control over that. He saw nothing in this Bill which gave that control. If we confirmed the agreement, Hannans Roads Board would be entitled to 3 per cent.; subsequently the territory would cease to belong to the Hannans Roads Board; then where did we come in? It was a question of what was in the agreement between the parties, and in taking upon ourselves to confirm that agreement, we ought to know what was in it. The company were to give 3 per cent. of the gross earnings to the Hannans Roads Board, and there was no limit as to time. Supposing the territory over which the tramway would run should cease to properly belong to the roads board, what then? It appeared that then the Kalgoorlie and Boulder municipalities would be contributing 3 per cent. to Hannans Roads Board. If this House meant that to be so, well and good.

THE PREMIER: What right had the roads board to get the £2,000? It ought to go into the general revenue of the country.

MR. MORAN: They thought it was worth that for the concession.

Mr. WILSON: The agreement ought to be before us, so that we might satisfy ourselves that it was equitable as between the parties.

MR. ILLINGWORTH: It should go in the schedule of the Bill.

THE COMMISSIONER OF RAILWAYS moved several amendments, which were agreed to as follow:—(1) in clause 2, line 4, insert the words "except so far as it relates to a proposed route *d* and;" also in line 5, after "and," insert "save as aforesaid;" also strike out the paragraphs headed "Route *d*" and "Alternative route *e*."

Schedule as amended agreed to.

Title—agreed to.

Bill reported with amendments, and the report adopted.

ADJOURNMENT.

The House adjourned at 10·28 o'clock until the next day.

Legislative Council,

Thursday, 22nd November, 1900.

Question: Sixpenny Telegrams, to inquire—Question: Burning off and Bush Fires—Industrial Conciliation and Arbitration Bill, third reading—Patent Acts Amendment Bill, second reading (resumed), adjourned—Appropriation Bill, first reading—Post Office Savings Bank Amendment Bill, first reading—Remedies of Creditors Act Amendment Bill, first reading—Adjournment.

THE PRESIDENT took the Chair at 4·30 o'clock, p.m.

PRAYERS.

QUESTION—SIXPENNY TELEGRAMS, TO INQUIRE.

HON. J. M. DREW asked the Colonial Secretary:—1, If the Government is aware that in New Zealand the system of sixpenny telegrams is described as being a magnificent success. 2, If the Government is aware that a similar reform is being introduced in New South Wales, or is being advocated by the Postmaster General of that colony. 3, If the Government is aware that the Postmaster General of New Zealand states that on the introduction of the sixpenny telegram system the number of messages increased by about 60 per cent., and the revenue by 25 per cent. 4, If the Government will institute inquiries into the success attendant on the introduction of this system into New Zealand, with a view to the introduction of similar systems in this colony should the result of the inquiries prove favourable.

THE COLONIAL SECRETARY replied:—1, The Government has no special information. 2, The only information possessed by the Government is from telegrams in the newspapers. 3, No such statement has reached the Department. 4, Inquiries will be at once made, and, if favourable replies are received, the subject will have the consideration of the Government.

QUESTION—BURNING OFF AND BUSH FIRES.

4. HON. W. MALEY asked the Colonial Secretary: 1, Was the permission given last year to light bush fires in the month of February, along the Great Southern railway, merely an experiment. 2, If the Government is aware that great loss was sustained by settlers in that

district by reason of such bush fires. 3, If the Government intend to repeat the experiment. 4, If so, in whose interests.

The COLONIAL SECRETARY replied:—1, No. On its being pointed out to the Government that it would be in the interests of the districts to shorten the period during which it was unlawful to set fire to the bush in the Katanning and Williams districts, the date of termination of the prohibited period was altered from 1st March to 1st February. 2, The Government is not aware of any loss sustained by settlers owing to this alteration. 3, The Government has no objection to altering the date back again to the 1st March if it is shown to be in the interests of the districts to do so. 4, This question is answered by No. 3.

INDUSTRIAL CONCILIATION AND ARBITRATION BILL.

THIRD READING.

Read a third time, on motion by the COLONIAL SECRETARY, and returned to the Legislative Assembly with amendments.

PATENT ACTS AMENDMENT BILL.

SECOND READING.

Debate resumed from 14th November.

HON. R. S. HAYNES (Central): I rise with some diffidence to speak on the second reading of this Bill, because I feel the gravity of the situation which will arise if the Bill is passed into law. There are certain principles upon which Parliament always proceeds in discussing any proposed measure brought before it with a view of altering another law. There are certain principles which have actuated the British Parliament for many centuries, and these principles are such as to have raised the British Parliament to a position of eminence and have caused it to be the envy and admiration of the whole civilised world. It has always been the ambition of the House of Parliament in any British dominion to try and walk in the footsteps of the British House of Parliament, and follow the grand principles which have been laid down from time immemorial by that great institution. One of these golden principles is this: there shall be no deprivation of the rights of others without adequate compensation. It is especially the duty of this House, which has been elected upon a property qualification, to take especial care of the rights of property and see that those rights are not invaded. More especially is that necessary, when, during the history of our colony, it appears that any one branch of the Legislature is about to face its electors, because frequently a House of Parliament about to face its electors is apt to bow down to the popular cry, and to get popular votes by introducing and passing measures which it would not do had that House of Parliament any time before it to exist. Members from time to time in this House have objected to certain legislation being introduced on the ground that one House has been declared to be in a moribund state, that it is a dying Parliament. It is almost out of touch with the electors, and it has been said that this House is more in touch with the people, as it has been added to, by elections, since another place was elected. It becomes all the more necessary on an occasion like this, situated as we are, to be careful and pause before we pass legislation which will not meet with the approval of the country, and which I venture to think is opposed to the first principles of justice and equity. There are three questions which it is necessary for this House to inquire into, and to be satisfied upon, before it assents to any measure which it is proposed shall become law. The first principle is: has the opinion of the country been obtained on the proposed change? Secondly: does the proposed measure interfere with the rights of property? Thirdly: what will be the effect of such legislation as affecting those rights and the credit of the colony generally? With reference to the first question whether the opinion of the country has been obtained on this proposed measure, it is necessary to take a survey of our position, and of the proposed measure before us; to point out to this House what these rights are, what is the effect of a patent, and what little probability or possibility there is of the public having expressed an opinion on it, seeing that they know nothing about it. There are few members in this House who actually understand the exact position and how the rights of individuals are affected, nor do they know the history

of the patent law. I think there is no one in this House who understands the actual state of the patent law in the colony at the present time. I am aware that includes myself, and I say it because, after a long study, I have come to the conclusion that I do not understand it, and no one has come to the conclusion that he does.

