Legislative Council.

Thursday, 31st October, 1918.

The PRESIDENT took the Chair at 3 p.m., and read prayers.

[For "Questions on Notice" and "Papers Presented" see "Minutes of Proceedings."]

BILL REMOVED FROM MEMBERS' FILES.

Hon. A. SANDERSON (Metropolitan-Suburban) [3.5]: On a point of order, I wish to ask whether it is in order for a Bill which has been placed on a member's file to be removed from that file without permission. I am referring to the Fruit Cases Bill. I had two copies of it and both have been removed.

The PRESIDENT [3.6]: I was always under the impression that Bills were placed on hon. members' files after the first reading, at which stage the Bill has generally been printed and is ready for distribution. I think it is better for Bills to be placed on members' files after the first reading, so that members may have an opportunity of studying them. My idea was that this was always done. The Clerk, however, assures me that this has not been the practice and that Bills are placed in members' hands after the second reading. I consider that when a Bill is placed on a member's file, it is deemed to be in that member's possession, and that it ought not to be removed, except, of course, in the case of a misprint, or for some other reason that I should expect the Minister to explain, in which case the Bill would be replaced by a more perfect Bill. I am sorry to say, however, that my memory of what was the practice is not borne out by the Assistant Clerk, and I should like to ask the leader of the House to state what the custom has been.

The COLONIAL SECRETARY (Hon. H. P. Colebatch—East) [3.7]: As a general rule, a Bill is not produced for distribution amongst members until the member in charge of it is ready to move the second reading, but I quite agree with you, Mr. President, that it would be convenient if Bills could be placed on members' files as soon as possible after the first reading. I understand that, so far as the Bill in question is concerned, it was withdrawn not merely because the second reading had not been moved, but because errors were discovered in it.

The PRESIDENT [3.8]: In such a case the Minister would be justified in causing the Bill to be withdrawn, but he should explain to the House the reason for the withdrawal. The more I think of it the more I am convinced that Bills ought to be placed on members' files after the first reading, so that members may have full time in which to give the Bill consideration.

Hon. W. KINGSMILL (Metropolitan) [3.9]: So as to put the matter in order I will give notice that, at the next sitting of the House, I will move—"That all Bills be placed before hon. members at the first possible opportunity after they have been read a first time."

Hon. J. W. KIRWAN (South) [3.10] Arising out of this point of order I would like to ask for your ruling, Mr. President, as to whether the Bills, when they are on the file, should be removed under the instruction of a Minister or the instruction of the President? Is it not for the President of the Chamber to instruct the officers of the House, rather than that the officers should receive instructions from the Minister?

The PRESIDENT [3.11]: I think the officers of the House ought to receive instructions from the President, and if I had known of this matter I would have given instructions. I was only made aware of the fact some 10 minutes ago that the Bill had been removed.

Hon. Sir E. H. WITTENOOM (North) [3.12]: Once Bills are inside members' portfolios I take it they are in the possession of members and no one should have the right to remove them. If there is an amended Bill coming forward I can understand it, but no one should abstract a Bill from a member's file without the President's permission.

Hon. C. F. BAXTER (Honorary Minister—East) [3.13]: It was discovered that there were errors in the print of the Bill which was distributed, and I thought I was entitled to instruct that the Bill should be withdrawn so that it might be replaced by the amended Bill later on.

Hon. A. Sanderson: Was it a misprint?

Hon. C. F. BAXTER (*Honorary Minister*): There were some errors in printing and some in drafting. I approached the Clerk and he said the usual procedure was to distribute the Bill on the second reading stage, but he added he thought that the Bill which had been circulated could be removed.

The PRESIDENT: It would be better to ask my permission in the future.

BILLS (2)—THIRD READING.

1, Supply.
2, Prisons Act Amendment.
Read a third time and *passed*.

BILL—CRIMINAL CODE AMENDMENT.

In Committee.

Resumed from the 23rd October; Hon. W. Kingsmill in the Chair, the Colonial Secretary in charge of the Bill.

Clause 7—Repeal of Section 188 and substitution of new provisions:

[An amendment had been moved by Hon. J. Cunningham to strike out the words "with or without whipping" from lines 7 and 8 of the clause.]

Amendment put and a division taken with the following result:—

Ayes	7
Noes	11
Majority against	4

AYES.

Hon. H. Carson	Hon. J. Mills
Hon. J. Cunningham	Hon. Sir E. H. Wittenoom
Hon. J. E. Dodd	Hon. J. Ewing
Hon. J. W. Hickey	(*Teller.*)

NOES.

Hon. J. F. Allen	Hon. G. W. Miles
Hon. C. F. Baxter	Hon. J. Nicholson
Hon. H. P. Colebatch	Hon. A. Sanderson
Hon. V. Hamersley	Hon. H. J. Saunders
Hon. J. J. Holmes	Hon. J. Duffell
Hon. J. W. Kirwan	(*Teller.*)

Amendment thus negatived.

Hon. J. NICHOLSON: I propose to move that the word "sixteen" be altered to "seventeen."

The CHAIRMAN: The hon. member cannot move it at this stage, for we have passed the line. The Bill will have to be recommitted for it.

Hon. Sir E. H Wittenoom: He could not carry it, anyhow.

Hon. J. NICHOLSON: But the word "sixteen" is in the same paragraph as we are considering, and occurs again in the next one.

The CHAIRMAN: The hon. member, if he wishes, can test the question by moving his amendment in the next paragraph.

Hon. Sir E. H. WITTENOOM: I move an amendment—

That the following proviso be added to Subsection (1) of proposed Section 187:—"Provided that if the offender's age does not exceed 22 years he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years, with or without whipping."

From my point of view there is a psychological question in this. We know that a lot of young people crowded together under the existing conditions of life are very liable to fall into this trouble. That a young man of 17, 18, or 19 years of age who happens to have carnal knowledge of a girl of 14 or 15 years of age is to be made a criminal and get five years' imprisonment, seems to me monstrous. The vices of gambling and drinking and smoking are all acquired, but the vice of sexual intercourse is constitutional, and therefore some allowance should be made. To turn young fellows into criminals for following the dictates of nature—I admit it ought to be regulated—is going too far. The provision in my amendment is in practice to-day. At present any person so offending is liable to two years' imprisonment and a whipping. I propose to allow that to remain as it is, for the reason that, as far as I know, there has been no trouble at all under it. The altered provision in the Bill has been introduced owing to older people taking advantage of young girls. That proposed provision will still remain. Then there is the question of blackmail. There is nothing whatever said about the young girl who induces a man to have this carnal knowledge and incur the penalty. In such cases some consideration should be shown. I hope the amendment will be carried.

