

House on the subject, the best course to pursue would be to adjourn the debate *sine die*.

Debate adjourned accordingly.

The House adjourned at four o'clock, p.m.

LEGISLATIVE COUNCIL,

Friday, 10th August, 1883.

Native Prisoners for Rottnest—Telegraph Line between Roebourne and Kimberley—Expenditure on Government House, Perth—Width of Tires Bill, and the Roads Boards—Native Aboriginal Offenders Bill: in committee—High School, Perth, Mortgage Bill: second reading—Pearl Shell Fisheries Bill: third reading—Adjournment.

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

PRAYERS.

NATIVE PRISONERS FOR ROTTNЕСТ.

MR. BROWN, without notice, asked the Colonial Secretary whether the Government were aware that something like twenty-seven native prisoners had just arrived at Geraldton from the North, under sentences of imprisonment, and whether it was the intention of the Government to bring on these prisoners, in the usual course, and send them to Rottnest, in view of the already crowded state of the native prison on that island? He asked the question now, without notice, because he understood the *Rob Roy* would be leaving Geraldton for Fremantle next day, and probably, unless other arrangements were made, these natives would be brought down by that steamer. He did not know whether the Governor had the power to have these prisoners detained at Geraldton instead of having them sent on to Rottnest; at any rate, the question of disposing of so large a number of native offenders elsewhere than at Rottnest was one which he thought was well

worthy of consideration, in the face of the Colonial Surgeon's report on the condition of sick natives on the island. Dr. Waylen said: "The prison is, I consider, far too small for the number of men at present confined in it. There is accommodation for 106 at the most; at the outbreak of the epidemic there were 170, and in May last 179. With this crowded state, the cold wet weather, and the very infectious character of the malady, added to the nature of these aborigines to despond and rapidly fail in vitality, the number of deaths which have taken place can hardly be wondered at." He thought this was a very serious matter, and, had there been time, he should have felt it his duty to have communicated personally with the Governor on the subject of making some provision for the disposal of the twenty-seven additional natives now on their way from the North.

THE COLONIAL SECRETARY (Hon. M. Fraser) said the Government were aware of the arrival at Geraldton of a batch of native prisoners, and, if the hon. member would give notice of his question, he should be prepared to answer the hon. member.

TELEGRAPH LINE BETWEEN ROEBOURNE AND KIMBERLEY.

MR. GRANT, in accordance with notice, asked the Colonial Secretary, "If the desirability of constructing a telegraph line between Roebourne and Kimberley was under the consideration of the Government?" He asked the question because it appeared to him highly desirable that Kimberley should be placed in telegraphic communication with this part of the colony. It seemed to him it would be hardly possible for the Government to manage a district so far away from head quarters, unless there were some means of communication.

THE COLONIAL SECRETARY (Hon. M. Fraser) said no doubt the extension of the telegraph line about to be constructed between Northampton and Roebourne was a question which, sooner or later, must occupy the attention of the Government, and probably of the Council, but the Government was not prepared at this date with any proposals in the matter.

EXPENDITURE ON GOVERNMENT HOUSE, PERTH.

MR. GRANT, in accordance with notice, asked the Colonial Secretary, "What amount of expenditure had taken place at Government House, in furniture and repairs, within the last seven years?" As a select committee had been appointed to consider what further expenditure should be incurred in improving the house and grounds, he thought it was but right that the Council should be informed what amount had already been expended.

THE COLONIAL SECRETARY (Hon. M. Fraser) said the matter would have his attention.

WIDTH OF TIRES BILL AND THE ROADS BOARDS.

MR. CAREY, in accordance with notice, asked the Colonial Secretary to lay on the table of the House the replies of the various Roads Boards to the circulars sent out by the Government after the session of 1882, on the subject of the Width of Tires Bill; also whether the Government intend to introduce any measure dealing with this question during the present session? It would no doubt be in the recollection of hon. members that when the Width of Tires Bill was withdrawn last year, the Colonial Secretary made a statement to the effect that circulars would be sent to the various Roads Boards requesting their views as to the provisions of the Bill, and that when these replies were received the Government would endeavor to frame a measure which would be acceptable to the country.

