On motion by Mr. Thomas, debate adjourned.

ADJOURNMENT.

The House adjourned at 10·40 o'clock, until the next Tuesday.

Legislative Council,

Tuesday, 15th September, 1903.

The PRESIDENT took the Chair at 4·30 clock, p.m.

Prayers.

ELECTION RETURN, METROPOLITAN-SUBURBAN PROVINCE.

The President announced the return of writ issued for election to the seat for the Metropolitan-Suburban Province, vacant by the death of Hon. B. C. Wood; and that Mr. Zebina Lane had been duly elected.

Hon. Z. Lane, having been introduced, took the oath and subscribed the roll.

PAPERS PRESENTED.

By the Colonial Secretary: Annual Report of Governors of the High School. Annual Report of Committee of the Victorian Public Library. Interim Report of the operations of the Agricultural Bank for year ended 30th June, 1903. By-laws of Boulder municipality. Annual Report of Commissioner of Police.

Ordered to lie on the table.

QUESTION—GAOLER AT GERALDTON.

Sir EDWARD WITTENOOM (for Hon. J. M. Drew) asked the Colonial Secretary: 1, What was the term of service in the Prisons Department of the present Geraldton gaoler prior to his appointment to the latter position. 2, How many prison officials were there at the time of this officer's appointment who had to their credit a longer term of service with the department, either as warders or gaolers, and to whom the appointment would have meant promotion. 3, Was the position offered to any of these officers.

The COLONIAL SECRETARY replied: 1, Seven years. 2, Two, of whom one had but three months' longer service. Mr. Compton, however, was the superior in rank to both. 3, No. Gaoler Compton was transferred to Geraldton from Derby on the closing of that prison in September last.

RETURN—ROADS BOARD RATING.

On motion by Hon. C. A. Piesse, ordered: That a return be laid on the table of the House giving the names of the roads boards that have rated themselves under the provisions of the Roads Act, 1902, such return to show the system of rating adopted by each board, and the amount of rate fixed for collection.

MOTION—AGRICULTURAL & PASTORAL SETTLEMENT, GREAT SOUTHERN DISTRICT.

Debate resumed from 9th September on the following motion by Hon. C. A. Piesse: 1, That with a view to the farther extension of agricultural and pastoral interests, the country east of the Great Southern Railway should be at once examined and reported upon by a competent officer of the Lands Department, and that such examination and report should embrace all land west of the rabbit-proof fence lately erected from Burracoppin, on the Kalgoorlie railway, to Starvation Harbour, and thence along the coast to Albany. 2, That in the interest of mining, an officer of that department should accompany the party.

The COLONIAL SECRETARY (Hon. W. Kingsmill): Since the last sitting the Minister for Lands informed him that the Lands Department would comply

with the wishes expressed in the motion. The department had for some time been working at high pressure, caused by the immense number of applications for land, which had taxed to the utmost the departmental resources. Practically all the officers were busily engaged, and the more prominent officers were the hardest worked. The Government were not losing sight of the importance of the country to which the motion referred. A portion of it was being casually examined by those engaged in inspecting the rabbit-proof fence; and as soon as a more prominent officer, better suited for the work recommended by the motion, could be spared, he would be despatched to the district, accompanied by an officer of the Mines Department.

Question put and passed.

LUNACY BILL.

THIRD READING.

Read a third time, and transmitted to the Legislative Assembly.

NOXIOUS WEEDS BILL.

IN COMMITTEE.

Resumed from 9th September.

Clause 7—Notice to be served on occupier of infested land:

HON. J. W. HACKETT: Would the Colonial Secretary state what was proposed to be done with regard to Crown lands and lands the property of the Commissioner of Railways, also municipal lands? The amendments on the Notice Paper hardly met the case.

THE COLONIAL SECRETARY: The amendments of which notice had been given went as far as he promised to go when the Bill was previously before the Committee. The intention of the Government in regard to Government lands was explicitly expressed in the new clause relating to the clearing of certain Crown lands, and which provided that "all Crown lands being public reserves for stock routes or camping grounds, and all railway reserves, shall from time to time be cleared by the Minister for Lands and the Commissioner for Railways respectively." It would be seen that these lands which were looked after by two large departments of State, the Lands and the Railways, were to be kept clear of noxious weeds. With regard to the treatment of lands within the control of municipalities the object had been arrived at, not by proposing a fresh clause, which was not necessary under the circumstances, but by amending the interpretation of "owner," and in making that amendment the objection taken to the Bill by Sir Edward Wittenoom, had been also dealt with. The definition of "owner" was to be altered as follows:—

> "Owner" means the person for the time being registered in the office of Land Titles or the Registry of Deeds, or in the Department of Lands or of Mines, as the proprietor, owner, lessee, or licensee of land, and includes any person for the time being entitled to the rent of land, or who would be entitled to the rent if the land were let at a rent. The council of a municipality shall be deemed an owner within the meaning of this Act in regard to all public roads and streets within the municipality, and all reserves vested in or under the control of the council.

The words "entitled to receive" the rent of the land had been altered, so that the person entitled to the rent itself, not by virtue of agency, was liable. Municipalities would be deemed "owners" within the meaning of the Bill, and the reserves outside municipalities as well as inside had to be kept clear of noxious weeds.

HON. F. M. STONE: The amendment did not go far enough. Under Clause 12 the owner of land adjoining a road had the right to keep the road clear up to the centre. On one side there might be land held in fee simple and on the other side land held by the Crown. The owner of the fee simple land had to clear away all noxious weeds, but the Crown could allow the noxious weeds to grow on the other side of the road and up to the centre of the roadway. If the Crown were not to be bound by the Bill, it was absurd to pass such a measure. It would be throwing expense on the owner of fee simple land to keep his land clear, whereas waste lands of the Crown need not be cleared of noxious weeds. If the Bill was to be reasonable, the Crown should be bound by it.

HON. E. M. CLARKE: The Bill had been framed with the object of declaring any weeds to be noxious weeds within the meaning of the Bill, and for the eradication of noxious weeds if the Government thought fit. The owner in one instance was personally liable for clearing

his land up to the centre of the road; but what happened to the owner of the land on the other side of the road? If there were an owner on the opposite side of the road the whole road would be cleared, but what would happen if only one side of the road was owned by a private individual and the other side owned by the Government? It might be that a few yards beyond there were waste lands of the Crown teaming with noxious weeds. It was a lopsided Bill, and was not calculated to put matters right. The Crown should be made equally responsible with a private owner. If he had his way he would make roads boards responsible. He did not see why private owners should be made liable for weeds growing on a public road. "Owner" should mean the Crown or any corporate body. The owner of private lands had to keep the noxious weeds down, but the Crown could have a nursery for noxious weeds.

SIR E. H. WITTENOOM: The Bill was very good and should be placed on the statute-book, for though it would not be used to any great extent, power should be given to the Government to have such a law available if noxious weeds came about. The Colonial Secretary had not gone far enough with his proposed amendment, although he had gone as far as his legal adviser would allow him. Take the case pointed out by Mr. Stone. As a rule if land was good enough to be occupied on one side of a road, it would very probably be occupied on the other side also; but there was no power given in the Bill to do anything with the road, and the various roads boards should be included in the proposed amendments, so that they should keep the roads clean. It was agreed by the Minister that all waste lands of the Crown within two miles of agricultural land should be kept clear of noxious weeds by the Government.

THE COLONIAL SECRETARY: No.

SIR E. H. WITTENOOM: Did railway reserves include the chain on each side of a railway?

THE COLONIAL SECRETARY: Yes.

SIR E. H. WITTENOOM: A railway reserve might be a reserve for a station.

THE COLONIAL SECRETARY: All the lands reserved for the purposes of a railway.

SIR E. H. WITTENOOM: Roads boards should also be included within the clause, also waste lands of the Crown within two miles of cultivation. It was impossible for any private person to keep lands cleared if there were noxious weeds on land belonging to the Government adjoining private land. Although we might pass a Bill that might partially get at the root of the evil, we could not thoroughly do it unless waste lands and reserves were included. The lupin was a first-rate fodder plant, and useful for manure also. Roads board lands, and waste lands of the Crown within two miles of any cultivation, should be brought under the clause.

HON. W. T. LOTON: It should be the duty of roads boards to keep their roads clean. The occupiers of adjoining lands might seldom use the road, and had enough to do to attend to their own property without being compelled to clear weeds off a road used by the general public. Landowners and tenants were rated by the roads boards, and on what work could roads board revenue be more legitimately employed? Unless this principle were recognised, he would strenuously oppose the Bill. Noxious weeds were highly injurious; but the Government and the Railway Department were the worst offenders in allowing them to flourish.

HON. J. W. HACKETT: While the Bill might do some good, it might work great injustice and lead to partial administration of the law. Injury would fall on those least able to bear it, and on those whom, with curious irony, the Bill was intended to benefit, unless the measure were made absolutely uniform in operation, so as to clear all land from which danger was to be expected. Better throw out the Bill than expose the unhappy farmer to the attentions of an inspector who could render him liable to a penalty of between £5 and £50, and to other charges. To clear ground of weeds, and to keep it clear so as to prevent any of them from flowering, would be most expensive. Mr. Stone's suggested amendment would leave loopholes through which bushels of weeds might pour in upon the farmer; for the only reserves exempted would be camping reserves, stock routes, and railway lands. Nothing was said of unsold Crown lands waiting

for settlement, whence the weeds might spread, impairing the value of the farmer's crop. The South-Western and other districts were dotted over with hundreds of Crown reserves to which the amendment would not apply. Such reserves should be compulsorily kept clean. Unless this were provided for intolerable hardship would be inflicted on the farmer, and all his labours rendered nugatory. In view of to-night's developments, it was a pity the Bill had not been referred to a select committee.