The COLONIAL SECRETARY: There is probably a good deal to be said for the amendment, but there are one or two points which the Committee should consider. In the first place the clause as it stands merely fixes the maximum penalty, and it is hardly likely that a judge in his discretion would impose that maximum penalty on a youth of 20. The second point is that the amendment fixes an irregular age. The age of 21 is the recognised age. People are not regarded as being fully responsible until they are 21. I do not think there is any real necessity for the amendment, because the discretion of the judge would be sufficient protection to the juvenile offender, but if the hon. member will agree to make the age 21 instead of 22 I will not offer any objection to the amendment.

Hon. Sir E. H. WITTENOOM: I have no objection to making the age 21, but the Minister is in error in saying that this is left to the discretion of the judge, for, under the clause as it stands, once a young man is accused of this offence, he is a criminal.

Hon. G. J. G. W. MILES: I move an amendment on the amendment—

That in line four "22" be struck out and "21" inserted in lieu.

Amendment on amendment put and passed.

Hon. J. CUNNINGHAM: I support the amendment, but I am of opinion that the hon. member has not gone far enough. His remarks will apply in all cases where the age of the girl would be between 13 and 16. But there is a great difference between dealing with a girl of that age and dealing with an infant under the age of 13.

Hon. Sir E. H. Wittenoom: We are coming to that question.

Hon. J. CUNNINGHAM: What we are coming to presently applies only to guardians, teachers, and school-masters. We have in the Bill two different penalties for the same offence. I think provision should be made in this clause by inserting after the words "sixteen years" in the third line "and over 13 years."

The CHAIRMAN: I cannot accept that amendment at the present stage, for the reason that we have passed that line.

The COLONIAL SECRETARY: The amendment the hon. member suggests is not necessary, because the proposed section we are dealing with now is one to amend Section 188 of the Code, which applies to offences against girls under 16 years of age. Proposed Section 5, which it was decided the other day to leave over until we reach the end of the Bill, applies to Section 185 of the Code, which deals with offences against girls under 13 years of age. If Sir Edward Wittenoom's amendment is carried, it will only apply to cases of offences against girls over 13. Offences committed against girls under 13 would still come under Section 185 of the Code.

Amendment put and passed.

Hon. J. E. DODD: I move an amendment—

That in proposed new Section 187 the following words be added, to stand as Subsection 2:—"In the event of a person being convicted under this section, it shall be open to the convicted person to submit to a sur-

gical operation for emasculation, and provided a medical practitioner certifies that he is physically fit to undergo such operation, the operation shall be performed, and thereupon the sentence of imprisonment shall be annulled.''

The imprisonment provided in this section is one of five years. I believe that offences of this kind are due to hereditary influences, and that the majority of the offenders are not criminals in the ordinary sense of the term. We cannot allow these individuals to be at large. Surely the method I propose for dealing with them is a reasonable one. The operation, apparently, is not altogether a serious one and does not degenerate the patient. I think the innovation would be appreciated by a number of individuals suffering from their own passions, and possibly if this operation was performed they would come out of prison and become of use to themselves and of benefit to the public.

The COLONIAL SECRETARY: I suppose that criminals of all kinds are entitled to our sympathy, but I do not endorse the opinion that these offenders are not criminals. The man who defiles a girl of 10 years is surely a criminal. As the result of the debate in another place on this point, when it was pointed out that a provision of a similar character was in force in other parts of the world, the Attorney General has taken steps to make exhaustive inquiries and ascertain in what parts of the world this was in force, with a view to ascertaining by means of reports whether it was doing good or harm. Pending the receipt of such reports I do not propose to vote for the inclusion of this provision in our Criminal Code.

Hon. Sir E. H. WITTENOOM: I support the amendment on the ground that the operation provided for is absolutely optional. A man who is doing a term of five years' imprisonment make take the course suggested if he so desires, and be liberated.

Hon. A. SANDERSON: I trust we are not going to distingush ourselves by passing this amendment. The proposal seems to be a most extraordinary one, the most extraordinary thing that even we have put forward.

Hon. Sir E. H. Wittenoom: Or enterprising.

Hon. A. SANDERSON: I appeal to the Committee not to pass it.

Hon. J. NICHOLSON: This amendment introduces a form of treatment which might possibly meet the difficulty which has been created. As to whether this course meets with the views of hon. members or not is debatable, as the amendment would have the effect of releasing from prison any offenders who submitted themselves to the operation. There must be many blackguards in crime such as these who cannot be described as other than moral degenerates, and who would perhaps gladly submit to the operation in order to get out of gaol. Many of these offenders are aged persons, and would no doubt avail themselves of this opportunity. The dastardliness of their crimes might still not be apparent to them, and they might continue to be a nuisance in this direction and a menace to society. I am prepared of some other form of punishment than is provided in the Code, but I do not think this would exactly meet the case. If there is to be any annulling of sentence it should be entirely at the discretion of the Governor-in-Council and subject to his recommendation. There may be dozens of men to whom the release should not be extended. What the Colonial Secretary has said with regard to the inquiries being made should impress itself upon us. Although fully in sympathy with the mover of the amendment, I consider we should not pass legislation of this kind hurriedly.

Hon. Sir E. H. Wittenoom: Do you think there are many offenders who would choose the alternative?

Hon. J. NICHOLSON: I do. Certainly, the offender should be put through a probationary period prior to release.

Hon. V. HAMERSLEY: I am entirely in sympathy with Mr. Dodd's amendment. To undergo an operation of this nature is indeed a serious matter. Nevertheless, the probability is that men who have suffered imprisonment for crimes of this kind might feel that in their own interests they should submit to the operation; that is, with a view of protecting themselves against themselves. To the community the matter would appear as in the nature of an expiation of the crime, and as a guarantee against its repetition. My belief is that very few of the offenders would prefer the operation to even five years' imprisonment. I hope the amendment will be carried.

