Constitution only in name, and which does not advance in one jot or tittle the cause of constitutional reform.

THE PREMIER (in reply): I just want to say a few words to answer the question put by the member for the Murchison, when he asks what will happen at the approaching general election when those who supported the Government are asked to explain the attitude they have taken up in supporting this Bill. I want to answer the member so that the electors will know what the hon. member advocated last year and what we advocate now. I am now dealing with the hon. member as reported in *Hansard*. [MR. THOMAS: I think the Premier had better drop *Hansard*.] I particularly desire to see these observations as recorded side by side with what has just been said, because last year the leader of the Opposition took up such an extreme attitude that if he could find a stone to throw at the Government, he would throw it, and he was not particular what size of stone it was. Some of the stones were pretty large, and sometimes he picked up mud also. In reply to the observations this evening of the hon. member, I cannot do better than use the hon. member's own words. Last session he said:—

> I am glad to be able to congratulate Ministers, in no grudging manner, on having introduced a Bill which to my mind has been conceived in no party spirit, but has been drawn, generally speaking, on broad lines, and discloses in almost every word and sentence a desire to render equal justice to every one of the great interests of the State, and to maintain the balance even between those conflicting interests—conflicting at least in some respects—which go to make up the sum total of every community.

I desire no more eloquent words than those with which to justify the Bill which the hon. member just now so severely attacked.

Question put and passed.

Bill read a second time.

ADJOURNMENT.

The House adjourned at 9·20 o'clock, until the next day.

Legislative Assembly,

Thursday, 6th August, 1903.

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

PRAYERS.

ADDRESS-IN-REPLY—PRESENTATION.

At 25 minutes to 5 o'clock MR. SPEAKER, accompanied by hon. members, proceeded to Government House to present the Address-in-Reply to the opening Speech of His Excellency; and having returned, MR. SPEAKER reported that:

His Excellency had been pleased to reply as follows:—

> MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY,—
>
> I thank you for your Address-in-Reply to the Speech with which I opened Parliament, and for your expression of loyalty to our Most Gracious Sovereign.
>
> FRED. G. D. BEDFORD,
> Government House, Governor.
> Perth, 6th August, 1903.

MR. SPEAKER AND THE ASSEMBLY.

THE SPEAKER: With the permission of the House, I wish to express to hon. members my great thanks for the kind and considerate manner in which so many of them have spoken of my restoration to health, and my reoccupation of the Chair of this Assembly. I can only say that I deeply feel the remarks made, and that they will be an additional incentive, if possible, to me to preside over this House as long as my health may enable me to do so. (General applause.)

INQUIRY, AUDIT MATTERS.

SELECT COMMITTEE'S REPORT.

HON. WALTER H. JAMES brought up the report of the Select Committee.

Report received, read, and ordered to be printed.

PAPERS PRESENTED.

By the PREMIER: Copy of by-laws relating to the municipality of Albany.

By the MINISTER FOR RAILWAYS: 1, Sleepers replaced on Government Railways, Particulars; Return to order of the House dated 5th August. 2, Statement of Revenue and Working Expenses of the Midland Company; Return to order of the House dated 5th August.

Ordered, to lie on the table.

QUESTION—WATER SUPPLY, METROPOLITAN DISTRICT.

MR. DAGLISH, without notice, asked the Treasurer: 1, Whether he is aware that the water supply for metropolitan and suburban consumers for the last three days has been undrinkable and unpotable owing to its nauseous taste and strong smell. 2, Will he make an inquiry into the cause, and endeavour to have a more wholesome supply provided by the Metropolitan Waterworks Board.

THE TREASURER replied: The matter has not been brought to my attention. If the hon. member chooses to ring up the Metropolitan Waterworks Board office, he can be supplied with any information he may desire.

QUESTION—PUBLIC WORKS COMMITTEE, TO APPOINT.

MR. DAGLISH asked the Minister for Works: 1, Whether it is the intention of the Government to introduce a Bill authorising the appointment of a Public Works Committee in time for such committee to inquire into and report upon the various railway proposals to be laid before Parliament this session. 2, If not, whether the Government will appoint a special committee to deal with these propositions, so that Parliament may have some independent information to guide it before any expenditure is sanctioned.

THE MINISTER FOR WORKS replied: 1, The Government previously during this Parliament introduced a Public Works Committee Bill, which was rejected. There is no intention of repeating the experiment this session. 2, When the railway proposals referred to are before Parliament, it will be within the power of Parliament to refer each or any of them to a special committee.

QUESTION—COASTAL SURVEY, NORTH-WEST.

MR. PIGOTT asked the Premier: 1, Whether the Government will take into early consideration the advisability of having farther surveys made of the coastal waters in the North-West portions of the State. 2, Whether the Premier will advise the House of any action the Government decide to take in this matter.

THE PREMIER replied: Yes. We are communicating with the Admiralty, as our attention was drawn to the matter by the Hon. the Colonial Secretary.

NOTICE OF MOTION IRREGULAR.

SPEAKER'S RULING.

MR. J. L. NANSON had given notice of motion, "That this House views with grave concern the proposed introduction of aliens into the Transvaal."

THE SPEAKER: This notice of motion I must rule out of order, as being substantially the same as a question on which the House has already expressed an opinion. I will read an extract from *May's Parliamentary Practice*. Though I have read it before, it is advisable I should read it again for the information of members:—

> It is a rule in both Houses, which is essential to the due performance of their duties, that no question or Bill shall be offered that is substantially the same as one on which their judgment has already been expressed in the current session. A mere alteration of the words of a question, without any substantial change in its object, will not be sufficient to evade this rule. On the 7th July, 1840, Mr. Speaker called attention to a motion for a Bill to relieve dissenters from the payment of church rates, before he proposed the question from the Chair. Its form and words were different from those of a previous motion, but the object was substantially the same; and the House agreed that it was irregular, and ought not to be proposed from the Chair. Again, on the 15th May, 1860, the order for the second reading of the Charity Trustees Bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the House had already put off for six months. So, also, on the 17th May, 1870, a motion for an address in favour of emigration was not allowed to be made, being substantially the same as a resolution which had been negatived in the same session.

According to that practice, I rule this notice of motion out of order.

MR. NANSON: With your permission, sir, I should like to make a personal explanation.

THE SPEAKER: The hon. member cannot do that. There can be no discussion on my ruling, unless he wishes to bring forward a distinct motion that he objects to my ruling.

MR. NANSON: No, sir; I wish to ask you in what manner I can make a personal explanation to the House.

THE SPEAKER: I do not know. All I know is that you are out of order in speaking now.

MR. NANSON: I have on other occasions heard members make personal explanations.

THE SPEAKER: They have made personal explanations as to some words used in debate affecting them, but not on such occasions as this, in respect of a ruling by the Speaker.

RETURN—LANDS DEPARTMENT, OFFICERS RELATED.

On motion by Mr. TAYLOR, ordered: That a return be laid upon the table of officers in the Lands Department who are related one to another.

RAILWAY TRAFFIC BILL.

SECOND READING (MOVED).

THE PREMIER (Hon. Walter James), in moving the second reading, said: In introducing this Bill and placing it before the House, I desire to say a few words to explain its genesis, and enable members to ascertain more accurately the reasons which have led to its introduction, and the evils which we hope to remedy if it passes into law. In doing so, I propose to deal very shortly with one or two cases only; because those instances give rise to that condition of affairs the existence of which explains and justifies the appearance of this Bill. We have to-day about 300 miles of private railways in addition to the Midland Railway. Those lines, however, are nearly all constructed to enable existing timber leases to be properly worked, and it is not the intention of the Government to extend the Bill to all such lines. In one or two cases we believe it should be applied, but in other cases the Bill will not apply to such lines until the existing conditions have altered, and the need for its application has arisen. The main object of the Bill is to enable a reasonable use to be made of private railways where that use can be enjoyed without prejudice to the fair interests of the owners of the lines. The whole Bill is controlled by the word "reasonable," and a most influential board—a board occupying a position which will command the respect of the community—is created to determine what is or what is not reasonable, having regard to the principle laid down in Clause 28 of the Bill. In relation to any matter, what is or what is not reasonable depends on the facts; and it must be borne in mind that the board has full jurisdiction to reject any demand which is not reasonable. I would submit to the House that private railways are built under franchises which are of great value, and which inevitably tend to secure monopolies unless they are strictly controlled and strictly watched. When a line is once constructed, it can practically defy competition, because it controls the traffic. Viewed as a mere means of internal communication, private lines very closely affect the development of the State; and that development demands that the powers of the railway owners shall not be exercised unreasonably. Again I emphasise the fact that the dominating feature of this Bill is an obligation cast upon the owners of private railway lines not to use those lines in an unreasonable manner. The Bill asks no more than that. It is based upon a principle which, while safeguarding the reasonable interests of the owners, establishes on its face the claim of the State to insist that those who own valuable and practically exclusive franchises shall use them reasonably, and with a due regard to the interests of the State. This Bill follows upon principles which have long received recognition, and which are likely to receive a still larger and wider recognition unless the present-day tendencies to create monopolies and to mercilessly use them for pecuniary ends are to be allowed unchecked and uncontrolled expansion. Bearing in mind, therefore, that the main principle of the Bill is to enable the State to have for the purposes of its development a reasonable use of these railways on terms which it is competent for this