HON. C. A. PIESSE: Members had a right fully to discuss this clause. In the main he indorsed other members' statements; and unless the Colonial Secretary could see his way to meet the wishes of agricultural members and those who thought with them as to the treatment of noxious weeds on Crown lands, he (Mr. Piesse) would move that the Chairman do leave the Chair. There were modes of procedure to stop a Bill of this kind going farther, and it would be his duty as an agricultural member, unless the Minister could see his way to fall in with the views of members, to move that the Chairman do leave the Chair. It would be an absolute waste of time to pass the measure unless provision was made by which the Government would be responsible.

HON. W. MALEY: Having travelled through all the States during the recess, he noticed that the roadsides throughout Australia were the places where the pests abounded. In South Australia he noticed that stinkwort had been eradicated in some places, but adjoining paddocks were covered with it. In the vicinity of Port Elliot and Strathalbyn there was a weed known as the "dense devil," which gave a great deal of trouble. It would be idle for the country to be put to the enormous expense of sending inspectors round to eradicate the pest and putting the owners of property to considerable expense, when the Government were neglecting the source from which the seed was distributed throughout the country.

SIR E. H. WITTENOOM: Exception was to be taken to the reference to the speeches being second-reading speeches. The gist of the Bill hinged on Clause 7. Members wanted to know who was the occupier. The Government should be considered as occupier, and be obliged to clear their portion of the land. Unless the Committee were convinced that the Government were sincere in doing their duty, then the Bill would go no farther than Clause 7.

HON. B. C. O'BRIEN: The Bill might be made acceptable if in Sub-clause 12 the words "or any roads boards districts" were added, and in the proposed new Clause 15, referring to Crown lands and public reserves, the word "being" was struck out. That would overcome the whole difficulty, and the onus would be thrown on the Crown to clear all Crown lands, stock routes, or any other land.

THE COLONIAL SECRETARY: The amendments submitted had been subjected to very careful consideration, and they represented the fullest extent to which the Government were prepared to go at present.

HON. J. W. HACKETT: Even the education reserves were to be exempt.

THE COLONIAL SECRETARY: Yes. The Government were not prepared to go beyond the amendments. If that did not meet with the wishes of members he was sorry for it. This was a matter of precedent also. In other countries the liability of the Crown in this direction was defined. In the New Zealand law on this subject members would find, so he was informed, precisely the same provisions as those to be found in the amendment; therefore it was thought, and the Minister for Lands agreed in the contention, that as far as the Crown was prepared to go was expressed in the amendment which defined the clearing of certain Crown lands. With regard to the liability of roads boards, while not prepared to support the proposed amendment, it would not have any deleterious effect on the Bill, and he was prepared to take the sense of the Committee upon it. Dr. Hackett was quite right when he said the administration of the Bill was the essence of the contract. There was no doubt about that. When introducing the Bill he said it was a weapon to be used in the future against the possible invasion of noxious weeds rather than to deal with a scourge which in some places, he feared, was almost beyond dealing with. For this reason he thought the Committee should hesitate before they risked losing such a measure, more

especially as the Government were willing to go as far as Governments went in other places, and when the chief usefulness of the Bill would be in its future administration rather than in its present application. He made this announcement of the intention of the Government in order that members would know what conclusion had been arrived at in regard to the measure, and that members might weigh well in their minds as to whether the measure, as it appeared with the added amendments, would serve the purposes for which it was introduced. He thought it would do so most admirably.

SIR E. H. WITTENOOM: There was not the slightest doubt the Bill was a useful one, and although the application might be to some extent limited, the Bill was better than nothing at all. The Minister might agree to the inclusion of roads boards, which was a small matter. The eradication of weeds would not cost those bodies much money, and the amount would fall on those who had to pay the rates. It would be a fair thing to give the Bill a trial. Noxious weeds were a very great evil, and if they got a fair footing would do a great deal of harm. The Bill might be passed with the amendments, and if found to be faulty there was nothing to stop its being amended at some future time. We might take it as a Bill on trial, as many Bills had been. This was a most important matter to agriculturists, and was not thoroughly realised except by those who owned land. Therefore if the Minister would include in the new clause "roads boards" he would be inclined to support the measure and give it a trial, on the understanding that when it was put into force it could be amended at some future date if necessary.

HON. C. A. PIESSE: Perhaps it would be well to discuss the Bill with the object of saving it if possible. There was the old Act in force if this Bill were defeated. Section 10 of the old Act contained a provision whereby the Minister "may" clear Crown lands. If that section was inserted the Bill might be useful.

THE COLONIAL SECRETARY: Section 10 was absolutely useless, for the Minister might clear Crown lands or he might not. The proposed new clause provided that certain Crown reserves alluded to as arteries for the distribution of noxious weeds should be cleared from time to time by the Minister. He had already intimated that he would not strongly object to the inclusion of roads boards. Both he and the Lands Department maintained that the inclusion of waste Crown lands would make the Bill unworkable. The Government had gone as far as other Governments went, and by the amendment were doing their best to meet members' wishes.

HON. E. M. CLARKE: One fact was worth a ton of argument. Recently in the South the Government purchased 10,000 acres, hundreds of which were covered with poison plant which the Government were not obliged to remove. But if the land were sold, the unfortunate purchasers would at once be pounced on by the inspector. The Bill, to be effective, must apply to Crown as well as to private lands.

HON. J. W. HACKETT: The Government said they must stand or fall by the Bill, with the amendments proposed by the Minister and Mr. Loton. Such a measure he (Dr. Hackett) could not accept, in view of his having to stand for re-election. The Bill was to be made in one direction oppressive, and in another useless: oppressive because of the enormous powers given to the inspector, and useless because of the numerous loopholes left for the dissemination of noxious weeds.

THE COLONIAL SECRETARY: Inspectors had the same powers now.

HON. J. W. HACKETT: The landowner could be fined not less than £5 nor more than £50, and the inspector could afterwards enter with labourers and destroy the weeds, charging the cost to the occupier. Of those powers farmers would not complain if every dangerous spot were cleared and kept clear. But to this the Minister would not agree, limiting the Crown's liability to the clearing of railway reserves, camping grounds, and stock routes; while harbour reserves, education reserves, public reserves, and all unsold portions of repurchased estates were expressly exempted from the operation of the law. In the absence of an assurance that this would be remedied, he appealed to the Committee not to work this cruel wrong on farmers, and he would

move that the Chairman do leave the Chair.

THE COLONIAL SECRETARY: The Government could not concede more than he had indicated.

SIR E. H. WITTENOOM: Better pass the best measure procurable: for when the Government were subsequently faced with the fact that all except Crown lands were kept clean, the law would doubtless be amended.

MEMBERS: That would be too risky.

HON. W. T. LOTON supported the last speaker. The objection raised by Mr. Clarke might be met if lands repurchased by the Government were brought within the clause.

THE COLONIAL SECRETARY: It would be to the interest of the Government to keep such lands clean.

HON. W. T. LOTON: Then why should the Government object to their inclusion? Do not throw out the Bill; for delay would mean great expense to settlers and the retarding of new settlement.

HON. G. RANDELL moved that progress be reported.

Motion negatived.

THE COLONIAL SECRETARY: Section 10 of the existing Act imposed no liability on the Government, but provided that the Minister might clear unoccupied Crown lands. The Bill provided that he must clear certain Crown lands which were frequently the means of disseminating noxious weeds. This was a distinct advance on the existing law. The Bill had not been considered by Ministers only, but by the experts of the Lands and Agricultural Departments, whose conclusions were embodied in the amendments now on the Notice Paper. Members should not ask the Government to go farther than other Governments, for the Bill imposed on the Government liabilities as heavy as members could fairly ask the Government to bear.

HON. C. A. PIESSE: The Government must somehow be brought within the scope of the Bill. To what extent could they be trusted in this matter? Land which they had resumed near Spencer's Brook for railway purposes was now infested with poison plant, though absolutely clean when resumed. The Government were rearing poison seeds which were worse than noxious weeds, and right in the heart of an agricultural district.

THE COLONIAL SECRETARY: The example given by Mr. Piesse was the strongest argument in favour of the present Bill. If it was possible under present legislation for the Government to neglect to clear a reserve, then fresh legislation was needed. An obligation was imposed on the Government by the amendment to clear such places from time to time.

HON. J. W. HACKETT: The Government should go a step farther, and make the Bill as perfect with regard to other reserves as it was proposed in regard to railway reserves in the Bill.

HON. C. E. DEMPSTER: It was not advisable to wreck the Bill, because it was a necessary measure. If the provisions were carried out with discretion and consideration they were desirable. The Bill would apply more to weeds which might be brought here in the future than to weeds existing to-day and which it would be impossible to eradicate. Take, for instance, the Spanish radish and such weeds. The Government should be given a certain amount of credit for endeavouring to meet the wishes of members as far as possible. The railway lines were likely to be the means of spreading noxious weeds, and if the Government made a careful examination of the railway lines and eradicated the weeds, a great deal of good would be done. At present all along the railway line Spanish radish and other weeds were growing and if the Government eradicated these weeds it would do a great deal of good. It would be well to accept the Bill in its present form. He did not know the noxious weeds which were met with in the South-East. Stinkwort should be eradicated as quickly as possible. It was wrong to lose sight of the importance of the Bill. The measure might seriously affect a person holding pastoral leases, and who might be called on to eradicate noxious weeds when he had only been in possession for a short time. Then there were annual leases to be considered.

