ADJOURNMENT.

The House adjourned at 10.8 p.m. until the next day.

Legislative Council,

Wednesday, 27th July, 1898.

Petition: Early Closing Bill—Return ordered: Cash Receipts for the Colony—Supply (Revenue and Loans) Bill, £850,000; second reading and remaining stages.—Prevention of Crimes Bill: in Committee, Division on Clause 2—Public Education Bill, first reading—Early Closing (Shops) Bill, in Committee, Division on reporting progress (clause 1)—Rivers Pollution Bill, in Committee, clause 2—Bankruptcy Act Amendment Bill, second reading—Interpretation Bill, second reading; referred to Select Committee—Crown Suits Bill, second reading; referred to Select Committee—Shipping Casualties Inquiry Bill second reading; referred to Select Committee—Adjournment.

The PRESIDENT took the chair at 4.30 o'clock, p.m.

PRAYERS.

PETITION: EARLY CLOSING BILL.

HON. A. G. JENKINS presented a petition from employers and employees in the town of Coolgardie, in support of the Early Closing (Shops) Bill, now before the House.

Petition received.

RETURN: CASH RECEIPTS FOR THE COLONY.

HON. F. M. STONE moved "that a return be laid on the table of the House showing the actual cash receipts for the colony from the 1st July, 1897, to 30th June, 1898." He said his object in making this motion was that the House should be placed in possession of the particulars of what cash was actually received in the colony during the financial year. He understood that the revenue was now made up of cash receipts, and what were called receipts from railways and other branches of the Government, in this way, that one department might get a case of books from Fremantle; that department then went to the Treasury, got the money, and paid the Railway Department, which in turn paid the money again into the Treasury. It was taking money out of one pocket and putting it into the other. He wanted to know the actual cash the colony received, so that we might be in the position of knowing what the Treasurer really had to expend.

THE COLONIAL SECRETARY (Hon. G. Randell) said he did not know that the hon member would get exactly what he desired in the terms of the motion, because he understood that all receipts would be treated as cash receipts.

HON. F. M. STONE said he had explained what he wanted so that the Colonial Secretary would understand the motion.

THE COLONIAL SECRETARY: The hon. member would please say what he did want in the motion.

HON. J. W. HACKETT: The Government would only give what was asked for.

HON. F. M. STONE said he wanted the actual cash receipts.

Question put and passed.

SUPPLY (REVENUE AND LOANS) BILL, £850,000.

SECOND READING, ETC.

THE COLONIAL SECRETARY (Hon. G. Randell), in moving the second reading, said: It is hardly necessary for me to make many remarks on this measure. A Bill of this nature has constantly been brought down to this House from the Legislative Assembly, granting supplies for the carrying on of the business of the country, pending the passing of the Estimates. The sum of £850,000 is asked for by this Bill, which has just been brought down from the Legislative Assembly. I trust hon. members will not object to the passing of the measure, as it is absolutely necessary in the interests of the public service that it should be passed.

Question put and passed.

Bill read a second time.

The Standing Orders having been suspended, the Bill passed through the remaining stages without debate or amendment.

PREVENTION OF CRIMES BILL.

IN COMMITTEE.

Clause 1—Person twice convicted may be subjected to police supervision.

HON. F. M. STONE moved, as an amendment, that the words "seven years" be struck out, and the words "two years" inserted in lieu thereof. Some hon. members seemed to think this clause was too stringent, and it was for that reason he submitted the amendment.

Put and passed, and the clause as amended agreed to.

Clause 2—Person convicted before court of summary jurisdiction may be subjected to police supervision.

HON. F. M. STONE moved, as an amendment, that after the word "jurisdiction" in the third line there be inserted "And a previous conviction and sentence of imprisonment of not less than two months against him." A person convicted for the first time, and sentenced to 12 months' imprisonment, might at present have police supervision up to 12 months; but the amendment provided that a man must have been convicted previously before 12 months' police supervision could be ordered.

HON. R. S. HAYNES: The clause should be omitted altogether, because it gave magistrates a power which was opposed to the principle of the Bill. In England police supervision was allowed after the second conviction, and it could be understood that in thickly-populated England a person might be lost sight of. But the reason which applied in England for such a law scarcely applied in Western Australia, where the police could generally find out where a person was, especially a person sentenced to a long term of imprisonment and allowed out on a ticket-of-leave. The Bill gave a power beyond that which should be intrusted to Police Magistrates, who at times misunderstood the law. He was referring to the Police Magistrate of Perth, and to the power vested in him of remanding prisoners during trial. That power had been seriously misunderstood by the Police Magistrate, to the detriment of prisoners, who, on the application of a constable, where sometimes remanded without any reason being given by either constable or magistrate. The result was that a person was sent to gaol for eight days, although he might be innocent. Such a case had occurred that day, and, in his opinion, was a great miscarriage of justice. The magistrate said it was the rule of the court; but it was not the rule of that magistrate's court or of any other court. This case was quoted to show how the magistrates might make mistakes. If a magistrate made a mistake afterwards, an appeal could be made to the Supreme Court; but under the Bill, if police supervision were awarded, there would be no appeal at all. The Committee ought to hesitate before allowing a magistrate power which should be reserved for judges. In the olden days the characters of the police were well known; but, without saying a word against the present force, a person could not shut his ears to what was heard against some of the police. It was difficult for some people to get employment now, but under police supervision that difficulty would be very much intensified. When a person had suffered his punishment, in heaven's name, let him go. He had spoken against a similar clause in a former Bill, and then most members agreed with him. The other portions of the Bill were excellent, although he did not think there was much need for such a measure as might be at first thought. The same object might be attained by a variation of the sentence on the part of the judge. It might be thought advisable, under certain circumstances, to give a short term of imprisonment with police supervision, and the exercise of such power should not be given to the police magistrates, but should be confined to judges. The Attorney General agreed with him that this was too great a power to place in the hands of police magistrates. He had given the matter careful consideration, and he had come to the conclusion that the clause ought to be struck out. It would not impair the efficiency of the Bill.