influential and independent board to lay down, it follows that the Bill should not apply to any lines which cannot be made to assist the State—which the State cannot reasonably ask to aid in its development. There is, therefore, no reason to apply this Bill to a mere timber line or a firewood line, unless such line or the industries it serves lead to the establishment of a settlement, and change a line which was purely a timber or a firewood line into one which serves more permanent and more extensive interests. That change may be brought about. We have here in this State several instances of lines built merely for the purpose of exploiting timber leases or timber concessions, but leading to the growth of a certain amount of settlement, and ceasing to become mere timber lines, ceasing to be a part, as it were, of the plant used in the exploitation of the forest, and serving useful ends in assisting the development of the State. That change can be brought about. I say there are to-day in Western Australia instances where that change has been brought about; and for that reason we should not expressly exclude such lines from the Bill, but should reserve the power given to us by Clause 39 to exempt such railways from the operation of the Bill while they are merely serving the purpose of exploiting a timber industry or dealing with a firewood reserve. Not only for that reason is it more satisfactory not to expressly exclude them, but to deal with them under the powers of Clause 39. For another reason also it is desirable that there should be the power to bring such lines within the purview of the Bill; because that power will be in itself a guarantee that no monopolies will be created by timber companies or firewood companies endeavouring to treat with unfair severity the goods and merchandise of those business people who desire to open up trade relations with and to supply the employees of such companies. Trading monopolies of that nature are not what timber leases or firewood leases were granted for; and, therefore, to the extent to which this Bill can directly or indirectly prevent the growth of those monopolies, it will serve a useful purpose to the State, and will do nothing of which those who own the private railways can reasonably complain. So far as firewood railways are concerned there is little, if any, need for legislation, because the terms on which these lines are constructed are of such a nature that the Lands Department has complete control, and can always insist that proper regulations be carried out, and proper facilities provided. But even in such cases the existence of such a board as contemplated by the Bill will be of great value if disputes arise between the public who desire to use the line and the owners of the line. There will then be created this tribunal, and disputes will be dealt with and decided by them which under the present conditions would be dealt with by the Minister for Lands, and in connection with which there might be suggestions made that political influence was brought to bear. I desire to deal with the Bill as one intended to reach and control those private railways which are not of a merely temporary nature, mere plant in the exploitation of timber leases or firewood areas, and which as a matter of fact ought to be used to a reasonable extent to assist our development. Again let me say that none can with reason quarrel with the contention put forward by the Government, that we are justified in asking, when persons own valuable franchises in the nature of railways, that they should use these franchises in a reasonable way, and that the question as to what is reasonable or not must to a large extent be determined by the fact that these railways in nearly every instance were built for the purpose of assisting the development of one or more of the industries of the State. Whilst we may agree that such is a fair way of putting the proposition, the difficulty is to define what is "reasonable." That bears in each case upon the point of view of the individual who uses the expression. It is because we appreciate that difficulty that we provide in the Bill for the establishment of a board which will commend itself to every fair-minded man in the State, a board occupying a position which no owner of a private railway could fairly object to. I have indicated that I do not think the Bill should apply to every private railway. It should not apply to the railways which are merely laid down as part of the plant of a timber lease or a firewood

area. I have explained that there are reasons why these railways should not be expressly excluded because we provide ample machinery to meet these cases by Clause 39, and the power will rest with the Governor to bring these railways within the purview of the Bill, a power which will be a guarantee to prevent imposition of unreasonable terms and unfair conditions. I shall say now what I should have said earlier, that I am dealing with the Bill, assuming it to be amended in accordance with the amendments on the Notice Paper, and Clause 39, as members will see, should the amendment be accepted, gives to the Government power to exempt any line, from time to time, from the operation of the Bill. Let me indicate to the House the lines which I think to-day should be covered by the Bill, railway lines in connection with which questions arise suggesting the advisability of a measure of this nature. They are the Midland Railway Company, the Rockingham-Jarrahdale line, and the Torbay line. These three lines are built on concessions, not all land-grant concessions but built on concessions given to companies. They are not lines laid down like the ordinary timber lease line or as the ordinary firewood line is. They are lines granted to assist in developing the State. Let us for a few minutes see what is the position to-day as to these lines. There is one other line I desire to refer to, although the difficulties in connection with that line do not exist now, because it is part of the Government control, but the difficulties that did exist when it was a private railway justify me in saying that it is one instance which shows good ground for bringing the Bill before Parliament. I do not want to traverse the history of the Midland Railway Company in this State. It is well known to every member from the time the concession was first granted to the present date. I want to take the position in October, 1901, when a joint select committee of both Houses was appointed to deal generally with the position of that company and to inquire into its management. That committee consisted of Messrs. Haynes, Brimage, Drew, Jameson, and Speed, members of the Council, and Messrs. Hastie, Hutchinson, Jacoby, O'Connor, and Stone, members of this House. In moving in the Assembly in support of the resolution which came to us from the Council in favour of the appointment of the joint select committee Mr. O'Connor, in this House, gave his reasons. He said:—

> Constant complaints are received in connection with railway facilities. Only last week complaints were sent in by Mr. Phillips and Mr. Stone, members of this House, and by members of another place. The passenger compartments are packed with whites, blacks, and half-castes, and this is a constant occurrence. The speed of the trains is not kept up. Sometimes the trains travel at a very fast rate; but generally speaking they travel at 10 or 12 miles an hour, although they are supposed to travel 20 miles an hour. Sometimes the passengers are lucky to get to their destination at all.

Following on that came observations from the member for the Swan, observations which no doubt particularly pointed to the fact of that member's own experience in connection with the Canning-Jarrah line under the old management: conditions which, had they existed now, the hon. member would have been a most ardent supporter of the Bill before the House. I hope the hon. member is an ardent supporter now because he could not take up the position that because his own little trouble is over, no one else's trouble need be attended to. He said:—

> Those who have business to do with the company, as traders, who have goods to send over that line, and those who have to travel over it, find that they are exceedingly badly treated. I have had complaints from the farmers at Chittering——

I hope the member will not forget that Chittering is still in his electorate. The hon. member went on to say:—

> I have had complaints from the farmers at Chittering that they find it difficult to get their goods away. It is almost impossible to get trucks, and it is difficult, when they have got the trucks to get them loaded. The settlers are considering whether it would not be better to revert to the old system in vogue in the old days, and cart their stuff to Perth. Complaints are frequently received from passengers who have to travel over the line. The accommodation is ancient.

The member for the Greenough dealt with the question, and he said:—

> This is a matter that has given the public a lot of worry and trouble for years past. The company have not treated the public fairly in any way, which is well known by those who have to use the line and travel over it.

There were other observations from the member for Geraldton, Mr. Hutchinson, and I refer particularly to the observations of these members whose local experience gave special point to their observations. He said:—

> Everyone who travels over the Midland line or has business in connection with the line knows that for a very considerable time past the company have not been carrying out the conditions of their agreement with the Government.

One of the objects of the Bill is to establish a tribunal which will enable the conditions to be insisted on, and avoid the difficulties now cropping up, in the way of settling these disputes. The hon. member goes on to say:—

> It has been said, and truly, in another place, that on more than one occasion the Midland Company has actually attached an explosives van to a passenger train. All the trains now running over the Midland line, except those which happen to convey the Governor or members of the Ministry, are mixed trains, that is to say they convey both passengers and goods. Now it is against the regulations of the Government railways to carry explosives on passenger or mixed trains. Notwithstanding the regulations, the Midland Company do as I have said. If it be necessary, for the safety of passengers, to prohibit the carrying of explosives on Government passenger trains, then it is equally necessary to prohibit the carriage of explosives on the Midland Company's passenger trains, which are, moreover, subject to the same conditions and regulations as the Government trains. . . . . Then there is the question of the accommodation of passengers. On almost every train from the Murchison we see women and children crowded together, frequently overcrowded, and having to put up with accommodation that would not be tolerated on a Government line for a single week. No lavatory cars are provided——

MR. WALLACE: The same thing applies to the Government line every week.

THE PREMIER: The hon. member goes on to say:—

> No lavatory cars are provided; although they ought to be provided, and are provided on the Eastern Railway. The only occasions when lavatory cars run over the Midland line are those when the Government take pity on the people at the other end, and allow the Government lavatory cars to go on.

Perhaps the member for Mount Magnet will listen to this:—

> Under such circumstances the Midland people consider passengers under an obligation because the cars are run, notwithstanding that the fares charged over the Midland line for very poor accommodation are the same as those charged by the Government for infinitely better accommodation.

MR. WALLACE: Dirty old cars belong to the Government.

THE PREMIER: Members will be glad to know that when the matter was dealt with in the House the member for Mount Magnet was one of those who supported the appointment of the select committee.

MR. WALLACE: Not to inquire into the railway management only.

THE PREMIER: I mentioned the object of the committee a few minutes ago.

MR. WALLACE: The report was favourable to the Midland Company.

THE PREMIER: Mr. Connor, member for East Kimberley, also spoke on the question, also the member for Toodyay (Mr. Quinlan). The appointment of the select committee was agreed to almost unanimously in the House. There seemed to be this recognition in the House, that there are matters that require to be inquired into, and we find from the observations of members who spoke on the point, distinct statements which, if they were true, showed that due facilities were not being given on the line. If on some Government lines adequate provision is not made, in Parliament there is power to rectify that difficulty, but in connection with private lines there is no such power. We want to create the power that those who hold these franchises should hold them not in a selfish way. The joint select committee were appointed and went into the matter fully. They heard a lot of evidence, and made a lengthy report. I find in paragraph 14 the committee refer to the passenger carriages in use on the Midland line, and that paragraph says:—

> The passenger carriages in use upon the Midland line are of good design and in good order, and at the time they were introduced were equal to those in use upon the Government lines; but it must be remembered that, at the time, the number of miles of railway open for traffic, that is on the Government lines, was very small. There can be no doubt that the carriages, as now used by the Midland Railway Company, are quite unfit for the carriage of passengers over a distance of 277 miles. There are no conveniences in the carriages.

And here I particularly draw the attention of the member for Mount Magnet,

because he is very gallant on these matters:—

> There are no conveniences in the carriages, and the reports of the agony which passengers, many of them females, travelling along the line are forced to endure, in a carriage crowded as they frequently are, is lamentable, and this state of things ought not to be permitted to continue. The conveniences for travellers at the various stations are wholly inadequate. The passenger rates and freights in force in some instances are in excess of those in force on the Government railways.

