upon the perpetrators of the offences which the Bill proposed to deal with. It was evident that some stronger dose than at present administered was required as a cure for this incipient larrikinism,—a social infliction which, unless checked in the bud, might develop here, as it had in the other colonies, into a very troublesome disease.

The amendment proposed by the hon. member for Geraldton was then put, and a division called for, with the following result:

| | | |
|---|---|---|
| Ayes | ... ... | 9 |
| Noes | ... ... | 9 |

| AYES. | NOES. |
|---|---|
| Mr. Burt | The Hon. G. W. Leake |
| Mr. Grant | The Hon. M. Fraser |
| Mr. Hamersley | Mr. Crowther |
| Mr. Higham | Sir L. S. Leake |
| Mr. Marmion | Mr. S. S. Parker |
| Mr. S. H. Parker | Mr. Randell |
| Mr. Steere | Mr. Shenton |
| Mr. Venn | Mr. Stone |
| Mr. Brown (*Teller.*) | The Hon. R. T. Goldsworthy (*Teller.*) |

There being an equal number for and against the amendment,

THE CHAIRMAN OF COMMITTEES gave his casting vote with the 'Noes,' assigning as his reason for doing so, that, if the Bill was necessary at all, it was necessary to extend the powers now vested in justices with respect to the punishment of the class of offences which the measure dealt with.

The amendment was therefore negatived, and the clause agreed to.

Clause 2—"This Act and the 'Police "'Ordinance, 1861,' shall be read together "as one Act:"

Agreed to.

Preamble and Title agreed to, and Bill reported.

## PUBLIC OFFICERS ACT, 1879, AMENDMENT BILL.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake), in moving the second reading of a Bill to repeal certain portions of "The Public Officers "Act," passed last Session, said it might be in the recollection of some hon. members that the Act referred to was introduced in order to confer the powers exercisable by various public officers upon those gentlemen who might, for the time being, happen to be acting as their *locum tenens*. The Bill was duly discussed in the House, and eventually passed, and was sent home for Her Majesty's assent. By a recent mail, a Despatch was received from the Secretary of State, pointing out that there was no necessity for any legislation on the subject, inasmuch as Her Majesty, or the Governor of the Colony acting in her name, could lawfully appoint a person so to act as *locum tenens*, and to discharge all the duties of the permanent officer, during his absence. In the face of this Despatch, in which it was also shown that the Legislature of another Colony had passed a similar Act to our own, under a similar misapprehension, and in order that our statute book should not be encumbered with a needless enactment, or with an enactment that interfered at all with the Royal prerogative, the present Bill was introduced. It repealed the first, second, and third sections of the Act passed last Session, but left the remaining clause (relating to the functions exercisable by the stipendiary magistrates) intact.

The Bill was read a second time, and passed through Committee, *sub silentio*.

## SHIPWRECKED COLONIAL SEAMEN BILL.

Read a third time and passed.

The House adjourned at half-past eight o'clock, p.m.

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# LEGISLATIVE COUNCIL,

*Tuesday, 27th July, 1880.*

Expenses of Superintendent of Roads—Financial and other Returns—Retirement of Joseph Harris, Esq. —Vote of £17,000, Northern Railway—Closure of Street in Pinjarrah Bill: motion for second reading —Sandalwood Bill: second reading; in committee —Jury Act, 1871, Amendment Bill: referred to select committee—Adjournment.

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

PRAYERS.

EXPENSES OF SUPERINTENDENT OF ROADS.

MR. SHENTON, in accordance with notice, moved, that a return be laid on the Table of the House, showing in detail how the sums of £724 16s. 9d. and £94, respectively, have been expended by the Superintendent of Roads. The first amount referred to appeared in the Superintendent's report under the head of "salary, travelling expenses, and various sums paid by him." The second item appeared under the head of "horses, buggy, and other articles purchased."

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said the return asked for should be furnished.

FINANCIAL AND OTHER RETURNS.

MR. S. H. PARKER, in accordance with notice, moved, "That an Humble "Address be presented to His Excellency "the Governor, praying His Excellency "to be pleased to direct that the several "Returns mentioned hereunder be laid "on the Table of this House:—

"A.—A Return showing the whole "cost of the construction of the Northern "Railway to the present date; the "cost of all rolling stock, stations, and "plant provided for the same; the cost "of all lands taken for the said Railway; "and all other charges and expenses "incidental to the construction of the "said Railway.

"B.—A Return showing how and when "the sum of £14,243 10s. 6d., mentioned "in the Return of the Financial Con-"dition of the Colony, laid upon the "Table of the House, was expended; and "the dates and persons when and to "whom, and the fund from which the "same was paid.

"C.—A Return showing the exact "Financial Condition of the Colony on "the 1st July, 1880, inclusive of all out-"standing liabilities on that date—so far "as the said Return can now be made "up.

"D.—A Return giving in one column "the various items of 'Miscellaneous "Services' voted for the year 1879, and "in another column the amount ex-"pended on each item.

"E.—A like Return giving in one "column the various items voted for "'Works and Buildings' in 1879, and "in another column the amount spent on "each sub-head.