THE CHAIRMAN: If the amendment which was now before the Committee was carried, then the hon. member could move the omission of the clause. The amendment would have to be taken first.

Amendment put and passed.

HON. F. M. STONE said he proposed to answer a few remarks made by the Hon. R. S. Haynes in reference to the clause. He regretted to hear statements from the hon. gentleman which seemed to cast a slur on the magistrates of the colony. [HON. R. S. HAYNES: Oh, no.] Power had been placed in the hands of magistrates to inflict punishment by fine and imprisonment, and magistrates could even award 18 months' imprisonment. That being so, we should empower a magistrate to give terms of police supervision. The Hon. R. S. Haynes seemed to think that this police supervision was similar to the old ticket of leave, but it was not. A man at Coolgardie, who had to report himself to the police, and wished to leave that town, simply reported at the police station that he was leaving, and, on arrival at some other place, he reported his arrival there to the police. The police knew that the man was in their midst and watched him, if it were necessary. The Hon. R. S. Haynes had stated that this provision was not in the English Act, and he (Hon. F. M. Stone) had placed it in this Bill because the circumstances of this colony were different. In moving the second reading he had pointed out that crime of a certain character was getting very prevalent in this colony.

HON. R. G. BURGES: Put the Immigration Restriction Act in force then.

HON. F. M. STONE: That no doubt would prevent undesirable people coming here, but undesirable people were already in the colony.

HON. R. G. BURGES: Half of them had not come yet.

HON. F. M. STONE: Still there were undesirable characters in the colony, and he hoped this provision would be the means of making them leave.

HON. R. S. HAYNES: They could not leave.

HON. F. M. STONE: There was nothing to prevent them from leaving. If people under police supervision were leaving the colony they simply had to report that they were leaving, and if they got away the police here were not going to follow them, and the Government would not take any steps to bring them back. The strong objection which the Hon. R. S. Haynes had raised to this provision was the placing of the power in the hands of magistrates. Considering the magistrates there were in this colony, we could safely place the power in their hands. Very few cases of this character came before the judges.

HON. R. S. HAYNES: Why not?

HON. F. M. STONE: If a man was caught with house-breaking implements in his possession, the police knew that he was employed in some robberies, but they might not be able to prove a charge against him. The police might know that the man had not been doing any work for a considerable time, and they could prove that before the magistrate. The man was brought up therefore as a rogue and vagabond under the section of the Act which was called the running-in section.

HON. R. S. HAYNES: That section was abused.

HON. F. M. STONE: Magistrates had the power at the present time of giving these offenders six months' imprisonment. If this clause were not passed, it came to this, that the Committee had no confidence in the magistrates to administer the laws of this country. He hoped hon. members would look upon the clause as a very useful one in putting down crime.

HON. R. S. HAYNES said he would like to contradict at once the statement made by the Hon. F. M. Stone that he (Hon. R. S. Haynes) had no confidence in the magistrates of the colony. Some few months ago he had stated that the magistrates as a general rule were right, and he said so again. He believed that the section of the present Act as to general vagrancy was abused, and he also believed that members of the police force levied blackmail on people by holding this section over them. The section gave a police constable the right to dog a man's footsteps. The Hon. F. M. Stone had stated that judges of the Supreme Court did not put this section into force, but the hon. member did not state the reason why they did not do so. It was because judges did not believe in interfering with the liberty of the subject. He objected to giving any justice power under this clause. In the back blocks party spirit ran very high, and it was hardly right to place such a power in the hands of a justice. The Hon. F. M. Stone had said that he (Hon. R. S. Haynes) had no con-

fidence in the magistrates. That was drawing a red-herring across the trail. There were magistrates in this Chamber, and he repeated what he had said before that magistrates seldom did wrong. The fundamental principle of the laws of this country said that a man should be tried by his countrymen. He was satisfied that this Bill would work unduly and oppressively on a large class of people. Magistrates might take a wrong view of a case, and there was no appealing against their decision. If a person did appeal, it would probably be to the same magistrate. In Perth there would scarcely be much objection to this clause, because the magistrates were under the eye of the public and under the whip of the Press; but it was the country he was afraid of. He wished to do all he could to prevent crime, but we should not inflict a hardship in endeavouring to do so. Many justices had had to resign for misconduct, and was it right to place such a power in the hands of justices of that description? It was premature to invest justices all over the colony with this power.