And they recommend that a Government inspector should be appointed continuously to inspect the line and report generally; also that the Commissioner of Railways should require the company to at once provide lavatory cars for the convenience of passengers, and the extention of conveniences for passengers on the various railway stations; also that the Commissioner of Railways should require the company to run at least two passenger trains per week, to run each way during the night between Midland Junction and Walkaway; and that all passenger rates and freights be assimilated to the rates and freight in force on the Government railways. In dealing with the Midland Railway Company, I want to point out to members the complaints made in this House, and I hardly think that any member could say there have not been many and serious complaints. I myself heard complaints from members of this House dozens of times last year and the year before, and the fact remains that passengers, and particularly female passengers, were treated not only unreasonably but in an inhuman way, and it was only at last, by the action of the Government, that this was overcome. Passing from that to the Torbay Railway, which runs for a distance of about nine or ten miles, that was built with the object of assisting settlers to use it. I have heard complaints, and perhaps the member for Plantagenet (Mr. Hassell) will be able to refer to them. That line is not now being used to the extent it ought to be for the purpose of assisting settlers who live along it and who desire to utilise it. They say there is a certain contract, but the difficulty comes up in settling that contract and getting some tribunal to take a reasonable view of the requirements of those who are settled in the neighbourhood, and to insist upon the company carrying out its obligations. Then go to Jarrahdale. That line from Rockingham to the Jarrahdale mill has been built for years. It passes through land well capable of settlement, but apparently it blocks the way to settlement, and a few years ago nothing was done. There is a difficulty even now in doing much. Some slight concessions have been made, but what position are we in with regard to the continuation of those concessions? There is a line which has been built I suppose almost 30 years. [Interjection.] It was built in 1870, was it not? Anyhow, it has been built 20 years, and nobody can say that it was built as a mere temporary line to be used for the exploitation of timber. Settlement has to a certain extent grown up along that line, but it would be enormously increased if that line could be fully utilised. I believe there is a great deal of good land which that line would serve, but at present we have no means by which we can ask those who own the line to allow us to use it under reasonable conditions. Then take the Canning Jarrah line to which I have referred, and which has now passed into the hands of the Government. [Mr. Jacoby: Not all of it.] Much of it. The fact that all of it has not passed into the hands of the Government will, I am certain, convince the hon. member of the necessity of this measure, because there are so many portions which have not passed into the hands of the Government that he wants us to take. What was the position with regard to that line? There were complaints by every person settled along it. The member for the Swan (Mr. Jacoby) surely would admit that, and he himself has raised his voice and protested about the manner in which people were used. Persons carrying on industries along that line, and prepared to pay equal rates and equal fares, got no assistance at all.

Mr. Jacoby: I did nothing to urge confiscation as a remedy.

The Premier: We will come presently to the question of confiscation, and I will show how antiquated the hon. member is on that point. He is at least 50 or 60 years behind, on that question. In connection with this Bill there are four lines—three now, but four only 12 months ago—those being the Midland, the Torbay, the

Jarrahdale, and the Canning Jarrah. All these were built in connection with concessions from the State. Complaints have constantly been raised. I say certainly, so far as the Jarrahdale line is concerned, there could be a considerable increase of settlement if that line were reasonably used to assist settlers. I was alluding just now to the Canning Jarrah line, and the settlement on that area which is now being so rapidly carried on was considerably curtailed by the fact that those running the line would not make the least effort to assist the settlers, even although the settlers were prepared to pay what I think was more than reasonable.

MR. ATKINS: The big trouble was that the Jarrahdale owners would not allow them to settle on their concession.

THE PREMIER: They are allowing them now to a limited extent. The complaint is that those who are settled on it do not get all the satisfaction they can fairly ask. Although we have seen a recent amendment in connection with the Midland Company and other lines, the fact remains that we have no machinery provided by which we can insure that these amendments which were denied so long and which now exist will be continued. Why should it have been necessary to have a joint select committee, and for members of this House to make so many protests and to call attention to the inhumanity in connection with the carriage of female passengers between Walkaway and Midland Junction, before we got the improvement that has taken place during the last six or 12 months? I admit that there is great improvement compared to what the condition of affairs was 12 months ago. I know attention will be drawn to that fact, and I want to anticipate it. It was in view of the unsatisfactory state of affairs last year that in the Address of the Governor on the 17th of July last year I inserted this paragraph:—

> The growing and well-founded complaints against private railways for their indifference to and neglect of the reasonable needs of those who are developing the wealth of the State in the districts through which such lines are constructed, are occupying the attention of my Ministers, and it is hoped that before the session closes a Bill will be submitted by means of which the State shall secure that these railways shall adequately serve those interests for which alone these lines were authorised.

Apparently that paragraph had some influence in bringing about the changed conditions in connection with one line at least. It is astonishing how that particular company is deaf to public opinion until it is very strongly expressed. Again I say the fact that these alterations have been made, instead of being an argument against a Bill of this kind, is one of the strongest arguments in favour of it. It must be borne in mind that our position is not peculiar. It is a position every State suffers from which has a large number of railways owned by private individuals under no control — private railways passing over an area where there is large settlement or there are opportunities of large settlement. I suppose the difficulty is as old as the time when two people began to combine together. Need arose for the State to protect itself against monopolies, and I suppose no monopoly is more thorough than the monopoly of railway construction; for if a railway is once built, nobody but the State itself can undertake the duty of building a competing line, because those owning the line already built hold all the cards, and by reducing the rate and making temporary concessions they can render it entirely impossible for any private company to build a line in competition.

MR. JACOBY: They did so at Wanneroo.

THE PREMIER: The State may do it, but I think that even the State would be loth to do so, and make a line running parallel with an existing line merely to rectify evils on that old line. Very shortly after railways began to be constructed in the old country—long certainly before they attained the development they have now reached—those evils were recognised. Thus we find a series of Acts extending over a great number of years, all of them recognising that the State has the right by legislation to control the operation of railways and to prevent them from being too largely used for monopolist purposes. That is the principle upon which this Bill is based. It is very closely founded on an existing model which has been for upwards of 40 years in operation in the old country; a Bill which was passed in the year 1854 by the Imperial Parliament at a time when they were not inclined to indulge in what my tertiary friend from the Swan calls confiscation or repudiation. We will

take the first Act, which was passed in 1838. By that Act Parliament claimed the right to insist upon mails being carried and upon the ordinary sorting department being provided. The first direct enforcement by Parliament was to have control of the charges enjoyed by these companies. English railways were built under authority which gave the Government no right to impose conditions which subsequent legislation has enacted.

MR. ILLINGWORTH: Always a parliamentary train.

THE PREMIER: That came afterwards. English lines were built in the first instance without any conditions at all; and you find in the old country, year after year, legislation passed for the purpose of imposing conditions upon them; legislation which clearly recognises that the State has the right to interfere by legislation in these matters. That is the point I desire to bring more especially to the notice of my friend, who talks about confiscation and repudiation. Then take the next year, 1839. In that year they passed an Act which compelled existing companies and all future companies to have gates at all their crossings and to keep gatekeepers. That seems a simple matter to us now, because we are so accustomed to it, but that actually was a piece of express legislation so far back as 1839. Then we come to 1840, when a long Act called the Railway Regulation Act was passed.

MR. ATKINS: What about ballast?

THE PREMIER: That Act was extended in the year 1842. In the Railway Regulation Act of 1842—I am referring to these Acts now more for the purpose of showing members that there is a perfect current of legislation all passed on the principle that the State has a right to interfere in these matters—there is a section which compels all the railway companies to fence with sufficient fences throughout the whole length of their lines. Now, that was provided a long time ago.

MR. TEESDALE SMITH: Why do not the Government of this State fence their lines?

THE PREMIER: The Government are doing it throughout the agricultural districts.

MEMBER: Very slowly.

MR. JACOBY: At the rate of a mile a year.

THE PREMIER: Again, I see that by an Act passed in the year 1842 the British House of Commons placed a five per cent. duty on the gross receipts from passenger fares. That again was what might be called a strong interference with the rights of private property. By the Cheap Trains Act of 1844 the British Parliament provided that where the profits of a railway company exceeded 10 per cent. per annum, the Government could insist upon a revision of fares, so that the profits should not rise beyond 10 per cent. That Act also provided that the Government should have the option of purchase at the expiration of 21 years from that date or from the date of construction of the line, whichever might be the longer, over all future railway lines: and also—this is most important—the Act provided that where a railway already built should extend any of its branches for a distance of more than five miles, the Government should have the right to purchase the excess; but if they purchased the excess they would have to buy the whole line. So really at the end of 21 years from that year, the Imperial Government, strictly speaking, had a right to buy all lines whether built before or after that year. A select committee of the House of Commons, which sat I believe in the year 1867, came to the conclusion that it was inadvisable for the State to purchase the railways. The fact remains, however, that so far back as the year 1844 there existed an Act which gave the Government the right to buy all future lines, and provided, as already explained, an indirect method of buying all lines then built, if those lines carried out extensions exceeding five miles in length. Then again, so far back as the year 1844, an Act required that there should be at least one cheap train per day each way at a penny per mile—another interference with the rights of private property. Farther, the Act provided reduced fares for the naval and military forces. Moreover, it gave the public the right to use electric telegraph lines built by the companies, without favour or preference to any particular individual. This Act gave such extensive powers, that my ancient friend opposite

would call them powers of repudiation and confiscation.

MR. JACOBY: You have already provided for all these matters by the agreement with the Midland Railway Company.

THE PREMIER: If these matters are already provided for, then plainly there is no confiscation about this Bill. The point I want to make, however, is that by legislation the British Parliament has interfered with the so-called rights of railway companies. A company building a railway in England before this legislation was passed had no terms—practically no terms imposed upon it. Yet the British Parliament imposed these terms year after year.

MR. JACOBY: Do the English Acts stop the running of trains?

THE PREMIER: Yes; if the trains are unsafe.

MR. JACOBY: Where is that provided?

THE PREMIER: Next we come to the Act of 1845, which prevents the sale or lease of a railway without Parliamentary consent—yet another interference with the rights of property. Thereupon we come to the Railway and Canal Traffic Act of 1854, with which I shall deal presently. The Act of 21 and 22 Victoria, 75, prevents a railway company from acquiring a lease of any canal works without Parliamentary consent; the object being to prevent too large a combination without the consent of Parliament. The amending Railway Regulation Act of 1868 provides that if railway companies use steamers in connection with their services—and hon. members know that in the old country a great many railway companies own steamships—the obligations imposed on them by other Acts shall apply to the steamer traffic also; that a railway company shall not be able to say that when using a steamer it is perfectly free from regulations imposed by the Acts under which it runs its railways. The British Parliament practically said, "The provisions imposed on you by legislation as railway owners shall also apply when you use steamers in conjunction with your railways." The same Act compelled railway companies to provide smoking compartments. It is a very short step between calling on a railway company to provide smoking compartments in the year 1868 and calling on a railway company to provide lavatory cars in the year 1903. The same Act provided that for the safety of passengers there should be communication between the guard's van and the carriages. Then followed the Railway Regulation Act of 1873, appointing—as the member for Perth (Mr. Purkiss) will remember—a body of commissioners to deal with the questions which arose under the Railway and Canal Traffic Acts and the various amending Acts. Up to that date that body consisted of a Judge of the Court of Common Pleas and two commissioners. By the Act of 1873 the board was constituted of three commissioners. Members will no doubt recollect the Continuous Brakes Act, under which the Government could compel private companies to instal continuous brakes. Again, there is the Cheap Trains Act of 1873, which provides for the running of one cheap train a day each way. In that Act the British Parliament said to the railway companies, "You shall on every train, or on a reasonable number of trains every day, provide a certain amount of accommodation at a cheap fare." The Act provided also a farther reduction in the charge for the conveyance of military and naval forces. In 1888 came another amendment Act, and then we have the Act of 1889, making yet farther amendments. By the Act of 1889 the Board of Trade was given power to insist on the railway companies instituting the block system, to insist on their adopting the interlocking system, and to insist that in every case the continuous brake should be provided. Such were the powers given to the Board of Trade. Again, by the Railway Regulation Act of 1893 express power was given to the Board of Trade to check excessive hours of labour. Then we come to the Railway and Canal Traffic Act of 1894 with farther amendments. Having stopped at the year 1894, we began with the year 1838. Right from 1838 to 1894 there is a continuous stream of legislation passed for the purpose of checking the natural monopolistic tendency of railway companies. Now, can a member say, on the mere recital of that stream of legislation, that this Bill sets up any novel or startling principle? I can almost show in English legislation a corresponding provision for every pro-

