

He never lost an opportunity of advising a miner to settle upon the land. If we offered sufficient facilities to enable this class of the community to take up agricultural land, there would be no need to go to the old country for immigrants.

Mr. ANGWIN moved—

*That progress be reported.*

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

Ayes	..	..	..	19
Noes	..	..	..	18

Majority for .. .. 1

**AYES.**

Mr. Angwin	Mr. O'Loghlen
Mr. Bath	Mr. Scaddan
Mr. Collier	Mr. Swan
Mr. Gill	Mr. Troy
Mr. Gourley	Mr. Underwood
Mr. Heitmann	Mr. Walker
Mr. Hudson	Mr. Ware
Mr. Jacoby	Mr. A. A. Wilson
Mr. Johnson	Mr. Bolton
Mr. Nanson	

(Teller).

**NOES.**

Mr. Barnett	Mr. Mitchell
Mr. Cowcher	Mr. Monger
Mr. Davies	Mr. N. J. Moore
Mr. Gordon	Mr. S. F. Moore
Mr. Gregory	Mr. Osborn
Mr. Hardwick	Mr. Price
Mr. Hayward	Mr. F. Wilson
Mr. Hopkins	Mr. Layman
Mr. Keenan	
Mr. Male	

(Teller).

Motion thus passed.

Progress reported.

**ASSENT TO BILL.**

Message from the Governor received and read notifying assent to the Land and Income Tax Bill.

**ADJOURNMENT—CHRISTMAS HOLIDAYS.**

On motion by *the Premier*, ordered: That the House at its rising adjourn until Tuesday, 5th January, at 4.30 p.m.

*House adjourned at 11.33 p.m.*

**Legislative Council,**

*Tuesday, 5th January, 1909.*

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Bills: Wines, Beer, and Spirit Sale Act Amendment, Com.	1195
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Fines and Penalties Appropriation, 2a., Com.	1196
Fremantle Disused Cemetery, Com.	1196
Victoria Park Municipal Boundaries, Discharged	1201

The President took the Chair at 4.30 p.m., and read prayers.

**PAPERS PRESENTED.**

*By the Colonial Secretary:* 1, Roads Act, 1902—By-laws under Parks and Reserves Act, 1895, of the Kalgoorlie Roads Board. 2, Department of Agriculture—Annual Report for 1908. 3, Public Service Commissioner—Third Annual Report, 1908.

**BILL—WINES, BEER, AND SPIRIT SALE ACT AMENDMENT.**

*In Committee.*

The CHAIRMAN: Progress had been reported after consideration of Clause 10, and on a new clause moved by the Hon. M. L. Moes as follows:—“(1.) Every packet licence granted before or after the passing of this Act shall authorise the master of the vessel therein mentioned, being a vessel licensed to carry passengers within the State of Western Australia, to sell and dispose of any liquor to any passenger on board of such vessel while such vessel is on her passage. Provided that the provisions of Section sixty-one of the principal Act shall not apply to a packet licence. Provided also that no licence shall be necessary to authorise the granting of allowances of liquor to the crew of any vessel. (2.) Section six of the principal Act is hereby repealed.”

New clause agreed to.

The COLONIAL SECRETARY moved—

*That the Bill be returned to the Legislative Assembly requesting them to make the amendments agreed to in Committee, and that the Committee have power to sit again on receipt of a message from the Legislative Assembly.*

Motion put and passed, the Bill reported with amendments.

## BILL—WORKERS' COMPENSATION ACT AMENDMENT.

### *Second Reading.*

The COLONIAL SECRETARY (Hon. J. D. Connolly) in moving the second reading said: It is not necessary for me to speak at any length, because in the session before last, a short amendment to the Workers' Compensation Act was passed. It was somewhat of a larger measure than this now before the Chamber, and it contained the four clauses contained in this particular Bill. The first amendment it is proposed to make to the Act of 1902 is set forth in Clause 2. It is provided that proceedings to enforce the workers' claim shall be commenced within three months after the claim for compensation has been made. Clause 3 provides for bringing under the Act casual workers such as wharf labourers and lumpers. Clause 3 is really the reason why this small Bill has been introduced. It has been promised to the wharf workers for some time that an amendment of this kind would be inserted in the Workers' Compensation Act. As members are aware, under the Workers' Compensation Act when a workman engaged in a hazardous occupation receives an injury, he is entitled for a certain time to one-half the wages he has been earning. It so happens that the wharf labourers work at one time for one company and at another for another company; so that in taking the average wages earned by the worker from the company concerned it may be that it will work out at not more than 10s. per week, and consequently, under the Act he would only receive 5s. per week, notwithstanding that he may have been earning regularly from one company and another quite £3 a week. When a ship comes in the lumpers go to that ship and work on it; then they may not work for the company controlling that vessel until another vessel comes in for that company, which may be a fortnight or more later. This clause seeks to amend that state of things. Briefly, it provides