"F.—A Return of the whole cost of "organisation and up-keep of the "Southern and Eastern Mail Services; "such Return to give the number and "cost of horses purchased; the cost of "carriages, harness, and other inciden-"tals; and the cost of erection and "repairs of stables and fences neces-"sitated by such Mail Services.

"G.—A Return of the whole cost and "expense of the working of the Albany "Mail Service during the year 1879, "including all liabilities incurred on "account of the said service during that "year."

With reference to the first return asked for—that showing the whole cost of the construction of the Northern Railway, and all charges and expenses incidental thereto—it might be in the recollection of hon. members that at the last Session of Council he had moved for a similar return. On that occasion, the Colonial Secretary stated that "he "trusted the hon. member (Mr. Parker) "would see the inexpediency of furnish-"ing such a return, when he informed "the House that litigation was pending "in connection with the railway works "referred to." So far as he (Mr. Parker) could make out, there was no reason whatever why the return asked for should not have been furnished last year, any more than there was at present. What he asked for was simply the sums actually expended—the amount of any unliquidated claims had nothing to do with it. The Governor in his opening Speech had given them the total amount expended, but what he wanted now was a return showing the various items of expenditure in detail. What the House would like to see were the charges incurred for construction, for supervision, for rolling stock, and so on, each under a separate heading, so that hon. members might be able to arrive at some idea as to how the money had been expended. He did not wish for any information at all that would in any way prejudice the Government in any litigation now pending between them and the contractor. The next return asked for was one showing how and when the sum of £14,243 (mentioned in the return of the financial condition of the Colony, laid upon the

Table of the House) had been expended; and the dates and persons when and to whom the same was paid; also out of what fund the money had been obtained. It would be seen on reference to the return referred to that the amount in question was set forth as "excess of expenditure on the Northern Railway above the sum of £17,000 (provided by the Loan Act, 1878) and chargeable to the general revenue." Hon. members were aware that, in 1878, the House was asked to vote an additional £17,000 in order to finish this line, and the money was voted and expended. But, in addition to this, they now found that a further sum of £14,000 had also been expended, and the mystery which he wanted cleared up was—where the money came from, and how it had been spent (if it had been spent). It was impossible to say from the return before the House whether the amount in question was still an outstanding liability; if it was not, it was still more impossible to say from what fund, if paid, it had been paid, or when. If it was expended in 1879, it ought to have appeared in the Excess Bill for that year. The next return asked for was one showing the exact financial condition of the Colony on the 1st July last, inclusive of all outstanding liabilities on that date —so far as such a return could be made up at the present moment. He had added those words as it was only his wish that the return should be made up to as recent a date as possible; and he did not think any difficulty need be experienced in furnishing such a return. The next return (D) was a similar return to that which he had asked for last year, and which was duly furnished by the Government. He imagined there could be no objection to furnishing a similar return this Session. The return marked E he moved for in the interests of hon. members, so that they should be informed as to how the vote for "works and buildings" had been expended. The next return, showing the whole cost of the organisation and up-keep of the mail services, was a return which he thought the public would be glad to obtain, and he thought the taxpayers who provided the funds for maintaining these services had a perfect right to the information which he sought on their behalf. No doubt these services as at present conducted were a source of great convenience, but the question was did it pay? Was the game worth the candle? The last return he had moved for was one showing the whole cost and expense of the working of the Albany mail service, including all liabilities incurred on account of the service in question during the year. He mentioned "all liabilities" advisedly, for when a similar return was moved for last year the information required was not forthcoming, and when he complained of it he was twitted with the fact that he had obtained all he had asked for. He did not think it could be said he was taking the Government by surprise in any way by asking for these returns, for at the last Session of Council the following notice of motion stood in his name on the notice paper for some days before the close of the Session:

"Mr. S. H. Parker: To move, at "the next Session of the Legislative "Council (if then a member of that "honorable body), an Humble Ad- "dress to His Excellency the Governor "for the following Returns:—

"*a.*—Return showing the exact "financial condition of the Colony "on the following dates, namely: "the 1st January and 1st April, "1880.

"*b.*—Return of the whole cost and "upkeep of the Royal Mail Service "during the year 1879.

"*c.*—Return of the whole cost of "organisation and upkeep of all "other Mail Services instituted and "maintained by the Government.

"*d.*—Return giving details of ex- "penditure during the year 1879 on "the following, namely:—

"Roads and Bridges; Works "and Buildings; Travelling Ex- "penses of Officials; Volunteers; "Immigration; Government Gar- "dens and Reserves; Acclimatisa- "tion; Incidental Expenses."

Question—put and passed.

## RETIREMENT OF JOSEPH HARRIS, Esq.

Mr. STEERE, in accordance with notice, moved: "That an Humble Address "be presented to His Excellency the "Governor, praying that he will be "pleased to communicate to the Council "all papers connected with the enforced

"retirement of Joseph Harris, Esquire, "from the Public Service, thus entailing "an increased annual charge upon the "Public Revenue for a pension for that "officer."

The motion was agreed to.

## VOTE OF £17,000 FOR NORTHERN RAILWAY.

MR. S. H. PARKER, in accordance with notice, asked the Honorable the Colonial Secretary, "Whether he can "give any explanation of the fact that in "1878 the sum of £17,000 was stated to "be all that was required to finish the "Northern Railway and all that the "Council was asked to vote for this pur- "pose, while the sum of £31,243 10s. 6d. "has been actually spent."

