

## Legislative Assembly,

Tuesday, 16th October, 1894.

Adjournment for want of a Quorum.

THE SPEAKER took the chair at 2-30 p.m.

PRAYERS.

## ADJOURNMENT FOR WANT OF A QUORUM.

Fifteen minutes from the time of meeting having elapsed, and a quorum of members not being present, MR. SPEAKER, under Standing Order No. 36, declared the House adjourned until the next sitting day, viz., Wednesday, 17th October, at half-past four o'clock p.m.

## Legislative Council,

Wednesday, 17th October, 1894.

Homesteads Act Amendment Bill: third reading—Births, Deaths, and Marriages Bill: committee: third reading—Agricultural Bank Bill: first reading—Explosive Substances Bill: first reading—Police Act Amendment Bill: first reading—Municipal Institutions Bill: re-committal—Dentists Bill: committee—Roads Act Amendment Bill: committee—Adjournment.

THE PRESIDENT (Hon. Sir G. Shenton) took the chair at 4-30 o'clock p.m.

PRAYERS.

## HOMESTEADS ACT AMENDMENT BILL.

## THIRD READING.

This Bill was read a third time, and passed.

## BIRTHS, DEATHS, AND MARRIAGES BILL.

## IN COMMITTEE.

## Schedule 2.—Fees:

THE HON. S. J. HAYNES: When in committee on this Bill on the last occasion, I asked whether 7s. 6d. would not be the proper fee for a certified copy of each entry. I should like the Colonial Secretary to say if that is correct.

THE COLONIAL SECRETARY (Hon. S. H. Parker): It seems that that is the fee. We now pay 10s.

THE HON. S. J. HAYNES: Is there no mode of altering this? I am interested in a case where a number of these certificates have to be obtained, and if 7s. 6d. each has to be paid, it will increase the cost.

THE CHAIRMAN (Hon. Sir G. Shenton): I think the only way to alter it is by "suggestion" to the Legislative Assembly, because here any reduction would affect the revenue.

## Schedule passed.

## Schedule 3.—Form of Registration:

THE HON. F. M. STONE: Under this the name and surname of the father of a child has to be given, and in some cases this would be impossible,—in the case of a bastard child, for instance.

THE COLONIAL SECRETARY (Hon. S. H. Parker): Section 27 says that the particulars shall be given to the best of the knowledge and belief of the parent.

## Schedule passed.

The remaining schedules were agreed to and the Bill reported.

The Standing Orders were suspended.

## THIRD READING.

The Bill was read a third time, and passed.

## AGRICULTURAL BANK BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

## EXPLOSIVE SUBSTANCES BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

## POLICE ACT AMENDMENT BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

MUNICIPAL INSTITUTIONS BILL.

RE-COMMITTAL.

On the motion of THE COLONIAL SECRETARY (Hon. S. H. Parker) this Bill was re-committed.

Clause 40.—Where no Council, Governor may appoint person to settle and revise lists :

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "and shall have and exercise" be struck out, and the words "and such person or persons shall have and exercise all the powers of valuers under this Act and," be inserted.

Question put and passed.

Clause, as amended, agreed to.

Clause 149.—Council to prepare annual estimate :

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the following new paragraph be added to the clause :—"Notwithstanding anything contained in this part of this Act, the Council of any newly proclaimed municipality may exercise the powers and carry out the duties and obligations granted to and imposed upon a council as soon after their election as may be practicable, having regard to the intervals of time respectively assigned for the doing of any act under the provisions of this part of this Act; and for the purposes of this section the council of any such newly proclaimed municipality may prepare the statements and estimate therein mentioned in respect of the remaining period of the then current year, and any rate struck by such Council by virtue of the provisions of this section shall be payable only in proportion to the unexpired period of such year."

Question put and passed.

Clause, as amended, agreed to.