THE COLONIAL SECRETARY: It was a matter of administration.

HON. C. E. DEMPSTER: It would be hard on a leaseholder if he were called on to eradicate the weeds on his land.

All these matters should be carefully considered. He would rather support the Bill as it was than not to have any Bill at all.

Clause put and passed.

Clause 8—Penalty for neglecting to clear without notice:

HON. C. A. PIESSE moved that the words in line 1, "fails or," be struck out. There was no need for the words. A man could not be punished because he failed to do a certain thing. A man might have striven to do the work, and it was unfair to penalise him when he might have made every effort to clear his land of noxious weeds. If a man neglected, then he was liable to punishment under Clause 9.

THE COLONIAL SECRETARY: Where it was clearly shown that the continued presence of noxious weeds on any land was due to the negligence of the owner, and not to his incapacity through the prevalence of the weeds or the want of funds, that would be a good defence. He sympathised with the amendment, and felt inclined to agree to it.

HON. E. M. CLARKE: If the owner of the land grubbed up the noxious weeds and then weeds spread from Crown lands alongside, that would be a sufficient defence.

Amendment passed, and the clause as amended agreed to.

Clause 9—agreed to.

Clause 10—Minister may recover expenses:

HON. C. A. PIESSE: Any expense incurred in connection with the administration of the Bill was to be a first charge on the land. This was a most drastic provision, and struck at the heart of commercial business. A man might lend another £2,000 or £3,000 to improve his land, which afterwards might become infected with noxious weeds. The inspector had power under certain conditions to put a big staff on land to clear it of weeds, and the expense of this clearing was to be made a first charge over any previous charge on the land. There should not be legislation in this form: what would become of banking securities? The Crown had no right to take this power to themselves. He moved that all the words after "jurisdiction," in line 5, be struck out.

THE COLONIAL SECRETARY: The clause was inserted, not to inflict a wrong on the mortgagee, but to protect him by maintaining the value of the land; hence if the costs were not recovered from the occupier, they should be recoverable in priority to the claim of the mortgagee. Had not municipal rates a similar priority? Clearing the land would make the mortgagee's property more valuable.

HON. C. E. DEMPSTER supported the amendment.

HON. C. A. PIESSE: A long time must elapse before municipal rates could so far accumulate as to swamp the property; whereas if a large staff entered on the land to clear weeds, the property might be forfeited in one season. The Government should take the same risks as a private creditor, for they had no right to special treatment.

HON. F. M. STONE: A mortgage contained a covenant that rates should be paid by the mortgagor, and the mortgagee insisted on their payment; but existing mortgages contained no covenant to clear weeds, hence the clause would affect such securities. As to future advances it would be fair enough, for a mortgagee would insist on a covenant to clear weeds, and in default of clearing foreclosure; but that the claim of the Crown for cost of clearing should have priority over the claim of an existing mortgagee would be unfair, as such mortgagee could not insist on the clearing of weeds.

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

Ayes	..	...	13
Noes	...	...	8
Majority for	...	...	5

AYES.	NOES.
Hon. T. F. O. Brimage	Hon. W. G. Brookman
Hon. E. M. Clarke	Hon. J. D. Connolly
Hon. A. Dempster	Hon. J. T. Glowrey
Hon. C. E. Dempster	Hon. W. Kingsmill
Hon. J. W. Hackett	Hon. R. Laurie
Hon. A. G. Jenkins	Hon. J. A. Thomson
Hon. W. T. Loton	Hon. Sir E. H. Wittenoom
Hon. W. Maley	Hon. Z. Lane (*Teller*).
Hon. C. A. Piesse	
Hon. G. Randell	
Hon. F. M. Stone	
Hon. J. W. Wright	
Hon. B. C. O'Brien (*Teller*).	

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

Clause 11—agreed to.

Clause 12—Owner of frontage to clear half width of road:

THE COLONIAL SECRETARY moved that the words "This section does not apply to public roads within a municipality" be added to the clause. If the Committee desired the Bill to apply to roads boards, better strike out the clause and add these words to the definition of "owner." He would not move that this be done, nor would he support such a proposal; but as it would not affect the practicability of the Bill, he was willing to take the sense of the Committee on it. That was the proper way to move the amendment which the hon. member wished.

HON. W. T. LOTON moved that the clause be struck out. It was unfair to impose on the owners of adjoining land the expense of keeping roads clear. There might be an owner on one side of the road who would keep the road clear to the centre, but the other half of the road might be adjoining Crown lands on which noxious weeds were allowed to grow. Roads were not only used by the adjoining occupier, but by the public generally, therefore the roads boards should keep the noxious weeds down. If roads boards taxed the land owners for the purpose of clearing the weeds from the roads the cost would be thrown upon land-owners equally.

THE CHAIRMAN: The hon. member had better vote against the clause when put.

HON. W. T. LOTON withdrew his amendment.

THE COLONIAL SECRETARY: The hon. member had better accept the amendment which he had moved, and then vote against the clause as amended. The amendment which the hon. member desired should be made in the definition of "owner." The Government were not prepared to accept the amendment, as roads boards had quite sufficient to do without imposing any extra burden upon them.

HON. J. W. HACKETT: If the clause were retained in its present state the farmer on one side of the road would be obliged to keep, not only his own land clear, but half the road besides. If on the opposite side there was Crown land, weeds would be allowed to grow there and scatter seeds about in all directions. If the Crown did not keep their land clear the farmer should not be bound to keep his land clean.

HON. W. T. LOTON: It was not his intention to oppose the amendment. The municipalities were the proper bodies to keep the roads clean. He would subsequently move that the clause be struck out.

Amendment passed.

HON. W. T. LOTON moved that the clause be struck out.

THE CHAIRMAN: The hon. member could vote in the negative.

HON. W. T. LOTON: It was unjust and unfair to tax private owners to keep roads clean. The roads boards were the proper bodies to do this.

HON. C. A. PIESSE: Roads boards should keep the roads clean. If the boards had not sufficient money, provision would have to be made by which they could obtain more money. Farmers should not be made responsible for keeping the roads clean.

Clause as amended put and negatived.

Clause 13—Effect of money being charged on land:

HON. F. M. STONE: The clause should be struck out in consequence of the Committee having negatived the latter portion of Clause 10.

On motion by the COLONIAL SECRETARY, progress reported and leave given to sit again.

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

PEARLSHELL FISHERY ACT AMENDMENT BILL.

SECOND READING.

Resumed from 9th September.

SIR E. H. WITTENOOM (North): I should like to place on record my appreciation of the excellent and lucid manner in which this Bill has been introduced. The Bill deals with a many-sided subject which deserves the serious consideration of the House. I think, however, the time has arrived when a protest should be made against legislation of such importance being initiated in the Legislative Council. My opinion always has been and is now that the Council is not the place in which to initiate legislation. Legislation is supposed to come from the direct representatives of the people; and the duty of this House is to criticise it.

HON. G. RANDELL: We are direct representatives of the people.

SIR E. H. WITTENOOM: Our position is different from that of members in another place, who are directly sent there by the personal votes of the people; and we are sent here to revise the legislation initiated there. I say the time has arrived when we should protest against the initiation of a number of important Bills in this House without their being previously considered by the Assembly. I have looked through the Bills presented here this session; and I find that out of 13, nine were initiated in this House. We are not in any way informed how they will be received in another place. We have here an important Bill to regulate the great pearling industry. The Bill deals with the licensing of boats and of divers, the importation of coloured labour, and many other important matters which should first have been presented to the Assembly. I have no hesitation in saying there is not a single member of this House who has the knowledge necessary for dealing with this Bill; and yet we must legislate on a matter about which we know nothing whatever, and send on the Bill to another place where there are probably some members who have had experience of the industry. In this way we get many of our resolutions thrown back on us, simply because we do not understand the subjects of which we talk. Were it not that I am desirous of presenting this Bill to another place, I should move that it be read this day six months. I will in a cursory manner go through the Bill, to show some of the objections to it. The Bill is absolutely unnecessary for any purpose except consolidation. The need for consolidation may be argued in favour of many Bills presented here; and I take this opportunity of congratulating the Government on their having made consolidation part of their policy; for to endeavour to bring as much legislation as possible within the scope of one Act is a thoroughly harmless policy.

THE COLONIAL SECRETARY: Say a useful policy.

SIR E. H. WITTENOOM: A very useful policy. I understand that the only legislation required by the representatives of the pearling industry is for preventing dummies holding boats, and dealing with pearl buyers.

THE COLONIAL SECRETARY: What about a slightly increased revenue?

SIR E. H. WITTENOOM: I believe the proposal for that is made in the interests of the Government; and that the pearlshell merchants and owners of boats have not the slightest objection to it, but are quite willing to pay the dues which the Government may levy. But they do feel that they need legislation to prevent dummying. I may explain that dummying takes place when a coloured man with a certain amount of capital owns a boat, and gets someone who is absolutely without a sixpence—without financial or any other sort of credit—to register as the owner of this boat, and work it for a salary of £50 or £100 a year, while the coloured man is the real owner and takes the profits. The salaried man is known as a dummy; and I understand that practice is what most people in the pearling business wish to avoid. The other question is that of pearl dealing, and it is surrounded with so much difficulty that it is hard to know how to legislate. As I have said, this Bill is not at all acceptable to those engaged in the industry.