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said the explanation asked for would be given in due course.

## CLOSURE OF STREET IN PINJARRAH BILL.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) moved the second reading of a Bill to provide for the closure of a certain street in the township of Pinjarrah (upon which the Government had already erected stables for the use of the mail horses).

MR. BURT moved, as an amendment, That the Bill be read a second time that day six months. The street which it was proposed to close might in time become a busy thoroughfare, and, as the Government had chosen to build their stables upon it without first having obtained the assent of the House to a Bill legalising the closure of the street, let the Government bear the consequences.

MR. S. H. PARKER seconded the amendment. He did so upon the general principle that it was a very unwise proceeding on the part of the Government or the Legislature thus to deprive the inhabitants of any town of their streets or thoroughfares, which, in course of time, might become very valuable.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) pointed out that in this instance no public question or principle whatever was involved, or, if there was, it was of a most trivial description. The inhabitants themselves did not appear to take the slightest interest in the matter, and the only effect of the amendment would be to embarrass the Government. The Crown had already bargained with Mr. Greenacre for a piece of ground of his, facing the closed street, and given him three other town allotments in lieu thereof, expecting that no opposition would be offered by the Legislature to the step taken.

MR. STEERE: It appears to me that there is a principle involved, and a very serious one. The Government, it appears, have entered into a private arrangement, depriving the public of a useful thoroughfare, depending upon this House afterwards giving its sanction to such an arrangement, which I think would be a very vicious principle indeed. I shall support the amendment.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) was free to confess that it would have been more in accordance with the eternal fitness of things if the Government, as it had done in all similar cases heretofore, had first obtained the assent of the Legislature before closing the street and erecting the stables on it; but the fact of the matter was, it was an imperative necessity that the Government should secure quarters for the mail horses, and there was no other convenient place available. This was the first occasion on which it had not been the practice of the Government to obtain the ratification of the Legislature in order to validate the resumption of land before actual occupation was taken, and he hoped the House would not embarrass the Government, and put the country to the expense of pulling down the stables and re-erecting them elsewhere.

MR. CROWTHER would support the amendment. The Government finding itself in a somewhat awkward predicament, appealed to the House to extricate it out of its difficulty. Having so to speak committed a larceny of a public street, it now came to the Legislature asking them to legalise the theft.

MR. BROWN did not understand from the hon. member who had moved the amendment that he was expressing the views of the inhabitants of Pinjarrah in opposing the action of the Government in this affair. The closing of this street must have been a matter of public notoriety, but no action appeared to have

been taken by the inhabitants to protest against it in any way; and he thought before they could expect the Legislature to saddle the general body of taxpayers with the loss which would be entailed if these stables had to be pulled down, they should have done their duty by petitioning the House through their representative.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) admitted that it would have been better if the Government had first obtained the sanction of the House before making arrangements for the closure of the street in question; but hon. members should bear in mind that the House was not in Session at the time, and it was necessary to erect these stables without delay. Hon. members would not have cared to have been summoned to Perth simply to pass the Bill now before them. [Mr. CROWTHER: I should think they wouldn't.] The Gomment had done what they conceived was best for the Public Service, and now asked the House to ratify their action. He could not help thinking that some hon. members opposed the Bill in what he might call a spirit of factious opposition.

MR. BURT said he could not at all accept the position raised by the hon. member for Geraldton, that the representative of a district in that Council should on all occasions be able to show that he was supported in his action by his constituents. There was something entirely novel about such a principle as that, and he hoped the House would not affirm it. The hon. member might with equal reason have asked the hon. member for Perth (Mr. Parker) whether he was supported by his constituents in his action in moving for the financial returns of which he had given notice. As regards this particular question, however, without prejudice, he might say that he had consulted several of the inhabitants of the town and district which he represented, and they all agreed that the closure of the street would be a detriment to the town. As to the stables, they might not be required for long; for there was no knowing how long the present Administration would keep up the present mail service. Every Administration had its particular hobby. Some time ago the Administration of the day took to the silk-growing business, but that had since been abandoned, and the late Administration had entered into the mail-coaching line. But who could tell how long the present Government would keep up that business? Once abandoned, these stables would be of no use.

MR. BROWN said the hon. member for the Murray had misunderstood him. He had never said anything that could be construed into an implication that he questioned the hon. member's right, or any other member's right, to speak on behalf of his constituents without showing to the House how far he was supported in his action by them. He would be sorry to say any such thing. What he did say was, that the hon. member had not told the House that the inhabitants of the town had expressed any dissatisfaction at the action of the Government in closing this street. He regretted the tone in which the hon. member's motion had been met by the Government, and thought there was nothing whatever to warrant the imputation that hon. members were actuated in this matter by a spirit of "factious opposition."

MR. STEERE said if any "factious opposition" had been shown in that House this Session, it was on the part of the hon. gentleman himself (the Colonial Secretary), in trying to oppose the production of the returns he (Mr. Steere) had asked for.