HON. C. SOMMERS: Hence the necessity for this Bill.

HON. R. S. HAYNES: The hon. member has interjected that as no one knows the law, therefore we should amend a law we do not understand. A patent is a monopoly—a monopoly granted under certain circumstances. I will quote from *Frost*, an authority on patent law:

> Previous to the reign of James I., the Sovereigns of England laid claim to, and exercised, the right of granting monopolies of carrying on certain trades, or producing various articles within the realm, or importing them from other countries. These monopolies were given to the recipients in respect of services rendered by them, or as marks of royal favour to the favourites of the Crown. The system of creating monopolies was made the means on various occasions of raising large sums of money for the expenditure of the Government, and the support of the Crown, to the detriment of the public at large. Under the Tudor Sovereigns monopolies were granted to such an extent, and became so monstrously oppressive that, finally, in the twenty-first year of James I. Parliament passed the celebrated Statute of Monopolies, which, as a declaration of the Common Law on the subject of monopolies, must be considered as the foundation of our modern patent laws.

Amongst other things enacted:

> The first section of the statute declares "That all monopolies and all commissions, grants, licenses, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies, politic or corporate, ... are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in nowise to be put in use or execution.

That gets rid of monopolies granted out of favour.

> The fifth and sixth sections refer to letters patent for inventions, and exclude them from the effect of the foregoing clauses, which effectually suppressed all illegal monopolies, and deprived the Crown of all claims to grant such monopolies in the future, and also of all power to prevent persons aggrieved from pursuing their legal remedies.

That is the history of the beginning of the patent law. When monopolies were forbidden the patent law was founded; so that it is a law that has existed for many centuries. A monopoly is of course a patent, but it is granted as a recompense for the energy, the industry, the skill, and ability of any person who devotes his time and money for the purpose of bringing about some new discovery, which is a work of utility and of great use to man. That has all to be inquired into before a patent is granted. If the invention is not of utility; if it is such as not to be entitled to any mark of favour, then the patent is refused. If it is proved to be of benefit to mankind, the Crown has the right, by letters patent, to grant to that person a monopoly of fourteen years in Great Britain and elsewhere. This Bill was introduced—and I think it is to the credit of the gentleman who introduced it—in a speech which stated that the object of the Bill was to deprive the owners of the "McArthur-Forrest patent," of their rights. It is aimed at that patent, and that patent alone. Of course in its drag net the Bill will have the same effect on all other patents in existence at the present time, but the object of introducing the Bill was to deprive one person of his rights, such as they are, under the patent. Let us see what the history of the patent is. Prior to 1887, when gold was crushed and treated over tables, the refuse or tailings were absolutely of no use. There were "dumps" of tailings to be seen in all old mining centres and they remained there absolutely useless, yielding no benefit to anyone. Three gentlemen associated themselves together for the purpose of endeavouring to extract the gold, which it was known existed in these tailings, and, after many years of research and scientific inquiry, discovered a method by which these tailings could be treated, and all the gold extracted from them by the application of cyanide of potassium. That undoubtedly was an invention of the greatest utility. By its operation, mines which could not theretofore be worked became profitable and paying mines. The applicants made out a case in England, a patent was granted in 1887, and it will expire in 1901. It is evident to anyone who thinks for a moment, that two doctors and one experimental chemist would scarcely be men of business to undertake the introduc-

tion of that patent into all the gold-bearing countries of the civilised world. It would cost a huge fortune to register the patent alone; it would cost a greater fortune still to provide agencies and inspectors, and all the plans for extending portions of the patent to all mining centres. Therefore a company was formed known as "The Cassel Gold Extracting Company," in which the patentees still remain large shareholders. That company became the purchasers of the patent rights, in consideration of shares, which the patentees held in the company, and the company found the necessary money to introduce the patent. A subsidiary company was formed, known as "The Australian Gold Recovery Company," of which Mr. McArthur and the brothers Forrest still remain shareholders and directors. That company registered the patent in the colony of Western Australia, as well as in other places. I will endeavour to be careful in the choice of my words, and I shall quote such sections of the Act to support every statement I make, and for any allegation I make I shall cite the best authority extant—*Frost*. The subsidiary company was formed, and it obtained in this colony letters of registration under the Patent Act of 1888. It will be necessary here for me to state shortly to the House what the patent law in the colony was then, what the effect of these letters of registration were, and what rights they conveyed on the assignees of the patent in this colony.

HON. A. P. MATHESON: In what year did they take out the patent?

HON. R. S. HAYNES: In 1891, I think.

HON. J. W. HACKETT: At all events, it is the 1888 Act.

HON. R. S. HAYNES: It is under the 1888 Act, which was the first Act dealing with patent law in this colony. There was a previous Act to regulate registration of designs and trades marks known as 48 Vict., No. 7, but that measure did not deal with patents. The Act of 1888 was the Act in force at the time the letters of registration were granted, and certain rights were conferred on the patentees. Hon. members will understand the patentees had already been registered in Great Britain. Section 49 of the Act of 1888 provides:

> No person shall receive a patent or an instrument in the nature of letters patent under this Act for an invention or discovery which has been previously patented in Great Britain or any other country, but it shall be lawful for the Governor in his discretion, on the application of any person being the holder or assignee of any patent granted or issued in Great Britain or any other country for any new discovery or invention, and upon such proof as the Governor may deem sufficient, that such person is the *bonâ fide* holder or assignee of the said patent, and that the same is in full force, and upon payment to the Colonial Treasurer of the sum of fifteen pounds, to grant letters of registration under the seal of Western Australia to the holder of such patent as aforesaid or his assignee, and such letters of registration shall be deposited in the Patent Office, and shall be deemed to be letters patent issued under this Act for such invention or improvement, and shall have the same force and effect as letters patent issued thereunder; and shall inure to the benefit of the holder during the continuance of the original patent in the country in which it was issued or granted, and no longer, and all the provisions of this Act shall apply to such letters of registration in the same way *mutatis mutandis*, and as fully as to letters patent or an instrument in the nature of letters patent issued under this Act.