Hon. J. J. HOLMES: I would like to support Mr. Dodd, but there is in my mind some doubt as to what is likely to happen if the amendment is carried. I would certainly support the amendment if by the performance of the operation society would ensure ridding itself of the criminal for ever; but I fear that the liberation of the offender, even after operation, may entail an immense risk to the community. He might as the result of the operation prove a worse disposed criminal than before. Before I can vote for the amendment, I must be satisfied as to the effects of the operation.

Amendment put and negatived.

Hon. J. NICHOLSON: I move an amendment—

That in proposed new Section 187, in Subsection 2, the word ''sixteen'' be struck out, and ''seventeen'' inserted in lieu.

Considerable difference of opinion has been expressed among hon. members as to whether the age of consent should be raised or not, and I recognise that in moving this amendment I tread on debatable ground. On one side it is contended that here girls of 16 may show marked evidences of development into womanhood. On the other side it is argued that only in comparatively few cases are those evidences very apparent. As regards the majority of cases, 17 years is fair and reasonable to provide as the age up to which our girlhood should be protected by law. That age already obtains in New South Wales and South Australia, and, I believe, in

ment the Committee would not be passing legislation of a novel or an experimental character. In view of the necessity which unfortunately exists for protection of our girlhood, I submit the amendment with confidence.

The COLONIAL SECRETARY: Undoubtedly there is a great deal to be said in favour of the amendment. I do not propose to argue the point. But in connection with this Bill the position simply is that the Government have proposed for offences of this nature penalties greater than those obtaining before, and have endeavoured to provide in other ways protection for our youthful girlhood. That is as far as the Government propose to go at present.

Amendment put and negatived.

Hon. Sir E. H. WITTENOOM: I move an amendment—

That in proposed new Section 187, subsection 3, the words "for the offence of having unlawful carnal knowledge must be begun within six months, and for the offence of attempting to have unlawful carnal knowledge within three months after the offence has been committed" be struck out, and the following inserted in lieu: "must be begun within three months after the offence has been committed."

It is unfair to have such a matter held over the heads of people for six months. I will not occupy time in debating the subject.

The COLONIAL SECRETARY: I admit at once the advisability, in the interests of the accused person—who, it must be assumed, is frequently innocent—of providing that action should be commenced as early as possible. The provision for six months in certain cases would not be inserted without strong reason, which I stated in moving the second reading. In the case of an attempted offence, however, proceedings must be taken within three months. I hope the clause will pass as printed.

Hon. J. DUFFELL: This provision received consideration at the hands of the Council of the Association of Justices of the Peace, comprising about 500 justices, in which number is included one of the leading physicians of Perth. This gentleman distinctly stated that it was necessary this clause should pass as printed, for the simple reason that in the case of a girl of comparatively tender years it is next to impossible to tell, within three months, whether or not she is in a state of pregnancy. In view of that expert advice, I shall certainly support the clause as it stands.

Hon. J. E. DODD: I have heard nothing yet to justify me in supporting the extension of the time limit from three to six months. I will go as far as anyone in endeavouring to protect young girls and children, but I do not like the extension of the period. It is only a short time ago we had a case at Fremantle in which a soldier was charged with an offence against a girl, and it came out in the evidence that quite a long time had elapsed before the prosecution was lodged, and that the proceedings were only taken because of something else that happened, something that the alleged offender would not do that he was asked by the father of the girl to do, and the prosecution was then lodged more in a spirit of revenge. The man was acquitted. We can leave the way open for a good deal of persecution by making the period too long. I cannot see anything in the point raised by Mr. Duffell. If a man has carnal knowledge the victim knows it without waiting three months.

Hon. Sir E. H. WITTENOOM: I do not agree with the Colonial Secretary in this matter, because all the young women of to-day know within three months whether trouble will eventuate from carnal knowledge.

The Colonial Secretary: They may know but it may not be apparent to the parents.

Hon. Sir E. H. WITTENOOM: We know of cases where it was not apparent to the parents until the baby was born, and it is not fair to keep a matter like this hanging over people's heads for six months.

Amendment put and a division taken with the following result:—

Ayes	9
Noes	8
Majority for	1

AYES.

Hon. J. Cunningham	Hon. J. W. Kirwan
Hon. J. E. Dodd	Hon. J. Mills
Hon. V. Hamersley	Hon. Sir E. H. Wittenoom
Hon. J. W. Hickey	Hon. J. Ewing
Hon. J. J. Holmes	(*Teller.*)

NOES.

Hon. C. F. Baxter	Hon. A. Sanderson
Hon. H. Carson	Hon. H. J. Saunders
Hon. H. P. Colebatch	Hon. J. Duffell
Hon. G. W. Miles	(*Teller.*)
Hon. J. Nicholson	

Amendment thus passed; the clause, as amended, agreed to.

Clause 8—Substitution of new section for Section 189:

Hon. Sir E. H. WITTENOOM: I move an amendment—

That the following proviso be added to paragraph (1) of proposed Section 189:—"Provided that if the offender's age does not exceed 21 years, he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years with or without whipping."

This amendment is consequential on the one we have already agreed to.

Amendment put and passed.

Hon. J. NICHOLSON: With regard to the second paragraph, providing that if a girl dealt with is under the age of 13 years, the offender is guilty of a crime, I think there has been an omission in that no provision has been made for the case of a girl who may be an idiot or an imbecile. We might add those words, but perhaps it would be better to recommit the Bill and add them to proposed Section 188 which we have just passed, and which proposed section provides punishment for the defilement of idiots.

Hon. J. Mills: Suppose they are both mentally deficient?

Hon. J. NICHOLSON: Of course the circumstances would then be considered. If anyone is deserving of protection it doubtless is the poor helpless creature who is an idiot or an imbecile.

Hon. J. W. KIRWAN: What I was referring to was paragraph (iii.) of Subsection (1) of proposed Section 189. We there have reference made to accused persons who are guardians, teachers, or school-masters. I think we ought to include employers.

The CHAIRMAN: I regret that I cannot take the amendment now. But the hon. member can discuss it.

Hon. J. W. KIRWAN: That would be of little avail if I cannot move the amendment. I will move for a recommittal.