MR. MARMION regretted that so much of the time of the House had been wasted over so trivial a matter. He thought it would have been more gracious on the part of the Government, seeing the opposition there was to the Bill, to have withdrawn it, and he would suggest—in order to avoid further discord, and at the same time to prevent themselves from suffering an ignominious defeat—that they (the Government) should now adopt that course.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said he had heard before coming to the House that the Government would meet with a defeat on this Bill. Hon. members, it appeared, did not come there to listen to arguments, to hear both sides of the question, and to decide upon it on its merits, but with a predetermination to defeat the Government, and to throw out their Bill.

He could only regard such a proceeding in the light of a factious opposition, and he regretted very much to see it. As to any factious opposition on his own part, with reference to the returns referred to by the hon. member for the Swan, he repudiated the imputation. If the hon. member would frame his notices of motion intelligibly, he would get the returns he wanted.

The motion for the second reading of the Bill was negatived, upon a division, by a majority of four, there being—

| | | |
|---|---|---|
| Ayes | ... ... | 6 |
| Noes | ... ... | 10 |
| Majority against | ... | 4 |

| AYES. | NOES. |
|---|---|
| The Hon. G. W. Leake | Sir T. C. Campbell |
| The Hon. M. Fraser | Mr. Crowther |
| Mr. Burges | Mr. Grant |
| Mr. S. S. Parker | Mr. Homersley |
| Mr. Randell | Mr. Higham |
| The Hon. R. T. Goldsworthy *(Teller.)* | Mr. Marmion |
| | Mr. S. H. Parker |
| | Mr. Steere |
| | Mr. Venn |
| | Mr. Burt *(Teller.)* |

Question—That the Bill be read a second time this day six months—put and passed.

## SANDALWOOD BILL.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser), in accordance with notice, moved the second reading of a Bill to prevent the destruction and export of immature sandalwood. The hon. gentleman said it might be in the recollection of some hon. members that during the second Session of the Legislative Council, in 1876, a Select Committee of the House was appointed to enquire into and report upon certain amendments then proposed in the land regulations. The Committee consisted of Mr. Padbury, Mr. T. Burges, Mr. Monger, Mr. Steere, Sir T. C. Campbell, and the hon. gentleman himself. One of the recommendations of the Committee (whose report was adopted by the House) was, that after the promulgation of the amended regulations no license should be issued for the cutting of sandalwood that was less than six inches in diameter. When the report of the Committee was under discussion, the hon. member for Fremantle, Mr. Marmion, asked how it was proposed to carry out this provision as to the size of sandalwood, at the same time pointing out that wood less in diameter than that specified might be represented as the branches of bigger trees. Other hon. members who spoke on the occasion pointed out the difficulties surrounding the subject, but all were agreed that if the regulation could be enforced, it would put a very wholesome check on the present indiscriminate destruction of immature wood. The House having adopted the recommendation of the Select Committee, the land regulations were amended in this respect, and licenses were issued for cutting sandalwood of the specified dimensions only. But it had since been represented to him by more than one person interested in the sandalwood trade, that, practically, it was almost impossible for the police to enforce this provision, or to effectually interfere with the sandalwood cutters so as to prevent the destruction of immature wood. The present Bill was therefore brought forward with a view to place a more effectual check upon this ruinous practice, and the measure was introduced in the interests of a valuable and important industry, in order that the existing regulations should have the force of a statutory enactment. He was ready to acknowledge that the question was surrounded with considerable difficulty. It would of course be impossible for the police to follow the wood-cutters into the far distant localities where they cut the wood, and thus to secure a conviction; and it was considered that the best plan would be to empower the police, or any other person authorized by a Resident Magistrate to do so, to seize any wood less in diameter or circumference than the specified dimensions, wherever found,—in a cart on the road, or in the merchant's yard in town, when delivered. As the sandalwood was not consumed in the Colony, but exported elsewhere, it was thought that by authorizing the examination and seizure of the wood at or near the port of shipment, a very wholesome check would be placed upon the evil complained of, as merchants, and others dealing in the wood, would be careful not to purchase any that was likely to be forfeited, while at the same time they themselves would be liable to a heavy penalty. Sandalwood cutters would then soon discover that it

was not to their own interest to cut immature wood, or such as did not come within the required dimensions. It would be seen on reference to the fifth clause that the penalty upon conviction of an infringement of the provisions of the Bill was a fine not exceeding £1 for each tree or sapling cut in contravention of the enactment, and that the fines thus obtained were to be paid to the Colonial Treasurer for the purposes of the general revenue of the Colony. If the House agreed to the second reading of the Bill,—as he presumed it would, seeing that its object was to carry out a regulation already affirmed, and to protect an important colonial industry—he proposed, when the Bill was committed, to fix a certain date for its coming into operation, for it would be manifestly unfair to put such an enactment in force at once, seeing that merchants and other holders of sandalwood might have considerable quantities of wood of the prescribed dimensions in stock, or already cut in the bush. It was therefore proposed to afford them an opportunity of exporting, or otherwise getting rid of such wood, before the present Bill came into operation. He hoped hon. members would deal with the measure on its merits.