vision of this Bill; perhaps not so far-reaching in detail as is this Bill—I shall presently explain that aspect of the case—but every clause in the measure has, so far as the principle is concerned, justification in the legislation of the old country, beginning so far back as the year 1838 and coming right up to the year 1894. The present Bill, however, is largely founded on the Railway and Canal Traffic Act of 1854, and I desire to refer to that Act in detail in order to show that the Government are not introducing any startling measure. That English Act was a recognition of the then growing difficulties and oppressiveness of private railways. In the year 1839 a select committee of the House of Commons had sat and reported in favour of a board to superintend the railways, urging the establishment of that board as being necessary—these are the words of the committee—"for the purpose of protecting the weak against the strong, and counteracting the evils incident to monopoly." Now, whether or not the committee fully realised the danger of monopoly may be open to question. I think that when we realise the extent to which monopolies grow—I do not refer to any particular combine—we begin to see that difficulties may arise in connection with the matter. I think it has not been fully realised in the past, or legislators would have made their provisions more adequate. When the difficulties were realised—this is shown by subsequent legislation—the English House of Commons contained such a large proportion of men who were either directors of railway companies or shareholders in railway companies that it was extremely difficult to get such legislation passed. I think it was said on more than one occasion that the whole difficulty blocking the way of such legislation in the old country was to be found in the fact that so many railway directors and railway shareholders were in the House of Commons. I suppose there is no class of legislation more difficult to pass through the House of Commons than legislation dealing with railway companies, because, as I have said, there are in the House so many railway directors and railway shareholders. Therefore, in pointing to this volume of legislation in the old country, one adduces a striking testimony, I submit, to the appreciation of the House of Commons of the need for this legislation. The testimony is convincing in view of the circumstance that such remedies can be obtained in spite of such strong opposition. In 1844 another select committee reported that it was clear from reason and from experience that the necessary legislation should be subjected to a habitual and effective supervision on the part of the Government; and in 1854 this Act was passed. The Act of 1854 provides for the granting of reasonable facilities for receiving, forwarding, and delivering traffic. Bearing in mind the position of this State and the position of the old country, I do not know that any clause in this particular Bill goes farther than this simple old Act passed in the year 1854, of which Section 2, the operative section, provides—

> Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company, and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

This is an Act passed in the year 1854, and the whole of the legislation, practically speaking, is contained in that one section. There is a section which pro-

vides machinery, but the second section is the main section. The principle of that Act has been extended, and amendment Acts have been passed in the years 1888 and 1894. Members will see, therefore, that the principle is an old principle, recognised so far back as 1854. The present Bill is really on the lines of those Acts. The principle, I say, has been recognised and has been as far as possible extended up to the end of 1894. After that explanation, I hope the member for the Swan (Mr. Jacoby) will not think there is anything startling or revolutionary in the Bill introduced by the Government. Now, there can be no doubt that the operation of the section I have quoted has not been so extensive as it ought to have been, owing in a large measure to the fact—I am certain the member for Perth will bear me out on this point—that at the time the legislation was passed the Judges, if they did not agree with legislation, had a great inclination by their reading of the law to very seriously curtail its operation and effect. Now-a-days that tendency has been fully remedied: Judges now-a-days perhaps more fully appreciate than they did formerly, that the obligation cast on a Judge is to administer the law, and not to concern himself whether the law is good or is bad. In those days, about the year 1854, that was not so: the tendency was the other way. I myself have often been astonished at the construction which has been placed on the language of an Act of Parliament by the Judges of 50 years ago, who were more anxious to maintain the old law than to recognise the new. Consequently one finds old decisions and old rulings read into new Acts, which in a great number of cases were, looked at from the point of view of common sense, obviously intended for the purpose of remedying the old law. We often see Acts moulded by Judge-made law in such a way that instead of carrying out the reforms intended, they seem to leave the old traditions as they were before the amending Acts were passed. That, of course, does not happen now-a-days, though it frequently happened in the year 1854, when we had the old Common Law Procedure Act and a narrower method of construing Acts of Parliament. But I wish to show the extent to which, even under adverse conditions such as those, this Act of 1854 operated, and imposed on railway companies who apart from the Act had no obligations, conditions which may be thought very harsh and unreasonable, but conditions which, so far as one can see, needed to be considerably extended to make the Act fully operative in the old country. I will give some instances, because I do not wish members to think that I am introducing anything startling or revolutionary. I do not like to hear members talk about confiscation. That is an unpleasant word to use, and I do not think it should be applied to anyone, certainly not to the Premier, unless its use is undoubtedly justified. Since the passing of the Act of 1854, railway companies cannot refuse to carry traffic which they have facilities for carrying; but they are compelled to carry it not as common carriers but as ordinary bailees, subject to certain conditions. The section provides that every railway company shall afford all reasonable facilities for the receiving and forwarding and delivering of traffic, even though this may involve structural alterations. It has been decided that—

> The company will not be ordered to provide a junction, when it is doubtful if the Board of Trade would allow it to be used. A railway company cannot refuse facilities under this section for the exchange of traffic with another company over a junction line sanctioned by Parliament and by the Board of Trade, on the ground that in their opinion the junction is unsafe for passenger traffic. An arrangement for carrying traffic between a company's railway and a steam packet company's wharf had existed for 10 years, at the end of which period the railway company gave notice that they would not continue such interchange. The Railway Commissioners held that the arrangement was a due and reasonable facility under this section, and that the facilities should be continued to be afforded.

That was a case in which an agreement which had existed for 10 years was about to terminate. The railway company wished to put an end to it, but the commissioners came to the conclusion that the facilities should be continued. Again:—

> If the company refuse to carry a certain class of goods as common carriers, and require special rates to be paid for the carriage of such goods, this was held by the railway commissioners to be a refusal of reasonable facilities within the section. Reasonable facilities include proper accommodation in the stations

and in the carriages, and for receiving and forwarding passengers, and for getting them in and out of the carriages, and the like. Owners of sidings properly constructed under the superintendence of the company's engineer are entitled, under the head of reasonable facilities, to have their trucks taken by the company, if they have been placed as near as possible to the junction, arranged in proper order and clear of obstacles. A cloak-room is a reasonable facility within the section. Platforms of sufficient length, and waiting rooms at a station, are also facilities. Where facilities were asked for a particular class of traffic on a branch line, part of a system of railways, and the particular traffic was carried on other parts of the system, the commissioners had jurisdiction, although the railway company said that they had never carried the particular traffic on the branch line in question. It is settled that the operation of this section is not to be limited to charges made after the goods have actually come upon the railway. It extends to cartage as well. This section has been held not to apply to transit by sea. But its provisions are extended by the Regulation of Railways Act, 1868, to steam vessels used by railway companies and the traffic carried by them.

Here is a strong case:—

The Railway Commissioners have decided that the company cannot fix the weight of packages of fish to be carried at the lowest rate of charge at 18 pounds, where the result was that a fish merchant whose packages were 21 pounds in weight, and could not be altered without damage to his business, had to pay the higher rate fixed for packages between 18 and 28 pounds. The company were directed to fix 21 pounds as the limit for the lowest rate, as they could not show that packages of 21 pounds would cause more labour or expense to the company than packages of 18 pounds. The company must not shut their stations at an earlier hour to the vans of independent carriers than to their own agents, unless, perhaps, it could be shown that it was necessary to do so for the public convenience.

They are not entitled to have a favoured list in connection with carriers. There is a great volume of cases, all of which throw light upon the operation of this Act, and I have taken the cases just quoted from the well-known authority on the law of railways, *Browne and Theobald*. I have another authority, *Macnamara*, dealing with the same subject. I refer to these instances because members will better understand the operation of the English Act by my reading these instances than by my reading the section:—

In a case where a complaint was made by persons occupying works or manufactories adjacent to the railway that the railway company did not supply sufficient wagons for the traffic on the railway, it was held that although the duty cast upon the railway company by the special Act was limited to cases where there was a request for wagons by members of a particular class, and where also only particular lines of railway were required to be used, yet where the duty did arise, it determined what was a reasonable facility within the meaning of Section 2 of the Traffic Act, 1854, as effectively as if it were a duty of a more general kind or one which applied under any circumstances; and the railway company were enjoined to afford all reasonable facilities for the receiving, forwarding, and delivery of the applicants' ore passing exclusively over the lines transferred, having regard to the above section.

So also in another case, where traders whose collieries and brickworks were connected by sidings with a railway complained of undue delay in dealing with the trucks, the Commissioners held that the railway company had not afforded all reasonable facilities, and required them to do so, also—

To work and manage their railway duly and properly, and to provide sufficient locomotive power and labour for that purpose, and to desist from unduly detaining empty or unloaded wagons destined for the collieries and works of the applicants, and to haul away with regularity and despatch from the sidings communicating with their railway loaded wagons properly placed ready for removal.

There is in *Macnamara* a whole series of such cases. As an instance:—

A railway company do not afford all due and reasonable facilities for receiving, forwarding, and delivering traffic if, having sufficient powers, they keep their platforms, booking offices, and other structures at any station in such a condition as to space and other arrangements as to cause dangerous or obstructive confusion, delay, or other impediment to the proper reception, transmission, or delivery of the ordinary traffic of that station, whether consisting of passengers or of goods.

There are other cases; but I think those will explain to members the operation and the extension of that English Act passed in 1854.

MR. TEESDALE SMITH: That Act deals with 40 millions of people and 20,000 miles of line. Why not give us something from the Acts of South Australia or New South Wales?