THE COLONIAL SECRETARY: You surprise me.

SIR E. H. WITTENOOM: At all events I can assure the Minister, though he may be surprised, and even at the risk of bringing about I will not say an epileptic fit, that persons connected with the industry have represented to me that this is a very unacceptable measure. Coming to details, we find a provision for licenses; and no exception whatever is taken to the license, save perhaps with respect to Clause 11, which states:—

> No person using a diving apparatus shall dive for pearls or pearlshell unless he is the holder of a pearl diver's license in the form of the fourth schedule.

I am told that many young hands are taught to dive, and are what in other businesses are called apprentices; and until they become thoroughly good divers they ought not to be compelled to take out licenses. That, however, is a small matter. As to the question of exclusive license, those interested are not inclined to quarrel with the Government. I think the exclusive license a good thing. I

understand the idea is to induce people to replant areas which have already been fished over; and the only objection to my mind is that the term of the license is not long enough. I am told by people who understand the subject that the term of 21 years is not sufficient to enable a man to take up an area, replant it with pearlshell oysters, and get a return. A period not exceeding 30 years, or some such term, would be more acceptable, but that is not a very great point.

THE COLONIAL SECRETARY: It is an increase of seven years on the present term.

SIR E. H. WITTENOOM: It requires a very large amount of capital and it takes years to develop, and the work is always carried out on waste ground already fished over and of no use to anyone. With regard to the pearling agreements I am told that all these come under the present Merchant Shipping Act; therefore this portion of the Bill is unnecessary. With regard to Clause 26, Sub-clause 3, I do not at all understand why "indorse" should be spelt with an *i* and not with an *e*. There is also an absurdity in Clause 32, Subclause (*b*), which provides that no deduction shall be made from any wages except in respect of "goods which are shown, to the satisfaction of a magistrate or inspector, to have been sold or supplied to the pearl-fisher by the employer at a fair and reasonable price." Supposing a man has been engaged three years. During the first six months someone may sell him a pair of duck trousers for 6s., and after three years he says that he has been charged 2s. 6d. too much. Who is to decide? for that is what it will amount to in many cases. This provision on the face of it is an absurdity. Then we come to offences by pearl-fishers, which I understand are also dealt with by the Merchant Shipping Act. Clause 39 says:—

> If a term of imprisonment to which a pearl-fisher is sentenced under this Act terminates during the subsistence of the pearling agreement under which he is engaged, the master or owner or his agent party to the pearling agreement, or his agent, shall either—(*a*.) At once cause the pearl-fisher to be put on board his ship; or (*b*.) Discharge him from his agreement, paying whatever may be due to him, and pay his passage in accordance with the bond executed under section twenty-eight.

I understand a bond has already been entered into, therefore they are under penalty to see that this has been done. Now we come to the importation of pearl-fishers, and it seems to me this is an attempt to override the Federal Act. I understand the importation of any coloured labour is a question for the Federal Parliament to deal with, but here we are making conditions for the importation of coloured labour into Western Australia. If it wanted anything more to assure me that we are contravening the conditions of the Federal Act it is found in Subclauses (*d*) and (*e*) of Clause 44. Subclause (*d*) says:—"A pearl-fisher may, at the termination of his engagement, with the like permission, go and remain on shore within the limits of the place named in the permit for a period not exceeding fourteen days." That is not a great time, although it is perhaps contravening the present policy of the Federal Parliament in connection with coloured labour—I do not say whether I agree with it or not—it seems to be a contravention; still Subclause (*e*) is worse. It says:—"With the like permission, or in the case of a ship or vessel being laid up for the hurricane season or for repairs, an owner or master may employ pearl-fishers on shore within the place named in the permit." It seems to me if any boat is laid up for the hurricane season for three or four months or for repairs over a considerable time, the owner may employ the pearl-fishers on shore. That shows that a man is able to employ coloured labour against other labour on shore at that place. That seems to override the Federal Act. The miscellaneous questions in connection with this Bill are not very great, with the exception of Clause 48, which says an inspector may "examine the diving dress, air-pump, air-tubes, and gear, and all other gear or tackle in any ship or boat or at a station; and may, by order under his hand, forbid the farther use of any article so examined which is, in his opinion, unsafe or insufficient." Does it not seem to the common sense of members of the House that a diver would be the best judge of this? Does any member think that any diver would go down with faulty material or with faulty gear of any kind? Would not a diver be a better judge than an inspector?

THE COLONIAL SECRETARY: Certainly not if there was competition.

SIR E. H. WITTENOOM: He will not go down and risk his life for anybody.

THE COLONIAL SECRETARY: The same thing would apply to miners.

SIR E. H. WITTENOOM: It is not so direct in the case of mining. No owner of a fishing boat would order a man to go diving with a defective dress on, because it would be an absolute case of murder if he did. By Clause 49—

> An owner or master, or the person in charge of a fishing station, if he objects to an order of an inspector forbidding the further use of any gear, tackle, or other article, may, by notice in writing, require the same to be tested, whereupon the gear, tackle, or other article shall be taken before a magistrate, and shall be tested in such manner as he may direct; and the magistrate may confirm the order or reverse it, or make an order allowing the gear, tackle, or other article to be used after making such alterations or repairs as he may prescribe.

A man has to put in a fortnight or three weeks. He takes his boat from the pearling ground and goes to the resident magistrate and appeals. Supposing the resident magistrate says he is right. He has wasted all this time over the matter which the man whose life was involved could have decided for himself. This seems to me to be superfluous. It has been pointed out to me by persons who understand the matter that it is absolute nonsense. I am sorry the Minister is laughing. These are most serious matters and not laughing matters, and I hope he will not treat the subject in a spirit of levity. With regard to pearl buyers, I am told a separate Bill would be far better to deal with this question. It is a most serious, delicate, and very intricate question. I believe the work of buying pearls has arrived at even a finer art than the work of buying diamonds was at Kimberley. Under these circumstances we require special legislation of an intricate character to cope with it. In these circumstances I would point out to the Minister that it would be better to introduce a special Bill to deal with this subject instead of including it in this measure; it would deal with the case in a more powerful manner. With regard to Clause 74, the last one I shall refer to, the pearl fishers' hospital fund, it has been represented to me that to deduct a shilling a month from the wages of the ordinary sailor would be too much and not be fair. It would be all right for the diver, because he gets paid better wages than the sailor, but I am given to understand that the proprietors of the boats are quite willing to pay the shilling a month themselves. I also understand they have offered to provide a greater sum than the amount that will be derived if the hospital is handed over to them to be kept for the pearlers. They do not think the wages given would stand one shilling deduction. The natural answer to that would be to add one shilling to the wages and deduct it afterwards. Perhaps if the owners of the vessels paid the amount required to keep up the hospital, that would meet the case. I have nothing more to say, only that the Bill is so unsuitable for the business that had it not been for the fact that it emanated from this House I should move that it be read a second time this day six months. Under the circumstances I leave it in the hands of the House. I have put on record the views of those interested in the matter, and I hope even if the Bill passes in its present form in this House, it will be amended in another place to suit the exigencies of the business. Pearling is accompanied with a large amount of expense and hardship, and it will not do to harass the business with a lot of regulations that do not apply. Under the circumstances we should deal with the matter from a commonsense point of view. I deeply regret we have no member of the House who has a practical knowledge of the industry which I believe is bringing in a fair amount of revenue. I can only hope that nothing will be done to place any impediment in the way of this industry, which is one of the many we have in this country.

HON. F. M. STONE (North): Though I do not entirely agree with Sir Edward Wittenoom in saying that most of the Bills introduced into the House should not have been introduced here, still I think in a Bill of this nature it would have been more advisable if it had been introduced in another place by reason of the fact that there are many members there acquainted with the industry. As Sir Edward Wittenoom pointed out, here we have few members, if any, who have

any knowledge of the subject with which the Bill deals. However, I propose to discuss the measure with the limited knowledge which I have, and to point out certain defects in the Bill which I think will make it unworkable. I think perhaps it would have been better if this Bill had been first of all submitted to the parties mostly interested, and to have heard their views on the subject before legislation was introduced. [SIR E. H. WITTENOOM: I have just given their views.] There may be certain gentlemen residing in, or who are in Perth at the present time, who have a knowledge of the subject, but I am unaware that this Bill has been in the hands of gentlemen in the far northern parts of the country who are interested in the working of this industry. In turning to the clauses of the Bill, as was pointed out by Sir Edward Wittenoom, Clause 11 says:—"No person using a diving apparatus shall dive for pearls or pearlshell unless he is the holder of a pearl-diver's license in the form of the Fourth Schedule." That may be found unworkable in many cases. It is not as if we were dealing with people on land. In the case of mining you have the engineer who is licensed and other persons who are licensed, but here the parties are away a considerable distance from land, on the sea, and it may be found that a person who holds a license may be incapacitated. The boat has then to leave the pearling ground, where at the time the men may be reaping a good benefit, and come all the way to port to get a fresh license for the men on the boat to enable them to work. The answer to that may be that we should make everyone on board take out licenses. But look at the expense that would throw on the owners. It is not the object of the Government or of members of the House to attempt to cripple the industry, but to attempt to help it along as much as we can. Still this may be the means of crippling the industry. There ought to be some means by which, when the person holding a license is incapacitated, another person may be able to use the license for the time being to enable the owners to reap the benefit if they get on to a good patch of shell. In the clauses dealing with pearling agreements there seems to be some inconsistency. First of all we have the local agreement; that is an agreement signed at a port in this State. Clauses 24, 25, and 26 deal with these agreements, and Clause 26 provides firstly that the owner shall sign the agreement, and secondly that the agreement shall be read over and explained to each pearl-fisher in the presence of a magistrate or an inspector, by whom the signature of each pearl-fisher shall be attested. Then there are agreements to be signed in the foreign ports at which coloured labour may be obtained; and I agree that the authorities at such foreign ports require certain provisions in the agreements before they allow the men to leave those ports. Clause 35 purports to deal with such an agreement; but it enacts merely that the agreement shall have the same effect as an agreement duly made under Clause 24. But how about Clauses 25 and 26, which set out the terms of the agreement and how it shall be signed? I do not know how the agreements made at foreign ports are signed; but they may be signed in a manner entirely different from that provided in the Bill.