The COLONIAL SECRETARY: I quite agree with the hon. member. Under the State Children Act the employer, for the purposes of that Act, is a guardian. I am in accord with the proposal of the hon. member, and I will have no objection to his amendment on recommittal. I have an amendment to move in proposed Subsection (3). It is not intended that a guardian, teacher, or school-master should be allowed to set up the defence that he thought the age of the girl was greater than stated in the indictment. I move an amendment—

That the first and second lines of proposed Subsection (3) be struck out and "If a person accused of the offence of unlawfully and indecently dealing with a girl under the age of 16 years proves that the act committed was done with the consent of the girl" be inserted in lieu.

The effect will be to limit the defence that he thought she was over 16 years of age to offences against girls under 16 years of age.

Amendment put and passed; the clause as amended agreed to.

Clauses 9, 10, 11—agreed to.

Clause 12—Amendment of Section 210:

Hon. J. DUFFELL: The first paragraph ought to be deleted. At first glance it appears to be very innocent, but if it is carried the onus will be thrown on the defendant of proving his innocence, which is not in accordance with British justice. I move an amendment—

That paragraph (1) be deleted.

The COLONIAL SECRETARY: I hope the amendment will not be carried. I am entirely in accord with the principle enunciated by the hon. member, that the onus of proving his innocence should not be cast on any accused person. But under this provision it has to be proved by the prosecution that the place was kept as a place to which persons resorted for playing a game of chance. The only thing that the prosecution is not required to prove is that the keeper of the place kept it for his personal gain. It would be very difficult to prove that. The provision says that if the prosecution proves that the place was kept as a place to which persons resorted for playing a game of chance, then it shall not be a sufficient defence for the accused person to say, "You cannot prove that I kept it for the purpose of gain." If he kept it at all it is assumed that he kept it for personal gain. That is in no way in conflict with the principles of British justice, nor is it a new departure.

Hon. A. SANDERSON: The mere fact that this appears here is sufficient evidence that it is a new departure.

Hon. J. Cunningham: It is already in the Gold Stealing Act.

Hon. A. SANDERSON: We are now dealing with the criminal law, in respect of which we have 1,000 years to guide us. This is a new departure. I have always protested against this sort of thing. In the Coal Vend case in the High Court, Chief Justice Sir Samuel Griffiths condemned in unmistakable language a Federal Act which embodied this principle. He went on to say that no other British country had adopted this principle in their legislation. It is of no use saying we have it in other Acts. It is a very bad principle, and ought not to be in any Act. As for the contention of the leader of the House that this is no new departure, the mere fact that it appears in the clause is sufficient evidence that it is both a new and an important departure. I will support the amendment.

Amendment put and a division taken with the following result:—

Ayes	6
Noes	10
Majority against ..	4

AYES.

Hon. J. Cunningham	Hon. J. W. Kirwan
Hon. J. Duffell	Hon. J. Mills
Hon. J. W. Hickey	Hon. A. Sanderson (*Teller.*)

NOES.

Hon. C. F. Baxter	Hon. V. Hamersley
Hon. H. Carson	Hon. J. J. Holmes
Hon. H. P. Colebatch	Hon. C. W. Miles
Hon. J. E. Dodd	Hon. Sir E. H. Wittenoom
Hon. J. Ewing	Hon. H. J. Saunders (*Teller.*)

Amendment thus negatived.

Clause put and passed.

Clause 13—Amendment of Section 211:

The COLONIAL SECRETARY I hope the Committee will strike out this clause. It was not in the Bill as originally introduced, and was inserted in another place by a narrow majority in a small House. That is one reason for asking it to be struck out. It will give another place an opportunity of reconsidering the matter in a larger House. In 1915 a select committee representative of both Houses was appointed to inquire into the matter of horse-racing. Amongst other recommendations submitted by the Committee was that betting on racecourses, other than through the totalisator, should be prohibited. It was also recommended that more stringent laws should be enacted against street and shop betting. In the following year the Government sought to put into force these recommendations of the select committee. The method adopted by the Government was to introduce a Bill making stringent provisions against street and shop betting, and to announce that on the passing of the Bill they would put into force the

law as it stood against bookmakers on racecourses. The Bill was introduced in this Chamber, and at the instance of the late Mr. Jenkins an amendment was carried on somewhat the same lines as Clause 13 of the present Bill. In consequence of the carrying of that amendment, the Government dropped the Bill, because they were not prepared to agree to the legalising of bookmakers. I know it is a strong argument that it is not a good thing to have laws on our Statute-book which are not carried into effect. The bookmaker is illegal, and if at any time it is considered by the public conscience that the matter is such as to justify the Government in putting the law into effect this can be done. In the meantime the bookmaker carries on his business illegally. That fact may tend to check abuses, because he is at all times an offender against the law in this respect. I hope we shall not at this stage take the retrograde step of legalising bookmakers. At the time of the sitting of the select committee we had evidence before us from many racing men in all parts of the State, including the Chairman and Secretary of the W.A.T.C., and leading officials of the racing clubs on the goldfields, advocating the abolition of the bookmaker, but strange to say as soon as the Government announced their intention of doing away with him all these people came to light on his side, with the result that is known.

Hon. J. W. KIRWAN: I hope the Committee will act as they did before when the matter was before them in 1915, and will allow the clause to remain as it stands. The question is not one of opposition to betting, but simply a question of the consistency of the law. The law, as it is at present, is in such a position that if we do not pass this clause it is liable to be brought into contempt. To bet on racecourses is not only illegal as regards bookmakers, but it is illegal for a person to make a bet with the bookmaker. The member for Perth recently stated that any person found betting on a racecourse was liable to three years' imprisonment under the law. The bookmaker is now required by law to pay a tax on his betting tickets. It would be absurd for us to vote against this clause. It is simply removing an inconsistency which now exists. The Attorney General says he is not going to interfere with the law. There is really no harm in betting itself, but only in the abuse of it.

Hon. J. EWING: I hope the Committee will not strike out the clause. The law is inconsistent and the Government have never enforced it in any way. It is just as bad to take a ticket on the totalisator as it is to make a bet with the bookmaker. There is indeed a lot of hypocrisy about this matter. I am prepared to abolish both the totalisator and the bookmaker if the public desire it. People like to have a chance on the totalisator and the Government afford them an opportunity of doing so. That is as great an evil as having a bet with the bookmaker and the position of the Government is untenable. There is a law which makes it illegal for a bet to be made on a racecourse and yet it is permitted.

