

Legislative Council,

Wednesday, 21st August, 1895.

*Arbitration Bill: second reading; committee—
Partnership Bill: second reading; referred to
select committee—Criminal Evidence Bill:
second reading; bill laid aside—Fertilisers and
Feeding Stuffs Bill: first reading—Medical Act
Amendment Bill: first reading—Adjournment.*

The PRESIDENT (Hon. Sir George Shenton) took the chair at 4.30 o'clock, p.m.

ARBITRATION BILL.

SECOND READING.

THE MINISTER FOR MINES (Hon. E. H. Wittenoom): I may state that this is not a Government Bill, but, as the hon. member who had arranged to move the second reading is not here, I propose to ask the House to read the measure a second time, in order to save delay. I may say, however, that the Bill has the support of the Government. It is a measure for the purpose of amending the law relating to arbitrations, and it has been brought forward because the law as it now stands has not worked in an easy a manner as it might be done. I need not deal with the various clauses of the Bill, as they seem to be perfectly plain and, as far as I can see, they all bear on the subject. I will not say more except to move to that the Bill be now read a second time.

THE HON. S. J. HAYNES: I have much pleasure in supporting the second reading of this Bill. It does not, I may inform hon. members, make any new legislation, but codifies the existing law, and makes it more easy than at present for anyone wishing to ascertain what the law is.

THE HON. A. B. KIDSON: I have much pleasure in supporting the second reading, and I agree with the Hon. Mr. Haynes that this Bill is, as far as I can ascertain, a codification, rather than an alteration, of the existing law. It is a good thing, I think, to have the law set out in this form, because it will prove of great assistance, not only to laymen, but to the legal profession as well.

Question put and passed.

Bill read a second time.

IN COMMITTEE.

The Bill was then considered in committee, agreed to without amendment, reported, and the report adopted.

PARTNERSHIP BILL.

SECOND READING.

THE MINISTER FOR MINES (Hon. E. H. Wittenoom): This, Sir, is a Bill to amend the law relating to partnership, and it seems to be a very comprehensive one. As far as I can see it deals with the subject of partnerships from almost every point of view. Hon. members will see that it is divided into three Parts. The first of them deals with the nature of partnerships, the second with the relations of partners to persons dealing with them, and the third with the dissolution of partnership and its consequences. It seems to me that all classes of disputes are arranged for—how far one partner is liable for the actions of another, and the shares and responsibilities of partners. It is unnecessary for me to say any more, and with these remarks I move that the Bill be read a second time.

THE HON. S. J. HAYNES: I have much pleasure in supporting the second reading of this Bill. I may say that it contains nothing more than a simple statement of the present law relating to partnerships, but it puts the law in a more convenient form, thereby enabling the public to ascertain the rights, powers, and liabilities of partners better than they can do now.

THE HON. D. K. CONGDON: I have no objection to the second reading of this Bill, although I hope it will not be rushed through Committee as was the last Bill.

THE PRESIDENT (Hon. Sir G. Shenton): Any hon. member can at any time in Committee move that progress be reported.

THE HON. A. B. KIDSON: I shall have much pleasure in supporting the second reading of this Bill. The object of it, as was the case with the last Bill, is to codify the existing law (which is represented by numerous decisions of the Courts) in the form of a Statute, so that the legal profession, and others may have a simple means of ascertaining what the law is. At the same time, the Bill is a very important one, and requires a good deal of consideration, not only by the lay members of the House, but by the legal members also. In looking through it, I have noticed what, in my opinion, would be several improvements, and I shall, therefore, propose, later on, that the Bill be referred to a Select Committee.

THE MINISTER FOR MINES (Hon. E. H. Wittenoom): I may say in reply to what has fallen from the Hon. Mr. Kidson that I have

myself gone carefully into the Bill, and have mastered its contents as well as I could. Like the last, this is a private member's Bill, but it has been carefully considered by the Legislative Assembly, and on behalf of the Government I asked the Attorney-General whether this was such a Bill as I should support. He assured me it was a good and a useful Bill. I do not think any improvements of importance can be made, but if they can, we might just as well consider them in a committee of the whole House rather than refer them to a Select Committee.

Question put and passed.

Bill read a second time.

THE HON. A. B. KIDSON moved that the Bill be referred to a Select Committee.

Question put and passed.

A ballot having been taken, the President announced that the Hon. S. J. Haynes had the highest number of votes, and that the Hons. S. H. Parker and W. Alexander came next, with an equal number of votes, whereupon it was determined by lot that the Hon. S. H. Parker should be a member of the Select Committee, in addition to the Hon. S. J. Haynes and the mover (Hon. A. B. Kidson).

THE HON. A. B. KIDSON moved, "That the Committee have power to call for persons and papers, to sit during any adjournment, and to report on 28th August, 1895."

Question put and passed.

CRIMINAL EVIDENCE BILL.

SECOND READING.