that a workman shall be paid half the average rate of wages which he would have earned had he been continuously employed by the same company. I do not think there can be any objection at all to this. At the present time the Act, so far as it applies to wharf labourers, is of very little use indeed. Labourers who have sustained injury have received under the Act as little as 5s. or 6s. per week. At the same time it must be admitted that some of the companies, if not all of them, have come to recognise the injustice of this, and have paid half the average wages that a man would earn if he were employed full time by the company for which he was working when he was injured. A further amendment is proposed which provides for the appointment of medical assessors. At the present time an injured workman is attended by a medical practitioner who gives him a certificate stating that he is not yet fit to return to work—a certificate in which perhaps the employer's medical practitioner or the medical practitioner of the insurance company does not concur. Under the Act it is provided that there shall be medical assessors, whose decision shall be final. Should a workman go to one of these, and should the medical assessor say he is not fit to go to work, that decision shall be final and he will continue to receive his payment under the claim. The employer's doctor certifies that the workman is fit to go back to work; but the workman goes to the medical assessor, who says, "No, you are not fit to go to work." And so the workman continues to receive his money under the claim. The medical assessor's certificate is final, no matter if half-a-dozen other doctors say that the man is fit to return to work. This amendment seeks to bring the Act into line in this respect with the Queensland Act and with the Imperial Act. A workman receives an injury, and if the employer's doctor says he is fit to go to work the workman if he be dissatisfied with that ruling can go to his own medical practitioner. Should the two doctors agree, well and good; but should they disagree they will call in a duly appointed medical assessor, whose decision shall be final. It is further pro-

vided that should they fail within a reasonable time to appoint an umpire it will devolve on the resident magistrate to appoint such disinterested medical practitioner, whose decision shall be final. Briefly, these are the two main amendments sought to be inserted into the Workers' Compensation Act of 1902. I know there are several other amendments which both those who look after the interests of the worker and those who look after the interests of the employer think it necessary to insert in the Act. But if we go into all these matters I am afraid there will be very small chance of getting the Bill passed this session. There are two very pressing amendments. The first as to the wharf labourers has been promised for a considerable time. It has passed this House before, but on account of press of other business it was crowded out in another place. It is likely that in another session there will be a consolidated workers compensation measure brought in, but in the meantime I will ask the House to pass the Bill as it stands. I move—

*That the Bill be now read a second time.*

Question put and passed.

Bill read a second time.

*In Committee.*

Clauses 1 to 4—agreed to.

New Clause—Amendment of Section 8 :

Hon. M. L. MOSS moved that the following be added to stand as Clause 2—

*Section 8 Subsection 4 of the Principal Act is hereby amended by striking out the word "alone" at the beginning of the second line of the subsection and by striking out the words, "Small Debts Ordinance 1863 or any amendment thereof" in the third and fourth lines thereof, and substituting in lieu thereof "Local Courts Act 1904."*

On the last occasion when a Workers' Compensation Amendment Bill was before the House he had succeeded in carrying an amendment altering Section 8 of the Act. That section provided that the court which had to fix the compensation to be paid to the injured man should con-

sist of the resident magistrate of a district and arbitrators nominated by the workers and masters respectively. There was not a single instance where those arbitrators had been other than partisans of the sides they represented. The workers' arbitrator stuck out for the worker every time, whilst the masters' arbitrator stuck up for the master every time. The fees of these arbitrators had to be paid by the party which ultimately lost the litigation, and it was clear from the very fact that the decision rested entirely with the magistrate that the cost of these arbitrators was absolutely unnecessary. It was with the idea of doing away with this unnecessary expenditure on the losing party in the case that he proposed the new clause. Instead of these partisans acting as arbitrators, they should be on the floor of the court contending for their respective sides. His experience showed him that really disgraceful proceedings went on in these arbitration cases, for the arbitrators in every instance did their best to influence the magistrate, and in nine cases out of ten the latter arrived at a decision by splitting the difference.