The Colonial Secretary: The totalisator is legal.

Hon. J. EWING: Both instruments for betting are instruments of chance. It may be just as well to have the bookmaker there and to legalise him. If this is not done, then the Government should not take a tax from him for the tickets he issues. I hope the clause will not be struck out. If it is, I am satisfied the Government will not put into force the law as it stands.

Hon. J. F. ALLEN: I support the deletion of the clause. As a member of the Horse-racing Committee I found that the general opinion of the witnesses was in favour of the abolition of the bookmaker. The consensus of opinion was, that racing would be a cleaner sport without the bookmaker. When we compare him with the totalisator, which I do not favour because I consider that gambling is one of our greatest evils, we are reminded of what Sir Edward Wittenoom said, namely, that there are two things which the totalisator cannot do and which the bookmaker can, one being that it cannot give credit and the other that it cannot influence racing. These are arguments which appealed to me in favour of the totalisator against the bookmaker. Personally, I would be prepared to wipe out both of these attendants to horse-racing.

Hon. J. W. Kirwan: To strike out the clause will not alter the present position.

Hon. J. F. ALLEN: It will if the bookmaker is legalised.

Hon. J. W. Kirwan: The law will not be enforced.

Hon. J. F. ALLEN: If the contention which has been raised by the member for Perth is a good one, it means that further amendments are necessary. Because the law as it exists is not enforced, it does not justify this Chamber in legalising something which the community do not approve of. I shall vote for the deletion of the clause.

Hon. Sir E. H. WITTENOOM: I intend to support the deletion of the clause, and I cannot see anything to convince me in any other way. It is stated that if we do not legalise the bookmaker he will still go on plying his calling. If so, all the more shame to the Government for not putting the law into force. We all recognise that there is a gambling spirit in Australia, and it must have an outlet. Let that outlet be the fairest and best one that can be devised. There are two ways of letting it out, and these are through the totalisator and through sweeps. The totalisator is fair, because it is necessary to pay cash down and there is no one to manipulate it. Sweeps, as they are conducted to-day, are also a fair speculation for anyone who can afford 5s. Why should not anyone possessing the gambling spirit pay down his 5s. on the chance of getting £5,000? It is not a very large amount if they spend 5s. a month in this way. With the totalisator and the sweeps, we afford an outlet for the gambling spirit, but the bookmaker is different. He is unnecessary. When we find actions are illegal they are over-

looked by the Government and cannot be enforced. The law against the bookmaker, although illegal, cannot be enforced. Drunkenness cannot be cured by law. But when we come to sexual intercourse the penalty is five years and two whippings and that has to be enforced. It is not consistent to legalise what is never intended to be carried out.

Hon. J. J. HOLMES: I support the amendment. If there was any doubt in my mind on the subject it was caused by the expression used by Mr. Kirwan, who said that there was no harm in betting. It was the abuse of betting that was the harm. It is the fact that we have legislation preventing betting that makes the abuse. The law is not put into operation but the existence of the legislation has had the effect of making betting an abuse. There will always be a certain amount of betting and gambling. The whole business of the world is a gamble; but whenever it becomes a menace legislation is passed to check it. We have passed legislation to prevent betting at all, but because of the desire on the part of the community to bet, the law is winked at.

Hon. H. MILLINGTON: I oppose the deletion of the clause for the reputation of the Government. They have enacted a law which, if it does not legalise the bookmaker, recognises him. Custom has legalised the bookmaker and I do not think there is a great outcry for wiping out the bookmaker. It is a peculiar position that we collect a tax from the bookmaker and then tell him we will wipe him out of existence by another law. If we strike at the principle we may do away with it, but no one is prepared to do that. Everywhere in the world an attempt is made to stop gambling but we only regulate it, and the question is, how far shall we regulate it? It is the worst possible thing to do to enact a law and then give it out that the Government have no intention of enforcing it. We have had a deliberate statement to that effect. As far as sweeps are concerned, even from the respectable portion of the community more money is wasted in that way than in any other way. I do not know how those in favour of private enterprise can vote against betting. The relative merits of the bookmaker and the totalisator is a very interesting subject to debate. I have heard the Colonial Secretary and others say that the totalisator is a fair system of gambling. If so, stick to it, but one will find that the totalisator takes a consistent percentage and gets the best of it every time. Gambling needs regulating but we should not regulate it in a way that will make us look ridiculous. If I vote for the deletion of the clause I could not tell anyone why. The bookmaker is being used by the State as a tax gatherer and yet he is classed as a rogue and a vagabond. The law makes the bookmaker a tax gatherer, yet we are asked to pass a law to prevent him gathering the tax.

Hon. J. CUNNINGHAM: I shall vote against the Colonial Secretary. One interesting feature is that, in the event of the Colonial Secretary being successful in having the clause deleted, where is it proposed to allow the totalisator to be run, because the totalisator will not be allowed to exist on the racecourse. I am not prepared to make criminals of a number of people in the State. The West Australian public are a sport-loving people. They go to the races and if they have a few shillings to bet with, there is no reason why the opportunity should be denied them. I do not see why we should tie them to the totalisator.

Hon. R. J. LYNN: Here we have the Colonial Secretary asking for the deletion of a clause which would legalise the bookmaker. Ever since the inception of racing in Western Australia the bookmaker has been on the racecourses, and although we have had it from the Colonial Secretary that the existing law, if enforced, is sufficient to suppress the bookmaker, no attempt has been made to enforce it. If it is desired to do away with the bookmaker, why has he been made a tax gatherer for the State? Although the bookmaker has always been on the racecourse, no action has been taken by the Government to prevent him from following his calling; and I am given to understand that even if the clause is deleted, no such action will be taken and the bookmaker will still bet on the racecourse. It is better that we should legalise the bookmaker than have him illegally plying his calling on the racecourse. If, from the standpoint of morality, the present Government intend to suppress the evil because of the harm it is doing to the community, let them introduce a Bill dealing with all the evils arising from gambling. If necessary I am prepared to vote for the abolition of both the bookmaker and the totalisator, for I believe quite as many evils arise from the totalisator as from dealings with the bookmaker. It would be infinitely better to allow the clause to remain, for if it becomes an evil the Government are in a position to regulate it. In the regulation of the bookmaker they should also take into consideration the advisableness of regulating the totalisator. To delete the clause and yet expect the bookmaker to continue in his capacity as a tax gatherer for the State would be to reduce the whole thing to a farce.