Clause 155.—Mode of making valuation :

THE COLONIAL SECRETARY (Hon. S. H. Parker) : It will be remembered, Sir George Shenton, that when this Bill was in committee on a previous occasion, at my suggestion we altered the rate from  $2\frac{1}{2}$  per cent. to 3 per cent. It now seems that, according to the opinion of the Speaker of the Legislative Assembly, that in proposing this amendment I committed a grave error, and he has addressed a letter to me on the subject, with a view to having the original words,

" $2\frac{1}{2}$  per cent.," re-inserted. His letter is as follows :—

October 15th, 1894.

My dear Colonial Secretary.—I think you will agree with me that at all times, and more particularly at the present time, it is extremely undesirable that any cause for friction should exist between the two Houses; and being anxious, so far as I am concerned in my office of Speaker, not to be the means of widening the present unamiable relations that are patent to all of us, I think it right, following a precedent adopted by the Speaker of the House of Commons, to call your attention to the fact that the Legislative Council has exceeded its powers in amending the amount of the rates in the Municipal Institutions Act, and if the Bill comes down to the Assembly with this amendment in it, I shall be obliged to point out to the Assembly that it is an infringement of its privileges for the Legislative Council to amend any taxation or rating clauses in a Bill, whether imposed for local or general purposes, and is calculated to break down the broad line of distinction between the duties, attributes, and powers of the two Houses. I have numerous authorities to support me in the view which I feel myself compelled to take in order to protect the undoubted privileges of the Assembly, and I should be glad to show them to you should you so desire it.

The President of the Legislative Council does not, I believe, concur in my views in respect to this matter; but I think I may say, without being egotistical, that the authorities all bear out my contention; and the Chairman of Committees, who came in to consult me on this matter, after I had commenced to write this letter, informs me that he has carefully consulted all the text books, and has arrived at the same conclusion which I have. So far as the relations between the two Houses are concerned, the gravamen in this case consists in the fact that the amendment made in this Act, and which infringes our Constitutional and Parliamentary privileges, was proposed by a member of the Government, and unless you recommit the Bill and restore the rating clause to the same position in which it left the Assembly, the spectacle will be presented of the Government actually inviting a conflict between the two Houses on a question of privilege. I think you will see that this would be a very grave state of affairs, and one not to be lightly entered upon.

I think it would be only fair to the members of the Legislative Council that they should be informed of the intimation which I have conveyed to you of the course which I propose to take if the Bill is returned to us with the rating clause amended. Such an intimation made by the Speaker of the House of Commons to the Lords would at once be accepted as conclusive as to the rights of the Commons.

There is, I am inclined to think, a good deal of misapprehension as to the power of the Upper House, to originate or amend, being restricted to money Bills only. I think in this

colony I may define money Bills to be those which require the recommendation of the Governor, and which by law must originate in the Assembly. These are the Bills as to which the Legislative Council may make suggestions.

There are, however, numerous other classes of Bills imposing pecuniary burthens upon the people, directly or indirectly, to which the Lords cannot make any amendment relative to tolls or rates.

In 1860, a Divorce Bill came down from the Lords with a provision inserted in it authorising the Proctor to charge certain proceedings as part of the expenses of his office. Objection was taken to this action of the Lords in the House of Commons, and the Speaker ruled that this procedure on the part of the Lords should not be permitted, as it indirectly created a salary which it was the province of the Commons only to provide.

It does not seem to me, I may say, that that case is quite on all-fours, because there an office was created with a salary attaching to it. The letter proceeds:—

I can assure you that I stand on very firm ground in the position which I have taken up, and I think it would be unwise of the Government to precipitate a collision which can now be easily avoided.

The amendment which you have made is a trifling one, but the principle which it infringes is a great one, and at this early stage in Responsible Government I could not advise the Assembly to permit of such an encroachment on its rights.

I remain,

Yours faithfully,

JAS. G. LEE STEERE.

Speaker.

The Honourable the Colonial Secretary,  
Perth.