I therefore give it as my opinion, and it is an opinion which I venture to think will not be gainsaid, that when the company obtained letters of registration, they were in exactly the same position as if they had letters patent under the Act. That is a position which cannot be successfully disputed, but I understand a contention to the contrary will be raised. After the company had obtained letters of registration under the Act of 1888, that Act was repealed by 58 Vict., No. 4, or the Patent Act of 1894, under the latter of which certain rights were saved, and I shall show presently why the Act was introduced. Section 49 of the Act was repealed, but it was re-enacted in practically similar words, though I cannot call to my mind in which section it was re-enacted.

HON. M. L. MOSS: What year? I think you mean Section 2 of the Act of 1894.

HON. A. P. MATHESON: The Act of 1892.

HON. R. S. HAYNES: Yes, the Act of 1892; the section was repealed by Section 2 of 58 Vict., No. 4, but was re-enacted practically in the same words.

HON. M. L. MOSS: Yes, that is clear.

HON. R. S. HAYNES: That Act saved the rights of all persons who had patents

or letters of registration granted to them, only speaking as for the future, and not seeking to touch rights which persons had under the Patent Act of 1888. Section 2 of the Patent Act of 1892 gave certain rights, and that section was repealed by the Act of 1894; but the Act of 1894 again saved the rights, Section 2 being as follows:

2. (1) The second section of and the Schedule to "The Patent Act Amendment Act, 1892," and the fifty-fifth section of "The Designs and Trade Marks Act, 1884," are hereby repealed. (2) Such repeal shall not effect—(*a*) Any letters of registration of a patent, nor any design or trade mark heretofore granted or registered; nor (*b*) Any applications, under the sections hereby repealed, pending at the time of the coming into operation of this Act for letters of registration of a patent or registration of any design or trade mark, and such applications may be completed as if this Act had not been passed.

All that I want to show is that whenever the Legislature attempted to amend the Act there was never any attempt made to confiscate existing rights. Under the Act of 1888 a patentee, in addition to having the right of enjoying the benefit of his patent for fourteen years, has the right to petition the Governor and ask for a prolongation of the term on certain grounds, one ground being that although his patent is one of great utility he has not been sufficiently remunerated through no fault of his own, and the Governor has the right to refer that petition to the Supreme Court, which is bound to inquire into the question as to whether he has received sufficient remuneration or not. The patentee is bound to put before the Court a full and complete statement of every penny he has received, or any person has received under the patent in any part of the world, and he has to show all the expenses which have been incurred, so that the Court can ascertain for itself the full amount which has accrued to the patentee and to his assigns. And if the Court then be satisfied on the strictest possible evidence, which is required, that the patentee has not been insufficiently remunerated, or that he has charged too great a royalty or done a thousand and one things, the Court may refuse his application; and the Court will tell the applicant that the application for prolongation is not a matter of right but one of grace, and grace only. When the Court is satisfied on the strictest proof that the patentee has been insufficiently remunerated, they refer the matter back to the Governor who takes these facts into consideration, and then grants a prolongation on such terms and conditions as he may think fit. It will be seen, therefore, that the Crown is safeguarded and that there is no fear of any miscarriage of justice. The petitioner has to go, in the first instance, to the Governor, which means the Governor-in-Council, and from the Governor-in-Council to the Supreme Court, and then from the Supreme Court back to the Governor-in-Council, with whom it rests entirely whether the prolongation shall be granted.

HON. J. W. HACKETT: When the petition is sent to the Governor in the first instance, is that taken as a formal step to the Supreme Court?

HON. R. S. HAYNES: My own opinion is that the petition should be sent on, but past experience shows that that has not been done by the Governor-in-Council, who has frequently refused to refer matters to the Supreme Court, not under this Act but under another Act in which the same words appear. If it be stated that the company are not the patentees, that is a matter for the Court to decide. But the very persons who invented this process are shareholders in the company, and an assignee has equal right with the patentee to apply for prolongation in England, the English Act in this respect being in exactly the same words as our own Act. *Frost*, in dealing with the practice before the Court, says:—

On an application by assignees, the Judicial Committee always consider that by favourably listening to the application of an assignee, they are, though not directly, yet mediately and consequentially, as it were, giving a benefit to the inventor, because, if the assignee is not remunerated at all, it might be said that the chance of the patentee of making an advantageous conveyance to an assignee would be materially diminished, and consequently his interest damnified. For this reason, consideration is given to the claims of the assignee who has an interest in a patent.

As I say, the English Act is in exactly the same words as our own, and I will explain presently what procedure is to be gone through in England, and point out the barriers which have to be surmounted before anybody there can obtain an extension of a patent from the Privy Council.

The letters of registration of this Company will expire in 1901 when, of course, their patent will expire, unless it be extended, and the patentees are now applying to the Judicial Committee of the Privy Council for an extension of time. I ask the House to pause for a moment and reflect, who are the members of the Judicial Committee of the Privy Council. I suppose there never has been in any civilised country in the world a body of lawyers who are so intimate with science, with law, and with social relations, as the Privy Council. They are practically the cream of the British race. The Lord Chancellor, nearly all the Law Lords, I think the Chief Justice, and many justices who have distinguished themselves not only in England, but in India and Australia, are appointed to the Judicial Committee of the Privy Council. Anyone who takes the trouble to study the judgments of the Judicial Committee will be amazed to find the intimate knowledge they have of the conditions of life in Western Australia, in Canada, in any part of Australia, or in any part of Her Majesty's dominions, of the intimate knowledge of the leading men in the country, and the conditions of life; anyone would be amazed to think that any body of men would have such intimate and accurate knowledge. For integrity and honesty of purpose they are second to none in the world; they are above suspicion. This body of astute lawyers, all holders of the blue ribbon, are the men who have to say whether this company has been sufficiently remunerated or not. The patentees are applying to the Privy Council for an extension of the patent. Is this House afraid the Privy Council will do an injustice? Is the House afraid the Privy Council will extend that patent, or advise an extension if the patentees are not entitled to it? On the other hand, if the patentees are entitled to it, is this House to deprive them of their right? See the barriers the Privy Council erect before they extend a patent. *Frost* says:

A petitioner seeking the grace and favour of the Crown is bound to strict truth in his statements; and the petitioner should remember that a prolongation or extension is a matter of favour and not of right, and that a petition will be dismissed if it fails to state everything belonging to the patent fairly and fully. Thus the petitioner in his petition and accounts must refer to all foreign patents granted to him in respect of the invention forming the subject-matter of the English patent, for an extension of which his application is made, and to the remuneration or loss he has derived or sustained through such foreign patents. Prolongation has been refused on the ground that the petition was nominally presented by one, but actually in the interest and for the benefit of another company, to whom the shares in the first company had been transferred, and no statement of this fact appeared in the petition, and the Judicial Committee would not have been cognisant of it, had it not been brought forward by the Attorney General.

A patentee is never entitled to demand *ex debito justitiæ*, a prolongation or extension of the term of his monopoly. In all cases, the Judicial Committee have an absolute discretion in recommending the Crown to promote the progress of the petition; and the only limit to this recommendation is that the period of extension shall not be more than fourteen years.

Now, when we come to the question on what grounds petitioners are to proceed, *Frost* says:

It is clear that a petitioner, in order to induce the Judical Committee to recommend the Crown to grant the prayer of the petition, must satisfactorily prove two things, viz.:—(I.) The invention is meritorious; (II.) he has been insufficiently remunerated, owing to no fault of his own. Merit.—The applicant must make out a *primâ facie* case of validity. For this purpose, a decision of the High Court of Justice, or the Court of County Palatine of Lancaster, in favour of the validity of the patent, will be sufficient. The Judicial Committee will not recommend the extension of a patent, which, on the face of it, appears to be invalid; but they will not discuss or decide the question of validity, if it appear decidedly doubtful on the ground of lack of novelty, or utility, or from any other cause. In cases of doubt as to the validity of the patent, the Judicial Committee exercises its discretion. If a new grant is allowed, it is of course open to the same objections, and may be annulled in the same manner as the old one; and the Judicial Committee are not called on to discuss the question as to whether an extension, if granted, would avail the petitioner anything: that is left to the courts of law. There is an obvious distinction between the "merit of ingenuity and the merit of utility" of an invention; and unless the Judicial Committee are satisfied that the invention possesses the latter, they will not recommend an extension; but the fact of great labour and ingenuity being required to produce the invention will go far to establish a case of utility strong enough to satisfy the Committee that the public is likely to derive a benefit from the invention sufficient to warrant an extension.

I entreat the House to listen to this. It shows what the Judicial Committee re-

quire before they grant an extension, and members will see patentees must prove the possibility of doubt before they get it. Hear what the petitioners have to prove:

The petitioner must lodge at the Council office, not less than one week before the day for the hearing, a statement of accounts as evidence of his contention that he has been insufficiently rewarded, having regard to the value of the invention to the public. The Judicial Committee insist that the statement shall be a full, clear, and accurate balance-sheet, showing the whole profit and loss which has been derived or sustained in respect of the invention. It is the petitioner's duty to satisfy the Committee, in a manner which admits of no controversy, as to the amount of remuneration which in every point of view the invention has brought to those who have introduced, or helped to introduce, it to the public, in order that their Lordships may be able to come to a conclusion whether that remuneration may fairly be considered a sufficient reward or not. To use the language of Lord Cairns, "It is not for the Committee to send back the accounts for further particulars, nor to direct the accounts for the purpose of surmising what may be their real outcome if they were differently cast; it is for the applicant to bring his accounts before the Committee in a shape which will leave no doubt as to what the remuneration has been that he has received. If this requirement is not attended to carefully, the Committee will most probably refuse to grant the petitioner leave to amend the accounts, and will dismiss the petition altogether; and the petitioner will not be excused on the ground that he has kept no such accounts, or has destroyed his books. It is most material for the Judicial Committee to know in what ratio the profits have increased or diminished from year to year, therefore it is advisable for the petitioner to strike a balance at the end of each year's accounts. . . . The Committee are required to have regard to all the circumstances of the case. The question always is, what has been the total remuneration derived from the patent, or which could have been derived from the patent? Consequently, when the patent has become vested in an assignee, *e.g.*, a company, the Committee require a disclosure, not only of the assignee's profits, but also of all the profits derived by his predecessors in title, and also when licenses have been granted, a disclosure of not only the royalties received by the patentee, but also where possible, some evidence as to the profits made by the licensees. . . . The effect of rendering incomplete accounts, or accounts in an improper form, is not always fatal, but the petitioner must not rely on the indulgence of the Committee, and he cannot be too particular in the matter of accounts. Under special circumstances, when it appears that the accounts are wrong through a *bona fide* mistake on the part of the patentee, the Judicial Committee may grant an adjournment in order that the accounts may be put right, but in most cases of insufficient or improper accounts the petition will be dismissed at once.

When the Committee grant, or recommend the granting of prolongation, it must not be thought a renewal of the patent is granted on the same terms as previously, It has been the practice, instead of prolonging a patent, to grant a new patent for a term:—

It is not necessary for the patentee to file a fresh specification on the grant of a new patent; and the validity of the new patent may be questioned in the same way and on the same grounds as that of the old one: the new grant is in the nature of a graft on the old one, and has no existence apart from it. A new grant of letters patent is subject in all cases to the conditions imposed by the Act of 1883 and subsequent statutes, and may be granted to more than one person jointly, but, it is submitted, a new grant cannot be made to a person or persons who has, or have not, or one of whom has not a legal interest in the old letters patent. The Crown in granting new letters patent has the power to, and frequently does, impose conditions in the interest of the original patentee or his representatives. The following are instances of cases in which such conditions have been imposed. In Whitehouse's Patent, extension was granted to an assignee on condition that he secured to the patentee and inventor, during the term, an annuity of £500, in addition to £300 already secured to him. In Markwick's Patent, where the original patentee has been bankrupt, the condition was imposed that he should receive an annuity during the extended period. In Morton's Patent the assignee was required to secure to the original patentee one-half the future profits after recouping his own losses. In Herbert's Patent an extension was granted to assignees on condition that they secured upon trust to the widow and representatives of the inventor one-half of the profits. Sometimes conditions are imposed on the patentee for the benefit of other persons who have an interest in the patent, or who might be liable in respect of infringements committed between the date of the order and the sealing of the new patent, or to the effect that a patentee mortgagor should give to his mortagee a like security over the new patent as he had over the old.