Question—That the clause as amended stand part of the Bill—put, and division taken, with the following result:—

Ayes	6
Noes	12
Majority against	6

Ayes.	*Noes.*
Hon. A. G. Jenkins	Hon. H. Briggs
Hon. A. B. Kidson	Hon. R. G. Burges
Hon. A. P. Matheson	Hon. D. K. Congdon
Hon. G. Randell	Hon. C. E. Dempster
Hon. J. E. Richardson	Hon. J. W. Hackett
Hon. F. M. Stone (Teller).	Hon. S. J. Haynes
	Hon. W. T. Loton
	Hon. E. McLarty
	Hon. C. A. Piesse
	Hon. W. Spencer
	Hon. F. Whitcombe
	Hon. R. S. Haynes (Teller).

Clause thus negatived.

Bill reported with an amendment, and report adopted.

PUBLIC EDUCATION BILL.

Received from the Legislative Assembly, and read a first time.

EARLY CLOSING BILL.

IN COMMITTEE.

Clause 1—Short title:

HON. A. G. JENKINS said he had several amendments to propose, but there had not been time to have them printed. He understood that the Hon. A. P. Matheson and several other members had amendments, and he asked that progress be reported at this stage.

THE CHAIRMAN: It was customary to go on until the Committee came to an amendment which it was desirable to see in print, when progress could be reported.

HON. C. A. PIESSE moved, as an amendment, that in the first line the words "early closing" be struck out, with a view to the insertion of "limitation of hours of work in shops." His object was to meet the views of those hon. members who had said that, instead of closing shops at a certain hour, they would be in favor of regulating the hours of work in shops.

HON. F. M. STONE moved that progress be reported.

Motion put, and division taken, with the following result:—

Ayes	13
Noes	6
Majority for	7

Ayes.	*Noes.*
Hon. H. Briggs	Hon. R. G. Burges
Hon. D. K. Congdon	Hon. F. T. Crowder
Hon. C. E. Dempster	Hon. R. S. Haynes
Hon. J. W. Hackett	Hon. S. J. Haynes
Hon. A. G. Jenkins	Hon. F. Whitcombe
Hon. A. B. Kidson	Hon. C. A. Piesse (Teller).
Hon. W. T. Loton	
Hon. E. McLarty	
Hon. A. P. Matheson	
Hon. G. Randell	
Hon. J. E. Richardson	
Hon. W. Spencer	
Hon. F. M. Stone (Teller).	

Motion thus passed.

Progress reported, and leave given to sit again.

RIVERS POLLUTION BILL.

IN COMMITTEE.

Consideration in Committee resumed.

HON. F. M. STONE moved that progress be reported.

THE CHAIRMAN said he wished hon. members, when they did not intend to go

on with an order of the day, would move the postponement of the order before the House went into Committee. By not doing so, an amount of unnecessary work was given to the clerks.

HON. F. M. STONE said he had intended to move the postponement before the President left the chair, but when he rose to do so the House had gone into Committee.

Progress reported, and leave given to sit again.

BANKRUPTCY ACT AMENDMENT BILL.

SECOND READING.

HON. A. B. KIDSON: It is with great pleasure I rise to move the second reading of this Bill, and in doing so, I may say I do not propose to speak at any great length in connection with it, because this Bill was before hon. members on a former occasion, when I spoke at considerable length in moving its second reading. The Bill passed through all its stages in this House, and hon. members will recollect that it was introduced into this House at a somewhat late period of last session, and after the Bill came up in another place, the time was not sufficient to enable the measure to be discussed properly. Seeing that the Bill received such fair treatment at the hands of this House, and so that hon. members should have an opportunity of passing it, I have introduced it early in the session, in order that it can become law. In regard to the measure, I may say that since I introduced it last session I have spoken with the Attorney General about it, and he has informed me that he is in favour of the provisions of the Bill and he told me that he would do all he could to assist in passing the Bill in another place. It is unnecessary for me to enter into details; I went so fully into the measure on a former occasion, but I may say that the Bill is drafted practically on the lines of part 11 of the South Australian Bankruptcy Act, which has found favor, not only in South Australia, but also in most of the eastern colonies. When I say "found favour," I am given to understand on good authority that some of the other colonies are anticipating altering the bankruptcy laws to fall in with those in force in South Australia. So highly is this portion of the Act esteemed in South Australia, that nearly every bankruptcy, almost without exception—and these exceptions are only in very bad cases—takes place under this portion of the Act. The object of this Bill is to fulfil a very necessary need, and that is to provide for deeds of assignment in connection with bankruptcies being brought under the purview of the court. At present, as most hon. and learned gentlemen in this House know, deeds of assignment are not included in the Bankruptcy Act, and numbers of deeds are carried into effect which have not the sanction of the court at all, which is very undesirable. To show that there is a great necessity for the introduction of a Bill of this nature, I may point out that this matter has been considered at great length by various Chambers of Commerce throughout the colony. They have come to the conclusion that a Bill of this nature is most essential. Commercial people are not satisfied with the working of the present Bankruptcy Act, and, in saying that the present Act is not satisfactory, I am using a mild term considering that the Act is condemned in the strongest language by both debtors and creditors. The number of forms and the amount of red-tapeism in the present Act are simply appalling, and the expenses in connection with putting a bankrupt through the court are excessive. In connection with small bankruptcies, the forms are simply absurd. In an estate of £150 or £160, costs amounting to £15 or £16 are incurred before a man can file his petition at all. Then, in addition to this initiatory expense, there are other forms and pieces of red-tapeism sufficient to make people hesitate before placing an estate in bankruptcy. The result is that creditors prefer, even where there is no legal sanction, to accept deeds of assignment and avoid the bankruptcy laws altogether. I should like to revert, if I may, to the strong desire on the part of the commercial community for legislation of this nature. I had the honour of being on the joint committee of the Perth and Fremantle Chambers of Commerce with the leader of this House when the matter was discussed at considerable length, and the unanimous conclusion then come to was that part 11 of the South Australian Act was the best pro-