In view of this, and as the Speaker has pointed out that I have invited a collision with the other House, it seems incumbent upon me, without going into the merits of the case, to propose that the original words as sent down by the Legislative Assembly be re-inserted. It is a matter of so little importance—a difference of half per cent. only—that it is hardly wise for us to allow an amendment to go forth which will even be objected to by the Speaker, especially as his action will probably be endorsed by the Lower House, and thus may lead to this Bill being postponed for another twelve months. I am aware, sir, that you have looked into the subject, and from the authorities you have shown me it seems to me questionable whether the Speaker is not in error in the course he proposes to adopt. I take it, from the authorities I have read, that this House

is only precluded from making amendments which impose general taxation as distinct from rates which are local taxation. The rates referred to in this Bill are imposed upon property—not upon the people generally—in towns, and I think that the House of Lords is precluded from amending Bills which impose taxation generally, and the moneys from which go into the Exchequer, and which are payable by all classes of the community. But these rates are only payable by certain classes, and I maintain that the House of Lords is not precluded from amending a Bill which contains only such powers of rating. In the circumstances, however, it is not for me to invite or to precipitate any collision between the Houses, and I, therefore, now propose to strike out £3 per cent. and insert £2 10s. per cent.

THE CHAIRMAN (Hon. Sir G. Shenton): Before putting the question, I think it is my duty to state my views on this point. I may say at once that I differ from Mr. Speaker, and I will give my reasons for so doing. Under our Standing Orders it is provided by the first clause that in all cases not provided for hereafter, or by sessional or other orders, resort shall be had to the rules, forms, and practice of the Commons House of the Imperial Parliament, which shall be followed so far as they can be applied to the proceedings of the Council. We have no such sessional or other order to meet the present case. Turning, therefore, to the last edition of May's Parliamentary Practice, I find it laid down under the head of "Relaxation of Commons' Privileges" that the claim to exclusive legislation over charges imposed upon the people was formerly extended by the Commons to the imposition of fees and pecuniary penalties, and to provisions which touch the mode of suing for fees and penalties, and to their application when recovered, and they denied to the Lords the power of dealing with these matters. The rigid enforcement of this claim proved inconvenient; and in 1849 the Commons adopted a standing order, based on a resolution passed in 1831, which gave the Lords power to deal, by Bill or amendment, with pecuniary penalties, forfeitures, or fees, when the object of their legislation was to secure the execution of an Act: provided that

the fees were not payable into the exchequer, or in aid of the public revenue; and when the Bill shall be a private Bill for a local or personal Act. And the Commons also agreed to another Standing Order, whereby they surrendered their privileges so far as they affected private and provisional Order Bills sent down from the House of Lords, which refer to tolls and charges for services performed, not being in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes. The practical result of these Standing Orders is a waiver by the Commons of their privilege with respect to pecuniary penalties in public and in private Bills. Fees imposed in a public Bill can only be dealt with by the Lords, provided they are not paid into the exchequer; whilst it is competent for the Lords, by a private Bill, to impose fees and tolls for rendered services, and to authorise the levy of rates to be assessed and levied by local authorities for local purposes. I maintain that this is a private Bill, because it could have been introduced by a private member, and the rates to be levied under it are not rates which are to be paid into the revenue, but are such as are to be assessed and levied by local authorities for local purposes. The case cited by Mr. Speaker as to the Divorce Bill does not seem to me to be applicable, for there it was sought to make a new appointment for which a salary would have to be provided out of the fees payable to the Divorce Court. Besides this, Clause 155 simply refers to the mode of making a valuation, and the amendment made only applies as to how the assessment shall be made. My opinion, therefore, is that this Council has full power to deal with this matter, and that in making the amendment we are in no way infringing on the rights or privileges of the Legislative Assembly. It would have been different had this been a money Bill in the ordinary acceptation of the term; but it is not. It is only in the nature of a private Bill, and the rates to be levied are for local purposes only, and do not go into the public revenue. For these reasons, I regret that I am unable to agree with the dictum of Mr. Speaker.

**THE HON. H. MCKERNAN:** As this is a matter which has been to some extent sprung upon us, and as this Bill

will not be able to come into force by the time of the next municipal elections, I think it is advisable that progress should be now reported.

**THE COLONIAL SECRETARY (Hon. S. H. Parker):** It is important, if this Bill is to be passed in time for the next elections, we should deal with it as soon as possible.

**THE HON. H. MCKERNAN:** I do not agree with the haste which is being made. Even now the people will only have a month in which to consider its provisions.

