The ATTORNEY GENERAL: The whole of it will be in *Hansard*.

Mr. SPEAKER (10·24): I will not insist on the papers being laid on the Table by the Attorney General because the time for raising the point has been delayed too long.

*House adjourned at 10·25 p.m.*

# Legislative Council,

*Tuesday, 15th December, 1914.*



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

## PAPERS PRESENTED.

By the Colonial Secretary: 1, Public Works Department, report for the financial year 1913-14; 2, Government Savings Bank, annual balance sheet, report and returns for the year ending 30th June, 1914; 3, Fisheries Act, 1905-13—Whaling License to the Australia Whaling Coy., Ltd.

## QUESTION — PARLIAMENTARY MEMBERS' PRIVILEGES.

Hon. J. CORNELL asked the Colonial Secretary: 1, How many persons have been returned as members of the Legislative Council since the inception of Responsible Government? 2, How many members or ex-members of the Legislative Council are there who have at any period occupied a seat therein continuously for a period of twelve years? 3, How many persons have been returned as members of the Legislative Assembly since the inception of Responsible Government? 4, How many members or ex-members are there of the Legislative Assembly who have at any period occupied a seat therein continuously for a period of ten years? 5, How many Ministers and ex-Ministers of the Crown have there been since the inception of Responsible Government? 6, How many Ministers and ex-Ministers of the Crown are there who have been granted life passes over the Railways of Western Australia? 7, How many Presidents and Speakers have there been since the inception of Responsible Government? 8, How many Presidents and Speakers have been granted life passes over the Railways of Western Australia?

The COLONIAL SECRETARY replied as follows: 1, 103; 2, 16; 3, 407; 4, 19; 5, 55; 6, 24; 7, 3 Presidents and 5 Speakers; 8, 1 President and 2 Speakers

## MOTION—BUSH FIRES ACT, SUSPENSION OF REGULATIONS.

Hon. Sir E. H. WITTENOOM (North) [4.40]: I move—

*That in the opinion of this House the Government should take the necessary steps to suspend the regulations in connection with the burning-off and bush-firing in the Victoria district from the 1st January, 1915, owing to the droughty conditions—the absence of grass and crops—the necessity of getting scrub burned off before the cool weather sets in, thus affording additional employment to workers.*

The object I have in moving this motion has been so plainly set forward in the motion itself that it is almost superfluous to make many remarks in connection with it.

Hon. J. F. Cullen: Has it not been carried out already?

Hon. Sir E. H. WITTENOOM: No. I would like to explain to hon. members

that the procedure in connection with bush firing and burning is that the State is divided into what are called roads board districts, and the Governor-in-Council has power to prohibit the burning in any one of these districts for certain months. In this district I am speaking of, the Victoria district, the prohibition for some years past has been, I think, from November to the 15th February. Last year, owing to the very good season, the good rainfall, and to the quantity of grass that was about, and the late crops, it was extended until the 1st March, so that no bush fires or burning could be legally undertaken until the 1st March. The consequence was that when the cold weather set in after the 1st March a great deal of the sand plain country, which contains some of the most useful country in the Victoria district, could not be burnt at all. The result was that owners lost the advantages of a great deal of their healthy, good feeding country owing to the want of burning. This year the conditions are altogether altered. Instead of there being 21 inches of rain in the district, we have had something under eight inches, and there is little or no grass at all, while good crops are few and far between. Some of the best crops are in the neighbourhood of Northampton. The fact of having this prohibition suspended does not in any way alter the responsibilities of the person who lights a fire. All that it does is to make it legal to make a fire. The law in connection with bush fires is that you are bound to give your neighbours, who are contiguous to you on all sides, something like 48 hours' notice, and to take every precaution that men are on the site to see that the fire does not spread.

Hon. W. Patrick: A man is responsible when a fire takes place, even when he has given notice to his neighbour of his intention to burn off.