MR. STEERE said he did not rise to oppose the motion for the second reading of the Bill, for he thought the object for which it was introduced was a very desirable one—namely, the carrying out by legislative enactment of a recommendation made by a Select Committee, with a view to prevent the destruction of a valuable industry. But he thought the Bill, as drafted, went altogether beyond what the House would be disposed to agree to. He thought the second section, which provided that, under a certain penalty, no wood shall be cut on Crown lands under twenty inches in circumference, would meet all that was required. He did not think the principle involved in the following sections would meet with the acceptance of that House, for the result would be that it would practically prevent the export of sandalwood cut on land other than Crown lands entirely, and further result in the confiscation of a very considerable quantity of wood already cut. Some of our local merchants had many tons of sandalwood now lying in the bush ready for carting, much of which would be within the prescribed dimensions. He did not think such an enactment as this ought to be made retrospective in any way.

MR. RANDELL would support the motion for the second reading, although he thought the Bill was susceptible of improvement, and several alterations would have to be made in it in Committee. The practice referred to by the hon. member for the Swan, of merchants having large quantities of wood lying idle in the bush, before it was available for export, was, he thought, a practice that operated injuriously in more respects than one. In the first place it acted very detrimentally to the revenue derived from the export duty on this wood, and it also injured the industry itself. The wood by being cut and left lying in the bush for a long period of time became desiccated, and lost many of the properties for which it was chiefly valued,—which must operate detrimentally as regards the trade in this article. Moreover, a considerable quantity of the wood itself must be lost, in consequence of the practice referred to. While agreeing with the main principle of the Bill, namely, the prevention of the wilful destruction of a most valuable industry, he still thought the provisions of the measure required modification in some respects.

MR. SHENTON pointed out that the Bill in its present form interfered with the right of cutting wood on fee simple lands, and would certainly require amending in that respect. As to the principle of the Bill, it was one which he supposed would receive the support of every hon. member in the House; but he thought there would be considerable difference of opinion as to the details of the measure, as was the case when the subject was first mooted before the Select Committee. He thought, if some provision were enacted whereby the sandalwood cutters should be compelled to brand the wood which they cut, and every licensed cutter's brand were registered, this would be of great assistance to the police in checking the evil at present complained of. This was an amendment which he would submit when the Bill was committed.

The motion for the second reading of the Bill was carried without division, and the House went into Committee to consider the clauses in detail.

IN COMMITTEE.

Clause 1.—Short title:

Agreed to.

Clause 2.—"No person shall cut, on "the waste lands of the Crown, sandal- "wood whose circumference shall be less "than twenty inches round the outer "rings of annual growth, at the butt, or "at a distance of six inches from the "starting of the first root of the trunk "of a sandalwood tree:"

Agreed to, without discussion.

Clause 3.—"No sandalwood shall be "exported from the Colony which, being "trunk wood, shall not be the product "of a tree of the size mentioned in the "second section:"

MR. STEERE said there were amendments to be introduced into this section, and, meantime, he would move that Progress be reported and leave given to sit again on Thursday, for the further consideration of the Bill.

Agreed to, and Progress reported.

## THE JURY ACT, 1871, AMENDMENT BILL.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake), pursuant to notice, moved the second reading of a Bill to amend the present Jury Act. The hon. gentlemen said, so far as any expenditure of language was concerned for the purpose of explaining the objects of the measure, he felt very much relieved, for the Bill itself was as short and as clear as he could frame it, and any amount of rhetoric indulged in in support of the motion for its second reading would be simply a waste of breath. He might, however, say that the measure was brought forward to ensure the efficacious administration of justice. As an Englishman, it would of course be expected of him in this connection to boast, with honest pride, of a subject which was recognised by their forefathers as the palladium of their liberty —trial by jury. But he did not intend doing anything of the kind. Trial by jury was no doubt an inestimable blessing, but like most other blessings of human design in this world it had its countervail, and was most grossly abused. In some instances—and especially was this the case in a small community like our own—those who were summoned as jurors discussed the merits of a case, and that upon very imperfect grounds, long before they entered the box to well and truly try it, according to the evidence. It was, possibly, owing to this circumstance that the verdicts of juries, in many cases, turned out to be anything but satisfactory, for those verdicts were not, as they ought to be, the result of careful deliberation, based upon the evidence, but of previous impressions formed before entering the box. No matter, in such cases, how clearly and luminously a Judge might sum up the evidence, and how forcibly he might expound the law in its application thereto, the jury generally rejected the law and the facts as submitted to them, and were guided in their decision by their whims and fancies. This, as he said before, was an evil that was more particularly felt in a small community like our own, and one of the objects of the present Bill was to endeavour, to some extent, to remedy it. Under the present Jury Act, the radius within which a juror could be summoned to attend at Perth, both in criminal and civil actions, was twenty-five miles; and it might be said, that in our little community, where the choice of jurymen was so circumscribed, in nine cases out of ten,—he might even say in ninety-nine cases out of a hundred —every juror summoned for a trial knew something about the facts of the case before he entered the court. There were many centres of population at a distance more remote from Perth than this radius of twenty-five miles, and from which it was considered it would be desirable to summon jurors—Pinjarrah, Mandurah, York, Beverley, Northam, Toodyay, Bindoon, for instance. The people living in these localities, who would be eligible to sit on juries, were, for the most part, respectable tradesmen, and, in many cases, the owners of large freeholds—men who have essentially the interests not merely of the Colony, but he might say of the civilised community, at heart; men who, if sitting upon juries, would elevate the character of a juror, and render the name far more respected, if