SIR E. H. WITTENOOM: But Clause 35 has the effect simply of indorsing the agreement made at the port of shipment.

HON. F. M. STONE: Clauses 24, 25, and 26 set out what an agreement shall provide for, and how it shall be signed. If an agreement made outside the State is not in conformity with Clauses 25 and 26, it seems to me that we have something like a muddle.

THE COLONIAL SECRETARY: Do you think there is much in that point?

HON. F. M. STONE: I believe there is. I think Clause 35 should have continued: "and it shall not be necessary to include the provisions of Clauses 26 and 27 in such an agreement." In other words, if an agreement is signed outside the State, the point may be taken—and we should avoid such points—that the man is not under agreement as provided by Clauses 24, 25, and 26. The agreement made in the foreign port may not set out the terms provided in Clause 25; therefore the owner of the licensed ship has employed a person not under an agreement. To make the position clear I think Clause 35 ought to be somewhat amended. In Clause 32 we find that "the wages of every pearl-fisher and

every additional pecuniary reward earned by him shall be paid in current coin of the realm or other legal tender." I do not know what on earth the draftsman of the Bill meant by this; because everyone in legal circles knows that "legal tender" excludes anything but coin of the realm. But why should bank notes be prohibited? There may be a bank established in Broome.

THE COLONIAL SECRETARY: There is one.

HON. F. M. STONE: Then why should not a man be paid in bank notes? It is clear that a bank note is not legal tender, and I do not know of any legal tender except coin of the realm; so that clause needs amendment unless the Government or the House desire to prohibit payment in notes. Then we come to deductions; and the clause provides that—

> No deduction shall be made from any wages or pecuniary reward, except in respect of (*a.*) money paid to the pearl-fisher in advance; (*b.*) goods which are shown to the satisfaction of a magistrate or inspector to have been sold or supplied to the pearl-fisher by the employer at a fair and reasonable price.

Let us see what effect that will have on the wily Malay. Sir Edward Wittenoom has already drawn attention to subclause (*b.*) of Clause 32. That subclause opens a floodgate. The pearl-fisher will come into port for payment. There is an account against him for goods supplied—trousers, hats, sugar, and tea; and he immediately says "That tea is not worth 1s. 3d. a pound; it is common tea worth 1s. only;" and immediately an inquiry has to be made before a magistrate. The employer is put to all the expense of fighting the Malay on such questions. And how is the magistrate to decide as to the reasonableness of the price? Where are the tea and the sugar? They are consumed. Where are the trousers? Worn out long ago. And where is the hat? It blew overboard.

HON. J. W. HACKETT: You must give the men some protection.

HON. F. M. STONE: But why do they need protection? We do not protect the white man who works in a timber mill. We have no section in any of our Acts to provide that when certain deductions are made the workman can go before a magistrate, who shall decide whether such deductions are fair. The Malay, when purchasing the articles, may agree to the prices; but when he goes before the magistrate he may dispute everything. He may say "This knife is not worth 2s. 6d.; it is worth only 1s. 3d;" and he brings out an old rusty knife. The employer says "This is not the knife I sold him;" and so we go on making endless trouble and expense to be borne by the owner of the boat. Then we find that monthly contributions are to be deducted for a hospital. I do not know whether the authorities at foreign ports of shipment have had any voice in that, to start with. It is likely that they will strongly object to any deductions being made for such a purpose; and will say, when the labourers come to sign their agreements, "No; we shall not allow this." Then the owner of the boat must come into port with an agreement not providing for deductions. But Clause 74 states that deductions shall be made; so the lugger-owner is at once in the fire. At the port of shipment of the Malays, the authorities will not allow the deductions, and in Western Australia the deductions have to be made; so the clause means that the owner himself will have to pay this deduction of 1s. per month per man for a hospital. Then what provision is there to compel the Government to have this hospital? This is the first time I have seen a Bill which compels a deduction for such a purpose; and yet there is nothing to compel the Government or anyone else to provide the hospital. Of course the Government will take good care to get the money; but perhaps it may be years before the hospital is established.

THE COLONIAL SECRETARY: There is one already.

HON. F. M. STONE: There may be; but what is there to compel the Government to maintain it?

THE COLONIAL SECRETARY: Clause 74.

HON. F. M. STONE: The clause provides that "Such funds shall be employed solely in the establishment and maintenance of hospitals in the neighbourhood of the pearl fisheries." It does not say that the Government or anybody else shall provide a hospital. When a hospital is there the money goes to the hospital; but there is nothing in the Bill to compel the Government or anyone else

to provide a hospital. Where in combinations of men deductions are made for medical services, there is always provision for a hospital or a doctor, so that the members may get the benefits for which they pay. But here it is left entirely to the Government or to anyone else to open a hospital. That, I say, would be a strong objection with the authorities in those countries from which the pearl-fishers come. Such authorities would ask: "Are the Government in Western Australia compelled to maintain such hospitals? We shall not allow our men to sign agreements deducting a shilling per month from their wages, when there is no provision compelling the authorities to keep up the hospitals. The clause might inflict great hardship on men who had worked for months, and whose wages were subject to the deductions. We must see that such men get the benefit of the deduction before we allow them to enter into agreements." That will perhaps be an obstacle to the employment of men for the purpose of this industry; and I do not think that is the wish of the Government or the House. Again, the Bill provides that "no pearl-fisher brought to Western Australia by sea shall land or be permitted to land except within a port duly proclaimed in that behalf." To start with, the pearl-fisher is to have a medical certificate that he is free from disease and is of sound constitution, and if he has been vaccinated stating the fact. Before the employer can bring him into the State there must be a medical certificate that the man is free from disease in accordance with Clause 41, Subclause (*b.*) Suppose the boat to arrive with a number of sick men on board, and it is necessary to land them that they may be cured, the Bill does not provide for that. They must remain on board till they are well. The owner brings them from a port outside the State; but the medical certificate must be signed by a physician or surgeon qualified by any law in force in any of His Majesty's dominions; so a certificate signed by a foreign doctor is not sufficient to satisfy Clause 42.

THE COLONIAL SECRETARY: It may be signed at the port of arrival.

HON. F. M. STONE: I am coming to that; but why should we not be satisfied with, say, a Dutch doctor's certificate, to the effect that the man is free from disease and is of sound constitution? Are we not willing to trust a foreign doctor to give such a certificate? Why do we not allow any certificate but that of a British doctor? Then, to overcome that difficulty, it is provided that when the men are brought here the employer can get certificates at the port of arrival. But there may be no doctor at that port. I am answered that at present the resident magistrates are medical officers also.

THE COLONIAL SECRETARY: That is not so.

HON. F. M. STONE: Well, all the better for my argument. At certain ports there are no doctors at all. The employer arrives at such a port, but he cannot land his men. Suppose him to arrive at Derby, with all his men sick. Suppose he has been obliged to put in there in consequence of sickness having broken out while at sea. If there is no medical man there, the employer is prevented from landing his men, because he cannot get certificates. He may wish to go to Wyndham, so as to get on to a pearling ground in the vicinity. A man does not want to go to Broome to get a certificate. But the Bill does not provide for that. Under the Bill the boat must go where there is a medical man. Supposing a boat is coming from a port where there is no British medical man; it is obliged to go to a port where there is one.

THE COLONIAL SECRETARY: There is a medical man at Wyndham, Derby, Broome, or Cossack.

HON. F. M. STONE: At the present time that is so, but at times there may be no medical men there, and a pearler loses the benefit of the season. In pearling, as I understand, it is necessary to get on to the pearling bank very quickly. Instead of being able to do that a man may be obliged to bring his boat down, perhaps to Wyndham or Derby. If a man can get a certificate from a Dutch doctor the difficulty may be overcome. It would be satisfactory if such a certificate were allowed to pass. Under Clause 44, after the boat has got to Broome and the certificate is indorsed, those on board are allowed to land—

For obtaining wood or water, or on any other necessary ship's business, remaining on shore

no longer than is necessary for such purpose; on the occasion of payment of wages as by this Act required; in the case of sickness or for other sufficient reason, in the discretion of an inspector or licensing officer, and with his permission in writing.

If a person is sick, permission has to be obtained from the inspector before the person can land. Would it not be better to provide that a man should be landed in case of sickness, but if he is not sick then a penalty could be provided. That would sufficiently protect the landing of a man under the circumstances. If it was proved that the employee was humbugging the authorities and bringing men ashore he could be fined for so doing, but to hunt around for an inspector to get a certificate seems to be difficult. Then again a boat may be wrecked and all the men come ashore. In that case the owner is liable for a penalty. Under Clause 49 the question of tackle arises. A boat is out on the pearling grounds—I suppose it is the intention of the Government to appoint an inspector to go on the pearling grounds—the inspector goes round, visits a boat and says, "You must not use that diving gear." In that case the owner would have to give up pearling and come in to see a magistrate.