Hon. J. W. HICKEY: I intend to oppose the deletion of the clause. I hold no brief for the bookmaker, but until such time as comprehensive legislation is introduced I desire to see the bookmaker on the same footing as the totalisator. Several hon. members have defended the gambling element dominant in Australia. No self-respecting bookmaker on any registered racecourse would cater to the gambling element to the extent the totalisator does. On the last occasion the question was before us I gave expression to the same sentiment, and was criticised for it outside. A little later I took my critics to the "trots" and there I was able to prove the truth of what I had said. No self-respecting bookmaker on a racecourse would bet with a child, yet that occurs at the totalisator windows at practically every meeting of the "trots." It is also indulged in, I admit, by a certain section of bookmakers in the City. So long as the Government refuse to take decided action in the direction of eliminating the gambling element altogether, I desire that the bookmaker shall have the same status as the totalisator.

Hon. G. J. G. W. MILES: I am in rather an awkward position. On a previous occasion I said I was in favour of legalising and taxing the bookmaker. To a certain extent the Government have now done this, yet I conscientiously feel that we ought to abolish the bookmaker. In the circumstances I cannot quite make up my mind how to vote on this occasion. I know something of the subject. I have been honorary secretary of a race-club, and, though members may find it hard to believe, I have been a jockey in my day. I admit that I did not finish the course, that I fell off. It is my experience that bookmakers on a racecourse upset the whole of the sport, and that we cannot get clean racing while the bookmaker remains. Quite recently a friend of mine—one of the most honourable men I know—who was racing at Kalgoorlie, told me that he had been offered £300 to scratch his horse in a certain race. Now if they would offer that amount to the owner, what would they offer to a jockey not to win? As a matter of fact that horse, although heavily backed, did not win. When the question was previously before us I voted with the late Mr. Jenkins. On a subsequent measure I thought that street betting was to be entirely prohibited. I want to see that provision put into force. Many times have I advised my friends to keep away from racecourses and bookmakers, holding as I do that bookmakers are really smart men and know their business from A to Z. On the Terrace recently, I saw some friends of mine speaking to a leading bookmaker. I remarked to the bookmaker, "Have you got them all working for you?" and he said, "Yes, they are my working wethers." Down the Great Southern still more recently I saw at an agricultural show some sheep which we were told had cut 21s. worth of wool each. I remarked, "That is nothing, I know a bookmaker in Perth who has some wethers from which he cuts over 21s. worth of wool every Saturday." I am going to vote against the deletion of the clause. By what I have said I have cleared my conscience of the vote I recorded previously. The Government should enforce the existing law against bookmakers.

Clause put and a division taken with the following result:—

Ayes	8
Noes	11
Majority against ..	3

AYES.

Hon. J. Cunningham	Hon. R. J. Lynn
Hon. J. Ewing	Hon. J. Mills
Hon. J. W. Hickey	Hon. H. Millington
Hon. J. W. Kirwan	Hon. H. J. Saunders (*Teller.*)

NOES.

Hon. J. F. Allen	Hon. V. Hamersley
Hon. C. F. Baxter	Hon. J. J. Holmes
Hon. H. Carson	Hon. G. W. Miles
Hon. H. P. Colebatch	Hon. J. Nicholson
Hon. J. E. Dodd	Hon. Sir E. H. Wittenoom (*Teller.*)
Hon. J. Duffell	

Clause thus negatived.

Clause 14—agreed to.

Clause 15—Amendment of Section 323:

Hon. Sir E. H. WITTENOOM: Hon. members will be aware that Section 321 deals with assaults on the person. To make my position clear I will read what the Criminal Code says—

> Any person who unlawfully assaults another is liable on summary conviction to a fine of £10 and payment of costs of prosecution, and in default of payment to imprisonment with hard labour for six months . . . . . .

Then Section 323 provides—

> When a complaint of an assault has been heard upon the merits before justices, on complaint by or on behalf of the party aggrieved, under either of the two last preceding sections, and they dismiss the complaint, they are required forthwith to make out a certificate of the fact of such dismissal and to give it to the accused person. Any person who has obtained such a certificate of dismissal, or who has been convicted, and has paid the fine and costs or has endured the punishment adjudged, if any, is released from all further proceedings, civil or criminal, for the same cause.

The leader of the House in introducing this Bill, mentioned an incident where a man had assaulted another with most disastrous effects, and that all that could be done to the offender was to fine him £5 or £10. Most of us have known of assaults committed from personal feeling by people prejudiced against others. Such an assault is committed with a view to infliction of punishment on a man by another who is his physical superior. The latter will say "I can have £5 or £10 worth out of him and if he prosecutes me I can pay the fine." I know of a case similar to that mentioned by the leader of the House where a man assaulted another, striking him on the side of the head. The victim's occupation depended upon his hearing, and the assault rendered him deaf for life. The offender was prosecuted for assault, but the man assaulted was absolutely ruined by the blow. Moreover, we know there are frequently cases of men coming to town from the country with money in their pockets making temporary friendships and being knocked on the head and robbed. I consider, therefore, that the punishment for assaults is not in keeping with the offence, and I shall move an amendment adding to Section 321 of the Code the words "with or without whipping."

The CHAIRMAN: The hon. member had better move his amendment as a new clause at the end of the Bill, because in this measure each section of the Criminal Code has an amending clause to itself. In order to preserve similarity in drafting the course I suggest is the better.

Hon. Sir E. H. WITTENOOM: Very well, Sir. Every man in this country prizes his political liberty, his right to speak and act within the law. The only thing we have to do now is to preserve also his physical liberty, so that, provided he goes about within the law, he will not be interfered with by

anyone else. The time has arrived when men who visit violence on others should have it visited on themselves. The punishment can easily be avoided, namely, by simply not rendering oneself liable to it. It is chiefly unprovoked assaults I wish to prevent. Moreover, the matter is left to the discretion of the court by the words "with or without." Only the other day we had a case where a man walking down a by-way off St. George's terrace was knocked down and robbed. Violence of that character should be repaid by violence. On the second reading I referred to the cure of garrotting in England by flogging.

Hon. J. NICHOLSON: I would suggest that the court should also have power at its discretion to order the offender so many days or months imprisonment with or without whipping.