not more respectable, than it is. We should then, he might say, have a quantity of new blood introduced into our jury system, and the streets of Perth would be periodically graced with the presence of that very desirable element in all communities—the bucolic element. People who now do not visit Perth from one year's end to another would then be induced to pay us periodical visits; and as the presence of these jurors would only be required four times a year, hon. members might rely that the expense of extending the present radius would be reduced to a minimum. There were also cases in which the civil and commercial interests were concerned, and in those cases it was of very great importance that the influence of the juries should be uncontaminated, and that jurors should enter the box unimpressed with idle gossip one way or the other. This desirable end would be more likely to be attained if the jurors were selected from centres of population comparatively remote from the towns where such cases, as a rule, arise, namely Perth and Fremantle. At present, in many cases, in very many cases, owing to the circumscribed radius within which jurors were summoned, the imperfect impressions formed upon the minds of juries before they entered the court countervailed the effects of the evidence adduced and of anything which the Judge might say. When men were tried in cases of felony, both the Crown prosecutor and the prisoner had the right to challenge jurors, without showing cause, to the number of twelve; but if either party wished to challenge more than that number, some cause must be shown for doing so. At all events, a simple challenge, to the number of twelve, existed on both sides, so that it could not be regarded as any very startling innovation when he asked the House to assent to the principle being extended as was proposed, —that there should be three special jurors on each jury summoned for the trial of issues, such special jurors to be challenged only for cause. When he spoke of introducing the special jury element into trials for felony the element was merely novel as regards that branch of our criminal law. At present, on all trials for felony and misdemeanour, the jurors were taken indiscriminately from the special and the common jury list; and his hon. and learned friends on the other side of the House, who had been engaged in defending, as he had in prosecuting, accused persons, would agree with him that experience had shown that in the interest of the prisoner at any rate the less intelligent a jury they could have the better; and, so long as the challenge remained as it is, they would generally find that the more serious cases of criminal procedure were tried by the least intelligent class of men. Nor was it introducing any new element into their system of jurisprudence to have two classes of juries. The principle was already recognised in the administration of the civil law. And there could be no reason for saying that it was objectionable that three special jurors should in all cases form an element of the jury empannelled to try persons who were accused of felony. In cases of misdemeanour, juries at present could only be challenged for cause shown, and the difference between misdemeanour and felony was in the majority of cases of a most shadowy description; and he believed that in the contemplated amendment of the criminal law, this difference would, under the new code, be entirely abolished. What the Bill now before the House proposed was this: supposing the panel of jurors summoned for the trial of issue upon any criminal trial should consist of forty jurors, one-fourth of that number should be taken from the special jurors' list, and three of them shall serve on every jury and shall only be challenged for cause; so that unless the accused could show that these special jurors, for some reason or other, could not try him fairly, they would take their oath and their seat upon the trial. After that, there would be nine jurors selected from the common jury panel, and those nine would be subject to the present system of challenge without cause. The object of this proposed arrangement was the introduction of what he might call a healthier element into the jury system in cases of felony, and that, too, in the interests of the prisoner himself as well as of the Crown—in short, in the interest of society. He did not think that, having now placed the objects and the reasons of the Bill before hon. members, anything further he might say

would be of any use. He could only add that his only desire was, as far as possible, to elevate the character and the position of the juror, and to raise it as near as they possibly could to the character of the Judge—in short, to place the special jurors upon a trial in cases of felony very much in the position of a Grand Jury as regards the petty jury. He apprehended that some opposition would be raised to the Bill on the ground of expense, but, from a computation he had made, he did not suppose that the increased expense would be more than £150 a year—if so much. He did not honestly believe that this amount would be incurred in consequence of extending the radius within which jurors were to be summoned; and, that being the case, he could hardly fancy, in the interests of society itself, that such a sum would weigh with that House in discussing a question of this importance—the question of whether or not we shall have justice purely and efficaciously administered. If such should be the case—if hon. members rejected the Bill because it involved an expenditure of £150 a year, all he could say was, its rejection would be a disgrace to the community.

MR. BROWN said the question of expense was at any rate a subject for serious consideration, in the present state of the public finances, although he did not suppose that a question of £150 would be allowed by the members of that House to stand in the way of the satisfactory administration of justice. The hon. gentleman who introduced the Bill said that was the object in view,—which, by implication at any rate, was as much as to say that at present the administration of justice is not satisfactory. If it was considered necessary to extend the radius within which jurors were to be summoned to Perth, as was proposed in this Bill, he hoped the same principle would be extended to those districts where courts of Quarter Sessions were held, such as Geraldton and Albany, where the number of jurors were necessarily much more limited than at Perth. As to the question of expense, they were told it was proposed to introduce three special jurors on each trial for felony, and as under the existing Ordinance these jurors were paid more for their attendance, and also for mileage expenses, than the common jurors——

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): Not when serving on criminal juries.

MR. BROWN understood that at present there was no such thing as a special juror for criminal cases; he sat merely as a common juror. But when these men came to be summoned as special jurors, they would expect to be—and it would be only right that they should be—paid at the same proportionate rate as special jurors serving on civil cases. The object in view in introducing this new element into our criminal jury system, namely, to secure, as far as possible, an intelligent body of men, was no doubt a commendable one; but he very much feared that the wrong course had been taken to secure that end, for he was afraid that the result of the proposed arrangement would be to introduce an element of discord into the jury box, as the result of the manner in which it was proposed to secure this element of superior intelligence. These special jurors would naturally assume a sort of supremacy over the other jurymen, in consequence of their ascertained extra honesty——

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): No, no, no!

