

ADJOURNMENT.

The House adjourned at 10.55 p.m.
until the next day.

Legislative Council.

Thursday, 29th September, 1898.

Personal Explanation: Joint Committee and Official Receiver (correspondence read)—Papers presented—Question: Imprisonment of M. J. H. Davison—Health Bill, in Committee, Schedules; reported—Re-appropriation of Loan Moneys Bill, third reading—Interpretation Bill, Legislative Assembly's dissent from Council's Amendments, in Committee—Local Inscribed Stock Act Amendment Bill, second reading; in Committee, reported—Adjournment.

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

PRAYERS.

PERSONAL EXPLANATION: JOINT COMMITTEE AND OFFICIAL RECEIVER, INQUIRY.

HON. R. S. HAYNES: Before the business of the House commences, I desire to make a personal explanation in reference to certain statements which have been made concerning myself and other members of this House, in regard to the Joint Select Committee appointed to inquire into the administration of the Bankruptcy Act by the Official Receiver. My attention has been drawn to certain remarks which, to my mind, are tantamount to a charge of impropriety on the part of some hon. members, including myself. The charges I refer to are that during the course of the inquiry I, as chairman of the Committee, refused to allow Mr. Wainscot to be present, refused to give him copies of the evidence taken from day to day, and refused to summon witnesses who would give evi-

dence on his behalf. I may here say that Mr. Wainscot applied for admission to the proceedings of the Joint Committee, and I informed him, after discussing the matter with members of the Committee, that he could not be admitted, and that he would either have to apply to the President of the Legislative Council or to the Speaker of the Legislative Assembly. I then received from Mr. Wainscot the following letter:—

Office of Official Receiver, Supreme Court, Perth, W.A., 26th September, 1898.

The Chairman of the Select Committee re Senior Official Receiver's Department.

Sir,—I have the honour to make application to be present on the examination of witnesses called in this matter, in order that I may cross-examine and defend my department. I called this morning, but to my astonishment was refused admittance.

I have the honour, sir, to remain your obedient servant,

(Signed) H. WAINSCOT,
Senior Official Receiver.

To that I replied in writing, informing Mr. Wainscot that the Standing Orders forbade such a proceeding, and suggesting that application be made to either the President of the Legislative Council or to the Speaker of the Legislative Assembly. In reply to that, on the same date, I received this letter:—

Office of Official Receiver, Supreme Court, Perth, W.A., 26th September, 1898.

The Chairman of Select Committee re Senior Official Receiver's Department.

Sir,—With all due respect to the Standing Orders, I have the honour to submit that, only out of fairness to myself, I should have an opportunity of doing what I desire, namely, that everything be threshed out to its utmost, and that cannot be done ex parte. I should feel obliged by your supplying me daily with a copy of the evidence taken, and I also beg to notify that I intend to call witnesses. Will you kindly inform me whether they are to be subpoenaed through the Committee.

I have the honour, sir, to remain your obedient servant,

(Signed) H. WAINSCOT,
Senior Official Receiver.

P.S.—Will you please let me have a copy of the Standing Orders?

With reference to this application to be supplied daily with copies of the evidence taken, Standing Order 326 is in these terms:—

The evidence taken by any Select Committee and documents presented to such Committee, which have not been reported to the Council, shall not be disclosed or published by any

member of such Committee, or by any other person.

Therefore it was impossible for me to supply him with copies of the evidence taken from day to day, and I accordingly wrote to him as follows:—

Legislative Council, 26/9/98.

The Senior Official Receiver.

Sir,—I have the honour to acknowledge the receipt of your second letter of this date. You seem to have an imperfect knowledge of the proceedings before Select Committees. I am following the usual and proper procedure. Your request to be supplied daily with notes of the evidence taken cannot be complied with. Standing Order 326 forbids it. I have no power to supply you with a copy of the Standing Orders. You should apply either to the President of the Legislative Council or the Speaker of the Legislative Assembly. You will, in due course, be afforded a full opportunity of making any statements you may wish to the Committee, but your desire to call witnesses cannot be complied with, and shows you misunderstand the proceedings. The Committee will only be too glad to call before it any person who can assist in giving information which is material to the inquiry.

I have, etc.,

R. S. HAYNES, Chairman.

In reply to that letter, yesterday afternoon I received this:—

Office of Official Receiver, Supreme Court, Perth, W.A., 28th September, 1898.

The Chairman of Select Committee re Senior Official Receiver's Department; Legislative Council.