Then, I entreat the House to remember, any person can appear before the Privy Council and oppose the granting of the prolongation of a patent. I have heard it contended that no person in the colony can appear; but anyone can, and notice has to be given in the London *Gazette* inviting opposition, but anyone has the right to appear either by counsel or in person:—

When the justice of the case requires, conditions will be imposed in favour of the Crown or the public.

These are the general conditions under which application is made, for prolongation of a patent, to the Privy Council. I contend, therefore, that it would be unwise—I might use another adjective—it would be unwise for the House to pass any measure which would in effect be a slight upon the Privy Council. If you are satisfied that the Privy Council will do justice, why pass this Bill, because I do not suppose anyone here will say they would pass a law to deprive anyone of their rights. Members will not say "No," but they will vote for the Bill. Why should the House interfere with the natural course of events? Why take away from a person a right he has, seeing that the right is safeguarded. Does the House believe that ample justice will be done to the public by the Privy Council?

HON. A. P. MATHESON: Where do they consider the Western Australian public?

HON. R. S. HAYNES: The word "public" means "any person."

HON. A. P. MATHESON: The Privy Council considers Great Britain.

HON. R. S. HAYNES: The Privy Council does not deal with Great Britain alone.

HON. A. P. MATHESON: We are talking about patents before the Privy Council: they are British patents.

HON. R. S. HAYNES: All these applications are heard before the Privy Council; the Privy Council inquire into the actual profits made by the assignees in the colony.

HON. A. P. MATHESON: No.

HON. R. S. HAYNES: Yes; I say the Privy Council, in deciding the question, will inquire into all the profits made by the assignee or the licensee in the colony, or in any part of the world. The hon. member says "No"; I say "Yes," and I have the practice of the Patents Office behind me, by an authority, Mr. Frost. If the hon. member likes to look at it, he will say that I am right; it is on page 373. I state that to the House, and I challenge any lawyer in the House—and there are many here—to get up and contradict me. The question which I first spoke to is this: has the opinion of the public been obtained on the change? Has there been any agitation by the public? I say "No," for many reasons. Chiefly, I say there has been no expression by the public, because the public would not understand the position of affairs. It has taken me considerable time to find out the exact position of the patent law, and any member who wishes to contradict me should read up the patent law and search for himself the practice in regard to applications for the prolongation of a patent. It is quite clear I have established my first position that it is a *sine qua non* that before the passing of the Bill the opinion of the country should be obtained. The next question is: does the Bill interfere with the rights of property? A right in a patent is a right in property, and a very valuable right, perhaps even more valuable than an ordinary right in property, if the patent be in great use. It may be contended that the Bill does not seek to interfere with the rights of any patentees; but if that be so, I ask: what in the name of common sense is the object of the measure? Why is it necessary to introduce the Bill if it is not to deprive the patentees of their rights? If the Bill is not to do that, we are sitting here to pass a measure which is not to interfere with anybody. But I know differently, and the hon. member who introduced the Bill in another place was straightforward enough to state the reason. It is contended that the Legislature in the first Act of 1888 did not intend that if a patent were extended in England it should be extended in this colony; that the Legislature then made a mistake, and that the word "continuance" does not apply to the continuance of a patent here. But why should such a remark be made? The usual, ordinary method adopted in the construction of statutes is that each word is to receive its full and fair meaning, unless such a construction will lead to a manifest absurdity; but if you give these words the full and fair meaning, you find they do apply to this colony, and not only does that construction not lead to a manifest absurdity but, on the contrary, any other construction would lead, not, I admit, to a manifest absurdity, but to a manifest injustice. What kind of Legislature are we? It is said the Legislature made a mistake in 1888; but it must be remembered the Legislature

re-enacted the provision only four years afterwards in 1892.

HON. M. L. MOSS: And in 1894.

HON. R. S. HAYNES: And again in 1894; and it would seem that the Legislature kept on making mistakes. But people acquired rights under the statutes; and as to the Legislature not meaning to pass such law, references can be made to the pages of *Hansard*, though it is not to *Hansard*, but to the Acts to which we must look, and to which people apply the ordinary means of construction. Such an argument could not be advanced in a court of justice, either here or in England; because any court would hold the same thing, namely that it could only look to what the Legislature had said. I am now dealing with the question of the interference with the rights of property; and the patentees have a right to use this patent for fourteen years, with the right to apply for an extension at the end of that period.

THE COLONIAL SECRETARY: Not the "right."

HON. R. S. HAYNES: The statute gives the right.

A MEMBER: Not here.

HON. R. S. HAYNES: Yes; here in this colony.

THE COLONIAL SECRETARY: A patentee has the privilege of applying.

