given, the unfortunate man who was appealing would, if innocent, have a very poor chance of getting the previous judgment reversed. As to appeal by case stated, that would go before the Supreme Court, and the Judges would have got the magistrate's notes of the evidence showing that the committing magistrate had found certain facts proved ; so in that case there would be a poor chance of getting the judgment reversed. In this form of appeal also there are many technicalities to be complied with before the appeal could be heard, and it would be difficult in some cases, if not impossible, to have all these formalities attended to properly, where solicitors were not available. Some half-dozen clauses in the Bill set forth sentences which might be imposed under summary jurisdiction for stated offences, the power of sentencing prisoners summarily being extended under the Bill from 3 to 12 months. Surely the paltry amount of money it would cost the country to get juries and to give a fair trial, as compared with the fact that justice was now administered by inexperienced magistrates performing in most cases dual functions and not trained in a legal sense, should not prevent the right of appeal being given as proposed in the clause.

On motion by the *Colonial Secretary*, progress reported and leave given to sit again.

ADJOURNMENT.

The House adjourned at 6.17 o'clock, until the next Tuesday.

Legislative Assembly,

Thursday, 15th August, 1907.

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

Prayers.