*The Colonial Secretary :* There are arbitrators in the Arbitration Court.

Hon. M. L. MOSS : That was an illustration much in favour of the point he was making, for on the Arbitration Court there were representatives of the workers and employers respectively and both were partisans for those whom they represented. Those who read the awards of the Arbitration Court knew well there was a dissentient report every time. Under the Workers' Compensation Act it was provided that where a man was incapacitated he should receive one half his average earnings, and it was most undesirable that where the case was taken to arbitration the master who had to pay this sum should also have to pay the arbitrators' fees. On the other hand, if a worker set litigation in motion and lost his case, it was surely unfair that he should be saddled with the arbitrators' fees.

Progress reported.

BILL—FINES AND PENALTIES  
APPROPRIATION.

*Second reading.*

The COLONIAL SECRETARY (Hon. J. D. Connolly) in moving the second reading said: This is a small Bill providing that certain fines shall be paid into Consolidated Revenue instead of to municipalities as formerly. Prior to 1892, where fines were inflicted under the Police Act, one-half of the amount recovered was paid to the Crown and one-half to the informer. In the following year it was provided that one-half should be paid to the municipality in which the fines were incurred and recovered and the other one-half to the informer. Up to 1902, in cases where the police were in reality the informers, having laid the charges, the half which had to go to the informer was paid to the Crown, the result being that in such cases the municipalities got one-half and the Crown one-half. Under the Justices Act passed in 1902 the section of the old Act of 1850 providing for the informer getting one-half was repealed. As I have just pointed out it was from this source that the Crown in say 99 cases out of 100 obtained revenue, for in that proportion of cases the police were the informers, and one-half the fines accordingly went to the Crown. It was intended to have that section amended, but this result was not achieved, however, and the custom of paying one-half the fines to the municipal councils was continued as formerly. The present Bill provides that all fines recovered under the Police Act shall be paid to the Crown. I wish to draw members' attention to this Bill, because there has been some discussion upon it by the municipal councils, particularly on account of the form in which it was introduced into another place. The Bill as originally introduced into another place was very different from the one now before this Chamber. For instance it provided that all fines and penalties recovered in the police court should be paid into Consolidated Revenue. That certainly did create an injustice in so far as the municipal councils were concerned, because in many cases these

councils undertook prosecutions for breaches of the Municipal Act, and if fines were recovered under them they were to receive no portion of them, although they had gone to the expense of initiating the prosecutions and would be responsible if the prosecutions failed. The same remarks apply to prosecutions under the Health or Roads Boards Acts. The Bill, however, has been altered materially in another place from what it was when originally brought down, as will be seen by the latter portions of Clauses 2 and 3. It is there specially provided that the Bill shall not affect the appropriation of fines and penalties—(a) incurred and recovered under any law in force for the time being relating to the sale of fermented or spirituous liquor; (b) incurred under the provisions of any Act or by-law relating to local government; (c) incurred under any Act administered by a local authority; (d) and that fines and penalties recovered under Subsections (b) and (e) should be paid to the local authority within whose district the offences were proved to have been committed. Clause 3 provides that for the purposes of the Act "local authority" means the council of a municipality within the meaning of the Municipal Corporations Act, 1906, or a roads board district within the meaning of the Roads Act, 1902, or a local board within the meaning of the Health Act, 1898, or under any Act amending the same. Those were the Acts which the local bodies administered.

*Hon. M. L. Moss:* Are the municipal councils to get the fines inflicted under the Bread Act?

The COLONIAL SECRETARY: The Bread Act is not specially mentioned, and I do not know that many prosecutions are laid under it.

*Hon. M. L. Moss:* It is a very important measure.

The COLONIAL SECRETARY: Yes, that would be deemed to be an Act administered by the local authority. The present system is certainly not fair to the smaller municipalities. There are certain municipalities in and around Perth which have not police courts.