HON. R. S. HAYNES: A patentee has an absolute right to present a petition, and to prove before the court that he has been insufficiently remunerated. The patentees floated this affair into a company, and the shares of this company—I speak of the English company and the subsidiary company—are assignable and are accepted from hand to hand in good faith. To-day these shares are valuable, because there is the exclusive right to the patent for fourteen years, together with the right of application for a prolongation; but take away this latter right, and immediately the value of the shares is reduced, and that which is worth £2 to-day will be worth £1 to-morrow. Is that not interfering with the rights of property, not of people living here, but elsewhere? If the people were here, we should have five thousand of them assaulting the Premier, and it is only because they are out of the colony we hear nothing from them. This company has letters of registration, which I say are equivalent to letters patent here; and they have the right to petition the Governor, and to appear before the court and prove they have not been adequately remunerated for the patent they introduced. What does this Bill seek to do? It seeks to take away from the company the right of going beyond the Governor-in-Council. Are hon. members going to allow the Cabinet to supersede the Supreme Court, which is the tribunal in England to decide these matters? I have nothing to say against the Cabinet, but I would ask any hon. member how he would like any case of his tried by such a tribunal. Every Cabinet, I do not care which, has a skeleton in their closet, and some Cabinets have a whole graveyard. Only the other night I heard an hon. member speaking in reference to the Cabinet sitting as a Court of Appeal in a criminal trial, and when someone said there were lawyers in the Cabinet, there was a laugh all round. No one would like his own case tried before the Cabinet, and especially such a Cabinet as has introduced this Bill with the avowed object of taking the right of the company away. What chance of justice is there when a case has already been prejudged? If this is the court which people are to be asked to go to, the whole thing is a farce. No one can be heard before the Cabinet; it cannot be proved before the Cabinet that a patentee has been insufficiently remunerated, because the Cabinet takes no evidence; and the Cabinet cannot recommend the extension of a patent because there has not been proved to them that a patentee has had insufficient remuneration. That is the object of the Bill, namely, to justify the action of the Cabinet in refusing on the ground that there is no such evidence. What is this but robbery? If the patentees in England satisfy the Privy Council in the manner I have pointed out, and the Privy Council recommend that the patent be prolonged, that decision carries with it a prolongation of the patent in this colony.

A MEMBER: Where did you find that out?

HON. J. W. HACKETT: That is the whole point you have to prove.

HON. R. S. HAYNES: I give that as my opinion after a very careful perusal

of the Acts; but if I am not correct, why is it desired to introduce a Bill to take away the right? There is no use introducing a measure to take away that which does not exist; and when you bring in a Bill to take away a right, you admit at once that a right exists. And the right does exist, as one glance at the Act will show. That, however, is a question which I do not think I need weary the House with. I would point out we have no doubt the right of appeal to the Court, and if the patentees in England show to the satisfaction of the Privy Council that they are entitled to a prolongation, the Court here would scarcely be rash enough to decide to the contrary; and, even if the decision did not carry authority, we would be guided by it. But it is proposed to take away, not only existing rights, but possible rights; in other words, you pluck the pigeon so that he cannot fly. I therefore say the Bill is an invasion of the rights of property, and not only an invasion, but a confiscation. It is confiscation, because you take away the right and give nothing in return. Why should it be laid to the charge of this colony that it is the first to confiscate rights? Why does not the colony of Victoria confiscate? Why does not New Zealand confiscate? Why is it left to the colony of Western Australia to start the policy of confiscation? Surely this ought to be sufficient argument to prevent the House passing this legislation? Who is going to sully his name by voting for a measure which no other colony would dare to pass? I hope hon. members will not allow themselves to be not only gagged by the people of the goldfields, but bullied and schooled into passing this measure. If there are newspapers on the goldfields, there are newspapers in the Eastern colonies and in England, and for the sake of the fair name of the colony, and of our own reputations, we ought to hesitate and pause before we become parties to what is a policy of repudiation. When the patent was granted, it carried with it the right of applying for a renewal, but now it is proposed to repudiate that right. Why should we repudiate? Are we afraid the company will prove their right? It is no cost to the Government, and why do the Government introduce such a measure on the eve of a general election? It is as clear as noonday that the object of it all is to bow down and endeavour to catch popular applause on the goldfields. I have been twitted in some remarks from Mr. Matheson, who is an authority on patent law, as he is on most laws and most subjects, and who says that no person in this colony has the right to appear before the Privy Council.

HON. A. P. MATHESON: I never said anything of the kind,

HON. R. S. HAYNES: You questioned my statement that there was this right.

HON. A. P. MATHESON: No; I did not. I admitted it.

HON. R. S. HAYNES: I will give the hon. member the number of the page in *Frost*.

HON. A. P. MATHESON: I made quite a different assertion.

HON. R. S. HAYNES: I am not perhaps so intimately acquainted with the Privy Council as the hon. member, but I know that Court invariably decides on principles of justice and common sense, and that it will hear any of Her Majesty's subjects.

HON. A. P. MATHESON: I never said the Privy Council would not.

HON. R. S. HAYNES: *Frost* says: "It is to be observed that any person may enter a *caveat* or warning to the Sovereign not to accede to the prayer of the petition; interest in the patent is not essential, as in the case of opposition to the grant, the amendment of a specification, or the revocation of a patent." I would like to see a counsel get up and oppose any member of the Bar of this or any other of the colonies having the right of audience in the Privy Council; indeed, it is the only Court in England where colonial counsel have the right of audience.

HON. A. P. MATHESON: I never denied it.

HON. R. S. HAYNES: I accept the hon. member's statement, although I distinctly heard him say so. The irresistible conclusion is that I have proved my second ground, namely that this is an invasion of the rights of property, is opposed to our sense of reason and justice, and is unprecedented in Australian legislation. The same company is registered in the other colonies, and there no attempts at confiscation have been

made, and it is left to us, the youngest colony of the group with responsible government, to lead the way and embark on a policy of confiscation and repudiation. What will be the result as affecting the rights of the shareholders of the company? What effect will it have on the credit of this colony in England, because the shareholders are in England? There are plenty of newspapers in England which are only too anxious to obtain "copy," and these newspapers will not stop from defaming this country, not because there is any occasion to defame it, but to get a large discount on a loan. There are plenty of newspapers, I say, which will defame this country to raise the interest on a loan. That is one of the first effects the Bill will have. The effect on the people will be that their rights will be taken away; their interests will be damaged; the value of their shares will become depreciated, and if they are depreciated even 1 per cent., it is quite enough to make this House hesitate before passing the Bill. Once we embark on this policy of repudiation—this policy of passing Bills of this kind—directly we do that, other Parliaments are only too willing to follow. I have stood up in this House on other occasions and have endeavoured to make the House understand the reason why we should not pass such Bills as this. You are passing legislation to deprive one man of his rights. We all know the history of gold-mining in this colony. The Australian Gold Recovery Company only registered in 1891 or 1892.

HON. W. T. GLOWREY: I think it was in 1889.