THE COLONIAL SECRETARY: There might be more gear aboard.

HON. F. M. STONE: The inspector might condemn the lot. These contingencies are so very easy to arise. If a man has 50 or 60 diving dresses the trouble will not happen. But it is likely to happen, and we do not want to make the Bill a hardship or unworkable. If the gear is condemned, the boat must be brought in so that the men may see a magistrate, the diving dress has to be brought in, and if it is proved to the magistrate that the dress is all right, he can say, "You may go back." The men have come in from the pearling bank; they have lost their chance and now they are told they can go back again. That is all the recompense they get. With reference to the exportation of pearls or pearlshell, I understand that boats going to Singapore pick up pearlshell, but according to the Bill 48 hours' notice has to be given before that can be done. The boats are scattered about, and a steamer may be going through a lot of boats and a person may want to send shell to catch a market. There is no inspector about, and therefore the chance of the market is lost.

THE COLONIAL SECRETARY: This applies principally to pearls.

HON. F. M. STONE: Then leave out "pearlshell." In that case a market is lost through not finding an inspector. If this Bill dealt with persons on land it would be easy to get at an inspector, but from what I have heard and from what I have read of how the pearling industry is carried on, if we pass the Bill without amendment it will cause hardship, and make unworkable an industry which we wish to foster. Members may or may not agree with me, but it appears that if we legislate in the way this Bill proposes, it may be the means of forcing the pearling industry from the State to register under a foreign flag, and the whole of the profits which this country gets, and also as the Colonial Secretary admits, the revenue, will go out of the State. That is not a state of affairs which the Government or this House would like to see. We want a Bill which is workable for the protection of the pearling industry and of the State, and to allow revenue to be collected, but not a Bill to drive the industry away. It seems to me that it would be more desirable if the Government, instead of bringing forward the measure this session, allowed the Bill to be distributed in those parts of the country where people are particularly interested, and allowed expressions of opinion to be given. Letters may then appear in the newspapers on the subject. I have had no opportunity of consulting anyone directly interested in the industry, but the ideas have come to my mind, and I have presented them to the House, and I trust that some members may think there is something in them.

HON. R. LAURIE (West): Having some little knowledge of the pearlshell fishery in the North, and having the advantage of being able to meet those engaged in the pearlshell fisheries who are not resident here but are carrying on their business in the North, I have taken the opportunity to speak to those gentlemen, or I should have been afraid to get up here and say one word in favour of the measure before the House. But having taken the opportunity of doing what Mr. Stone has not

done, I would like to say that after having seen two gentlemen engaged in this business for 11 or 12 years—one having control of over 20 luggers, owning probably a dozen, and working from a schooner, as we know most of these men do—I feel that this Bill should have the support of the House. I have here a letter from the owner of a schooner who has a number of luggers working, and after carefully perusing the Bill the only objections he has to it are contained on one sheet of foolscap. One objection refers to Clause 11 and the question of try-divers. He says the measure should make provision for try-divers in the event of another diver breaking down. I suggest to the Colonial Secretary that the regulations should provide that in the event of a diver breaking down through sickness or tripping through misconduct—I shall explain some of the workings of the pearlshell fishery directly—men might be employed as try-divers, so long as an entry is made in the ship's log. Then there is an exception with regard to the question of mature shell, and also in connection with the high rate for licenses. These are the only three objections this gentleman takes to the Bill. This Bill is spoken of very highly indeed, and the gentleman who was called on by the Government to assist in the framing of the measure (Mr. Wharton) is spoken of highly as one who knows a great deal about the pearlshell fisheries in the northern parts. There are one or two things I wish to call the attention of the Colonial Secretary to. In licensing a boat, no provision is made for equipment, nor to see that the boat is in sound condition. No license should be issued to a vessel unless that vessel is fit to engage in trade; and in this opinion I am strengthened by the fact that one of the gentlemen spoken to says that many vessels engaged in the trade, if examined, would be condemned. Passing on to try-divers, I think there should be some regulation providing that if a diver break down, anyone on board the vessel who wishes to go down and who is willing to go down, should be allowed to do so if a proper entry is made in the log, so that if the inspector comes along and finds this man is competent and entitled to go down the man can obtain a license as a diver. There is another matter which is not provided for here. A diver for misconduct should have his license taken from him. A diver may be fined for misconduct, but I think the time has arrived when a diver should have his licence taken from him for misconducting himself. It is well known to those engaged in the pearl fisheries that the whole of the diving is in the hands of the Japanese. It is also well known that it takes a sum of £100, £150, or £200 before a diver can start. At Broome there is a Japanese club, and I am credibly informed that a resolution was come to that no Japanese diver should go on a lugger in charge of a white man. I think that if the Japanese divers felt that for such misconduct as they are often guilty of their licenses would be cancelled or otherwise dealt with, they might be more amenable to such discipline as the employer would desire to impose. Passing to the question of the exclusive license to fish for pearlshell over a certain area, I think a clause should be inserted in the regulations or in the Bill compelling the holder of such license to cultivate shells. It is useless to give a man an exclusive right to an area unless he is compelled to carry out the purpose for which such right is given him.

THE COLONIAL SECRETARY: The provision is similar to that for labour conditions on a gold-mining lease.

HON. R. LAURIE: I am credibly informed that one firm, Haynes and Co., at the Montebello Islands, have such a license; and I understand that they have been cultivating shell. It would be very wrong to give any person or persons an exclusive license over five or six square miles of sea, and to allow them simply to clean up that area and then leave it. They ought to be compelled to cultivate shell. There is no provision in the Bill for coloured pearlfishers who have been in the State for some years; but the measure provides simply that the employer, the owner of the vessel, must send the coloured man out of the country at the expiration of the engagement. Now there is quite a large floating population in the North-West; and having once employed a member of that floating population, the agreement may be renewed, but there is no provision for putting him on shore.

What is to become of him after he is paid off? Must the employer still retain him, or must he insure his being employed by someone else, and passed out of the country when finished with? I call attention to that so that it may be amended in Committee. Clause 52 permits a ship to carry intoxicating liquors. At Thursday Island provision is made for two gallons of spirits for each lugger; but in Broome and the North-West generally we find something worse than that. It is well known there that not only are spirits used, but that opium is used, and used freely; and I am told by one of the owners of a schooner now in the North that opium is not sold, but is only exchanged for pearls, and that quite a large quantity is used for that purpose. Now that attention is called to the matter, the opium trade in the North-West should be stifled. Clause 53 states that the Governor shall prescribe the sizes of pearl shells which it shall be lawful to take. This is a large power to put in the hands of the Governor-in-Council or of the inspector. The classes of shell which are found in the western and the eastern pearling grounds are very different. West of Cossack we find that the shells will range up to 5,000 per ton, the average being about 3,000. Then on the 80-Mile Beach the shells range from 1,600 to 1,700 to the ton. Now the inspectors appointed will have to take into consideration, when fixing a minimum size, the different sizes of shell in the different fishing localities. For example, the shell west of Cossack, while it is being matured, is very small, and averages 3,000 to the ton.

THE COLONIAL SECRETARY: Some of the shell west of Cossack is the biggest in the world—the Montebello shell, for instance.

HON. R. LAURIE: I am quoting a gentleman who has been engaged west of Cossack for over five years, in managing a fleet of more than 20 vessels.

THE COLONIAL SECRETARY: But you have heard of the Montebello shells?

HON. R. LAURIE: I have. At the same time, my informant says the shells average 3,000 per ton, and that the average of shell on the 80-Mile Beach is 1,600 to 1,700 a ton. There is no doubt about the shell west of Cossack being mature; and the inspector would have to use great discretion in view of the fact that the shell, though small, might be mature.

THE COLONIAL SECRETARY: That is provided for by the words "varying such dimensions for different parts of the coast of Western Australia."

HON. R. LAURIE: Precisely. But it may be provided that the minimum size shall be four or five inches across. If the shell is only three inches across and yet mature, why punish the man? There is no provision for acquitting him. Clauses 71 and 72 provide for penalties, and would punish the man and let the vessel go free. The vessel would still be licensed, and would be placed under the command of some one else as so-called owner, who would not be worth a shilling. He also may be punished; yet the vessel goes merrily on. Attention has been called to this defect; and there is a demand that the real owners shall be dealt with. As to Clause 74, providing a hospital fund, I may say that pearlers consider there is absolutely no need for this. Personally I think it is not wise to ask a coloured man to agree to have a shilling per month deducted from his wages for hospital purposes. The pearlers are quite willing to provide all the funds needed, and I am satisfied that they do not wish this shilling to be deducted. It is strange that while in our Workmen's Compensation Act we absolutely assure our own workmen in the event of injury while in our service, we ask coloured men to submit to these deductions. If the pearling industry is of some benefit to Western Australia, then if pearl-fishers fall sick while engaged on the vessels, the industry ought to be able to support them while in hospital. Some remark was made about the fishermen coming ashore; and a member ridiculed the idea that the men should come on shore as they do while the vessel is under repair. But there are only two places in the North where vessels come for repairs—Broome and Beagle Bay; and in Beagle Bay there is probably not a white man within 100 miles of where the vessel is beached. As to Broome, the men do come ashore; and I think it quite right that they should not come ashore except under permit. To my mind it is nonsense to say that by making this provision we shall interfere with

federal rights. It must not be forgotten that if we do not take precautions to make the men obtain permits to come ashore the Federal Government may say: "We shall not allow you to have the coloured men in the North at all." I say, knowing something of the conditions in the North, that without coloured labour the industry cannot properly be carried on; for no white man will work at diving for six or eight hours a day on one of those luggers; and unless we take proper precautions so that coloured men are allowed on shore at proper places only and under permits, the Federal Government may prohibit coloured labour in the North; and that will be the severest blow which the industry can possibly receive. In that respect the Bill is most satisfactory, and I trust members will give it their support. Some small amendments may be needed, but I think the Bill satisfies the pearlers. It satisfies me; and I am convinced, by the indorsement which I hold in my hand, that it is approved of by those who are engaged in the pearling industry in the North-West.