Therefore if an offence is committed in Leederville or Subiaco, which have not police courts, and a man is fined at the Perth police court for having committed the offence, the municipality of Perth receives the fines and not the municipality in which the offence was committed. There is no reason why the municipal councils should receive any fines for prosecutions instituted under, say, the Railways Act, the Police Act, or any similar measure. The municipalities do not contribute one penny towards the upkeep of the police force, which is solely maintained at the expense of the Consolidated Revenue, therefore, any fines which the municipalities may obtain from prosecutions should, in fairness, go into the Consolidated Revenue and not into the funds of the municipality where the offence was committed, or where the offence was tried. This Bill will also considerably help the smaller municipalities, because under the local government Acts which I have mentioned, the Health Act, the Municipalities Act, and the Roads Board Act, it is provided that the fines shall go to the funds of the municipality or local authority where any offence has been committed, and not where the fine is imposed or where the case originated. These municipalities in and around Perth—Leederville, Subiaco, Claremont, Cottesloe—in the past, if any fines were obtained under the Health Act say, or under the Municipal Corporations Act, or the Roads Board Act, or any of the Acts which the municipalities are solely responsible for, the fines would not be payable to those municipalities, but to either Perth or Fremantle or wherever the offence is tried. In this Bill it is provided that the fines shall go to the particular district where the offence was committed, and to the municipality that was instrumental in bringing the offender to book and thereby having to incur the expense. In South Australia the municipal and district councils receive fines under their special Acts, and informers' moieties of the fines under certain specific Acts. While in South Australia they receive these fines, a contribution is deducted

from their rates under the Municipal Act to pay for one-half of the upkeep of the police force.

*Hon. J. W. Hackett:* Half the rates?

The COLONIAL SECRETARY: Yes; that is the information I have here.

*Hon. R. F. Sholl:* A moiety of the penalties?

The COLONIAL SECRETARY: What I say is this. They contribute from their rates for the upkeep of the police force, and in consideration of that they are given the fines that are inflicted by the police courts.

*Hon. M. L. Moss:* There must be a mistake; surely one-half of the rates of the city of Adelaide are not given up.

The COLONIAL SECRETARY: I will not say that it amounts to one-half, but there is a contribution from these rates towards the upkeep of the police force, therefore, the municipalities are justly entitled to the fines. This Government, or any other Government, would be quite satisfied to give up the whole of the fines if the municipalities contributed, not one-half but even a quarter of the cost of the upkeep of the police force. In New South Wales the system is the same as provided here, the local Government receive the fines levied under their own Acts. That is what we propose here, to give the municipalities the fines received under their own Acts. I may also mention that under the Acts I have mentioned the municipalities sometimes receive gratuitous advice from the Crown Law officers, and also the assistance of the police. No charge is made for the assistance rendered by the police or the assistance given by the Crown Law Department when the department assists municipalities in prosecutions under their own Acts. Let me say again that this Bill does not seek to deprive the municipal councils of any fines that may be incurred by prosecutions instituted by themselves under their own Acts, or any prosecutions instituted by the police under the local Acts. It only provides where the police institute prosecutions under the Acts which I have mentioned, the Railway Act, the Police Act, and such Acts as that, the fines shall go to the Consolidated Revenue; that is,

the municipal council is not asked to support the police in any way at all. Let me say again it would be extremely unfair to deplete the revenue of that amount, seeing that the sole expense of earning that revenue has been borne by the State.

*Hon. C. Sommers:* Can you tell us the whole amount?

The COLONIAL SECRETARY: No; it was set down at £6,000 or £7,000 when the Bill was first introduced in another place. The amendment will bring the amount down very considerably. It only affects the revenue of a few municipalities such as Perth and Fremantle, because the smaller municipalities do not receive anything at all, but they will receive more, as I have already explained, under this Bill. I move—

*That the Bill be now read a second time.*

*Hon. M. L. MOSS (West):* This Bill is now presented to the House in a very different character from what it was when introduced in another place. Had it come here in its original form I certainly should have strongly opposed it, but with the proviso in Clause 2 the measure is made a perfectly fair one, and therefore, I shall vote for the second reading. It is quite correct, as the Colonial Secretary said, that at the present time all the fines imposed under the Police Act go to the municipalities where the offence was committed or where the offence is tried, and from the point of view of the suburban municipalities, those around Perth and Fremantle, although the offence may have been committed in a suburban area, although committed there it is tried in Perth or Fremantle, and these suburban municipalities are prevented from getting the fines.

*Hon. J. W. Langsford:* They have got some.