vision under the circumstances. The idea of the Bill was to simplify procedure and to reduce the expenses of bankruptcy. The Bill also seeks another good object greatly desired by creditors. It is provided in the Bill that if the creditors desire to have control of estates themselves, they shall be able to have that control. At the present time, the creditors, instead of having control of the estate, lose sight of the estate once it gets into the hands of the bankruptcy court, and when the estate comes out at the end it is found to be in a very different condition from what it was when it went in. The Bill will not interfere in the slightest degree with the working of the present Act; indeed, the Bill does not even amend the present Act. The only thing the Bill does do is to add another part to the Bankruptcy Act now in force, and to place the legislation of this colony on the lines of the South Australian Act. In the South Australian Act there are two parts. One deals with insolvency, and the other deals with deeds of assignment; and such will be the case in this Bill should it become law. Under this Bill a debtor, without going to the court, can call a meeting of his creditors himself under the procedure laid down. At that meeting the creditors can resolve either to take or accept a composition offered, or they can resolve that the debtor shall execute a deed of assignment in favor of a trustee for the creditors. In the event of the creditors deciding that there shall be a composition, it is necessary that what is called an extraordinary resolution shall be passed. An extraordinary resolution is a resolution carried by seven-eighths in value and three-fourths in number of the creditors present by attorney or proxy, every creditor under £5 being reckoned in value only. The effect of this will be that creditors not present at the meeting or who vote against the composition —that is the minority—will be bound by the resolution which is passed. That position hon. members will see is brought about without going to the Court, or without any oppressive and unnecessary forms of procedure. To give protection to both debtor and creditor a subsequent meeting has to be held, in order to affirm and confirm the decision previously come to. With regard to deeds of assignment, if members will look at clause 8 they will see that by a special resolution—which is another form of resolution, I shall allude to directly—creditors can decide that the debtor shall execute a deed of assignment under the Act to a trustee in favour of the creditors. A special resolution means a resolution "carried by the three-fourths in value and one-half in number of the creditors present and voting on the resolution; every creditor for under £5 being reckoned in value only." When that deed is signed by the debtor it is necessary that a sufficient number of creditors in value and number, should also sign the deed. Then the deed becomes binding on all creditors whether they have signed or not. It is absolutely esssential that there should be some such provision because at present if a deed of assignment is signed by all the creditors excepting one, that one can upset the whole of the wishes and desires of the rest. It is in order to get over that difficulty and to save an estate being thrown into bankruptcy by one creditor's obstinacy, that the Bill binds the minority to the views and desires of the majority. Hon. members will observe how little red-tapeism there is about this provision. This meeting is simply called by the debtor himself, in the first instance, without going to court at all. He must send out his notices in prescribed form.

HON. C. A. PIESSE: Will the hon. member explain more clearly what is meant by the provision as to creditors under £5 only voting according to value.

HON. A. B. KIDSON: The meaning of that provision is that if there are 15 creditors present, and one is a creditor for £5, there are, for the purpose of this Bill, only 14 creditors there. That is to limit the power of smaller creditors, and no doubt such a power ought to be limited. Clause 10 is a very important one. Without going to the court, the chairman of the meeting, appointed by a majority, has certain powers conferred on him. At the present time if the assets of the debtor are to be collected by the court, and they can only be collected in that way after the petition is once filed, interim receiving orders and all that sort of thing

have to be obtained. Under the Bill no such procedure is necessary. Under clause 10 the chairman may from time to time grant a warrant authorising the person therein named to seize the debtor's personal estate. The words of the clause are:—

> The chairman signing the certificate mentioned in the last preceding section may, from time to time, grant a warrant, under his hand, in the prescribed form, authorising the person therein named and his assistants to seize all the personal estate of the debtor; and such warrant shall have the same force and effect and confer the same powers and authorities as a warrant of the court to seize the personal estate of the debtor, and continue in force till superseded by a fresh warrant, or by the order of the trustee under the deed, or by a receiving order being made against the debtor.