THE PREMIER: The point I wish to make is that the principle on which this Bill is based is just, and has been recognised elsewhere. Some members believe it *is* a novelty; but it *is not*. It is old-fashioned; it is 50 years of age.

Whether it should be adopted here is another matter; but so far as I can see, in this State there is a special necessity for its introduction. In what other State are there so many private railways?

MR. TEESDALE SMITH: What about the Echuca Railway and the coal tramways of Victoria?

THE PREMIER: Only to one of those works would the law apply; and I am not aware of anything like the same difficulty in the other States as exists in ours, or the same need for legislation. All I wish is to point out that the principle is just. Whether or not it should be applied is another matter. There were not 40 millions of people in Great Britain when the Act of 1854 was passed.

MR. TEESDALE SMITH: Say half that number.

THE PREMIER: The principle is the same. In America the common law steps in, and it is very extensive, treating railway companies as owing a certain duty and obligation to the State; and according to common law principles the companies are compelled in some cases—although there is not an Act of this nature—to put up stations. For instance, there is one case in which it was held that—

> In America the question whether a railway company can be compelled to put up a station has several times lately been before the courts, and has been in each case affirmatively answered; it being held that the duty to establish stations upon a public railway was a public duty.

So also in another American case it was held that—

> A court of equity will compel a railway company to construct a station and give other railway facilities at a proper and necessary place.

I wish members to apply those principles to this Bill, which I will go through very shortly, and then have done. The Bill gives a definition of "traffic facilities," and I do not think any member will question its fairness. Of course it rests in each case with the board to decide, if the question crops up, which, if any, of those traffic facilities shall be provided by a particular railway. I do not wish members to think that we expect for one moment that the board could reasonably impose on any line the provision of all those facilities. That is not contemplated. But there is in the definition an enumeration of the various provisions which amount to traffic facilities. Several of them are simply copied from the Judges' decisions in the old country, while others are wider, owing to our local conditions. For instance, the provision as to lavatory cars is inserted here because there are special reasons why it should be; and I have no doubt that in the old country to-day, if any railway were found to carry passengers on a journey extending over 12 hours, the company would be compelled to provide lavatory cars, just as smoking carriages were ordered to be provided years ago where previously there were none. The clause defines what railway facilities are. Then we pass on to Clause 3 and to Clause 12, which provide that where complaint is made to a Minister that reasonable traffic facilities—and again I draw attention to that word "reasonable"—are not afforded, the company failing to afford and maintain such facilities as shall be required by the Minister or ordered by the board shall be liable to a penalty not exceeding £100 for every day such default continues. By Clause 4:—

> Any person may complain in writing to the Minister against any railway company that reasonable traffic facilities are not afforded.

If the Minister is satisfied that the complaint is just, he can call upon the company to afford the facilities desired. If the company refuse to do so, and give the Minister notice of objection, the Minister at once refers the matter to the board of arbitration. The company can appeal to the board for a determination. If they do not appeal, then the request has to be carried out. Whether a request is or is not reasonable must be determined by some tribunal; and it will in each case rest with the Minister to say, before he puts the law in motion, whether the request is reasonable, whether the facilities should be afforded without remuneration, or whether the company should be remunerated; and it will be for him to offer the remuneration. If a complainant says, "I want certain facilities," it will be for the Minister to say whether it is reasonable to call on the company to provide such facilities without reward, or whether so much should be paid for the facilities provided. Anyhow, whatever the Minister may ask the railway company

to do, and whatever terms he offers it is for the company to say whether the request is or is not reasonable; and if they think it unreasonable, they can go before the board of arbitration to be constituted by the Bill. I do not wish members to get the impression that the Minister can say, "You must do it," and that it must be done. The request of the Minister must be reasonable, and whether it is reasonable must be determined by the board. Now as to maintenance and inspection, I hardly think Clauses 13 to 18, inclusive, can be objected to. Clauses 15 and 16, members will see, are slightly modified by amendments of which I have given notice. The power given by Clause 16 to stop running of trains is to be exercised only where there has been a refusal to carry out the orders of the board or the request of the Minister—in those cases and in those cases only. Clause 13 is useful, because I submit there ought to be some power or right for a Government officer to inspect rolling-stock in connection with private railways, and to see that it is in a perfectly safe condition; and Clause 13 provides for no more than that. [MR. JACOBY: That power now exists.] We are now dealing in one Bill with all private railway companies. At present, in some cases we have the power, and in others we have not; but I say that in every case we ought to have power to see that rolling-stock used is proper rolling-stock. Clause 14, giving power to compel railway companies to fence, is a new clause; but I think it ought to be passed. We have a very similar section, No. 10, in the English Act of 1842; and our Government railways are now steadily extending their fencing through the agricultural areas. We now provide that private people shall fence if they are adjoining owners; and private owners having land in municipalities or in roads board districts have cast upon them the obligation to fence if their property faces a road. I submit we should be justified in asking the House to pass that clause. Under the Midland agreement the company is called on to fence where a line passes through freehold. The Bill provides:—

> Every railway company shall, at its own cost, fence the railway, and make crossings with gates and cattle stops, at such places and in such manner as the Minister may from time to time require, and shall thereafter maintain such fences, crossings, gates, and cattle stops to the satisfaction of the Minister.

It rests with the Minister to say whether fencing should be erected in any particular spot. There should be in every case an obligation cast on the private railway owner to fence the land, because the company is taking through the land what may be a serious danger to cattle and stock that may be trespassing, and the burden is cast on every company to fence the land. There have been many instances in which cattle have been destroyed when trespassing on a railway line. If it were the case of ordinary road, there would be no danger at all, but the danger lies in the fact that here we have a dangerous machine running through the country—a legal nuisance—and if cattle get on to the line they may be destroyed. Where there is a railway, this additional burden is cast on the owners to fence the land because there is this dangerous track running along. That clause therefore is not unreasonable, and the power lies with the Minister to cause the company to fence the dangerous portions of their land.

MR. TEESDALE SMITH: Why not provide a clause making them pay for the cattle killed?

THE PREMIER: How can one expect a cattle owner to always have a man looking after his cattle to see that they are not destroyed? The owner may not have a man running after his cattle to see that the Midland Company or the Millars' Karri and Jarrah Forests Company are not running over his cattle. The law looks on a railway as a nuisance, and unless there is statutory authority, the company is liable for all damages. Where there is statutory authority he can do much damage to the adjoining owner's property, therefore why not provide some protection? Clauses 19 to 30 deal with the constitution of the board.

MR. JACOBY: Where do you get a precedent for Clauses 15 and 16?

THE PREMIER: The hon. member wants to know if I have a precedent: the precedent is in common sense. We give to the Engineer-in-Chief, by Clause 13, power to inspect the permanent way and the rolling-stock, and we require, by Clause 14, the erection of crossing gates

and cattle stops. Then we say by Clauses 15 and 16, if that is not done we can stop the running of the trains. What is wrong about that? If the company is carrying out the law, no harm can be done.

MR. JACOBY: What about the passengers and goods?

THE PREMIER: The companies do not care about the passengers and goods. The Engineer-in-Chief comes to the conclusion that an engine should not be used. Do you think the company should use it under those conditions? It is not likely that a company would raise difficulties in refusing to do what the Engineer-in-Chief requests. By Clause 19 we have a board of arbitration, consisting of a Judge of the Supreme Court, the Commissioner of Railways or some person appointed by the Minister, and a third person appointed by the railway company. That will be a board of high standing. The most important provision of the Bill is contained in Clause 28, because we point out to the board there what they are to have regard to when dealing with the question of what is reasonable or not. The board, in determining any question referred to them, shall have regard—

To the reasonable needs and convenience of the persons who use or desire to use the railway; to the extent to which, having regard to the nature and extent of the railway company's traffic, the railway can be reasonably used to assist in the settlement and development of the land through which the railway passes or which it can reasonably serve.

Firstly, consideration is given to the railway company's traffic, having regard to the extent to which the line is used. When we pass on to Subclause 3 we deal with land-grant railways, and we impose a higher standard, and I think that ought to be imposed. We say there:—

In the case of any railway built, or agreed to be built, before or after the passing of this Act, wholly or partly in consideration of the grant by the Government of any land or any estate or interest therein, to the fact that such railway was authorised and should be managed and conducted with the object of settling and developing the lands served or capable of being served by the railway, and the lands granted or agreed to be granted as aforesaid.

MR. ILLINGWORTH: How will that bear on the existing contract?

THE PREMIER: The existing contract provides for a certain number of trains per day.

MR. ILLINGWORTH: More than that.

THE PREMIER: Not much more. The extent to which the court can come to a conclusion must be reasonable, and that in addition to the terms of the contract there are imposed additional terms.

MR. ILLINGWORTH: A bargain is a bargain, if it is a bad bargain.

THE PREMIER: I have been endeavouring to deal with that contention, and I am sorry if I have not made myself clear before. All the railways built in the old country before the Act of 1854 have imposed on them certain terms. They had a bargain; they built a railway with no conditions; subsequently conditions were imposed. They might have turned round and said, "We have invested our money without knowing of these conditions which have been imposed." When the Midland Railway was built, the main object was the development of the country. When the Torbay Railway was built, the chief object was the development of certain areas, and when the Canning-Jarrah line was built and this great timber concession was granted, if members will look up the old debates and discussions at that time they will see that the argument put forward was that the railway was to be built to increase settlement and development. In connection with the Canning-Jarrah line, when authority was given to Mr. Keane, although it was only a timber line, it was to encourage settlement and development along the route. All the lines were built on those conditions, and we know that no land-grant railway can possibly succeed unless it is used for the purpose of developing the lands given to the company. Subclause 3 asks the land grant railways to do no more than we have a moral right to ask them to do.

MR. NANSON: What they undertook to do.

THE PREMIER: Yes; what they undertook to do. They said "We are going to settle the country."

MR. ILLINGWORTH: They undertook to bring people here.

THE PREMIER: But they were exonerated from that afterwards. That clause shows that the country had that in view at the time. After all, is it un-

reasonable that we should say in relation to this Bill, "Your duty is measured by the fact that you built the railway to encourage settlement in Western Australia."

MR. JACOBY: You will not do that by closing the line.

THE PREMIER: There is no question as to closing the line. If the hon. member looks to the amendment, he will see it does not close the line, but stops the trains from running.

MR. JACOBY: It is the same thing.