Hon. Sir E. H. WITTENOOM: He is still responsible, of course. What the doing away of the prohibition does is that it does not make the act of burning-off illegal. For instance, I myself once, rather forgetting the date, I may say, and having a very heavy piece of sand plain to burn off, and finding an exceedingly advantageous day come along with a hot and strong wind, put a match to the grass, and the result was a most satisfactory burning-off, but later on I had the honour of appearing in the police court and being fined £1. Of course I took every precaution. I even sent my neighbours notice of what I was going to do. I admitted my fault and went out without a stain on my character, after paying £1. That is the result of doing it whilst the law is against it. When the prohibition is removed there is no danger of being summoned. The only danger is a liability to do harm to your neighbours. I find that already steps had been taken in this matter, and the method that is usual is that the chairman of the roads boards in the district approaches the Government, and then the Governor passes an Order-in-Council for whatever the Government decide. I happened to see the chairman of the Geraldton roads board the day before yesterday, and he informed me that he was entirely in accord with the motion, and that they had been going to move themselves if they had not seen this notice. Hon. members, therefore, will only be carrying out the wishes of many of the roads boards in that district by carrying this motion. In looking at yesterday's paper to see the procedure under the Bush Fires Act, I noticed the following:—

> His Excellency the Governor in Executive Council has removed the restriction, under section 5 of the Bush Fires Act, 1902, prohibiting the burning of the bush in the Dowerin road district, and on the Merredin State farm lands; and to alter the dates of the period during which the burning of the bush is prohibited in the undermentioned road districts, etc., to the following:—Brookton road district, November 1, 1914, to January 31, 1915, inclusive; Beverley road district, November 1, 1914, to January 15, 1915, inclusive; Moora road district, November 1, 1914, to January 15, 1915, inclusive; Upper Chapman road district, November 1,

1914, to January 31, 1915, inclusive; Dumbleyung road district——

This shows that the roads boards have already taken steps in the direction that I contemplate doing. I therefore now only recommend this motion to the Government, and the procedure in this case will be slightly different. Instead of the chairman of the roads board approaching the Government, I would ask the Government to approach the roads boards and ask them whether they concur in the proposal, and in that case the restrictions might be removed. I would strongly point out that in a year like the present, when there is very little grass, it is wise to get to the burning as soon as possible. It is wise to get to the burning of sand plain whilst the hot weather prevails, so as to be ready for the subsequent rains, and in carrying out this work there will be provided immediate employment for a large number of men. I have much pleasure in submitting the motion.

Hon. H. CARSON (Central) [4.47]: I desire to second the motion. I think it will commend itself to members and I feel sure the Government will act upon it. The motion, if carried, will mean a great deal to the settlers, more especially in the dry areas where I am situated. I have several men clearing and if we can get at the burning immediately there will be much more land cleared and cultivated next season. I hope the Government will take action and not wait for the roads boards to put this into force.

Hon. J. F. CULLEN (South-East) [4.48]: I hope Sir Edward Wittenoom will withdraw the motion. He has given good reasons for doing so. There is a simple procedure provided already in the existing law.

Hon. Sir E. H. Wittenoom: It is not provided in the law.

Hon. J. F. CULLEN: There is provision for the proper authority to approach the Governor-in-Council and ask for a specific day to be proclaimed. If this House passes the motion in regard to one district only, we shall have other districts coming to the House and making a similar request. I do not think it is right to establish any such precedent. We should follow the natural course of procedure, which is simpler than coming to Parliament. Does Sir Edward Wittenoom expect the Government to take notice of this motion and support an action over the heads of the local authorities?

Hon. Sir E. H. Wittenoom: The Government would have to consult the roads boards.

Hon. J. F. CULLEN: Why should they?

Hon. Sir E. H. Wittenoom: Because we are asking them to do so.

Hon. J. F. CULLEN: This House has no right to intrude in any such matters and it may be interpreted as a slight to the local authorities. Indeed, in many cases there might be an attempt to go over the heads of the local authorities and come to Parliament, and take up the time with such small details. I hope Sir Edward Wittenoom will withdraw the motion and allow the usual procedure to be followed.

The COLONIAL SECRETARY (Hon. J. M. Drew—Central) [4.50]: I hope Sir Edward Wittenoom will withdraw the motion, because there is no necessity for it. There has been a published announcement made by the Minister for Lands that he is prepared to accept the recommendations of the different roads boards, who should be in the position to know whether there should be exemption from burning operations or not.