This gives power to the chairman of the meeting to act promptly. It is my experience that in numbers of instances it is necessary that prompt action should be taken, otherwise the assets may all go. The deed will, of course, cover all the assets of the debtor of whatever kind. All the assets will be vested in a trustee, who will then be placed in precisely the same position as a trustee under bankruptcy, and will be subject to the same liabilities and duties. I said just now that the present bankruptcy law was not amended. I am wrong in that respect, but the amendment is only in one small section, and I hope the amendment will commend itself to hon. members. A great difficulty has always been presented by the fact that it is necessary to find a large amount of money before a debtor can be adjudicated a bankrupt. In big estates this does not matter, because in such cases the creditors are generally for sums above £50; but in a small estate, where the man who owes the money is a rogue, and it is desired to make him go through the court, it is necessary to collect, it may be, half a dozen creditors to make up the debts to £50. As a rule the trouble and anxiety in connection with that are not worth the candle, and the result is that in many cases a man, even though he be a rogue, is allowed to go. No difficulty can arise from the reduction made from £50 to £30, because the Bill can only come into operation in the case of a small bankruptcy. The South Australian Act fixes the minimum at £25, but it struck me that we might draw a mean, and this fixing at £30 is a fair thing. Under clause 17 it is provided "that if any debtor shall be arrested for debt, or while protected by order of the court, he shall, on producing such protection to the person arresting him, and giving him a copy thereof, be immediately discharged." He can get a certificate from the trustee or the chairman of the meeting, as the case may be. Say, for the sake of argument, he is arrested under defeasance, immediately he gets his certificate from the proper person, and shows it to the proper authority, he is released from custody, and properly so. By clause 20 the creditors in regard to the deed of assignment are placed in precisely the same position as the creditors in a bankruptcy. Cases may occur where the creditors are not possibly able to hear of the scheme. Notices might go astray, and creditors be thus excluded from the provisions of the deed. To meet such cases, clause 21 provides that a creditor who does not appear in the schedule may benefit by sending to the trustee the particulars "of his debt and a statement of account between him and the debtor, with a declaration verifying the same, in like manner as in bankruptcy, and by signing the deed or assenting thereto in writing."

Hon. J. E. Richardson: That is a good clause.

Hon. A. B. KIDSON: Yes; and another good provision is in clause 22, which gives full power and facilities to every creditor to inspect the deed of assignment. Whenever he wishes, all a creditor has to do is to apply to the trustee under the deed, and he has then the right to inspect that deed to see what the provisions are and who signed them. Clause 24 is an important clause, which only goes to show how well and carefully the interests of all parties have been preserved under the Bill. Under that clause the debtor or any creditor "may, upon making affidavit that the trustee has concealed, or is making away with, or improperly or fraudulently dealing with the estate and effects of the debtor, cause the trustee to appear and be examined in court." This is one of the great benefits under the Bill. At present no one has any control over the trustee under deeds of assignment. The trustee has the estate, and creditors have

very often great difficulty in preventing him from keeping it; but under this Bill the trustee will become liable to all the pains and penalties provided.

HON. F. T. CROWDER: A trustee is under a bond now.

HON. A. B. KIDSON: I know; but the trustee is not under a bond in connection with deeds of assignment, the present Act not touching these instruments. This Bill is for the purpose of bringing deeds of assignment within the provisions of the Bankruptcy Act, and making trustees of assignments liable to the same penalties as trustees in bankruptcy.

HON. C. A. PIESSE: Has the hon. member provided for frivolous complaints in the matter? Suppose a man made an affidavit simply to annoy?

THE PRESIDENT: It would be better to ask these questions in committee.

HON. A. B. KIDSON: I would like to mention one or two conditions a trustee has to observe. Clause 26 provides—

> The trustees of every deed shall comply with the following provisions:—I, He shall, with all convenient speed after he has executed the same, cause notice of such deed, and of the place where the same is lying for inspection and execution, to be given to the several creditors whose names appear in the second schedule to the deed, by the like means and in the like manner as is required to be given by the Official Receiver before the sitting appointed for the last examination of a debtor: II, He shall, within fourteen days from the execution of such deed by the debtor, file in the Court a true copy of such deed, with the schedules and debtor's declaration, and all assents and statements relating thereto, which shall be open to public inspection: III, He shall once in every four months, until the estate be finally wound up, file in the Court a statement of the whole estate of the debtor as then ascertained.

Once in four months he has to file in the court a statement of the assets of the debtor, collected up to that date. Sub-clause 4 provides that the trustee

> shall open a banking account in the name of the trust estate with some incorporated bank, and shall pay into such account all moneys received by him on account of the estate, and shall pay all moneys payable by such trustee on account of the estate by cheques drawn on such account; and no trustee shall at any time keep in his hands any sum exceeding Twenty pounds for more than ten days.

I think this is a salutary condition. The clause further says:—

> The trustee of every deed hereafter to be made under this Act shall, at the expiration of twelve months from the date of the deed, on the application of the Official Receiver at the request of any creditor, forthwith pay into court all moneys in his hands or to his credit.

The clause goes on to provide that any trustee failing to carry out these provisions shall suffer certain consequences. So far as I can ascertain, every possible contingency is provided for, without unnecessarily hampering any of the parties to the deed. The great point is to simplify the law, and, at the same time, to make it effective, and, so far as I can see, these particular clauses of the Bill carry out that idea. Then the Bill goes on to provide that the court may order the trustee to pay costs and expenses incurred through his misconduct, default, or removal. That is a very proper thing to do. Further, it is provided that the trustee shall pay into court, to the credit of the estate, a sum not exceeding £100 for every such misconduct or default. There is a clause here, clause 29, which is put in for the purpose of protecting the estate, and it reads as follows: —

> The trustee shall not realise, make sale, or otherwise dispose of any portion of the debtor's property, except property of a perishable nature passing under the deed within seven days from the debtor's execution thereof.

That is to provide against any unnecessary sacrifice of the assets of the debtor, and to give time for the creditors to turn round and see what the assets consist of. I would like to go back to clause 27. It is a very important one, and reads as follows:—

> The court may at any time within six months from the execution of the deed by the debtor, declare such deed to be void on the ground that the provisions of section twelve of this Act, or some or one of them, have not been complied with, or on the ground of fraud, or of any wilful and material error or omission in either of the schedules annexed to the deed.