**THE CHAIRMAN (Hon. Sir G. Shenton):** The question now is whether the words 3 per cent. shall be struck out.

**THE HON. H. MCKERNAN:** I say I do not think it advisable to rush this matter, and therefore I wish to report progress.

**THE HON. F. T. CROWDER:** I shall oppose the motion to report progress, because this matter has already been dealt with by the House most fully.

**THE HON. J. W. HACKETT:** This is a far more serious question than that which has been in suspense for so many days. The other is a question dealing with money Bills, and which will be settled in one way or the other, by law or constitutional usage, but, in this instance, we have the Speaker of the Legislative Assembly taking a most unusual course in sending a message, as the President of the United States sends to Congress, to a private member of the House informing him as to his intentions when this Bill is returned to another place. An action of this kind is to me one almost, if not altogether, without precedent. Here we have the Speaker of the Assembly sending to a private member of this House (although he is a member of the Government) informing him if the amendment we have made is returned, it will lead to a collision between the two Houses. But that is the smallest matter we have to consider. The question is whether the rights which the leader of this House says belong to us, and which you, sir, in your clear, well reasoned, and lucid decision, also hold belong to this House, are our rights, or whether we are bound by the declaration of the Speaker, without any intimation on the part of the other House,

or any statement as to what is the true law or constitutional usage. To me the Speaker's letter seems to consist of arguments and precedents—arguments which are inconclusive, and precedents which are wholly irrelevant. If we are not willing to surrender that which forms part of our undoubted legal rights, it seems to me that two courses are open to us—one, to accept the suggestion of the Hon. Mr. McKernan (and I hope if it be accepted it will not be put off beyond to-morrow), and if that be agreed to we can afterwards take our proper constitutional rights, and appoint a select committee to search for precedents, and subsequently report to the House. The other course open to us is to ignore the Speaker's letter and retain the clause as carried in the House. We can then send down the Bill to the Legislative Assembly, and see what they have to say upon the question. The matter is so important that I do not think we should hurry. We should have a distinct ruling and not a mere *ex cathedra* letter indited privately, but one given by the Speaker from the Chair, and endorsed by the Assembly. It will then be open to us to urge our rights, and if necessary we can consider what steps are necessary to enforce them.

THE PRESIDENT (Hon. Sir G. Shenton): I would suggest that the best plan is to send the Bill down with the 3 per cent. provision retained. We shall get the ruling of the Speaker. This is a serious crisis in our constitutional history, and we must now decide whether this House intends to abandon its privileges in Bills of this kind or not.

THE COLONIAL SECRETARY (Hon. S. H. Parker): I trust that hon. members will bear in mind that in moving the amendment, I did so because the Speaker said that I, as leader of the Government in this House, was inviting a collision. Were I a private member, I should no more dream of surrendering on this point than I should of flying.

Question—That progress be reported—put and negatived.

Question—That the words "three pounds" be struck out, and the words "two pounds ten shillings" be inserted—put and negatived.

Clause passed.

Bill reported.

# DENTISTS BILL.

## IN COMMITTEE.

Clauses 1 to 9 passed.

Clause 10.—Persons entitled to be registered:

THE HON. S. J. HAYNES: Subsection (d) provides that a person may be registered if he has practised dentistry in any part of the world for 10 years. I propose to make the period five years. I move to that effect.

THE COLONIAL SECRETARY (Hon. S. H. Parker): This Bill was prepared by the dentists, and we may take it that they have provided what they require. We know that in some parts of the world anyone can be admitted to professions without any particular study. The desire of the dentists is to prevent any unqualified person from being registered, and I do not think the provision is too stringent.

THE HON. S. J. HAYNES: I will withdraw the amendment, and make the term seven years.

Amendment, by leave, withdrawn.

THE HON. S. J. HAYNES moved that the word "seven" be inserted in lieu of "ten."

Amendment agreed to.

Clause, as amended, passed.

Clauses 11 to 14 agreed to.

THE HON. F. M. STONE moved that progress be reported.

Question put and passed.

# ROADS ACT AMENDMENT BILL.

## IN COMMITTEE.

Clauses 1 to 10 passed.