Clause put and passed.

Clauses 16 to 35—agreed to.

Postponed Clause 5—Amendment of Section 182:

Hon. J. E. DODD: In view of the discussion which has taken place on Clause 7 I do not propose to move the amendment of which I have given notice, especially in view of the information supplied by the Colonial Secretary that the Attorney General is seeking information from all parts of the world where this is in operation.

Clause put and passed.

New clause:

Hon. J. DUFFELL: I move—

That the following be added to stand as Clause 6:—"Whosoever unlawfully and carnally knows and abuses any girl under the age of 10 years shall be guilty of felony and shall suffer death."

The clause which I have moved is taken word for word from the Crimes Act of Victoria. I realise the seriousness of the position and also my responsibility in asking members of the Committee to place this new clause in the Code. In recommending it I would point out that it does not do away with the royal prerogative. If it appears on the Statute-book it will be a deterrent against the committing of such crimes. We know these offences have been more prevalent in Western Australia of late than they were formerly and they are even more prevalent than in Victoria. Under the circumstances I claim that that section existing in the Crimes Act of Victoria has been largely responsible for reducing the number of these offences.

Hon. J. J. Holmes: Why not leave it optional with the judge?

Hon. J. DUFFELL: If we use the word "may" instead of "shall" we take the sting out of it and the clause will not have the desired effect. My object is to prevent any man sinking so low as to commit dastardly crimes of this nature.

Hon. J. J. Holmes: Could you not give the judge who had the evidence before him discretionary power?

Hon. J. DUFFELL: I have already pointed out that it does not do away with the royal prerogative of mercy.

Hon. Sir E. H. Wittenoom: What was the punishment before?

Hon. J. DUFFELL: I think it was five years. Hon. members need only be reminded of the case at Fremantle the other day where a man, 35 years of age, committed an assault on a child, and with instances such as we have recorded in the police records we can see that these offences are increasing in number, whilst in other directions crime is on the decrease. The report of the Commissioner which was recently presented to us showed that of rape there were five cases, attempted rape two, gross indecency three, indecent assault three, indecently dealing with girls seven, and so on. This is sufficient evidence to show that offences of this nature are on the increase and that nothing short of punishment such as I have indicated will meet the case. It is my intention to divide the House on this amendment so as to know who is with me in the direction of protecting child life and who is opposed.

Hon. J. NICHOLSON: I doubt whether we would be within our powers in inserting this new clause in view of the provisions of Section 185. Probably the hon. member's desire to give power to the court to impose the death penalty on any person found guilty of this crime might be brought about in some other way. I would suggest in view of the importance of the matter that progress should be reported.

The COLONIAL SECRETARY: Clause 5 amends the present provisions of Section 185. Under the Act as it stands a person found guilty of the offence to which Mr. Duffell has referred is liable to a term of imprisonment for three years. By this clause it is made a crime punishable by 14 years' imprisonment. Now the hon. member wishes to impose the death penalty. I do not think he has exaggerated the magnitude of this crime, but I do not know that the Committee are prepared to increase the number of crimes for which the death penalty can be imposed. I propose to vote against the suggested new clause, because I am not satisfied that we should increase the number of crimes for which the death penalty can be imposed. If, however, this is carried, I would suggest to the hon. member that he should alter the wording of the clause to bring it into conformity with the Code, which does not make reference to felony. It would be a mistake in this one small part of the Code, if it is embodied in it, to introduce a term which is otherwise foreign to the Code. If the proposed new clause is carried I have no doubt the hon. member would be willing to amend the wording of it, so as to make it read in much the same way as the section regarding wilful murder.

Hon. H. MILLINGTON: I should like to have more time to think over such a serious proposal as this. It is quite possible that perpetrators of this kind of crime may be regarded as lunatics, and require special treatment. I do not know if the hon. member's proposal takes the circumstances of each case into account. It is quite possible that some form of treatment other than punishment by death would meet the case in some instances. We should have time to think over this matter.

Hon. Sir E. H. WITTENOOM: This seems to me to be a very drastic suggestion. At any rate, to persons who would be liable to imprisonment for a term of 14 years, I think the death penalty would be a pleasant alternative.

Hon. J. E. DODD: I hope the Committee will not agree to this. Personally, I would be in favour of an amendment to abolish altogether the death penalty. To increase the term of imprisonment in these cases from three years to 14 years is a sufficient advance in one step in dealing with such offences. It would be well for us to await the result of the investigations, which are being made by the Attorney General with respect to another form of punishment which has been suggested. To make another offence for which the death penalty will operate will be a retrograde step

The COLONIAL SECRETARY: I may have been misunderstood We are increasing the penalty to 14 years' imprisonment in the case of a person who attempts to have unlawful carnal knowledge with a girl under 13. The offence to which Mr. Duffell refers is at present punishable by imprisonment for life, with hard labour, with or without a whipping. That is the penalty which Mr. Duffell wishes to increase to the death penalty.

Hon. J. J. HOLMES: I support Mr. Duffell. There cannot be a more hideous crime than one against a girl of 10 years of age. Even if this means adding another crime to the list of those punishable by death, I do not think we should hesitate to do so.

Hon. J. EWING: I am inclined to support the proposal, but it seems to me that it is mandatory and that if carried the extenuating circumstances of a case could not be taken into consideration. It should be left to the judge to determine whether the death sentence is carried out or not. I suggest that the hon. member should amend his proposed new clause in that direction.

Hon. J. DUFFELL: None of the arguments which have been used have altered my convictions on this question, although I am prepared to fall in with the suggestion of the leader of the House that the clause should be worded in conformity with the section of the Code dealing with capital punishment. In my opinion the present punishment for this crime is not a sufficient deterrent, and that is my reason for wishing to increase it to the death penalty. Mr. President, in the course of my remarks I may have been carried away to such an extent that I may have used a word which was possibly out of place. If I have done so I do not wish to be laughed at. I am referring to the Usher of the Black Rod. As I was saying I strongly advocate the death penalty in substitution for the present one.

Hon. J. E. Dodd: Does not the hon. member think that the better form of punishment is emasculation?

Hon. J. DUFFELL: That is an operation to be performed on a person who has ruined at least one young life. My desire is to impose a punishment which will prevent that taking place. My contention is that the death penalty would be sufficient to cause a man to consider well before committing such an offence.