If a debtor has been guilty of fraud or false representation in connection with the deed, or has given false information to the trustee, a creditor can apply to the court to have the deed quashed, and the debtor made bankrupt. Clause 32 provides:—

> The court shall make all just allowances to the trustee, and further, may make order that such trustee shall be indemnified, in such manner as the court shall provide, from and against all actions and other proceedings to be brought against him for or arising out of any act or omission in relationship to his trusteeship.

While I am speaking in connection with

allowances, I might point out that the creditors at the meeting sanctioning the deed can fix the remuneration of the trustee, but, at the same time, that remuneration is subject to the approval of the court. Clause 41 provides that no corporation or body corporate shall make any composition or deed of assignment under the Bill. Then clause 42 provides the duties of the official receiver, which, it will be perceived, are simplified as much as possible.

HON. F. T. CROWDER: I hope you will make them pretty strict.

HON. A. B. KIDSON: I think the duties will be found strict enough. Clause 43 provides:—

> If, at a meeting of creditors, under section four, or some adjournment thereof, a resolution accepting a proposal for a composition or scheme, or for the execution by the debtor of a deed of assignment under this Act, or a resolution by a majority in value of the creditors present personally, by attorney or by proxy, that such meeting shall not be deemed an act of bankruptcy.

The law now is that any deed of assignment is an act of bankruptcy, on which a petition of bankruptcy can be founded, but under this Bill the creditors at the meeting at which the deed of assignment is sanctioned can pass a resolution saying that the execution of that deed shall not be considered an act of bankruptcy. If that resolution be passed, no creditor can subsequently make an execution of the deed of assignment the foundation of a petition in bankruptcy, and thus put out of gear what the majority of the creditors have agreed to. Clause 46 provides that the trustee, in realising the estate, shall, as far as practicable, consult the wishes of the creditors. That is very right and proper, because if any should have a voice or say in regard to assets of debtors, it seems to me the creditors are the persons. Here it is distinctly provided that the trustees, in realising the estate, shall, as far as practicable, consult the wishes of the creditors. One clause here, which I am sure will commend itself to hon. members, is that in connection with legal costs and expenses. That is clause 52. And it will be observed how public-spirited I have been in connection with this section in seeing that every provision is made for protecting the creditors against undue legal expenses. This clause provides:—

> No person intending to become bankrupt shall sell or dispose of any portion of his estate for the purpose of enabling such person to pay his costs of and incidental to such bankruptcy, and any solicitor or agent receiving the proceeds of any estate, knowing the same has been sold for the purpose aforesaid, in payment of such costs, shall be liable to refund the same to the Official Receiver or trustee in such estate. In every case the costs of the bankrupt's solicitor shall be liable to taxation, and such solicitor shall refund to the trustee or Official Receiver any amount received by him from the bankrupt in excess of the amount allowed on such taxation, or receive from the estate of such bankrupt any amount so allowed in excess of the sum which he shall have so received.

It will be seen that the costs are liable to taxation in the same manner as other costs. Clause 53 provides that any solicitor or agent, acting under instructions of the debtor, for the purpose of enabling the debtor to obtain the protection of the Bill, shall be allowed fair and reasonable charges out of the first proceeds of the estate. On the ground that the labourer is worthy of his hire, this is a proper clause to have in the Bill. One other provision made is to get rid of an injustice. By clause 58 the word "six" is substituted for "twelve," as provided in the present Bankruptcy Act. Under the present bankruptcy law an act of bankruptcy relates back twelve months. The idea in the Bill is to do away with the twelve months, and make the act of bankruptcy relate only to six months back. It has been found in practice that an act relating back twelve months is too long and gives rise to very great hardship. That is my experience, and I believe it is the experience of other persons. There is another objectionable section in the present Bankruptcy Act, which has been found to work hardship in connection with bills of sale. In order to remedy that defect, this Bill provides:—

> Sub-section two of section forty-six of the Bankruptcy Act, 1892, shall not apply to a bill of sale of personal chattels, given as a security for the drawing, accepting, indorsing, making, or giving of any bill or exchange, promissory note, or guarantee, or other matter or thing by the grantee to, for, or on behalf of the grantor on the security of any bill of sale, and contemporaneously with the giving thereof.

Because it seems to me that the same principle applies to a man who endorses a bill as to the man who gives his money. This clause has been put into the Bill with the view of more effectually carry-

ing out this object. I would like to read the sub-clause, because it is rather interesting.

"Sub-section two of section forty-six of the Bankruptcy Act, 1892, shall not apply to a bill of sale of personal chattels, given as a security for the drawing, accepting, indorsing, making, or giving of any bill of exchange, promissory note, or guarantee, or other matter or thing by the grantee to, for, or on behalf of the grantor on the security of any bill of sale, and contemporaneously with the giving thereof."

"Rules for carrying this Act into effect may be made, revoked, and altered from time to time by the Chief Justice, in the like manner in which rules may be made under or for the purpose of the Bankruptcy Act, 1892."