Hon. Sir E. H. Wittenoom: When was the announcement made?

The COLONIAL SECRETARY: It appeared in the *West Australian* about a week ago and it requested the boards to make application for exemptions, if they so desired. It is not expected that the Minister for Lands should communicate with all the roads boards and ask them whether they required to be exempted. I hope the motion will be withdrawn.

Hon. Sir E. H. WITTENOOM (North—in reply) [4.52]: I did not see the notice to which the Colonial Secretary has referred. If I had done so I should not have brought the matter forward. Parliament, of course, is the pro-

per place through which to approach the Governor-in-Council and I do not think that the law provides that the roads boards should do so. However, as the Colonial Secretary declares this announcement has been made, I shall have much pleasure in withdrawing the motion.

Motion by leave withdrawn.

## BILL—LAND ACT AMENDMENT.

*Second Reading.*

The COLONIAL SECRETARY (Hon. J. M. Drew—Central) [4.53] in moving the second reading said: This Bill is purely an administrative one. The object is to enable the Government from time to time to decide that the timber lands of the State shall be administered by any Minister of the Crown that may be deemed desirable. In the Land Act, 1898, and subsequent amendments it was provided that the timber country and all other lands, except mining leases and such like, should be administered by the Minister for Lands. In March, 1912, the Reclassification Board reported on the matter and this is an extract from their report:—

> Owing to the nature of the duties to be performed by the Forestry Department, the Commissioners are of opinion that the control of this department should be removed from the Lands office, and recommend that it should be placed under the Minister for Mines. It is desirable that the Forestry Department, whose principal interest lies in the direction of the non-alienation of timber country, should be under different control from the Lands Department, whose principal interest lies in the direction of clearing and settling land.

The Government decided to adopt the recommendation of the board and a transfer was effected as from the 1st July last. The reason for the transfer is clearly expressed in the extract from the report of the Reclassification Board, which I have just read. Two important industries have to be safeguarded, timber and agriculture. The Minister for Lands is apt to be unduly influenced by his desire to promote land settlement, and it could happen, in his eagerness to develop the agricultural industry, that he might prejudicially affect the timber industry. Apart from that, the fact of having very often to reconcile conflicting recommendations, a recommendation from the Inspector of Forests and one from the Under Secretary, the two recommendations, perhaps, being diverse, that fact has very often placed the Minister for Lands in an awkward position. With each department under different Ministers, the interests of both industries are likely to be conserved, more likely than under existing conditions. I move—

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

Hon. W. KINGSMILL (Metropolitan) [4.55]: I have much pleasure in supporting the Bill, if for no other reason, for this; that some months ago, as president of the Forest League of Western Australia, I had the honour to introduce a deputation to the Minister on this point. It has long been recognised by the League, and outside, that the position of the Minister for Lands under the present Act is an anomalous one. He had to do his best for land settlement, and at the same time he had to preserve the forests from destruction. The position was altogether intolerable and I am glad to have the opportunity of supporting this little Bill, which will put an end to an anomalous state of affairs.

Hon. W. PATRICK (Central) [4.56]: It struck me that in this measure it might be necessary to define the forest lands, so that it might be known which is forest country to be reserved and which is land for settlement.

The Colonial Secretary: They are defined.

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—LUNACY ACT AMENDMENT.