Hon. J. Nicholson: If he was normal.

Hon. J. DUFFELL: When a man understands that he is running the risk of being hanged for this sort of thing, he will be more likely to keep a hold upon himself. If my proposal is adopted I am willing to fall in with the suggestion of the leader of the House in regard to its wording.

The COLONIAL SECRETARY: Although I must not be thought to be supporting this proposal, in order to make the new clause conform with the Code, I move an amendment—

That all the words after "of," in line 3, be struck out, and "crime and liable to punishment by death" be inserted in lieu thereof.

That is the term used in connection with wilful murder in Section 282 of the Criminal Code Act.

Hon. J. MILLS: I cannot see eye to eye with Mr. Duffell, nor will I be a party to supporting a measure for taking a life unless for a life.

New clause as amended put and a division taken with the following result:—

Ayes	6
Noes	12
Majority against ..	6

AYES.

Hon. J. Duffell	Hon. R. J. Lynn
Hon. J. Ewing	Hon. J. Nicholson
Hon. V. Hamersley	(*Teller.*)
Hon. J. J. Holmes	

NOES.

Hon. J. F. Allen	Hon. G. W. Miles
Hon. C. F. Baxter	Hon. H. Millington
Hon. Sir H. Briggs	Hon. H. J. Saunders
Hon. H. P. Colebatch	Hon. Sir E. H. Wittenoom
Hon. J. Cunningham	Hon. J. Mills
Hon. J. E. Dodd	(*Teller.*)
Hon. J. W. Hickey	

New clause thus negatived.

New clause:

Hon. Sir E. H. WITTENOOM: I move—

That the following be inserted as a new clause:—"Section 321 of the Code is amended by adding the words 'with or without a whipping,' after the words 'Ten pounds' in line 2."

The COLONIAL SECRETARY: The amendment we have already made would meet the case which the hon. member desires to provide against. A person proceeded against for assault may be fined up to £10. That would be the end of it. Now the Act has been amended so that a person assaulted, even after taking action for assault and the assailant being fined £10, can proceed against the assailant and obtain damages.

Hon. J. J. Holmes: What damages could he get?

Hon. Sir E. H. WITTENOOM: It is not a question of damages at all. Men come down

from the country with their pockets full of money. They are assaulted in the most unpremeditated manner. There should be some deterrent. A fine of £5 or three months' imprisonment is not sufficient. I think a magistrate should have power to fine or imprison with or without a whipping. The magistrate should be able to award a whipping in addition any other punishment.

The COLONIAL SECRETARY: The amendment would read better if the words were put after the end of the first paragraph of Section 321. According to the hon. member's amendment the whipping would apply to minor assaults. What he wants to do is to apply them to major assaults.

Hon. Sir E. H. WITTENOOM: I am quite prepared to accept the suggestion of the Colonial Secretary, and I will alter the new clause to read as follows:—

> Section 321 of the Code is amended by adding the words "with or without a whipping" afer the words "first instance" in line 6.

Hon. H. MILLINGTON: The clause as it stands enables a magistrate to award a penalty of six months with or without hard labour. I do not think these are cases where whippings should be introduced. I admit that under the law as it stands the punishment is inadequate, but the cases instanced by the hon. member are cases for compensation. It would not be much compensation for a person who, having been assaulted lost his hearing, simply saw his assailant whipped.

Hon. Sir E. H. WITTENOOM: This new clause would provide for cases where there is no hope of getting damages.

[The President resumed the Chair.]

Progress reported.

House adjourned at 6.13 p.m.

Legislative Assembly,

Thursday, 31st October, 1918.

The SPEAKER took the Chair at 4.30 p.m., and read prayers.

[For "Questions on Notice" and "Papers Presented" see "Votes and Proceedings."]

NOTICE PAPER, ARRANGEMENT OF PRIVATE MEMBERS' BUSINESS.

Mr. SPEAKER [4.33]: Some remarks were made last night by the member for North-East Fremantle (Hon. W. C. Angwin) regarding the arrangement of yesterday's Notice Paper, and these remarks were emphasised by a paragraph in the "West Australian" of to-day's issue. I wish to assure hon. members that the arrangement of the Notice Paper was strictly in accordance with our rules; and I would refer those hon. members who are interested, to the "Votes and Proceedings" of the 15th September, 1910, when a somewhat lengthy statement was read to the House by the then Speaker, in explanation of a similar misunderstanding. From that statement I need quote only the following lines:—

> With regard to Orders of the Day, their position is regulated not by the date of the first introduction of the subject to the House but by the date on which the House ordered them to be set down.

Thus the resumption of debate on Mr. Teesdale's motion was ordered on the 18th September, while that on Mr. Jones's motion was ordered on the 3rd October. Mr. Teesdale's motion therefore took precedence. Hon. members who have been here for some years are familiar with the matter, but for the benefit of those hon. members who perhaps do not know, let me state that as regards notices of motion by private members the Premier takes no part in their arrangement on the Notice Paper. After they have been moved and have become Orders of the Day, the Premier takes no part whatever in their arrangement on the Notice Paper. All arrangemtnts of the Notice Paper made by the Premier refer solely to Government business. Hon. members will therefore know in future exactly how the matter stands.

BILLS RETURNED FROM THE COUNCIL.

1, Prison Act Amendment.
With amendments.
2, Supply (No. 2), £425,000.
Without amendment.

BILL—FORESTS.

In Committee.

Resumed from the 23rd October; Mr. Stubbs in the Chair, the Attorney General and Minister for Woods and Forests in charge of the Bill.

Postponed Clause 22a—Hewing of railway sleepers within State forests prohibited:

Mr. PICKERING: I move an amendment—

> That the words "Except as hereinafter provided" be inserted at the beginning of the clause.

On referring to the Notice Paper hon. members will see the clause whose insertion I propose to move later if this amendment is carried. The issue is whether or not hewing is to be permitted. The Attorney General has handed to me a work on Australian forestry, from page 221 of which I quote paragraph 402—

> "Standard" felling sizes prevent "clean cutting."—I assume further that the accessible forest, which is also that which will be worked first, will have mostly "clean fellings" on its working plans. In that case there will naturally be no longer standard sizes for felling. To permit a saw miller only to fell timber above a certain size adds