And then there are a number of necessary forms and so forth at the end of the Bill to give effect to the provisions of the Bill. I think I have explained the measure to hon. members as clearly as I can. It is not a complicated Bill. When we come to boil the whole thing down, the measure simply provides for doing away with red-tapeism and officialism connected with bankruptcies as they exist to-day, and making them more simple; that is the object of the Bill, and also to lessen the great expense to which a man is put under the present Act. The great object, however, is to bring deeds of assignment under the purview of the Bill; that is, that no deed of assignment legally shall have any value unless it is brought under this Bill. This measure should commend itself to the House, because, I am sure, hon. members must have experienced a difficulty in connection with these matters, and none have experienced more difficulty than hon. members of this House. I will ask hon. members to allow the second reading to pass, and when we reach the Committee stage I propose that the consideration of the matter shall be postponed for a fortnight so as to allow the Bill to go before the various Chambers of Commerce again for inspection and revision, if necessary. This is a very necessary law, and is very much desired by the commercial community. A Bill of this nature is of more interest to the commercial community than anything else, and the commercial community is crying out for such a Bill. If hon. members can see their way to allow the Bill to pass into law, they will be conferring a boon on the commercial community, which will not be forgotten.

HON. F. T. CROWDER: I have much pleasure in seconding the motion made by the hon. member, more especially as the hon. member proposes that, on reaching the Committee stage, the consideration of the Bill shall be postponed for a fortnight. Although practically I am in favour of the principle of the Bill, still it is necessary that at least a fortnight should be given in which to look into this measure. The present Bankruptcy Acts, under which, I may say, the colony is suffering at the present day, are very burdensome, and what we want is a measure more simple, and under which estates can be wound up cheaply. There is one point in clause 26 sub-clause 8 which I wish to refer to. It states: "He shall, one month before the final winding-up of the estate, which shall not be earlier than twelve months——"

HON. A. B. KIDSON: That is a misprint, it will be altered.

HON. F. T. CROWDER: Many estates are brought into the Court that could be wound up in three months, but this clause says that the final winding up shall take place in twelve months. There are dozens of other provisions in this Bill which require grave consideration. There is no doubt that hon. members will, during the fortnight, give careful consideration to the measure, and when it comes up again, we shall be prepared to deal with it. As a business man I may say that the Bill is really required by the commercial community.

HON. S. J. HAYNES: I wish to support the second reading of the Bill, and I am with the mover in the desire he has expressed, but there are some doubts in my mind as to whether his desires will be realised. I worked under the South Australian Act as a professional man some years ago, and I do not think that that Act, which was the old Bankruptcy Act of 1860, was all that could be desired. Still since that time there may have been many improvements in the Act in South Australia, but I may say that when I was there, the Act did not work altogether satisfactorily in the commercial interests. However, I say that improvements may have been effected in the Act. One of the objections to the old Act in South Australia was that it was an engine for

running through a great number of little swindles, in this respect: A man determined to get a clean sheet; prior to calling a meeting, the debtor quietly put some of his property in the hands of his friends, and when the meeting of creditors was called, it was a friendly meeting, and the required number of persons were present. It did not require any special value to be represented at the meeting, all that was required being a certain number to be present. The meeting was called, resolutions were carried, copies were filed in Court, and the man was clear. Although there were provisions in the Act for capsizing those resolutions, if fraud had been resorted to, still numerous swindles were perpetrated under the Act.

HON. J. W. HACKETT: Were all the steps under the sanction of the Court then?

HON. S. J. HAYNES: Yes. Under the Bankruptcy Act of 1860 they were under the sanction of the Court.

HON. J. W. HACKETT: Was the sanction of the Court required at every stage? I think you will find that the difference lies there.

HON. A. B. KIDSON: This Bill is taken from a later Bankruptcy Act than the one to which the hon. member is referring.

HON. S. J. HAYNES: I hope what I have referred to has been cured since then. Another objection to these assignments was that although the Bankruptcy Act had the effect of clipping numerous legal bills, it had not the effect of saving anything for the creditors, because the estate got into the hands of a worse body of men than even some greedy solicitors. It got into the hands of agents, and they ate up the whole estate. That was one of the greatest objections to the Act; it gave an opportunity to unprincipled agents to get hold of estates and eat up the whole of them by expenses. I am not casting any reflection on the better class of agents. I shall support the second reading, and if there are provisions in this Bill which will guard against the objections which I have brought forward, I shall be pleased to support it in Committee. But the Act in South Australia of which I am speaking did not give satisfaction to the commercial community. Provisions are wanted here by which commercial people may be reasonably protected; provisions so that estates can be realised to advantage, for the benefit of creditors. I do not know whether the present Bill taboos all private assignments, but I find private assignments work out very satisfactorily. What few assignments have taken place in the district I have the honour to represent have worked out very well; but the place is, reasonably sound, and we have not had many of those pieces of paper which are called deeds of assignments. I wish to support the second reading, and I hope the Bill will guard against the troubles which have occurred in South Australia.

Question put and passed.

Bill read a second time.

INTERPRETATION BILL.

SECOND READING.