New clause:

THE HON. F. M. STONE moved that the following new clause be added to the Bill:—Section 9 of "The Roads Act, 1888," is hereby amended by omitting the words "within the district," in the first line. He said: The principal Act provides that all meetings of boards shall be held within the district. This works a hardship. For instance, the South Perth Board must go to South Perth to meet, although all the members may reside in Perth.

THE HON. E. H. WITTENOOM: I shall support this, because I know at the North one or two meetings have been held illegally, because the members could not meet in the district. As I was not here

at the second reading of the Bill, I desire now to congratulate the Government on introducing this Bill, which gives many distinct advantages.

**THE HON. C. A. PIESSE:** I cannot support this amendment, because I think, if members of a district cannot meet in their own district, there should not be a board at all.

**THE HON. R. G. BURGESS:** I think it would be better if the boards met in their own districts. I do not think any district has a right to a board if it cannot get members who reside in the district.

Clause agreed to. Bill reported.

#### ADJOURNMENT.

The House, at 6:10 o'clock p.m., adjourned until Thursday, 18th October, at 4 o'clock p.m.

### Legislative Assembly,

Wednesday, 17th October, 1894.

Completion of Cue Telegraph Line—Alleged Omission of Pilot to Board the s.s. "Gulf of Siam"—Medical Bill: first reading—Leave of Absence to Mr. Phillips—Message from the Governor: Assenting to Bill—Message from the Governor: Elementary Education Act Amendment Bill—Supply of Meat for Metropolitan and Goldfields Markets: Report of Select Committee—Removal of Dredge from Canning to Perth—Point of Order—New Houses of Parliament: Proposed Appointment of a Royal Commission—Elementary Education Act Amendment Bill: second reading—Constitution Act Amendment Bill: further considered in committee—Estimates, 1894-5: further considered in committee—Want of Quorum—Adjournment.

**THE SPEAKER** took the chair at 4:30 p.m.

#### PRAYERS.

#### COMPLETION OF CUE TELEGRAPH LINE.

**MR. ILLINGWORTH:** I beg to ask the question standing in my name. I may say that on July 30th I asked the same question, and the answer I then

received was that the line would be completed within about three weeks from that date. It is now eleven weeks, and I now wish to ask the Director of Public Works—1. When the telegraph line will be completed to Cue? 2. Can there be a connection by bicycle over the unfinished portion? If so,—3. Will he arrange to have this communication established at once?

**THE DIRECTOR OF PUBLIC WORKS** (Hon. H. W. Venn) replied as follows:—1. The Department is daily expecting to hear that the connection has been made with the Mullewa end of the line. A field instrument has been provided to work the line temporarily, but, until the line is connected, precise information cannot be given as to the probable date of the completion of the whole line. 2 and 3. It is understood that the contractor has made some offer to run a bicycle mail service.

**MR. ILLINGWORTH:** That is no answer at all to my third question.

**THE DIRECTOR OF PUBLIC WORKS** (Hon. H. W. Venn): No reply has been given to the contractor as to his offer to run a bicycle service.

**MR. ILLINGWORTH:** My question was, will you arrange to have it done?

**THE DIRECTOR OF PUBLIC WORKS** (Hon. H. W. Venn): I cannot answer that without consulting the Government on the subject.

#### THE PILOT AND THE S.S. "GULF OF SIAM."

**MR. SOLOMON**, in accordance with notice, asked the Premier:—1. Whether the attention of the Government had been called to the subject matter of a letter, which appeared in the *West Australian* of the 9th instant, from the captain of the s.s. "Gulf of Siam," complaining that his vessel was not boarded by a pilot on his arrival from London with immigrants, &c? 2. If so, had any investigation been made into the matter, and what was the result of any inquiry, if instituted?

**THE PREMIER** (Hon. Sir J. Forrest) replied that the following explanation in this matter had been received from the Chief Harbour Master:—

The "Gulf of Siam" arrived at Fremantle on the evening of Saturday, 6th October, and was duly sighted from Rottnest Lighthouse. The steamer, however, came in at the South