THE PREMIER: Indirectly it is. Why should that condition not be imposed if a company will not carry out its terms! It is not likely that the railway will be closed up unless there is urgent need to do so. The effect of the clause will be that there is power to enable the Government to force the requests, whether orders of the Board or otherwise. In nine cases out of ten these requests will be carried out. That part of the Bill from Clause 31 onwards is nearly the same as the law now. Clause 39 in the present Bill I do not refer to, because members will see by the Notice Paper that I am striking it out and inserting a new clause, enabling the Government to exempt any particular railway from the operation of the Bill. I put Clause 39 in, subject to farther consideration, for the purpose of showing on the face of the Bill a declaration that we claim the right to buy the railways if it is thought desirable in the interests of the State. As Clause 39 was drafted, it does not give the Minister the right to buy: he has to have the consent of Parliament. The Minister would have to go to Parliament for consent, and then pass a Bill. The object in putting that there was to have discussion and to have the principle affirmed. As my property can be bought as the Government like, why should not the Government have the right to buy a railway? So far as the most important company is concerned, on whose behalf my friend is so anxious, if they get the cost of construction plus 10 per cent. they will get twice the value of their line. That clause is not before us now, and I do not propose to press it. With that exception the latter clauses of the Bill are a repetition of what we have now. I am sorry that I have trespassed so long on the time of the House, but I have done so because a number of members look on the Bill as containing some startling and new propositions. I have brought the Bill forward because there have been just complaints in the past as to the conduct of certain private railways. There can be no greater engine for oppressive monopoly than private railways if they are not subject to regulations; and although these private railways can do useful and good work, they will only do that work when it is insisted on. We have a tribunal to insist that such conditions are carried out. That tribunal will only use powers and opportunities in a reasonable way, and the request made by the public and the Minister must also be reasonable. I beg to move the second reading of the Bill.

At 6·30, the SPEAKER left the Chair.
At 7·30, Chair resumed.

On motion by Mr. WALLACE, debate adjourned.

AUDIT BILL.

SECOND READING (MOVED).

THE COLONIAL TREASURER (Hon. J. Gardiner), in moving the second reading, said: I offer no apology to this House for bringing in an amendment of the Audit Act. If members refer to the Audit Act they will see that it was passed on the 26th February, 1891. Anyone who has been brought into contact with the administration of this Act, and who studies the Acts of the sister States of the Commonwealth, will I feel sure agree with me that it is crude and does not carry out the wishes of the House with regard to public finances. Therefore it was thought advisable to bring in an amendment of that Act, and in doing so I have striven to lose sight of the fact that I am the Colonial Treasurer of this State, and have endeavoured as far as possible to bring in a measure which will meet all the requirements for the administration of the finances of Western Australia. It is generally supposed that the object of the Treasurer is to hoodwink the Auditor General. I recognise that whilst Treasurers may come and go, and some may occupy the position for a brief time and some for a lengthy period, the Audit Act, which practically governs the distribution of the funds of this State, should be made

so that it will be a protection to the citizens for all time. I have taken a deal of trouble to produce a workable safeguarding Act, and I think it is but fair and right for me to acknowledge in introducing this Bill the very great assistance I have received from Mr. Percy Witton, the Chief Clerk of the Audit Department of the Commonwealth, who has been good enough to lend me very valuable assistance, and in that assistance has brought with him the rich, ripe experience of the administration of no less than five Audit Acts of the Commonwealth. In addition to that, the Under Treasurer, who has had a very great and wide knowledge of the working of this present Act, has devoted a good deal of his time and has rendered very valuable assistance in trying to make this measure as perfect as possible. I also have to acknowledge the suggestions of the present Auditor General. I trust that as the result of this work I shall be able to convince members that a Bill has been produced second to none on the statute-books of the Commonwealth. I have endeavoured as far as possible to free this Act from useless and unworkable technicalities, to prevent useless duplication of unnecessary returns, to provide for a searching audit, not only of the books and vouchers, but of principles. In other words, I have striven to make a practical piece of business machinery, protecting to the full not only the expenditure of the State, but conserving also to the full the total revenues of the State. It must be acknowledged that in doing this I have placed upon the Auditor General far greater responsibilities than are his under the present Act; because this Audit Bill provides for a very much more thorough and comprehensive audit than was provided for under the old Act; and if this measure be thoroughly and conscientiously administered it will make the position of the Auditor General of this State not only the most onerous in the State, but also the most trustworthy. Recognising, as members will recognise when they go into this Bill, that we are placing a very great responsibility on the Auditor General to see that this is faithfully carried out, the first thing we shall introduce is a proposal to increase the salary of the office from £700 to £800 per annum. It will be found that in the Eastern States, except Tasmania, of which I have no knowledge, the Auditor General receives £1,000 per annum for his services. Even South Australia, which never can be accused of over-paying its staff, realises that the Auditor General's position is one that it has to recognise. It consequently pays him there, as he is paid in the other States, £1,000 a year; and I fancy that if the occupant of the office in Western Australia discharges faithfully and well the obligations of this measure, he will be entitled to receive the same salary as is received by the Auditor Generals of the other States and of the Commonwealth. I venture to say that if he discharges the duty to the satisfaction of Parliament, we shall freely and ungrudgingly give him the increased salary. We must recognise, too, that by this Bill we practically place under the control of the Auditor General not only the expenditure of some four or five millions of money annually, but we are also asking him here to see that not only shall money be duly accounted for, but that those departments which receive revenue shall be carefully checked in order to see that the people pay to the revenue of this State every penny they are entitled to pay. It can be easily seen, therefore, that the duties are very much broader and very much heavier than they were under the old Act; and for the due performance of those duties the Auditor General is undoubtedly responsible to Parliament, who are practically his master. Naturally enough, in considering this, the question must arise as to how far the present occupant of that office is qualified to fill the position. Far be it from me at the present juncture to express an opinion either one way or the other on this subject, and I merely refer to it to point out to the House the position we are placed in with regard to the Auditor General. An examination is being conducted into the Audit Department at the present time. If that examination clearly and conclusively proves that the Auditor General has faithfully carried out the Act and has fearlessly administered it, then an obligation is thrown upon this House to give him every possible encouragement, to stand by him in every possible case, so that he can have that respect and fear which undoubtedly ought to belong to

his office. I venture to say that if this measure is faithfully carried out in the way the State will expect it to be carried out, it will bring credit to the man who has to supervise it, and from the people of this State the utmost confidence and trust in his ability for the administration of it. It will be seen that in order to more fully protect the Auditor General from interference on the part of Ministers it is provided in Clause 16 that the Auditor General shall be entitled to lay before the Crown Solicitor a case in writing. Under most of the other Audit Acts of the States he is allowed to approach either the Attorney General or the Crown Solicitor; but I hold that the position of Attorney General is entirely a political one, and naturally enough in any case of divergence of opinion which might occur between the Treasurer and the Auditor General the sympathy possibly of the Attorney General would be with his colleague. Consequently I desire as far as possible to remove him from that influence; and therefore, under this Bill, the legal officer whom the Auditor General is to consult on all points is, not the Attorney General, but the Crown Solicitor.

MR. ILLINGWORTH: Who is an officer of the Attorney General.

THE TREASURER: Under the present Act the Auditor General has to report to the Treasurer, and I may say that objection may exist to the office of the Auditor General being under the control of the Treasurer. I think, however, that it matters little in any event which Minister controls the Auditor General, seeing that this officer is entirely the servant of Parliament and practically under no Ministerial control whatever.

MR. ILLINGWORTH: The Crown Solicitor is under the Attorney General.

THE TREASURER: True; but surely the member for Cue does not mean to assert that a principal officer of the Crown, such as the Crown Solicitor, is not entirely independent of the temporary occupancy by any legal man of the Attorney General's office.

MR. ILLINGWORTH: I am only stating a fact.

THE TREASURER: You may be stating a fact, but it is a fact from which you want people to draw a deduction which I venture to say the House will not for one moment attempt to draw. I do not wish to weary hon. members with a long description of a Bill which is to a great extent technical. I think it will be sufficient if in this second-reading speech I lay before the House the principles which guided me in the preparation of the measure. When the Bill comes into Committee, it will be time enough to weary members with long explanations of the technical clauses. The reason why I have spoken at some length with regard to the qualifications of the administrator of this measure is just this: unless we have a really good administrator of the Bill, the measure must to a great extent be waste-paper. The principles which the Bill lays down are these, roughly and briefly. In the first place, I have striven to give to Parliament a greater degree of control than it has had under the existing Act. Speaking with some knowledge, I believe that is a wise step; I consider it very wise to give Parliament as far as possible every power in the control of the public purse. The more Parliamentary control one has, and the less control or license one gives the Treasurer personally, the better it will be for the financial welfare of the State. I venture to say that when I deliver my Financial Statement I shall be able to convince the House that the conviction is one to which I have tried to give full effect during the past year. I am certain that in such a provision as is set forth in Clause 31 of this Bill there is a good deal of safety for the Treasurer. That clause enables him to say, "I cannot expend money without Parliamentary sanction." It is my intention in delivering the Financial Statement to follow as far as possible the lines of the Commonwealth and the lines of New South Wales, where a limited advance account is provided for the Treasurer to meet sudden emergencies; and beyond that amount it will be impossible for the Treasurer to go without the consent of Parliament. It may be said that a prodigal Treasurer would run through the amount very quickly; but, even if he does, he has got to the limit of the expenditure authorised by Parliament, and he cannot have any more money. If, on the other hand, even with a Treasurer of a frugal turn the sum should be exhausted in the first month of his office, then it will be extremely

difficult for members of Parliament to come upon him with suggestions of large expenditure not provided for in the Estimates, because the Treasurer will be able to say, "I have only had a certain sum allowed me, and practically that is all spent by this time." My experience—and I believe the experience of other occupants of the Treasury—is that Form I and Form J constitute a direct incentive to public officers to throw responsibility to the winds. Public officers make all sorts of haphazard, guessing estimates, and when they find themselves altogether in the wrong they trust to a good-natured Treasurer to pass Form I's and Form J's, which practically are measures to cover up the incompetency or lack of foresight of such officers. This Bill will, in a large degree, protect Parliament in that respect, and I hope indeed that the provision will afford a strong protection to the Treasurer also. We are abandoning the warrant system, which is nothing more than a guessing competition. This warrant system appears in the Act of every State in the Commonwealth, and yet the Auditors General of every State and the practical men who have administered the Act and have tried to work under it agree that it is nothing more nor less than a huge and useless form of guessing. And when one has guessed and found himself wrong, it makes no difference. Full machinery has been provided, with penalties as regards all those officers who administer departments responsible either for the expenditure of money or for the collection of money. In this particular, if under the existing Act a man made a mistake and it became necessary to debit him with the cost of that mistake—there have been such instances—then instead of surcharging the man responsible for the mistake the practice was to surcharge the Treasurer; and in this roundabout way, by this lengthy and tedious process, we eventually got to the bottom of things. The Bill proposes to alter that system altogether. If the Auditor General finds that through carelessness or negligence, or from any worse cause, it is necessary to surcharge a departmental officer, that officer will be surcharged directly and will be reported to the Treasurer. The Treasurer then is called on to take what means he thinks fit for the recovery of the amount and of the penalty provided by the Bill. I have inserted a clause which I feel sure will meet the wishes of members. For years past there has been constant complaint that one did not know exactly from the Estimates how much of the revenue for the year which was past was directly traceable in the Estimates of the following year. In order to get over this difficulty, Clause 36 provides:—

> The annual Estimates submitted to Parliament shall contain a statement of all outstanding liabilities in respect of public works in progress or contracts in execution for which any unexpended appropriation for the preceding year shall have been made by law, and provision for such liabilities shall be shown separately in the appropriation for the current year, and shall be a first charge thereon.