*Hon. M. L. MOSS:* No, they have not. There is no doubt this legislation is brought forward in consequence of the action taken by the Fremantle municipal council against the Crown, and I was concerned in that litigation and was mainly instrumental in making the Crown disgorge a large sum of money, it is for

that reason I rise to make a complaint as to the obstacles which were put in the way of that municipal council when the litigation took place. Let me say first with regard to the city of Perth, that the city of Perth had been receiving the whole of these fines when other municipalities, including Fremantle, Kalgoorlie and Bunbury, were only getting one half, when they were intitled as the law stands today, and as it stood then, to receive the whole of the fines. A claim was made for the moiety to be returned by the Government, but the Government declined to pay the amount although the city of Perth was receiving the whole of the fines; but the Government declined to pay the amount to the other municipalities although this fact was pointed out to them. The Fremantle municipal council deemed it right and just that they should get the whole of the fines and instituted proceedings in the police court. These proceedings were going on during last session of Parliament, and I have always studiously avoided bringing into the House any matter that is being dealt with in the police courts, or bringing forward any complaint when litigation, especially litigation in which I am concerned, is going on; but the litigation is now over, the Government were beaten, and all the moieties retained were paid to the municipalities entitled to receive them. It is only proper that I should make a statement as to the action taken by the Crown Law Department, which I say was *discreditable and disgraceful*. I have said that the city of Perth received the whole of the fines, and as a matter of ordinary business morality other municipalities throughout the State were entitled to be treated in the same way. They were not so treated, but one of the defences set up by the Government to try and defeat the claim of the Fremantle municipality and other municipalities was that the Police Act of 1902, the amended Police Act of 1903, the Justices Act of 1902, were illegally on the statute book, because these measures were not introduced in the Lower House by a Message from His Excellency the Governor. Although this Government and other Governments had been acting under these

Acts, although people had been prosecuted under them, and hundreds of people had been imprisoned, and hundreds of pounds of fines had been collected, it was set up that the Municipalities Act was illegally on the statute book. A great many obligations are undertaken under the Municipalities Act, and yet the Government came into court to try and escape their just liability. Although they had paid the whole of the fines to the municipality of Perth, they endeavoured to escape paying the other municipalities by raising a defence of this character. If a private individual entered into an agreement in black and white with another individual and then denied that agreement, what would one think? The Government should take the responsibility of their legal advisers, and should not set up that a number of Acts on the statute book are illegal, especially as this was a just claim, in view of the fact that the Perth municipality had been receiving the whole of these fines while all the other municipalities had been receiving only one half. In my opinion it was a disgraceful action. It cannot be alleged against me that this matter has been brought before Parliament to influence that litigation, but I say it was a discreditable action for the Government to take. I shall support this measure because, in my opinion, it is true, as the Colonial Secretary said, these municipalities who do not contribute to the upkeep of the police force, and do not contribute to the cost of the prosecutions under the Police Act. If the prosecutions fail and if an appeal is made to the Supreme Court, the municipalities contribute no part of the cost of the appeal, but quietly lie by, and are entitled as the law stands to receive the whole of the fines. It is wrong. It is essential that this proviso in Clause 2, that was not there when the Bill was originally introduced by the Government in another place, should be passed, because if that proviso was not there all penalties for breaches of the municipal by-laws, and breaches of the Municipal Act and the Health Act and all these statutes, would have gone into the Consolidated Revenue. It is needless to say that the municipalities

would then have escaped the responsibility of conducting these prosecutions, and prosecutions under the Health Act are very important. It is necessary that the Health Act and these other Acts should be properly administered. I am, therefore, in favour of this proviso in the Bill, and I am pleased to give the measure my support. I am glad to find that Sub-clauses (b) and (c) of the proviso give to the suburban municipalities that to which they are entitled; because so long as the offence is committed in one of the suburban localities it does not matter now whether the penalty is recovered, for where the fine is incurred the money will be paid to the body governing the particular locality. In these circumstances, because I think this matter has been put on a fair and reasonable footing, I am prepared to give the measure my support.

Question put and passed.

Bill read a second time.

*In Committee.*

Bill passed through Committee without debate, reported without amendment, and the report adopted.

BILL—FREMANTLE DISUSED CEMETERY.

*In Committee.*

Clause 1—agreed to.

Clause 2—Vesting of cemetery in trustees of the Fremantle cemetery:

Hon. M. L. MOSS: A promise had been made that the written assent of the religious denominations concerned to the passing of the Bill would be laid on the Table; but though this document was in the possession of the secretary of the board it had not yet been forwarded. He therefore moved—

*That progress be reported.*

Motion passed, progress reported.

BILL—VICTORIA PARK MUNICIPAL BOUNDARIES.

*Discharged.*

On motion by the Colonial Secretary, the Order of the Day for the second reading of this Bill was discharged.

*House adjourned at 5.23 p.m.*