HON. R. S. HAYNES: I will ask the House, did the company get any remuneration in 1889? Did they get any remuneration in 1890, 1891, 1892, 1893, 1894, and in 1895? No. Did they get any remuneration in 1896? I doubt if they did.

HON. A. G. JENKINS: It is their own fault if they did not in 1895 and 1896.

HON. R. S. HAYNES: It is their misfortune. There was nothing here to crush, nothing to treat, I may say. The first time they received anything might be in the beginning of 1895 or 1896, but it was the year 1897 before gold crushing on any large scale was in existence in this colony. I am speaking subject to correction on that point.

HON. A. G. JENKINS: Before that.

HON. R. S. HAYNES: I think the hon. member is wrong, and although I say I speak subject to correction, I do not mean by interjection. The company did not receive any benefit; but I will go back to 1895, to 1894 if necessary. Then the company would have had 6 years, when it was intended they should have 14. Unfortunately the conditions of the colony were such that they could receive nothing under their patent, because there was no gold for half the time the company have been registered. That is not their fault. If it was their fault, then they could not complain. It has not been owing to the company's neglect. Surely that must appeal to hon. members. Why did not the House in 1894 or in 1892 repudiate this patent? Why was it not done in 1894? Why wait until now? Because we had no members for the goldfields then. If this is the sort of legislation we are going to have from the goldfields; if this is to be the effect of the extension of the franchise, and the giving of six extra seats to the goldfields, then I say I have some reason for the position I took up, that I question the right of the House to give seats to places until those places have proved themselves worthy of the exercise of the franchise. It is said, amongst other things, that the company have been exorbitant in their demands. That is one of the cries which we hear everywhere. The company have charged five per cent. actually on the gold won from the tailings.

HON. A. G. JENKINS: Gross.

HON. R. S. HAYNES: Somebody says "gross." I believe two and a half per cent. would be the correct figures; but put it at five per cent. Do members see that without this patent the gold-mining companies would have got nothing from the tailings. Now 95 per cent. of the gold won from the tailings is given to the persons using the patent, and five per cent to the patentees. It may be said that the person working the tailings has to pay the cost of reducing; but the patentees have to get people to watch the companies; they have to keep offices here, therefore they do not get the whole benefit of the five per cent. The returns from the tailings are divided—five per cent.

to the patentees, with which they have to pay their shareholders and their profits, and 95 per cent. goes to the gold-mining companies, who, without this patent, would get nothing. This is a point I wish to impress on the House. I am using the actual argument that there would be no gold obtained from the tailings but for the patent. Is five per cent. too much? Then, if it is, why did not any of the gold-mining companies who "groaned," we are told, under this charge apply to the Governor-in-Council and point out the improper charges which were being made, for the Governor-in-Council has the right, of his own motion, to say that the charge is too much.

HON. F. WHITCOMBE: Section 27 of the Act says that.

HON. R. S. HAYNES: I will read it to members; it is the Act of 1888, Section 27:

> If on the petition of any person interested it is proved to the Governor-in-Council that, by reason of the default of a patentee to grant licenses on reasonable terms—(*a*) The patent is not being worked in this colony; or (*b*) the reasonable requirements of the public with respect to the invention cannot be supplied; or (*c*) any person is prevented from working or using to the best advantage an invention of which he is possessed; the Governor-in-Council may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor-in-Council, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

They have full power, and not one application has been made. Why? Because the companies know that the price is not too much, remembering the cost and trouble the Gold Recovery Company are put to. Instead of applying to the Governor-in-Council, instead of applying to the Gold Recovery Company to reduce the charge, what do the gold-mining companies do? They combine to try and defeat the patentees, and deprive them of their rights. What will be the effect on the holders of the shares in the company? They will say "We have paid for these shares; we have paid for the shares as an investment in the country, and to-day the colony has repudiated its bargain, and our shares are worthless." What opinion will they have of the place, of our integrity? What trust can they place in the people of the colony? It is the beginning of the end. If the colony once embarks on this policy, from that time forward our bonds will fall. From that time forward this colony will stink in the nostrils of the people in England. The eyes of the world are on Western Australia in consequence of the production of gold; the eyes of Paris and Berlin are upon us, and if it goes forth to the world that we have repudiated, what will the people think? The hon. member (Mr. Glowrey) perhaps would like to get his shares up, and perhaps they will go up if this Bill is passed. The eyes of the capitalists will be on this House; they will look with grave doubt on the colony, and the people in England will very properly hesitate again before they attempt to invest money in this country. I give that as my opinion, and I speak with some little knowledge, for I know the effect the Dividend Duty Act had on this colony in regard to investments in this country. The contention is that the Bill is to be passed for the benefit of the mining community. The mining community, forsooth! Are we going to foster and coddle the mining industry at the expense of shareholders in England, and the people in this colony? If that is the principle; if we are to coddle up the mining companies and deprive people of their rights so that the mining companies may exist, then I say enter on a policy of repudiation and carry it to its logical conclusion. And what is that? Why should you tax the working man? Why harass him? Why impose a duty on his beer? Why impose a duty on what he eats? What do you do that for? To screw money out of the unfortunate man who works by the sweat of his brow, to send money to London to pay interest to the shareholders in the mines. Why not repudiate for the benefit of the working man? It is repudiation and nothing else.

HON. W. T. GLOWREY: There is no comparison.

HON. R. S. HAYNES: The hon. member blushes at that, but he does not blush at the other side. In principle there is not the slightest difference between the two. Such a policy as that is the policy of the republics of Central America. If we embark on this policy, and having followed it closely, why not confiscate some of the money in the banks? Let us go to London: there

re millions in the Bank of England, and people are starving. Does that justify he Government of England in going to he bank and taking the money? I incerely regret that for the first time ince the redistribution of seats we are sked to pass legislation of this character. The Bill has been introduced into the House at the instance of the members for he new districts. I regret that exceedngly, and I think, on reflection, members will see the danger of passing legislation of this kind. This is not the first time he House has been asked to pass legislation of this character. The same Ministry introduced a Bill to whitewash a person and stop an action which was pending in a court against the person. It was the action of Baker against Traylen. The Government stopped that action on the verge of the trial. The House that would pass a Bill to stop an action brought by one person who had no friends, against another, would pass anything.