I think that clause will give effect to the desire frequently expressed by members that when a Minister brings forward the Estimates, each year's Estimates of expenditure shall practically form a clean estimate, and that those works which were started during and which actually belong to the expenditure of the previous year shall be shown separately on the Estimates. What is probably the most important alteration is contained in Clause 44 of the Bill. The clause referred to practically revolutionises the existing Audit Act. By Subclause 2, paragraph (*a*), it is provided:—

> The Auditor General or such other person as he shall appoint shall once at least in every year inspect, examine, and audit the books and accounts of every public accountant, and of every other person in the public service or subject to the provisions of this Act to whose possession or control any moneys shall have come for or on account of the Consolidated Revenue Fund.

MR. ILLINGWORTH: Does that include the Railway Department?

THE TREASURER: The question of the Railway Department audit will in all probability be settled almost immediately; and I have no doubt we shall be able to bring the Railway Department under the Audit Act in accordance with what we believe to be the desire of the House. To show how this Bill differs from the existing law I shall read Section 28 of the Audit Act, which provides:—

> The said Auditor General or any officer appointed by him for this purpose is authorised and empowered from time to time to inspect

and take account of all goods warehoused under bond to the Government in any store, whether public or private, and to inspect the books and accounts of every person in the Government service to whose possession or control any moneys shall have come for or on account of the public revenue, or other public account, by virtue of his office or employment . . . .

The present Bill specifically provides that the audit shall be taken once a year; and that, I believe, is the desire of the House. The report of the Royal Commission on the Public Service, which has been before members, frequently points out that the offices of many public servants who are entitled to receive and to expend revenue have not been examined for years. I say we do not want that to continue: we want to know at the close of the financial year, when the Auditor General presents his report, or as soon thereafter as he can, that the report conveys clearly and distinctly the fact that every officer entitled either to receive or to spend money under this Bill has had his books, his vouchers and all thereto appertaining, thoroughly examined. It does seem to me that there constantly crop up cases of men accused of embezzlement, which cases might easily have been checked or prevented by an annual audit, by an examination of the man's books at least once a year. We can hardly, when a case does crop up in which for years there has been no inspection, while for years there have been peculation and embezzlement, dissociate ourselves entirely from blame, making it all attachable to the man who commits the offence. Another important paragraph of Clause 44, Subclause 2, is paragraph (*b*), which provides that the Auditor General shall ascertain "whether the whole of the revenue and all other collections whatever have been duly collected and accounted for." It is one thing to say that an officer accounts for all the cash he has received, but it is another thing altogether to say that the State has received every penny of revenue which the officer ought to have collected. By the Bill we throw that responsibility on the Auditor General. It is known here, and it has been known in other States, that public officers, either from laziness or incapacity, have not always made that effort to collect revenue which they ought to have made under their various Acts. Now we are throwing on the Auditor General the responsibility for ascertaining not only whether moneys received are accounted for, but whether the officer charged with collecting the revenue has collected it practically to the uttermost farthing. Subclauses (*d*) and (*e*) contain another far-reaching provision—that he shall "ascertain the quality, description, and price of all stores purchased on account of His Majesty, and of all stores supplied for the use of every department of the public service, and whether any person in the public service has requisitioned for or obtained any stores in excess of the reasonable requirements of his office." There is great cause for regret that such a clause as this has not hitherto appeared in the Audit Act. It shall also be his duty to "examine whether the proper quantities of all such stores remain in stock in the proper store and building." Now it is one thing to check the book entries of the stores account; it is absolutely another thing to ascertain that the book entries correspond with the stock on hand. We are saying to the Auditor General: "You must not only be satisfied that money has been expended on stores, but you must also be satisfied that the stores absolutely agree with what your stock-book represents as being on hand." Now I say that the general result of the subclauses of Clause 44 will be to leave no obstacle which can prevent a thorough and exhaustive inquiry and examination each year of the State's affairs. We have taken away no jot or tittle of the Auditor General's power. On the contrary, we have given him the fullest powers, so that he may carry out his duties absolutely to the best of his ability. He is still a servant of Parliament; he is still responsible to Parliament; he still has the right, which he has frequently exercised, to report to Parliament any differences of opinion which may arise between him and the Treasurer, who is practically responsible after all for the custody and the expenditure of the moneys of the State. We recognise that the Auditor General has undoubted privileges, but we recognise also that those privileges are occasionally likely to be abused; and to prevent any injustice to the man who is accused, who generally has a right to

make some explanation—for though in businesslike principles an Act may be the most elastic we can possibly conceive, occasions will arise when it is necessary for a Treasurer to commit a technical breach of the Act—we have made a reasonable provision in Subclause 2 of Clause 54. The clause gives to the Auditor General power to report to this House, and the power to make special reports to this House; but it also contains the proviso: "A copy of every special report shall be sent by the Auditor General to the Treasurer before such report is transmitted to Parliament, to enable the Treasurer to make to Parliament any explanation he may think desirable." When such a special report is made, it is fair that the Treasurer shall be given at least an opportunity of stating his side of the case, and sending it in with the report for the information of Parliament. Referring to State loans, there is a provision in Clause 56 with regard to interest, and this is only following the custom hitherto observed in the Treasury of Western Australia. "All interest payable on account of the public debt shall be calculated and charged monthly." In the sister States there is a number of instances where Treasurers did not hesitate, when interest matured on the 1st July, to fail to debit it, as it should have been debited, to the operations of the previous year. In this as in many other matters, this State has set an example to Australia. I think anyone who fills the position of Treasurer should have the strongest and keenest desire to keep the finances absolutely clean; and that is why I have had this clause inserted, so that no future Treasurer can depart from the admirable example which has been set in this State of charging up monthly, as it becomes due, the interest on the public debt. I have no desire to weary the House with explanations of many of the other clauses. This is a Bill full of machinery for the working of principles. We have striven to make it a Bill recognising principles, eliminating from it everything that is unbusinesslike, yet desiring in no way to affect soundness of principle, or take away any of the powers relative to the expenditure of public money which should not only be inherent in this House, but should be directly under the control of the Auditor General. I hope that when in Committee anything which needs explanation I shall be able satisfactorily to explain to the House. I have studied all the Acts; I have taken the advice of many expert officers, including the Auditor General of the Commonwealth, in order that I might try to put on the statute-book of this State a sound Act, a business Act, and an Act which a business man, if he were making rules for the audit of his own books, would like to see in operation. And if I have succeeded in that, and if when the Bill goes through Committee and becomes an Act the House is satisfied it is a good Act, members will have clear consciences as to one fact, that so far as they are concerned they have provided an administrative instrument which ought in every possible way not only to protect the expenditure of the State, but conserve to the State the fullest meed and measure of its revenue. If so, we can then leave the Act, and say that its proper administration must have the good effect of carefully guarding to the minutest detail the revenue and the expenditure of this State. I have pleasure in moving the second reading. [General applause.]

On motion by MR. ILLINGWORTH, debate adjourned until the next Tuesday.

CO-OPERATIVE AND PROVIDENT SOCIETIES BILL.

SECOND READING (MOVED).

THE PREMIER (Hon. Walter James), in moving the second reading, said: This Bill, or practically the same Bill, was introduced during the session of 1901; and if members will turn to the *Hansard* reports for that year they will find on page 1105 a detailed explanation by me of the objects of the measure. I do not propose again to travel over that ground in detail, the Bill itself being very simple. It provides machinery by which societies formed for the purpose of carrying on any industry, business, or trade may be registered as trading corporations to carry on such business, with ordinary legal rights and privileges. It is based upon an English Act passed in 1893, which Act was based upon earlier legislation existing in the old country. This is the Act under which co-operative societies are formed

in Britain, and it is mainly with the object of enabling co-operative societies to be formed in this State that the Bill is now introduced. Members will observe that it enables any association of at least seven persons to obtain incorporation for the purpose of carrying on any lawful industry, business, or trade, whether wholesale or retail, including dealings with any description of land; and the only limitation is that no shareholder shall hold any share or interest in the society exceeding £200. The object of the Bill is to provide a simple machinery by which small societies can be formed for the purpose of carrying on operations within the wide description contained in the clauses of the Bill. Any lawful business can be carried on, except the business of banking. Applications have on more than one occasion been made for the registration of co-operative societies; but for this there is no provision in our existing legislation, and if co-operative societies desire to carry on now with limited liability, they have to register under the Companies Act. Well, here as elsewhere there are objections to applying to a comparatively small society the cumbrous machinery and procedure required by the Companies Act. Of course, if a company were formed to carry on co-operative operations on a very large scale, there might not be any reason why such company should not comply with the conditions of the Companies Act. But as the great majority—perhaps 90 per cent.—of the companies formed for the purpose of carrying on co-operative work are formed by the aggregation of a comparatively small number of persons, and certainly with a small capital, it has been found advisable elsewhere to make special provision for this class of society. Acts similar to this Bill exist in the Eastern States; and this is a class of legislation which has long been upon the statute-book of the old country as well as in the East. When the Bill was introduced by me in 1901, I think members formed the opinion that it was some advanced piece of labour legislation, and for that reason it excited a good deal of hostility, which resulted in its ultimately lapsing. I endeavoured to explain then, as I again assure the House now, that there is nothing dangerous in this Bill; on the contrary, it is a very just measure of reform, necessary to enable societies formed with an object of which we all approve to carry on their operations.