Question put and passed.

Bill read a second time.

FERTILISERS AND FEEDING STUFFS ACT AMENDMENT BILL.

IN COMMITTEE.

Clauses 1 to 7—agreed to.

Clause 8—Seller to give invoice certificate to buyer:

HON. R. LAURIE (West): Subclause 2 provided for the name of the seller as well as the registered brand of the fertiliser being given on the package. A considerable quantity of fertiliser which had to arrive next season would be increased in price if the name of the seller had to appear on the package. Surely the brand of the fertiliser, which had to be registered, was sufficient guarantee to know who was placing it on the market. He moved that in lines 5 and 6 of Subclause 2, the words "the name of the seller and" be struck out.

Amendment passed, and the clause as amended agreed to.

Clauses 8 to 30—agreed to.

Preamble, Title—agreed to.

Bill reported with an amendment, and the report adopted.

ADMINISTRATION (PROBATE) BILL.

SECOND READING.

Resumed from 20th August.

HON. F. M. STONE (North): The Government are to be congratulated on bringing forward a measure of this nature, and I trust that the Bill, with a few amendments I shall propose in Committee, will pass. The law of administration is somewhat confusing, and a consolidation measure of this kind will assist the practitioners, the Judges of the Court, and the officials considerably in the carrying out of administration. Clause 14, to my mind, materially affects the public, so to speak. It deals with the administration of estates in cases of intestacy, and to what extent the husband or wife shall benefit under such intestacy. By the present law, if the wife dies the husband is entitled to the whole of the personal property, and to a certain interest in the freehold property. On the other hand, if the husband dies the wife is entitled to one-third of the personal property, and the remaining two-thirds are divided amongst the issue. The widow has the right of dower on the freehold of lands, and the clause proposes to alter that in a way that I think is very good. Where the net value of property does not exceed £500, the husband or wife becomes entitled to the whole, and according to Subclause (*b*), where the net value exceeds £500, to the sum of £500 absolutely, and also to one-half share of the residue where there is no issue surviving; "and where issue survives, the husband or wife shall be entitled to one-third share of the residue and such issue to the remaining two-thirds." Members will see that will alter the husband's interest; he will only get one-half where there is no issue, but where there is issue the husband gets one-third, the same as the wife. I should like to see the clause go farther. In the event of there being no issue and no relations, the other half goes to the Crown. I think that is what we require to amend. I do not see the reason why because a person dies intestate—the wife and husband may have been the means together of accumulating money—in the event of there being no relative, that the husband or wife should only take one-half, and that the other half should go to

the Crown. We should amend that clause so that, in the event of the husband or wife dying, the whole estate should go to the survivor. The Crown gets the benefit of the duty, which is quite sufficient for the interests of the Crown. I think the clause should be amended farther with reference to the other half that would go to the relations. Supposing a husband or a wife dies leaving property, the wife or husband gets the £500, then half the balance, and the other half may go to some distant relation. I have known of cases in this State, under the law as it at present stands, in which the wife has taken one-third and the other two-thirds have gone to far-distant relations outside the State, of whom the wife or the husband knew nothing. They came in, got two-thirds, and the wife in one case that I know of, who with her husband had accumulated this money, was left in rather poor circumstances, but if she had received the whole she would have been comfortably off. Unfortunately there was no will, and the distant relations who had never been seen or heard of suddenly came into the two-thirds. I should like to see, where the husband or wife has certain relations, that they should come into a certain share; I mean brothers or sisters. But it should not go farther. There is no reason why nieces, nephews, cousins, or aunts should come into a share. In Committee that is a matter to thresh out and see what we can devise whereby the wife or the husband shall be protected to a certain extent, so that the remaining half shall not go to distant relations, as is provided for by the Bill and as is the law at present. I think where the husband or wife has been resident in the State, and has been the means of accumulating an estate and has no issue, even where there are brothers and sisters—I am not wedded to such relations receiving a share of the estate—the wife or the husband should take the whole. There are certain technical points that require to be altered in Committee, and when the clauses are being considered I propose to deal with them. I do not think it is necessary to dwell on them at present.

THE COLONIAL SECRETARY: Will the hon. member put the amendments on the Notice Paper?

HON. F. M. STONE: If the Committee stage is put off for a reasonable time I will put any amendments which occur to me on the Notice Paper. There is one very good clause in the Bill. A surety may find an administrator wasting an estate. I have been consulted time after time in this matter, and I have found no means of getting over it. A person has become a bondsman for an administrator, and he finds the administrator is wasting the estate. There are no means of compelling the administrator to administer the estate properly. Under one clause of the Bill a surety can come to the Court and get relieved.

HON. J. W. HACKETT: To what clause do you refer?

HON. F. M. STONE: Clause 39. A clause dealing with claims provides that the executor or administrator can force a claimant to come into Court and to prove his claim. A person may give notice of a claim, which is disputed, and the executor or administrator cannot administer the estate because this claim is hanging over his head. By the Bill he can give notice to the creditor, who must, within a certain time, proceed to prove his claim. That is a very necessary provision. Then the executor may pay debts, accept composition, and allow time for payment. I should like to see a clause providing that the executor or administrator, when a claim comes in, may require the claimant to support his claim by declaration before a justice of the peace. That is the course now adopted by the Curator of Intestates Estates. If I send in a claim to him, he requires me to make a declaration and to give evidence in support, so that he may investigate and settle the claim. That provision is of considerable assistance, because when claims are made on an estate the executor or administrator frequently does not know whether to settle or not; and if the claimant is obliged to make a declaration before a justice of the peace and be liable for perjury, this obligation may often be the means of stopping bogus claims. I do not like Clauses 52, 53, and 54, with reference to district agents. I do not see the necessity for the provision, and I think it would be very dangerous. I take it we propose to appoint clerks of Local Court as agents. If not, we shall have to appoint solici-

tors, who will require some remuneration, which will be an expense to the Government; so I think the intention is to appoint Local Court clerks. Then the papers have to be taken before such agents; and in cases where the estate exceeds £500 in value the papers must be sent to the registrar to obtain probate. I think that would lead to much confusion and expense, and that in case of estates of less than £500 the clauses would sometimes lead to bogus wills being proved. What would a Local Court clerk know about the different requirements in a will? I could undertake to ask any Local Court clerk now appointed how to draw the attestation clause to a will; and I am perfectly certain not one of them could draw such attestation, nor is it to be expected that they could. Yet the first necessity in examining a will is to ascertain whether that clause has been properly drawn, and then to ascertain whether the will is properly signed; and a Judge often requires additional affidavits and additional evidence. But a Local Court clerk could not be expected to have that knowledge; hence the papers would go backward and forward, and much expense would be incurred with respect to estates over £500 in value. But to give the clerks power to grant probate in estates of less than £500 would be equally inadvisable; for such estates are just as important to the beneficiaries as are estates which exceed £500 in value to those concerned, and the same protection should be afforded to small estates as to large. The clerk might grant probate erroneously; the executor might get hold of the money; and it might disappear before it could be stopped. I believe about 130 probates and about 230 administrations are taken out every year throughout the State. In England there are, of course, district registries; but the registrars are qualified men receiving high salaries, and living in densely-populated districts. I think there is a district registrar in nearly every county in England and Wales; but the population of each county is considerably larger than that of this State; hence it is necessary to have these registries in England, so that there shall not be an accumulation of work at the principal registry. I believe there are not more than, say, 400 administrations and probates going through our Supreme Court; therefore we need not fear an accumulation of work. If it is thought that this provision for district agents would facilitate probate, I say it would be the means of throwing money into the pockets of professional men. The only other matter I have to deal with is the duties. I should have liked to see the duties on deceased persons estates collected as in England. The Bill proposes that before obtaining probate the duty shall be ascertained and paid, and that the executor may give a mortgage on the property of the deceased, as security for the duty. And if there be no money in the bank, but the estate consists of land merely, he can give a security over that land for the duty; but I do not perceive how that can be done under the Bill, for this reason. Before the executor can get probate from the Court, the registrar must certify on the probate that all duty has been paid, and must not part with the probate until the duty is paid. If there is money in the bank to start with, the banker will not part with that money until probate is produced to him; therefore until the executor gets probate, how can he draw money from the bank to pay the duty? The registrar cannot part with the probate until the duty is paid; and to get the money the executor must go to the bank with the probate so that he may draw a cheque.

HON. G. RANDELL: Cannot the registrar exhibit the probate without letting it out of his hands?

HON. F. M. STONE: No. Clause 92 provides that—

> If, after the grant and before the issue of probate or administration, the duty in respect thereof is secured to the satisfaction of the commissioner, or is in part paid and in part so secured, the Master shall cause the probate to be produced at his office and before any Court, at the expense of the executor or administrator, as occasion may require.