*Second Reading.*

The COLONIAL SECRETARY (Hon. J. M. Drew—Central) [4.58] in moving the second reading said: This Bill is rendered necessary owing to a recent ruling by Mr. Justice Burnside. A man named Rudolph Hein was an inmate of the Claremont Hospital for the Insane for about five years. His relatives in Germany had repeatedly written to the department urging that he should be liberated. The Government, on the advice of the Inspector General of the Insane, were prepared to set him free provided his relatives paid for his conduct from Western Australia to Germany, and were prepared to take charge of him there. They would not consent to any such suggestion and they desired simply that Hein should be set free in Western Australia in order that he might secure a remedy for an imaginary injustice which affected his mind. We also received communications from the Imperial authorities and from the Kaiser. In addition we were communicated with by the Privy Council. A big file of papers has been built up on the question of this man's case. The ex-Chief Justice, Sir Henry Parker, conducted an inquiry and satisfied himself that the man was insane. A reputable firm of solicitors took up the matter, at the request of the relatives of Mr. Hein in Germany, and after due inquiry decided to take no further action. Recently the relatives sent out some money and a solicitor decided to test the matter in the Supreme Court, not on the ground of the sanity of Hein, but on the ground that he was illegally detained, owing to a defective document. The point which was raised succeeded and Mr. Hein was liberated. He was re-arrested shortly afterwards, brought before the police court and a number of doctors appeared and gave evidence with the result that the police magistrate was satisfied he should be sent again to the Claremont Hospital for the Insane. The unfortunate man is suffering from delusions and imagines he has been persecuted and there is no doubt it would be a great danger to the community or a portion of the community if he were liberated. He has made charges against public officials and also against ex-Ministers of the Crown. Rudolph Hein was set free on a variety of grounds:—1, the doctors, in accordance with custom, gave a certificate that he was insane but they should have attended the court and given evidence before the magistrate. 2, He was not wandering about the streets. 3, There was no evidence that he was without sufficient means of support. 4, There was no evidence that he was discovered under circumstances that denoted an intention to commit a crime. 5, There was no evidence that he was without proper care and control and was being ill-treated. But there was abundant evidence of his insanity. Yet, because the justices who heard the case had not paid sufficient attention to details the man was illegally committed. The Inspector General of the Insane has informed me that similar defects exist in connection with the documents relative to several and indeed to a great number of the inmates now in the institution. It would follow that if applications were made to the Supreme Court, a very large number of them would be set free. Thus the Bill has been drafted to validate the holding of the present patients in the hospital in so far as technical errors in documents are concerned and to provide that in future no patient who is really insane and a fit subject for detention shall claim his release because the magistrate's order or the doctors' certificate relating to him was not strictly in accordance with the law. Clause 2 of the Bill amends Section 5 of the principal Act, because that section is somewhat obscure. For instance, it uses the expression "deemed to be insane" but it does not state by whom deemed; in fact, the exact meaning of this expression is extremely doubtful. Further, the section of the principal Act does not provide for the arrest of a lunatic who is simply not under proper care and control, and before he can be arrested under this section he must be

found "wandering at large." Certain remarks which Mr. Justice Burnside recently made throw some doubt on the real meaning of the expression "wandering at large," so provision is made that a lunatic may be arrested if he is not under proper care and control. The amendment further defines more clearly the circumstances under which police officers may arrest lunatics without warrant. By Clause 3 the word "complaint" is substituted for the word "information." The former is the proper word in our law, as that is the word used in the Justices Act. In regard to Clause 4, it is very inconvenient for medical men who have certified to the insanity of a person to attend personally in court. It has never been done before in the history of the State and would not be done now except under the interpretation of the law as set forth during the recent case. Clause 5 proposes the insertion of a new section divided into three subsections. By these it is proposed to provide that when an order or other document relating to a lunatic is before the Supreme Court, if there is any defect in such document the court may amend it in accordance with the true facts of the case. The new section provides further that if an action is brought against any superintendent of a hospital for the insane or licensed house by any person confined therein as a lunatic, the court may treat the order as if it were amended in accordance with the true facts of the case, disregarding any informalities therein. The proposed section provides that when any person is brought before the court on an application for his release from a hospital for the insane or licensed house, the court need not grant his release if it appears that such person is in fact insane and that he ought to be kept under restraint either for his own protection or benefit or for the protection of the public generally. This clause also provides for the insertion of a new section covering cases in which any of the orders have been lost. The proposed new section will allow a copy to be used in place of the original. Clause 6 validates all orders made under the principal Act for the detention in a hospital for the insane or licensed house of any person notwithstanding that there is any omission or defect in the order. This will have the effect of validating the orders under which the greater proportion of the patients at the Claremont Hospital for the Insane are now held. Clause 7 provides for the Governor substituting new forms for those used under the principal Act. Amendments in the forms will be necessary, owing to this proposed legislation, and it will be more convenient that these amendments should be made by the Governor than that Parliament should treat with such matters of detail. Clause 8 proposes an amendment providing that no order or other document shall be questioned on the ground of any want of form or want of compliance with the forms prescribed. In Rudolph Hein's case one of the documents was impeached because it did not state the exact place at which the lunatic was examined. It stated "Perth" instead of "Perth Public Hospital," and in consequence it was declared to be defective. Clause 9 provides an amendment to make it clearer in what way the Justices Act is to apply to proceedings under this measure. The Justices Act provides that in cases of simple offences or breaches of duty any one justice may grant a remand. This amendment is intended to make the Justices Act apply as if proceedings under the Lunacy Act were for breaches of duty. Clause 10 makes these amendments retrospective without, however, invalidating anything already provided under the principal Act. I move—