MR. BROWN: Well, then, their extra intelligence; and they would be immediately marked as the objects of jealousy by the remaining nine. I think myself that the true solution of this difficulty would be to curtail, and very largely indeed, the present right to challenge; which I believe has proved in practice very detrimental to the administration of justice, by the opportunity it affords counsel to weed out the most intelligent jurors. I think if this were done, it would answer every practical purpose, without having resort to the innovations contemplated in the present Bill. As to extending the distance radius from 25 to 75 miles, I do not think that would secure the presence on the jury, as is anticipated, of men who know nothing from outside gossip of a case that is coming on; for it must be borne in mind that the cases tried at Perth are not all local cases. Many of them, indeed most of them, at some sessions, are cases from the country districts, the particulars of

which are better known, and more freely canvassed, out of Perth than in Perth. The fourth section of the Bill—that which enables a selected number of the jurors empannelled to try a case to have a view of the place in question before the trial—is, in my opinion, a very wise provision, and calculated to materially help in the satisfactory administration of justice.

MR. SHENTON would support the motion for the second reading of the Bill, for most of them were agreed that some alteration was required in the present jury system. But he thought the proposal to have two classes of jurors to sit together on one case would be found, in practice, to be anything but calculated to advance the interests of justice. As to extending the radius, he understood there were 400 jurors on the Sheriff's list at present, and it appeared to him that this number offered a wide field enough for selection. If they extended the radius as proposed to 75 miles from Perth, that would take in nearly the whole of the Eastern districts, and the increased cost of summoning jurors from that distance would be very great, without at the same time ensuring any counter-balancing advantages. He concurred with the hon. member for Geraldton, that if the right of challenge were limited, a great deal of what was now regarded as unsatisfactory in connection with this matter would be remedied.

MR. S. H. PARKER said he was prepared to admit at once that some amendments in the present Jury Act were desirable and necessary, and, for that reason, although he did not agree with many of the proposals embodied in the present Bill, he would not oppose its being referred—as he understood was intended—to a Select Committee. He had expected, when the Attorney General introduced the Bill, that the hon. gentleman would have been prepared to have given the house an approximate estimate, at any rate, of the additional expense it would entail, by extending the radius within which jurymen were to be selected. He was afraid the expenditure involved would be a great deal more than £150 a year. In fact, if, as was proposed here, the radius was extended to a distance of seventy-five miles from Perth, the result would be that only the Government would ever be able to afford the luxury of a jury in civil cases, for it must be borne in mind that jurors were summoned promiscuously, by the Sheriff, from any locality within the prescribed radius, and they might have some jurors from York, some from Pinjarrah, others from Bindoon, and others from Toodyay, serving on one and the same jury. The hon. gentleman in charge of the Bill said one of its objects was to elevate the tone and character of our juries; but he (Mr. Parker) would like to know how on earth it was proposed to do this when it was not intended to raise the property qualification of jurors in any way. Although they might extend the radius of the distance, it would be the same class of men, occupying the same station in life as those who at present served as jurors, who would be summoned. It could not be said that country residents were men of superior intelligence to the same class residing in towns. With regard to the exercise of the right of challenge, and the weeding thereby of the more intellectual men from among the jurors, it was altogether a mistake to say that the practitioners resorted to this expedient. Counsel knew better than to challenge any juror unless there was special cause for doing so, for it always created a prejudice against their client, and might be afterwards remembered against them, to their disadvantage, by the juror challenged. As to associating special jurors with common jurors, that certainly was a unique idea altogether. Such a practice did not, he believed, exist in any other part of the world. He could hardly conceive anything more calculated to hamper and to defeat the administration of justice. The moment the three special jurors entered the box, they would be regarded by the nine non-special jurymen with distrust, if not hostility. The three would be looked upon as Government men, bent upon giving a verdict in favor of the Crown, which feeling would operate in an opposite direction with the other nine, who as a rule would be inclined, for that very reason, to acquit a prisoner. The probability was, that in the majority of cases they could never get a jury to agree upon a verdict at all. Looking generally at the Bill, he could not but regard it as

erroneous in principle; but believing as he did that the present system was susceptible of amendment, and looking to the fact that the Bill might be so dealt with in Committee as to meet all our requirements in this respect, without having to resort to such an innovation as was here contemplated, he did not intend to oppose the motion for referring it to a Select Committee, which he understood was going to be made. One amendment which he thought would be generally accepted was some restriction on the present right to challenge, and also a reduction in the number of jurors necessary for trying a case. The latter, he thought, would be a great boon to all parties; and he failed to see why (say) seven men could not deal with a case as satisfactorily in every respect as twelve. It would, at any rate, cheapen the administration of justice, without at the same time detracting in any way from its efficacy.