Sir,—I have the honour to inform you the following gentlemen can give material evidence upon this inquiry:—His Honor the Chief Justice, Supreme Court; Mr. Salmon, manager N.S.W. Bank; Mr. Diamona, merchant, Fremantle; Mr. Wolfe, accountant, Perth; Mr. Alexander (Falk and Co.), Fremantle; Mr. Alexander Monger (Dalgety and Co.), Fremantle; Mr. F. A. Moseley, Registrar Supreme Court. I shall be glad if you have them called.

I have the honour to be, sir, your obedient servant,

H. WAINSCOT.

That I received at 5 o'clock yesterday afternoon, and I handed it to the Clerk of the Legislative Council with a view of having the witnesses summoned. That, I think, is a satisfactory refutation, and will show that so far as summoning witnesses, I could not allow him to do so, but if the names of the witnesses are given, the Committee will call them. The names of the witnesses have been handed to the Clerk, so that the persons may be summoned. The Committee have been sitting two days and adjourned until Saturday, and probably these witnesses

will be called early next week. To be told that the Committee are hounding a man down, which are the words used to us, and that we are practically denying justice, is a charge which I certainly cannot sit down under. I regret exceedingly that any person holding a responsible position, and to whose words some responsibility attaches, should so far forget himself and his position as to make an attack on other persons. I do not know from whom the remarks emanated—I do not know who gave the information, but I say that every member of the House, and every member of the Committee will do what he considers right, and in doing his duty he can do nothing more. I do not fear or favour one side or the other, and I believe every member on the Committee is acting with the same desire, to get the fullest information. There should be no desire to accuse the members of what I practically call absolute impropriety. It is a very serious matter, and I take this opportunity of repudiating the charge, and saying the statement is absolutely untrue.

THE PRESIDENT: I would like, as President, to say that I received a letter from Mr. Wainscot—it was a joint letter to myself and the Speaker of the Legislative Assembly—complaining that he had been refused admittance to the Select Committee, and also asking to be supplied with copies of the proceedings. I directed the Clerk of Parliaments to write and inform Mr. Wainscot that the only way to obtain what he wanted was by petitioning Parliament. Parliament had appointed the Select Committee, and could authorise the Select Committee to give copies of the evidence taken before the Select Committee, and could also allow Mr. Wainscot to be present. Parliament is the only power that can grant Mr. Wainscot the privilege he asks. If that gentleman presents a petition, no doubt his request will be granted.

PAPERS PRESENTED.

By the COLONIAL SECRETARY: By-laws of Leederville Municipality. Government sailing and rowing boats at Fremantle, Return as ordered.

Ordered to lie on the table.

QUESTION : IMPRISONMENT OF MR. J. H. DAVISON.

HON. R. S. HAYNES asked the Colonial Secretary:—1, If he is aware of the nature of the circular sent to hon. members by Mr. J. H. Davison concerning his imprisonment. 2, Will he make enquiries and inform the House of the facts of the case referred to?

THE COLONIAL SECRETARY (Hon. G. Randell) replied: I am aware of these letters, because I got a letter myself, and I have made some inquiries and obtained some information as to the facts of the case. The information is from the Commissioner of Police, and perhaps the hon. member would like it read. The Premier told me that he had received something like 150 letters from this man.

[Letter read by the Clerk.]

HON. R. S. HAYNES: I have to thank the Colonial Secretary for making inquiries into this matter.

HEALTH BILL.

IN COMMITTEE.

Consideration in Committee resumed.

Schedules—agreed to.

Preamble and title—agreed to.

Bill reported with amendments, and the report adopted.

REAPPROPRIATION OF LOAN MONEYS BILL.

The Bill having been returned to the Legislative Assembly with suggested amendments, and these amendments having been accordingly made by the Assembly, the Bill was now

Read a third time, on the motion of the COLONIAL SECRETARY, and *passed*.

INTERPRETATION BILL.

The Legislative Assembly having disagreed to certain amendments made by the Council in this Bill, the Assembly's reasons for the same were now considered.

IN COMMITTEE.

Amendment No. 1—Page 8, clause 19, strike out the whole:

HON. R. S. HAYNES moved that the Council insist on the amendment. This Bill was referred to a Select Committee to inquire and report. As stated in the report, the Bill was in some respects out of joint, as it referred to two sets of

statutes dealing with the same matters. That, perhaps, was not a very material point, but this clause went on to deal with the construction of the words "may" and "shall." The report of the Committee on this part of the Bill was as follows:—

The Committee consider that it would be a dangerous innovation in the law to allow section 19 to become law. However desirable it may be to give an interpretation of the words "may" and "shall," it is fraught with too much danger. These words have from time to time received judicial interpretation, which is based upon the particular clause where the words appear and the effect which the Legislature obviously intended the words to have, and at the present time little, if any, difficulty is experienced in assigning to the words the meaning which the Legislature intends. The Committee recommend this clause be struck out.