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

Hon. D. G. GAWLER (Metropolitan-Suburban) [5.7]: Many of the provisions of this Bill and in fact all of them, generally speaking, are very advisable. Undoubtedly it was wrong that Rudolph Hein should be released on quite a formal technicality, although the judge in court and I think everyone else was satisfied that he should be under detention. However, he was let out and then almost immediately after his release he was rearrested. It is to avoid the recurrence of this sort of thing that the Bill is brought

forward. So far as I can see, there is no grave objection to any portion of the measure, in fact, I think all portions of it will be useful. There is one point to which I would like to draw the attention of the House, and that is in Clause 4, which on the face of it rather encroaches on what we have always regarded as the liberty of the subject. Where a complaint is made and witnesses are called the defendant should have an opportunity to cross-examine them, but the effect of Clause 4 will be to deprive him of that right. The Government possibly are following the precedent laid down in the procedure for prosecutions for offences in regard to adulteration of milk in which the certificate of the analyst is accepted as prima facie evidence. In such cases it is provided that this shall be so unless the defendant requires the analyst to be called, and in this event the analyst is called and is subject to cross-examination. I suggest that to meet this objection words be inserted to permit the accused person to require the doctors or any of them to be called for cross-examination.

Hon. Sir E. H. Wittenoom interjected.

Hon. D. G. GAWLER: A man is not insane until he is proved to be insane, and such proceedings constitute simply an inquiry into his sanity. We must bear in mind that in such cases, not only in cases coming under Clause 4, but in other cases of apparent hardship, the detained person always has a right of application to the court of *habeas corpus*, and in that respect he is safeguarded. Hein was able to apply to the court of *habeas corpus*, and notwithstanding that he was under detention for a considerable time, he was brought up and his detention was inquired into. If this measure is passed in its present form the accused person would have his right to *habeas corpus*, but we have no right to put a man in a house of detention and to take away from a person alleged to be insane the rights given him by the common law. I suggest that the Colonial Secretary should accept an amendment to this effect. I can see no objection to the remainder of the Bill. The validating of other orders and procedures which have taken place heretofore constitute a principle which it is not always advisable to adopt, but the persons concerned have a right to *habeas corpus*, and if any injustice has been done it can be remedied. With these remarks, I support the second reading.

Hon. J. F. CULLEN (South-East) [5.12]: I have a doubt regarding Clause 4, but for a different reason from that expressed by Mr. Gawler. I recognise that it is necessary to pass a Bill of this kind. It would be a terrible condition of affairs if the Asylum for the Insane could be half emptied of its inmates on the ground of informalities, and thus be made a danger to the public, but in removing that danger there is no need to create a danger on the other side. I hold that it is a perilous thing to accept medical certificates without those certificates being supported by the presence of the medical men, and on the strength of those certificates to make an order committing a man to an asylum. It is all very well to say that there is a remedy under the Habeas Corpus Act, but it is a very different thing to try to get out, when a man is in, from trying to keep out before he is put in. I need not remind the Colonial Secretary of the terrible abuses in connection with bogus doctors, who have given certificates, on the strength of which sane men have been deprived of their liberty and held by force. It is not simply bogus doctors or persons using bogus certificates, but there are renegade doctors who have lost their standing who might give certificates, and such certificates might be accepted in the courts with which such cases are dealt. I certainly shall vote against Clause 4. If it has been a common practice heretofore to accept certificates because they purported to be certificates of medical men, then I say there has been very grave danger. Whilst admitting that there will be some trouble involved consequent upon the adoption of Mr. Gawler's amendment, I still have to point out that it is a most serious and grave matter to send a man into the lunatic asylum. The matter is serious

enough to justify our insisting that qualified medical men shall apear in Court to support their certificates; and not only that, but to prove their bona fides, and the value of their certificates. Subject to this reservation, I shall vote for the Bill.