But how can its production be secured? If the executor borrows the money to pay the duty, he can give security. But take the case of lands under the Lands Titles Act. The Commissioner of Titles requires the probate to be produced to him before he will register the executor as proprietor, to enable him to give security for the probate duty. But the Master cannot produce the probate,

save in his own office or before the Court. But there is another clause providing that the Master shall not produce it. Clause 127 states:—

> No will or codicil of any person dying after the commencement of this Act shall be registered, or be admissible or receivable in evidence, except in criminal proceedings or upon application for probate or administration until probate or administration in respect of the estate comprised therein shall have been issued or obtained.

So we find that Clauses 92 and 127 are contradictory. The executor needs the title deed as security for the probate duty, and to get the title deed he has to produce the probate at the Titles Office, but cannot get the probate till the duty is paid. In England the system is different. The probate is issued; the duty is made a charge on the land; and the executor must not pay any legacy until he pays the duty. The whole responsibility is thrown on the executor, who takes great care that he does not part with the legacy or other personal property until the duty is paid. With reference to land, the duty is made a charge upon the land, and the person to whom the land is devised gets it subject to that charge. I think that procedure is simple. But by the Bill, if we charge the land with the duty, and we apply at the commissioner's office to obtain a title, the commissioner will refuse to issue a free title until we produce a receipt from the Commissioner of Taxes showing that the duty is paid. As to the personal property, the executor would not pay a legacy unless the duty was paid. If there was no personal property the land must be charged, and the Commissioner of Titles would not issue a certificate unless the title was subject to that charge, or in case of the executor requiring the money for the purpose of paying the duty, the commissioner would ascertain that the certificate was given for that purpose before he registered the executor as proprietor. I think we may be able to draw such amendments as will make the Bill simpler. All we need is to provide for the collection of duty, to give every facility to the executor to pay that duty and get the estate administered, and not to hinder him. As to one matter touched on, to add a clause enabling an executor or administrator to charge commission on an estate, I do not like that. It will simply be the means of bringing into existence what we may call professional executors in this country, persons who will get hold of illiterate people to appoint them executors, so that commission may be charged. It may be said that as there is a company which charges commission, why should not individuals do the same? That company was appointed to meet the case of persons who could not get persons to act for them as executors or administrators, and there are cases in which persons have declined to act and the company has taken over the trusts. In my experience the company has been found very useful indeed: in many cases executors have been relieved from their trusts and the company has taken them over. But if we provide in this Bill for commission, professional executors will come into existence, persons who will advertise themselves ready to act as executors, and these persons will canvass people to be appointed executors. They will be appointed, but they will enter into no security, while the company is under security. If a person desires to appoint a trustee or executor, and desires to give them commission or an amount, it is very easy to mention that in the will; but often friends are appointed who say "We do not want anything; we will do for you what you would do for us; we don't want commission," and it is left out of the will. In appointing executors people appoint their friends, and they do that because they are willing to help one another. It is done gratuitously for the purpose of helping one another. Once we allow commission we shall have the professional executor, and the illiterate person will be dragged into his meshes. There will be no security for the due and proper administration of an estate by the professional executor. For a considerable number of years in this State we have carried on without commission, and I do not know of any case in which persons have refused to act because they have not received commission. It is more because estates are complicated and persons have other business and cares to attend to that they do not wish to act. It is not for the reason that commission is not to be paid them, and it would be only a few pounds after all, which would be no inducement for

persons to act. But the professional man will go round and get so many estates to administer. Under the Companies Act a certain amount must be deposited as security for the due administration of an estate. For that reason I do not see any reason to alter the law. There is an agitation by certain professional men to have commission allowed, but I have never had a single case in which a person has refused to administer a will in consequence of not receiving remuneration. This Bill was passed during a previous session, but was thrown out in another place in consequence of the provision in regard to commission being inserted. I hope the House will not insist on such a provision being inserted in the Bill, for it is a useful measure and commends itself in every way, with certain alterations that may be discussed and made.

HON. A. G. JENKINS (North-East): I would like to join issue with Mr. Stone with regard to his remarks as to the provision which he says is not desired or wanted in this Bill—the provision allowing executors and administrators commission on an estate that is realised by them. Mr. Stone detailed very fully in his first remarks on the Bill the very onerous duties cast on executors. At length he pointed out certain clauses containing provisions of what executors had to do and what they had not to do, and the trouble they were put to in administering an estate, and the hon. member believes that all this work should be done for nothing. Then the hon. member pointed to a company as being a very serviceable company, because they do this work and are allowed to charge commission. There can be no logic in that argument. If a company is protected and guarantees a sum of £10,000 and probably has estates in its custody of hundreds of thousands of pounds, if that company puts up only a small deposit, where is the logic in saying that there is security with the company, but no security with an executor who has to manage one estate? I could understand the logic if the company had to make a deposit for each estate. An executor is appointed to administer one estate, and the security is quite sufficient to the beneficiaries under the will, because the executor is very likely to be a personal friend of the testator.

HON. J. A. THOMSON: They are trusty persons.

HON. A. G. JENKINS: Is it fair that persons should be put to trouble and expense without getting recompense or being allowed any recompense at all? If the House pardons me, I would like to go somewhat fully into the law on this subject and to the facts leading up to the present position. This amendment was first moved in the Probate Bill of 1901 by Mr. Moss, and was accepted by the then leader of the House, Mr. Sommers, who spoke in favour of the Bill, and it was also accepted by the honorary Minister, Dr. Jameson, who also spoke in favour of the amendment and agreed to its being inserted in the Bill. The amendment was not agreed to by the Assembly, and the Bill was dropped. The next session the amendment was not even considered in the Assembly and the Bill was sent to this House, where the amendment was again inserted. On that occasion Dr. Jameson, the leader of the House, and Mr. Moss, the honorary Minister, both spoke in favour of the amendment, and thought it a very important clause to include in the Bill, but this session a change has come over the spirit of the dream. The Minister in charge of the Bill opposes the amendment, when his previous colleagues in the Ministry had been such ardent supporters of the clause. It is hard to discover the reason. The Act in force at the present time is 24 Vict., No. 15, and according to that Act,

> It shall be lawful for the Supreme Court to allow to any administrators of the effects of any deceased person such commission or percentage out of the assets as shall be just and reasonable for their pains and trouble therein.

Supposing a person is appointed an executor and does not desire to go on with his executorship and renounces probate, some other person can be appointed as administrator. When that administrator realises on the estate he can get commission, and the Court allows him what is just and fair commission. Mr. Stone says that is because he has to find sureties, but it is because he has to realise the estate. An executor who may have equally as much trouble and be equally as responsible a person, although he does not find a surety, is not allowed any commission. One gentleman can get a com-

mission and the other cannot. Under the Settled Lands Act of 1892 there is this provision:—

> The Court or a Judge, may, by order, authorise the trustees of a settlement to retain for their own use out of the income of the trust property, or in case of a sale by the trustees out of the proceeds of the trust property, a reasonable sum by way of commission for their pains and trouble in the management or sale of the property; but no such commission shall be allowed at a higher rate than five pounds per centum of the income or proceeds. An order under this section may be made upon summons or petition, or, if the settlement is a will and the executors are also the trustees of the settlement, upon an application to pass the accounts of the executors.

These gentlemen have not to get sureties, yet according to the law at present they can get their commission. Where is the argument in depriving an executor of his right to commission when at the present time he can get commission on realty but not on personalty? If members will read the Act of 1892 they will see that an administrator is entitled to his commission; but the first schedule of the present Bill repeals Sections 6, 7, 8, and 9 of 24 Vict., No. 15, and takes away the right which at present exists, and gives nothing in return. If the Bill becomes law, neither an administrator nor an executor can get commission. I am sure it is not intended to deprive any administrator of a right which he already possesses. The law has been in force in some of the Australian States for 20 years. At present it is the law in all the Australian States and in New Zealand. If the professional executors are going to be such a bogey, how is it that they have not become a bogey in the other States? If it was found that in the other States men go round canvassing for estates and reap immense benefits from them, there would have been an outcry, and the law would have been repealed, but the law has been in force all these years and it has not been found to work any evil yet. I fail to see why such an onerous burden should be cast on persons unless they are adequately remunerated. It is very well to say that a man should bequeath a present to his executor; but how many men know that this is necessary? How many men have their wills drawn up by lawyers? A very wealthy man may make a will leaving a legacy to his executor; but at death the testator may not be worth the amount of the legacy, though it be a first charge on the estate. Surely the fair method is to leave the executor's remuneration to the court, who will have the whole of the facts, the papers, and the accounts before them, and will be in a position to say what amount should be allowed, whether it should be one per cent. or five per cent. I am prepared to move that the remuneration, as in other States, shall not exceed five per cent. To raise the cry of "professional executors," and to say that because there is a company here doing the work of executors, anybody who does not want to be an executor should force all the business on the company, is utterly illogical. A man is asked to do a large amount of work, and perhaps to expend much time and money; and to ask him to forego all benefits in respect of his duties is hardly fair. For two sessions this House has almost unanimously supported my proposal to insert such a clause—in the first case without a division, and in the second case there were only five members out of a full House who voted against the motion. I think the clause is entitled to fair consideration from another place; I shall move that it be inserted; and I hope that the House will insist on its insertion.

Question put and passed.

Bill read a second time.

ADJOURNMENT.

The House adjourned at 9·34 o'clock, until the next day.