HON. A. P. MATHESON: That was in the good old days.

HON. R. S. HAYNES: No; in the days of responsible government.

HON. A. P. MATHESON: And it was done by goldfields members, I suppose.

HON. R. S. HAYNES: There was one goldfields member. The next legislation introduced was the Bill which may be described as the "Hainault Confiscation Act." In this matter also the Government said they had made a mistake, and while it is immaterial whether they did so or not, it is doubtful whether such was the case. The Government advertised this land as forfeited, and gave certain rights to miners under the Act to "jump" the mine and take possession. This the miners proceeded to do, and issued a writ for the purpose of taking possession; but the Government passed a Bill stopping the action, and took away their rights; and I ask hon. members to hesitate when they are being asked to do the same thing again. Whenever such legislation is introduced, I shall, both in the House and out, so long as I live, attack that legislation and everybody who supports it.

THE COLONIAL SECRETARY: The hon. member might get into trouble out of the House.

HON. R. S. HAYNES: The Colonial Secretary was not leader of the House on the occasion to which I am referring, that position being occupied by Sir Edward Wittenoom, with whose company I then parted, because I would not longer support a member or a Minister who introduced so vicious a Bill. The next attempt made was to deprive Mr. Morrison of certain rights on the Swan for the benefit of the Coolgardie Waterworks; but fortunately, Mr. Morrison lived in town, and was able to put his case clearly before the public in the newspapers.

HON. J. W. HACKETT: You are misrepresenting Mr. Morrison's case a little, I think.

HON. R. S. HAYNES: Fortunately the House opposed the legislation, and the Government shrank from taking away Mr. Morrison's right. At all events I was loud in my denunciations of the measure, which was unsuccessful.

HON. J. W. HACKETT: That was only a question of the tribunal for the arbitration.

HON. R. S. HAYNES: But, as in this case, they tried to change the tribunal to the Governor-in-Council.

HON. J. W. HACKETT: No; it was to a tribunal composed of members of the Houses of Parliament.

HON. R. S. HAYNES: Then I am wrong; but, at any rate, it was proposed to take the case away from the legitimate tribunal, which is the Supreme Court, and send it to a tribunal in which no person would have much faith.

HON. J. W. HACKETT: Composed of members of the two Houses.

HON. R. S. HAYNES: On a question like this I have no hesitation in saying I would have absolutely no confidence in a tribunal which would dare to usurp the functions of the Judges. In the first place, the members of such a tribunal are not sworn to be impartial, and indeed many of them are incapable of being so. We know exactly how a Ministry can stuff a select committee, because we are aware how the committee on the Hainault Bill was stuffed; and that was the sort of tribunal offered to Mr. Morrison, but fortunately the House refused to pass the legislation, and gave Mr. Morrison back his right, of which, though it might not be very valuable, he ought not to have been deprived. For these reasons I hope hon. members will approach this

question in a fair and impartial spirit, and endeavour to see that no injustice is done to anybody. Having done that, hon. members will have done their duty. So sure as an attempt be made to deprive one person of his rights for the benefit of another, so sure are we embarking on a course which will lead to disaster, to misery, and to ruin; and in the end the persons who vote for Bills of the kind are bound, I warn them, to be caught themselves in the very trap they are laying for other persons. If ever there was a time when the House should hesitate it is now. I know there is a certain amount of interest—I know that feeling runs high in certain quarters in the House, because there has been a demand by a certain section; but I think a full and complete inquiry would reveal a great many startling circumstances in connection with this Bill. Every member who has the self-respect he ought to have as the representative of the people should sit down and calmly reflect; and then if he can honestly vote for the Bill, let him do so; but I warn him the passing of the Bill will ultimately lead to trouble. I ask hon. members to see that no injustice is done to any persons because they happen to be out of the colony; and especially do I urge hon. members not to bow down to popular clamour, from which this House ought to be remote. It seems to me that we are being butted at, and that all the Bills are being sent from another place in order that we may resist popular clamour. I entreat the House to throw out the Bill. I ask every hon. member to think the matter over, and if he sees that the objections I have raised, or any of them, are valid, I ask him to vote with me against the second reading.

On motion by HON. C. SOMMERS, debate adjourned.

APPROPRIATION BILL.

Received from the Legislative Assembly, and, on motion by the COLONIAL SECRETARY, read a first time.

POST OFFICE SAVINGS BANK AMENDMENT BILL

Received from the Legislative Assembly, and, on motion by the COLONIAL SECRETARY, read a first time.

REMEDIES OF CREDITORS ACT AMENDMENT BILL.

Received from the Legislative Assembl and, on motion by the COLONIAL SECRETARY, read a first time.

ADJOURNMENT.

The House adjourned at 6·30 o'clo until the next Tuesday.

Legislative Assembly,

Thursday, 22nd November, 1900.

Petition against Industrial Conciliation and Arbitrat Bill—Question: Mining Lease 197E — Hampt Plains Railway Bill, Recommittal, reported Appropriation Bill, second reading, etc.—P Office Savings Bank Amendment Bill, second re ing, etc.—Remedies of Creditors Act Amendme Bill, second reading, etc.—Truck Amendment B the Administrator's suggestion of Amendmen Land Drainage Bill, in Committee, reported—Pe Electric Tramways Lighting and Power I (private), second reading (resumed), conclude in Committee *pro formâ*—Goldfields Act Ame ment Bill, in Committee, Clause 16 to new claus progress—Health Act Amendment Bill, in Co mittee, Clause 16 to end, reported—Adjournment

THE SPEAKER took the Chair 4·30 o'clock, p.m.

PRAYERS.

PETITION—INDUSTRIAL CONCILIATIO AND ARBITRATION BILL.

THE PREMIER presented a petitio from the Incorporated London Chamb of Mines against the Industrial Concili tion and Arbitration Bill in the form introduced.

Petition received.

QUESTION—MINING LEASE No. 197E

MR. ILLINGWORTH, for Mr. Vospe asked the Minister of Mines: 1, Wh were the lessees of Lease 197E. 2, Wh was the area of the lease. 3, Wheth twenty-seven protection orders had be granted in seven months for the leas