The COLONIAL SECRETARY (Hon. J. M. Drew—Central—in reply) [5.16]: Clause 4, to which exception has been taken, reads as follows:—

> The following paragraph is hereby added to Subsection one of Section seven of the principal Act, that is to say—
>
> It shall not be necessary that the medical practitioners shall attend personally before the justices unless they are specially ordered by the justices so to do, and the justices shall be deemed to have called such medical practitioners to their assistance, within the meaning of this section, if they have the certificates of such practitioners before them.

There is no doubt that a bench of justices coming to the conclusion that it is necessary to have the physicians present would call upon them to attend.

Hon. D. G. Gawler: But take the average justice!

The COLONIAL SECRETARY: That is the course which they would adopt where they thought it necessary. In nine cases out of ten, however, there is no doubt whatever as to the insanity of the person who is apprehended. Usually the unsoundness of mind is thoroughly manifest, manifest to even an amateur, to a man who has neither knowledge of, nor the slightest skill in, lunacy matters. Mr. Gawler has referred to the terrible abuses which prevailed in past times, in other parts of the world. We all know of those abuses; but under the legislation of this State there is an additional safeguard. Apart from the certificate of the two doctors, the person charged with unsoundness of mind is to be sent to the Hospital for the Insane at Claremont, where there is a staff of three doctors, who make regular examinations.

Hon. Sir E. H. Wittenoom: They are experts.

The COLONIAL SECRETARY: In addition, we have official visitors, who attend at the institution once a quarter, interview every inmate, and question him or her, and are therefore in a position to report whether or not he or she is insane. One of the two visitors is a thoroughly qualified medical man, and, in some degree, an expert in lunacy.

Hon. D. G. Gawler: What objection is there to the amendment?

The COLONIAL SECRETARY: One strong objection to it is that it is not necessary, because if a doctor would sign a false certificate in the first instance, that doctor would be fully prepared to go into the witness box and support his false certificate. What would be the use of putting such a doctor into the witness box for cross-examination? What is the use of anyone cross-examining a doctor? The doctor would merely express an opinion.

Hon. D. G. Gawler: But a doctor is not absolutely infallible.

The COLONIAL SECRETARY: Even if the doctor made false statements on oath in this connection, he could hardly be convicted of perjury, because unless one could dive into the recesses of his mind it would be impossible to prove that he was stating what he knew to be false.

Hon. D. G. Gawler: But one might prove that the doctor was wrong.

The COLONIAL SECRETARY: Under the suggested amendment it would be necessary to call two doctors, and the fees would be heavy. About thirty lunatics enter the Claremont Hospital for the Insane every quarter. At a fee of £5 for each doctor, the carrying of the amendment would therefore mean an expenditure of £300 per quarter for something that is not really necessary. Such a practice has never obtained in the past; the interpretation of the law has not been in accordance with any such practice; and therefore we should be furnished with some good reason for introducing a practice of this nature before we make an innovation which would involve such heavy expense.

Hon. D. G. Gawler: It is not proposed to call for the attendance of the doctors unless the accused asks for it.

The COLONIAL SECRETARY: If the justices come to the conclusion that it is necessary and advisable to cite the doctors, they have the power to cause them to appear.

Hon. D. G. Gawler: They are not infallible.

The COLONIAL SECRETARY: They may not be infallible, but the mere calling upon them to appear in the witness box would not make them infallible.

Hon. D. G. Gawler: I mean, the justices are not infallible.

The COLONIAL SECRETARY: The justices exercise common sense, at any rate; and they are in a fair position to decide whether or not an accused person is sane. If they have any doubt on the point, they would call upon the medical men to attend. I think the point may safely be left to the discretion of the justices.

Question put and passed.

Bill read a second time.

*In Committee.*

Hon. W. Kingsmill in the Chair; the Colonial Secretary in charge of the Bill.

Clauses 1, 2, 3—agreed to.