THE COLONIAL SECRETARY (Hon. M. Fraser,) in laying the papers asked for on the table, said the Government had no intention at present of moving in the matter of introducing another Bill dealing with the question.

NATIVE ABORIGINAL OFFENDERS BILL.

The House then went into Committee for the consideration of this Bill—

Clause 1.—Short title:

Agreed to.

Clause 2.—Repeal of Acts:

Agreed to.

Clause 3.—"The following words in this Act shall have the meanings hereby assigned to them, that is to say:—

"(1) The word 'Magistrate' shall mean a Government Resident, or a Resident Magistrate, or a Police Magistrate, and shall not be taken to mean any other Justice of the Peace.

"(2) The words 'General Quarter Sessions' shall mean the Courts established under the provisions of the Act 9 Vic., No. 4.

"(3) The words 'Aboriginal Native' shall mean any person of the whole or half-blood of the aboriginal native race."

MR. BROWN moved that sub-sections 1 and 2 be struck out. This was the first of the series of amendments which, as hon. members were aware from the printed papers placed before them that evening, he proposed to move in the Bill, and, if his amendments should meet with the approval of the majority—as he had reason to believe they would—the sub-sections which he moved to strike out in this clause would not be necessary. The great point at issue between the Government and he thought he might say the majority of the members of that House, was this: the Government desired, or rather their Bill proposed, that the power of dealing summarily with native offenders shall be limited to paid magistrates, and that the honorary justices shall be debarred altogether from exercising any summary jurisdiction in such cases. On the other hand, what he desired, and what those who were acting in concert with him desired, was that we should follow the lines of British legislation as regards the power to exercise summary jurisdiction, namely, to vest such power in the honorary justices, and to give any two of these honorary justices the same summary powers as are given to a stipendiary magistrate—power to deal in a summary manner with any offence committed by a native, involving a sentence of any term not exceeding two years. Since the second reading of the Bill the Government, he noticed, had telegraphed to the South Australian and Queensland Governments asking them what term of sentence (if any) one or more justices, sitting by themselves, can inflict in out-

lying districts upon aboriginal offenders, and what term a resident magistrate can inflict? He thought the House was indebted to the Government for the steps they had taken in this matter to ascertain what the law is, in the other colonies, as regards summary jurisdiction. He was not aware it was in any way disputed that, so far as the mother country is concerned, the law there is, that in all cases where summary jurisdiction may be exercised it shall be exercised by the honorary justices, the only difference between the honorary and the stipendiary magistracy in this respect being that a paid magistrate may exercise the same jurisdiction as two or more unpaid justices. The reply received by the Government from Adelaide was that "special magistrates"—meaning, no doubt, stipendiary magistrates—"or two justices, may sentence aboriginals for any offence, not punishable by death, to one year's imprisonment." Precisely the same powers, as regards summary jurisdiction, as in England. The reply received from Queensland was that the highest sentence which may be given summarily is twelve months, but that, there again, two justices had the same power as a stipendiary magistrate, and the same law applied equally to whites and aboriginal natives. It would thus be seen that both in Queensland and South Australia, as well as in England, the same power as regards dispensing summary justice was reposed in any two honorary magistrates as there is in a stipendiary magistrate. It was understood on the occasion of the second reading of the Bill now before the House that it proposed to debar the honorary justices of this colony altogether from exercising this summary jurisdiction—that was how the Attorney General explained it; but since then, he had it on good authority that the Government did not intend to debar the honorary justices from exercising, in conjunction with a stipendiary magistrate, the summary functions contemplated by the Bill, and that all they intended was that these summary functions shall not be exercised by any two or more honorary justices acting by themselves. That, he submitted, would be establishing a practice for which there was no precedent afforded by British legislation, either in the mother country itself or in the