THE MINISTER FOR MINES (Hon. E. H. Wittenoom): This Bill is an innovation in this colony, but I believe a similar law has been in force in South Australia for some time past, and, as far as I can gather, it works well there. This Bill does not go quite as far as the South Australian Statute, but the idea here, I believe, is that this Bill shall have a trial, and if it is found to work well, then its provisions can be extended. The measure before us only applies to cases which can be dealt with summarily by justices, and it enacts that any person charged with any offence, punishable summarily, may be a competent and compellable witness. In other words such a person may be a witness against himself and he must not be allowed to refuse to answer any question on the ground that what he says may tend to criminate him. At the same time no questions

shall be asked which may criminate him in some other offence which he is not then charged with. This is a new departure, and possibly some of the legal members of the House may be able to tell us whether the Bill is likely to work well. Whether such will be the case or not, I am not now prepared to say. I move the second reading of the Bill.

THE HON. S. J. HAYNES: I beg to second this motion. I may say that a similar Act was made the law in South Australia when I was serving my articles, and it has worked very beneficially. From my own personal experience I thoroughly agree with the principles of this Bill. Although we have no legislation of the kind in force now, the principles of this Bill are often obtained by subterfuge. For instance, if A charges B with assault, B could not give evidence; but to get over the difficulty, the lawyer often lays a counter charge against A, and thus B is enabled to give evidence. Some object to the provisions of this Bill on the ground that persons may criminate themselves. So far as my opinion goes, if a man is guilty, and he criminate himself, nothing but justice is done; while, on the other hand, an injustice may often accrue to an innocent person through his being unable to give evidence on his own behalf. I hope hon. members will see fit to pass this Bill, and I hope the day is not far distant when the principle of it will be extended to all trials which take place, even in the highest courts of the colony.

THE HON. A. B. KIDSON: I shall support the second reading of the Bill, although I cannot help saying that there are one or two provisions which I take exception to. The first of them is that the person charged is to be a compellable, as well as a competent witness. I have a strong objection to this, and I do not think the House should alter the law which has been in existence for so many years to such an extent. By Clause 3 a prosecutor may obtain a conviction out of the mouth of the defendant, and I do not think this should be allowed. If a man has a case against another he should be able to prove it and not rely on the defendant to prove it for him. I also object to the provision by which a wife is a compellable as well as a competent witness. I agree that the person charged, and his wife, if necessary, should be competent witnesses, but I object altogether to the provision which makes them compellable witnesses as well. It might fall to the lot of

anyone to be brought up, however innocent he might be, and it would be far from pleasant if he were compelled, together with his wife, to give evidence and be cross-examined may be, as to unpleasantnesses of the past which had almost been forgotten and which, perhaps, had nothing to do with the case. Then it is provided that a person called as a witness in pursuance of this Act shall not be asked, and, if asked, shall not be required to answer any question tending to show that any person charged has committed or been convicted of any offence other than that wherewith he is then charged, or is of bad character, unless such is admissible evidence. Circumstances might arise which might make the evidence thoroughly admissible, but it might not be necessary. When in committee I shall propose to alter the word "admissible" to "necessary." Then by the next clause it is provided that a person called as a witness shall not be asked . . . any question tending to show that any person charged has been convicted of any offence other than that with which he is charged, or is of bad character unless (b.) The person charged has asked questions of the witnesses for the prosecution with a view to establish his good character, or called witnesses to his good character, or otherwise has given evidence of good character. I think that is going too far, because a prosecutor may thus be able to force things out and let the magistrate and the public know them, although they may have nothing whatever to do with the case, and may not be evidence at all. I do not think the argument of the Hon. Mr. Haynes applies when he says that because they have this law in South Australia we should also have it here. If they are stupid enough to have such a law there that is no reason why we also should be stupid enough to have it here.

THE HON. S. J. HAYNES: Might I say in explanation that I did not say that because they have this law in South Australia we also should have it here. What I said was that a similar law worked well there.

THE HON. C. A. PIESSE: After what the hon. Mr. Kidson has said and after considering the subject carefully I see there are many objections to this Bill. I move, therefore, that all the words after "that" be struck out with a view to inserting "the Bill be read a second time this day six months."

Question—That the words proposed to be

struck out stand part of the question—put.

The House divided with the following result:—

Ayes ...	...	...	...	...	3
Noes ...	...	...	...	...	7

Majority against ... 4

AYES.	NOES.
Hon. S. J. Haynes	Hon. D. K. Congdon
Hon. H. McKernan	Hon. R. G. Burges
Hon. E. H. Wittenoom	Hon. J. E. Richardson
(Teller).	Hon. A. B. Kidson
	Hon. W. Alexander
	Hon. E. Robinson
	Hon. C. A. Piesse
	(Teller.)

Question put and negatived.

Question that the words "the Bill be read a second time this day six months," be inserted, put and passed.

Bill laid aside.

FERTILISERS AND FEEDING STUFFS BILL.

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

MEDICAL ACT AMENDMENT BILL.

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

ADJOURNMENT.

The House, at 5.30 o'clock p.m., adjourned until Thursday, 22nd August, 1895, at 4.30 o'clock, p.m.