The words "may" and "shall" occurred in several Acts of Parliament, many of which had received judicial interpretation, and in some instances the word "may" had, by reason of the context, been construed to be mandatory, as in other instances the word "shall" had been held to be discretionary. But if this clause were passed, all these decisions as to the construction of the words would be sent to the wind. He could not imagine a more dangerous thing than to allow this clause to pass, seeing that it dealt with not only future Acts, but with past Acts. Under the clause, where an Act said that on complaint a justice "shall" issue a warrant, the discretion of the magistrate would be taken away altogether; and by some draftsmen "may" and "shall" were treated as almost synonymous. The legislature of Great Britain during the last 300 or 400 years had seen no necessity for introducing such a clause, for the simple reason that the danger of it was seen. In the clause an endeavour was made to give "may" and "shall" meanings which they did not bear in ordinary acceptance in English.

HON. F. M. STONE: Perhaps the objection might be overcome by amending the clause, providing that it should not apply to cases on which there were judicial decisions to the contrary. There was doubt as to the construction of these words, and it would be better to have some conclusive meaning attached to them. At present the construction of the meaning of either word depended on

the mind of the judge; but with this amendment it would be known that "shall" was meant to be mandatory, and it would not be left to the decision of the court. He could mention many Acts in which he would defy anyone to tell how the words "shall" and "may" ought to be construed; but the amendment he had suggested would settle the question once and for all, while not affecting past decisions.

HON. R. S. HAYNES: The clause could not be amended now by the Council, although it might be amended in the Legislative Assembly.

THE PRESIDENT: The Council could not amend the clause now, and the amendment of the Legislative Assembly must be either accepted or refused.

HON. F. M. STONE: Could a Committee not be appointed to consider the point, and suggest an amendment in another place?

THE PRESIDENT: The only plan would be to get some hon. member in another place to move the amendment.

Motion—that the amendment be insisted on—put and passed.

No. 2.—Second Schedule, add the following to the end of the Schedule, to stand as 1:—

That in all cases where, on any summary conviction under this Ordinance of any person not being a convict, the sum adjudged by one justice to be paid shall exceed £10, or by two or more justices shall exceed £20, or the imprisonment, whether adjudged by one or more justice or justices, shall exceed one calendar month, any person who shall think himself aggrieved by such conviction may appeal to the next court of general or quarter sessions, which shall be holden not less than twenty days after the day of such conviction, at Perth, in the said colony, unless such conviction shall take place within one hundred miles of Albany, in the said colony, in which case any appeal from such conviction shall be to the next court of general or quarter sessions, holden not less than ten days after the day of such conviction, at Albany aforesaid.

HON. R. S. HAYNES moved that this amendment be insisted on. This schedule was inserted in a number of Acts of Parliament, and he wanted it still kept on the statute book for purposes of reference.

Put and passed.

Resolutions reported, report adopted, and a message accordingly transmitted to the Legislative Assembly.

LOCAL INSCRIBED STOCK ACT AMENDMENT BILL.

SECOND READING.

THE COLONIAL SECRETARY (Hon. G. Randell), in moving the second reading, said:—This Bill is simply to rectify an omission which occurs in section 8 of the Local Inscribed Stock Act of 1897 in line 9. Section 8 of the Local Inscribed Stock Act says, "in each half-year ending as aforesaid an additional sum for the formation of a sinking fund, equal to one and a half per centum on the total nominal amount of such stock." The words "per annum" have been left out, and this Bill has been introduced to correct the mistake. I move the second reading.

Question put and passed.

Bill read a second time.

IN COMMITTEE.

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

ADJOURNMENT.

The House adjourned at 5.10 p.m. until the next Tuesday.

Legislative Assembly.

Thursday, 29th September, 1898.

Papers presented—Coolgardie Goldfields Water Supply Construction Bill, in Committee, new clause (8), reported—Goldfields Act Amendment Bill, second reading—Land Bill, in Committee, postponed parts 11 and 12 considered, reported—Agricultural Lands Purchase Act Amendment Bill, second reading; in Committee, reported—Annual Estimates, in Committee of Supply, debate resumed on financial policy, adjourned—Prevention of Crimes Bill, in Committee, new clauses, reported—Early Closing Bill, second reading; in Committee, reported—Adjournment.

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

PRAYERS.