Clause 4—Amendment of Section 7:

Hon. D. G. GAWLER: I move an amendment—

*That in line 5, between "do" and "and," the words "or unless so required by or on behalf of the alleged insane person be inserted."*

I can see no objection to the insertion of these words, even if there is no merit in them. The Colonial Secretary's main objection appears to be that the justices already have the power to order the doctors to come before them, and that the justices may be expected to do so on all proper occasions. In my opinion, we ought not to assume that justices will do their duty on all occasions. Another objection of the Colonial Secretary is that heavy expense would be incurred, but that ought not to be allowed to weigh for one single moment in this connection. A principle of English law which has always been looked upon as highly important is that an accused person should be allowed to cross-examine his accusers. The Colonial Secretary said that the doctors are bound to be right, that they would not give a certificate unless it was right.

The Colonial Secretary. I never said anything of the kind. What I did say was that if doctors would give a false certificate in the first place, they would not hesitate to go into the witness box to support that false certificate.

Hon. D. G. GAWLER: We should allow accused persons the opportunity of opposing the certificates. The only objection to the point raised by the Colonial Secretary relates to expense, which, I repeat, we ought not in the circumstances to consider.

Hon. J. CORNELL: I favour the amendment, for the reason that the doctors should in every case attend the hearing. The clause as it stands goes to the opposite extreme, making it unnecessary for the doctors to attend unless specially called upon to do so. I am not prepared to leave such a matter to the discretion of justices. Indeed, some justices I have known ought, in my opinion, to have a doctor called in to them. A close analogy exists, as regards results, between a charge of lunacy and one of crime. Under the Lunacy law, a person is liable to be incarcerated for life. Therefore, persons charged with unsoundness of mind should be allowed the opportunity of engaging counsel and defending their case, and, most assuredly, the certifying doctors should be available for cross-examination. The necessity for this clause is, I believe, purely the result of the Hein case. Even if there were a dozen Hein cases, however, it is better that the country should be put to a little expense than that one single member of the community should suffer injustice.

The COLONIAL SECRETARY: I offer no objection to this amendment. I was under the impression that Mr. Gawler opposed the whole of the clause.

Hon. D. G. Gawler: No.

Hon. Sir E. H. Wittenoom: It is permissive, not mandatory.

The COLONIAL SECRETARY: Every year dozens of persons are arrested and charged with being of unsound mind, and, if the doctors were to be called in every case, the expense would be heavy. Mr. Gawler's amendment, however, I consider quite reasonable. If a man is in a condition to say that he desires to have the doctors called for the purpose of cross-examination, then it is a pretty fair indication that the man is not of unsound mind.

Hon. J. F. CULLEN: I should certainly have asked the Committee to reject the entire clause but for the circumstance that then the Bill would not accomplish what the Minister desires, namely to prevent a crop of litigation. As amended, the clause will meet that difficulty, and also meet the intention of the Minister, and, further, meet pretty fairly what I desire.

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

Clauses 5 to 10—agreed to.

Title agreed to.

Bill reported with an amendment.

*House adjourned 5.32 p.m.*

# Legislative Assembly,

*Tuesday, 15th December, 1914.*



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

## PAPERS PRESENTED.

By the Minister for Works: 1, Regulations under the Workers' Homes Acts, 1911, 1912, and 1914. 2, Report of Public Works Department for the year ended 30th June, 1914.

## PAPER—PROPOSED AGREEMENT WITH THE AUSTRALIA WHALING COMPANY.

Hon. R. H. UNDERWOOD (Honorary Minister—Pilbara) [4.37]: I beg to present a copy of a proposed agreement between the Government of Western Australia and the Australia Whaling Company, Limited, and I move—

*That this paper do lie upon the Table of the House.*

Mr. HOLMAN (Murchison) [4.38]: Before that motion is carried, I wish to ask the Premier whether he will place upon the Table of the House the whole of the papers connected with this matter before the agreement is completed or a license is granted.

The PREMIER (Hon. J. Scaddan—Brown Hill-Ivanhoe) [4.39]: Yes; if hon. members think it advisable, I will lay the whole of the papers on the Table as desired.

Question put and passed.