colonies. There was another issue between himself and those who were acting with him in this matter and the Government: the latter maintained it was a most improper thing to allow anything like the large powers now vested in any summary tribunal for dealing with native offenders to be exercised, and that all offences of a serious character should only be dealt with by the higher courts. He thought every hon. member would agree with the Government, to a certain extent, that where justice can be promptly meted out promptitude was a virtue, and that where the liberty of the subject, whether that subject be black or white, was involved, it was desirable, as far as possible, that the accused person should be tried before a court presided over by men trained in the law and accustomed to the administration of the law, and where they had the further protection of a jury. But, up to the present time, the law of this colony entrusted to a summary tribunal the right to sentence a native to the extent of three years—now proposed to be reduced to two—and it now became a question for that House to say whether that summary jurisdiction should be swept away or not. Personally, he was of opinion it would be highly undesirable, and for this reason: under the law as it now existed there was no chance of injustice being done, as the Governor was invested with extraordinary powers in respect of these native cases; he could, by warrant under his hand, order the immediate release or otherwise vary or mitigate the sentence of any native summarily convicted, if he thought, on consideration of the report of such conviction, that the sentence was not supported by satisfactory evidence, or that the circumstances of the case warranted any remission or mitigation of punishment. He wished hon. members to give their attention to these special powers very closely: they would be found in the 14th paragraph of the printed amendments, which he proposed to introduce, as subsequent clauses to the Bill. If hon. members would go further into the subject, they would see that, in no other instance, except in the case of aboriginal offenders, was the committing magistrate called upon to send a report of the conviction to the Colonial Secretary, as provided by the 10th clause of

the Bill,—a provision which he had retained in the new clauses which he proposed to introduce later on.

POINT OF ORDER.

THE COLONIAL SECRETARY (Hon. M. Fraser) rose to order. The only clause now before the committee was clause 3, and the hon. member was altogether out of order in dealing with any subsequent clauses.

MR. BROWN said he was merely endeavoring to show that, if his amendments were adopted, the sub-sections of the 3rd clause which he moved to strike out would not be required, and he wished to show why, in his opinion, they ought to be struck out.

THE CHAIRMAN OF COMMITTEES said the hon. member must confine his remarks to the clause under consideration, and not proceed to discuss subsequent clauses.

MR. BROWN: Then I will content myself by moving that the sub-sections of this clause be struck out—

THE ATTORNEY GENERAL (Hon. A. P. Hensman): When the hon. member for the Gascoyne said the other day he was going to move certain amendments upon this Bill, I understood him to say that he would have his amendments at once printed, so that they might be in the hands of members before we went into committee on the Bill. Now, for my own part, although I have had a copy of these amendments put in my hand this evening, I am bound to say I have had no opportunity of considering how they bear upon the particular sections of the Bill now before the committee, and it appears to me that we are placed in a somewhat inconvenient position, because we are asked to strike out all the parts of a clause defining the meaning of certain words in the Bill, and yet we have not the other amendments proposed to be made in the Bill before us, so as to be able really to appreciate the necessity for striking out these words. It is perfectly true they are all here, in print, but they have not been discussed nor considered in their relation to this clause; and the hon. member himself—perhaps it was inevitable—has not been able to refer to the bearing which the striking out of these words would have upon other clauses in

the Bill. Under these circumstances, I think the hon. member himself will admit that the discussion upon these amendments should be postponed, at any rate until we meet again.

MR. BROWN said he had no objection whatever to the discussion being postponed until any day the hon. and learned gentleman himself might choose to name.

Progress was then reported, and leave given to sit again on Monday, 13th August.

HIGH SCHOOL, PERTH, MORTGAGE BILL.