MR. ILLINGWORTH: Does it include building societies?

THE PREMIER: Building societies could register under the Bill.

MR. ILLINGWORTH: Dealings in land?

THE PREMIER: Yes. Those also. In the old country there is special provision dealing with the formation of building societies, but there are so few building societies here that it has not been thought necessary to provide special legislation for them. They are a class of society that deserve assistance, and if we can by a clause assist them we should do so. I have not had attention drawn to the need for special provision, but I will look into the matter and see what can be done in connection with such societies. As I have explained to members shortly the provisions of the Bill they can see for themselves as they read through the measure the details of the provisions therein contained. There are the ordinary provisions applying to the registration of societies, and rules and regulations. Accounts must be audited, and there is provision for winding-up. The Bill provides for cancellation of registration, and there are various other clauses inserted in the Bill similar to those relating to the Friendly Societies Bill, giving the registrar greater control over societies than any official has over any public company. The Bill really needs no explanation in detail, as the explanation is on the face of the various provisions. I beg to move the second reading.

On motion by MR. PIGOTT, debate adjourned.

ADMINISTRATION (PROBATE) BILL.

SECOND READING (MOVED).

THE PREMIER (Hon. Walter James), in moving the second reading, said: I hope we shall see the last of this Bill this session. It has been before us at least on three occasions. On two occasions it was shipwrecked in another Chamber, and on another occasion on account of the shortness of time it did not pass through the House. It is a very desir-

able Bill, and consolidates the existing law in relation to probate and administration, and brings into one Bill the provisions now contained in several statutes. Members will find if they turn to the schedule the number of Acts which this Bill repeals, and they will see how it simplifies the existing law very considerably. Part 2 of the Bill provides for the ordinary machinery in relation to probate and administration, the proving of a will and the granting of administration. In that part the alterations which I desire to draw attention to, and to which I have drawn attention on previous occasions, are contained in Clause 14. That clause applies to the estate of husband or wife dying intestate, the same rules that now apply to the estate of a husband. It gives to each of them a greater preference than they have now. Where the net value of the property does not exceed £500, or where it exceeds that sum, the surviving husband or wife has a preference to that amount. Shortly, the provisions of the clause are that where the net value of a property of a deceased intestate does not exceed £500, the husband or wife, as the case may be, receives the whole amount; where the net value exceeds £500, then £500 is paid to the husband or wife who survives, and of the remainder one half goes to the survivor if there is no issue surviving. Where there is issue surviving, the husband or wife gets one-third and the remaining two-thirds goes to the issue of the husband or wife.

MR. ILLINGWORTH: Why is that?

THE PREMIER: That is the existing law. This Bill gives an advantage of £500. If a man having a large estate dies intestate, there is a certain moral claim in favour of the mother and sisters as against the wife, where death ensues and there are no children.

MR. DAGLISH: Would a cousin be a next of kin?

THE PREMIER: To a certain extent if there were no next of kin in closer degree. The kinship goes through a very long tree. Supposing a husband dies leaving a wife and no issue, the wife gets £500 absolutely, and one-half of the balance, if the father is living, goes to the father, or if there is no father or mother, it goes to the brothers and sisters. If there are no brothers and sisters, it goes to the nephews and nieces, and so on step by step downwards.

MR. ILLINGWORTH: In every case the wife suffers.

THE PREMIER: I do not think the hon. member should say that. This puts the wife in a better position than she occupies at present. It must also be borne in mind when the intestate dies and there is no issue of the marriage and no one is left, I think the next of kin, the parents and the brothers and sisters, have a moral claim on the residue. It is not very often you get ordinary cases beyond the brothers or sisters or the nephews and nieces. That rule we now by this amended Bill apply to both the husband and the wife. It puts the children in relation to the wife in a better position than they occupy now. At present if a wife dies intestate, the property goes to the husband. If a wife dies leaving a husband and issue, the husband under this Bill gets £500 and two-thirds go to the children, and the other remaining third is distributed as mentioned in the clause.

MR. ILLINGWORTH: What about children of a former marriage?

THE PREMIER: They would be deemed to be her issue. In other words where the husband dies you trace the issue from him, and where the wife dies you trace the issue from her. That is an amendment of the law as it exists to-day. With that exception I think in this first part of the Bill there is nothing to which attention need be drawn. Part 3 deals with probates and administration; Part 4 with the Curator—I have been through these various parts two or three times before in this House. Then we come to Part 5 which is also an old part, but Part 6 is new. When this Bill was last before the House I did not incorporate in the Bill itself the legislation dealing with the imposition of duties on deceased persons' estates. That is now imposed by the Act 9 Victoria, No. 18; but I thought as we were dealing with the question of probate and administration, and as this matter so closely affected that question, this was the proper Bill with which to incorporate it. Therefore I have put it into this Bill. In this part of the Bill

members will observe we talk about a commissioner:—

> Commissioner means such person as may hereafter be appointed Commissioner of Stamps, and until such appointment is made means the Master of the Supreme Court.

At present we have no taxation officer at all. Under existing legislation the Master of the Court is the taxation officer, and he will continue to be the officer until a commissioner is appointed. If the new Stamp Bill be passed, it will be necessary to have an officer to administer that Act. It seems desirable, as the death duties are a form of taxation, the collection of them should rest with an officer who by his experience has a greater knowledge of taxation, and who would naturally have a knowledge of the questions involved in the interpretation of this Bill.

MR. ILLINGWORTH: Will all death-duties be paid by stamps?

THE PREMIER: I do not contemplate that by this Bill. I take the Commissioner of Stamps because if the new Stamp Bill is passed a commissioner must be appointed, and he will be the only special taxation officer we shall have; therefore he would be competent to deal with this Bill. It seems undesirable to get special machinery for the collection of death duties. Until the commissioner is appointed the master will discharge these duties. There are various amendments in detail in this part of the Bill which I will not refer to now, but the substance of them will be found the same as the existing provisions, and the machinery is made more simple, more direct and more effective. In this respect we are copying the legislation of South Australia, which has a similar Act; but there they impose succession duties, whilst here we impose a duty on estates. I am retaining the provision of charging the duties on estates. There are similar laws in Victoria and New South Wales, and we are retaining those provisions instead of adopting succession duties which are charged on particular legacies or bequests. On page 36 will be found the duties imposed by this measure. At present there is exemption on all property up to £1,500. I am not aware of any other State where they grant so large an exemption. We abolish that and say that all estates shall pay, and the amount of duty ranges from 1 per cent. on £1,000 to 10 per cent. on £50,000. If property is left or a bequest is made to the parent, the husband or wife, or the issue of the husband or wife of the deceased person, then those persons are favoured. The individual only pays half the duty. We reduce the duty in respect of blood relations, and these will be found mentioned in the Third Schedule, on page 37. Persons outside those classes are deemed to be strangers, and they have to pay the amount of duty mentioned in the first part of the Second Schedule. If members will turn to the existing Act, 59 Vict., No. 18, and compare the rates there and the rates here, they will see the difference. This makes them higher than they are at present, and in support of that increase I would submit that the rates charged here are reasonable rates, whilst the rates charged by the existing Act are too low, I think almost unreasonably low. I will pass from that now and content myself by drawing the attention of members to the fact that the fees in the Second Schedule are higher than the fees under the existing law. When my friend the member for the Greenough (Mr. Stone) dies, which I hope will not be for a long time, instead of 9 per cent. being paid as would be paid under the present Act on £100,000, 10 per cent. would have to be paid.

MR. STONE: It goes up to 10 per cent. now.

THE PREMIER: Yes; but that is for an amount over £100,000. I think members will find that the part of the Bill dealing with the question of duties involves no important alteration except that the rates are increased. [Interjection.] Members will find that, I think, either at the foot of the schedule of the existing legislation or in subsequent clauses. That is where a settlement takes effect after death. We say where a deed of gift is made a certain time before death we treat that in the same category as settlement. As members are doubtless aware, there are constant efforts made to evade the succession duties. We say that where a settlement is made to take effect in the event of death, the duty shall be paid when the death takes place, because obviously where it is made in contemplation of death there is an attempt to evade the

Act. Paragraph 2 of Schedule 2 of the existing Act says:—

On all settlements of property made by any person the trusts or dispositions of which are to take effect after his death (save as excepted in Section 7), duties at the same rate as in this schedule above provided.

That is the settlement section. Paragraph 2 of Clause 96 of this Bill reads:—

The property given or accruing to any person under any deed of gift shall, in the event of the death of the donor within six months from the date of the deed of gift, be chargeable immediately after such death with succession duty according to the scale in the second schedule, except in cases of death by accident.

Of course that does not apply to a deed of gift which is made in consideration of marriage, or in consideration of a binding contract to be performed. That is it applies only to a purely voluntary gift. I beg to move the second reading.

On motion by MR. HIGHAM, debate adjourned.

ADJOURNMENT.

THE PREMIER: The House would, he hoped, excuse him if, after producing four Bills this evening, he asked it to adjourn. It was somewhat early, but he had had rather a long task. Members had a lot of work to take home, with the Bills they had before them. He moved that the House do now adjourn.

Question passed.

The House accordingly adjourned at 8·38 o'clock, until the next Tuesday.

Legislative Council,

Tuesday, 11th August, 1903.

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

PRAYERS.

PAPER PRESENTED.

By the COLONIAL SECRETARY: By-laws of Albany Municipality.

Ordered, to lie on the table.

THE PRESIDENT—CONGRATULATION.

THE COLONIAL SECRETARY (Hon. W. Kingsmill): Before the business of the House is proceeded with, I desire to take the opportunity of expressing a feeling of gratification, in which I am sure every member shares, at seeing you, Mr. President, recovered from your recent illness and once more occupying your position in the House.

MEMBERS: Hear, hear.

THE PRESIDENT (Hon. Sir George Shenton): Mr. Kingsmill and hon. members, I thank you heartily for your kind expressions towards myself. It was a source of great regret to me that I was prevented from taking my accustomed seat in Parliament, and more especially that I was not able to preside over the Joint Sitting held for the purpose of electing a Federal Senator. However, I am now restored to health, and I hope to be enabled to occupy the Presidential Chair during the remainder of the session. (General applause.)

QUESTION—DIVIDEND DUTY ACT.

HON. F. M. STONE asked the Colonial Secretary: 1, If the Crown Law Officers are of opinion that under Section 7 of the Dividend Duty Act, 1902, a company is carrying on business in this State and elsewhere by reason of such company having a head office outside this