MR. BURT would like to know what it was that had induced the hon. gentleman who introduced the Bill to bring it forward at all. The House had not been informed in any way as to the reason why it was deemed necessary to submit such a measure, and, personally, he was at an utter loss to know what it all meant. There had been no outcry whatever on the part of the public, or any dissatisfaction expressed with regard to the administration of justice. The Acting Attorney General appeared to be altogether singular in the opinion that the present system had fallen into disrepute. The hon. gentleman seemed to have conceived a notion that the four hundred jurors who were now on the list had agreed and conspired to give perverse verdicts, with a view to defeat the ends of justice, and that therefore it was highly necessary to introduce fresh and untainted blood into the diseased system. On no other ground could he (Mr. Burt) understand the introduction of such a Bill. But he did not think the hon. gentleman would find anybody in accord with him in that opinion. The effect of such a measure as this would be to defeat the very object which the framer of it could have had in view, for it was absurd to suppose that, by extending the radius within which jurors were selected, they would thus secure the services of men who would come into court without any knowledge of the facts of the case they might be called upon to try. If every case tried at the Supreme Court were confined to offences committed in Perth there might be some reason in extending the radius to a distance of seventy-five miles from the locality where the crime was perpetrated. But the chances were, that, by extending the distance for the selection of jurors, they would be sure in almost every case to have some men on the jury for the immediate locality where the case came from. At present, the majority of cases of any very grave importance were cases in which the prisoner was unknown to a Perth jury, who, in many instances, first heard of the case when they entered the box. As to the incorporation of special jurors with common jurors, in the manner here proposed, he was bound to say that was an entirely novel principle, and one that, in practice, would never work satisfactorily for a single session. Under the present system, the same men who were qualified to serve as special jurors often also served as common jurors, and he would be bound to say, taking the average number of cases tried in a year, it would be found that the proportion of special jurors so serving was greater than it would be under the present Bill. He therefore failed to see what was to be gained by creating an invidious distinction between the two classes of jurors, when serving on the same trial, as was here contemplated, and thereby cause a feeling of antagonism and prejudice which certainly would not tend to the more satisfactory working of the jury system.

MR. STEERE then moved, as an amendment upon the motion for the second reading, that the Bill be referred to a Select Committee, consisting of the Acting Attorney General, Mr. Brown, Mr. S. H. Parker, Mr. Stone, and the mover.

The amendment was agreed to.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake) protested against his name being put on the Committee, and begged that it be expunged.

MR. STEERE: It cannot be expunged now.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): Then I won't sit.

MR. STEERE: But the hon. member must. I am not aware whether the same rule obtains here as in the House of Commons, relieving members over sixty years of age from serving on Select Committees, or whether the hon. member claims exemption under that rule.

THE ACTING ATTORNEY GENERAL (Hon. G. W. Leake): I am not sixty yet.

MR. STEERE: Then the hon. member will have to sit on the Committee.

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

## LEGISLATIVE COUNCIL,

*Wednesday, 28th July, 1880.*

Eastern Railway: cost of continuing from Spencer's Brook to York—District Roads Act, 1871, Amendment Bill: second reading—Excess Bill: motion for second reading; referred to a select committee—Messages Nos. 1 and 2—Real Property Limitation Act, 1878, Repeal Bill: second reading; in committee—Adjournment.

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

PRAYERS.

### EASTERN RAILWAY: COST OF CONTINUING FROM SPENCER'S BROOK TO YORK.

MR. SHENTON, in accordance with notice, asked the Honorable the Colonial Secretary: "Whether this House could "be furnished with the probable cost of "continuing the Railway from Spencer's "Brook, on the Northam Line, to York, "as shown in the dotted lines in the plan "presented to the Council by the Commis- "sioner of Railways?" He was aware that it would be impossible to give an estimate of the cost with that degree of exactitude which would be required were tenders to be invited for the construction of this branch line, but he thought the Commissioner might possibly be able to give the House an approximate idea of what the deviation referred to would cost. He was anxious to obtain this information, as it was his intention, at a later period of the Session, to move a resolution on the subject of the extension of the Eastern Railway.

THE COLONIAL SECRETARY (Hon. R. T. Goldsworthy) said the Commissioner of Railways would be asked to give an estimate of the approximate cost, but, in the absence of a detailed survey, no accurate estimate could be given.

### DISTRICT ROADS ACT, 1871, AMENDMENT BILL.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) moved the second reading of a Bill to amend the District Roads Act. The object of the Bill was to provide greater facilities than at present exist for the declaration of main and minor roads. Since the present Act was framed, nearly ten years ago, the circumstances of the Colony had very considerably changed, and it had been found necessary to alter its provisions, so as to enlarge the powers of the Governor to appoint main and minor roads from time to time upon the application of the local boards. At present, the only provisions there were for setting apart and declaring new roads throughout the Colony were embodied in the 25th clause of the existing Ordinance, which simply enacted that, for the purposes of the Act, the roads should be divided into classes, to be called main and minor roads, and that the local boards should, within three months after their first election, recommend for the approval of the Governor what lines of road in their respective districts should be so classed. That had been done years ago, and the present Bill proposed that the Governor, upon the application of any district board, may from time to time appoint what roads, or parts of roads that have been previously surveyed and marked out, shall be main or minor roads, and may also upon the like application revoke such appointment. The other section of the Bill dealt with the 43rd clause of the present Act, which it amended. The clause in question provided that no track which has been in