MR. BURT moved the second reading of a Bill to enable the governors of the High School, Perth, to raise money on mortgage. The hon. member said the reason why the Bill was introduced was this: the governors of the school had occasion lately to extend the buildings at present on the school site, and upon applying to the Government for a loan from the Post Office Savings Bank to enable them to fulfil the contract they had entered into, they were informed that the deed of grant under which they held the school site did not empower them to borrow money on mortgage, and the present Bill simply empowered them to do so. It empowered them to raise money not only on these buildings, but also upon any lands they may hereafter acquire. It was a power which had already been extended to many other institutions in the colony,—notably to the Oddfellows and the Freemasons in different parts of the colony, and also to Working Men's Institutes; consequently he anticipated no objection to the second reading of the Bill from the other side of the House.

THE COLONIAL SECRETARY (Hon. M. Fraser) said the institution the governors of which this Bill was intended to assist was one in which he had always taken great interest, but he found himself surrounded with some difficulties when he read the provisions of the Bill, the main difficulty being this,—whether if we gave the governors of this school the power here sought, other corporate bodies would not be equally entitled to the same consideration. He failed to see how the House could logically or consistently refuse to grant the same

privilege to any other institution of the same character, if it assented to this Bill. If it could be shown that there was any peculiar ground for granting this power to the governors of the school in question, he should be very glad indeed if it could be done, without prejudice to the claims of other corporate bodies holding grants from the Crown, in trust, for specific purposes. At present he could not see his way clear to support the Bill, though he had no intention to offer any active opposition to its second reading.

The motion for the second reading of the Bill was then agreed to.

PEARL SHELL FISHERIES BILL.

Read a third time and passed.

The House adjourned at a quarter past eight o'clock, p.m.

LEGISLATIVE COUNCIL,

Monday, 13th August, 1883.

Eastern Railway: Deviation in Second Section—Vote for a Botanical Garden at Perth—Message (No. 13): Assenting to Bills—Municipalities Act (1882) Amendment Bill: first reading—Married Women's Property Bill: first reading—Electric Telegraph Bill: first reading—Concessions to Leases, Kimberley District, as to Pre-emptive Rights—Loss of Kingston Spit Buoy: Select Committee—Aboriginal Native Offenders Bill: further considered in committee—High School, Perth, Mortgage Bill: in Committee—Adjournment.

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

PRAYERS.

EASTERN RAILWAY: DEVIATION IN SECOND SECTION.

MR. CAREY, in accordance with notice, asked the Colonial Secretary:—
“(1.) If in the opinion of the Legal Officers of the Government, the deviation recently agreed to on the second section of the Eastern Railway is in

“any way a breach of the contract, or
“likely to lead to future litigation. (2.)
“To lay on the Table of the Council,
“for the information of hon. members,
“all papers and telegrams in connection
“with the above deviation, in view of the
“subject being brought before the Council in form of a Resolution.” The hon. member said the reason he put the question as to the probability of future litigation was, because (hon. members would recollect) a deviation from the original specification in the contract for the Northern Railway had involved the colony in a great deal of litigation and expense with the contractor; and there was an opinion abroad that this deviation on the Eastern Railway may also lead to future litigation.

THE COLONIAL SECRETARY (Hon. M. Fraser), replying, said: With respect to the first portion of the question put by the hon. member, it must be apparent that it would be highly inexpedient for the Government to admit or deny in this House breaches of the railway contract, or likelihood of future litigation with the contractor. With regard to further papers in connection with the deviation, I have nothing to add to the answers already given in the matter.

VOTE FOR A BOTANICAL GARDEN

IN PERTH.

MR. RANDELL, in accordance with notice, moved, “That an Humble Address be presented to His Excellency the Governor, praying that he will be pleased to place upon the Estimates for 1884 a sum sufficient, but not exceeding £100, for the purpose of obtaining information as to the desirability and probable cost of establishing in Perth, or its vicinity, a Botanical Garden, or other institution, for carrying out on an efficient scale the work of acclimatisation and propagation in this Colony of the vegetable products of other parts of the world, or such of them as are calculated to be of general benefit. And that His Excellency will be pleased to place the information before-mentioned, with any recommendations he may think fit to make upon the matter, before this Council at its next session.” The hon. member said he thought it would be unnecessary