THE COLONIAL SECRETARY (Hon. G. Randell), in moving the second reading, said: I know hon. members, particularly the learned members of this House, will excuse me if I do not go into the intricacies of this very technical measure. I have read the Bill through carefully, and the conclusion I have arrived at is that the intention of the Bill is an excellent one. Mr. Kidson, in introducing the Bankruptcy Bill, said that measure provided for greater simplicity in the working of the Bankruptcy Statute. The Bill, the second reading of which I now propose, will act very usefully on future legislation; and it is not only concerned with future legislation, but deals with the past. It is both prospective and retrospective, and there are a great many distinctions and interpretations, which will tend to simplify Acts of Parliament and prevent a redundancy of words and a great deal of confusion, especially to the layman. Clause 3 refers to the re-enactment of existing rules, and its sub-clauses are occupied with the interpretation of words which are very often interchangeable in ordinances and Acts. It is provided also that an Act of Parliament in the future shall be divided into sections, and if it contains more enactments than one, each section of the Act to have effect as a substantive enactment without introductory words. The Bill refers to the past, by providing that "every Act passed after 13th April, 1853, whether before or after the commencement of this Act, shall be a public

Act,and shall be judicially noticed as such unless the contrary is expressly provided for by the Act." The Bill provides that a copy of every Act printed or purporting to have been printed by the Government shall be admitted as evidence. Clauses 6 and 7 refer to the citation of Acts and to the appropriation of duties, fees, fines, penalties, forfeitures, and so on. The latter clause provides that all such moneys shall "be paid into the hands of the Colonial Treasurer, and be appropriated to the use of Her Majesty for the public use of the colony, and the support of the Government thereof." The Bill also provides for the incorporation of what, I think, are generally termed the shortening ordinances which are dealt with in the second schedule of the Bill, and are generally distinguished by the letters of the alphabet from "A" to "H," inclusive. The Bill also provides for general rules of construction. Clause 12 provides for the construction of provisions as to exercise of duties and powers. The clause reads:—

(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised, and the duty shall be performed from time to time as occasion requires. (2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised, and the duty shall be performed by the holder for the time being of the office.

This distinction is further defined in one of the closing clauses of the Bill. Carrying my memory back, I recollect a great controversy that took place in this House as to whether "may" should mean "shall" or not. I forget now how the matter was settled.

HON. R. S. HAYNES: It has never been settled yet.

HON. J. W. HACKETT: And it never will be settled.

THE COLONIAL SECRETARY: If this Bill settles that dispute, it will be an important contribution to the legislation of this colony. The Bill also applies to enactments pased before this Bill becomes law. Clause 15 provides for the interpretation of the expression "commencement," which, when used with reference to an Act, shall mean the time at which the Act comes into operation. Clause 17 is principally occupied with the interpretation of different words, such as "British possession," which means any part of Her Majesty's dominions, exclusive of the British Empire; and "person," which is defined as including "any body of persons, corporate or unincorporate." "Court of summary jurisdiction" means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under the Act of the fourteenth year of Her present Majesty, numbered five, or any Act, past or future, amending that Act, and whether acting under such Acts or any of them, or under any other Act, or by virtue of his commission or under the common law." The expression, "Rules of Court" is defined, and it is provided that "financial year" shall mean the twelve months ending the last day of June. Clause 18 is an important provision, as follows:—

(1) Where this Act, or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. (2) Where this Act, or any Act passed after the commencement of this Act, repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—(a) Revive anything not in force or existing at the time at which the repeal takes effect; or (b) Affect the previous operation of any enactment so repealed, or anything duly done or suffered under any enactment so repealed; or (c) Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or (d) Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid. And any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act had not been passed.

These are the main features of the Bill, which is of considerable importance, and should have a beneficial effect on future legislation. I have already referred to the 19th clause, which provides for the interpretation to be placed on the word "may," and so on. The second schedule, as I have also mentioned, deals with what

I think are generally termed the shortening ordinances.

HON. J. W. HACKETT: Is this clause 19 taken from any other Act?

HON. R. S. HAYNES: No; it is original.

THE COLONIAL SECRETARY: I have proposed the second reading of this Bill with considerable hesitation, as it is a purely legal Bill. I have only again to express my view, after reading the Bill carefully over, that it will be a useful piece of legislation to carry into effect.

At 6.25 p.m. the PRESIDENT left the chair.

At 7.30 the PRESIDENT resumed the chair.

HON. R. S. HAYNES: This Bill seeks to consolidate enactments relating to the construction of Acts of Parliament, and to further shorten the language used in statutes. I have not the slightest objection to any Bill that is introduced for the purpose of consolidating a number of Acts of Parliament. If there are a number of Acts of Parliament dealing with one question, it is better to have them consolidated, but the Acts should not be amended and a number of new clauses introduced into the Bill. If new clauses are introduced, the Bill should not be passed unless we know the effect of those new clauses. I think I shall show hon. members that certain clauses which are here have already been provided for, and that the Bill is absolutely unnecessary. There has not been the slightest call for such a Bill. The measure does not place us in any better position, and, after considering the measure very carefully, I have come to the conclusion that it is absolutely useless. There are two clauses I think which are new, but both clauses are bad. Take clause 3, dealing with the re-enactment of existing rules. These existing rules are already provided for in 8 Vic., No. 11, and 16 Vic. No. 11, so that there is nothing whatever new in them. Everything in this clause is now the law of the country, and has been the law of the country in two Acts which have never been questioned. What necessity is there for a person to split up these enactments so as to mislead people? Clause 4 says: "Every Act shall be divided into sections:" that is already done. "Every Act passed after the thirteenth day of April, one thousand eight hundred and fifty-three, whether before or after the commencement of this Act, shall be a public Act: that is already provided for. Why do we want to pass another Bill, when these provisions are already the law of the land? It seems to be admitted that these provisions are already the law. By clauses 5 and 6 the "effect of repeal in Acts passed since 13th April, 1853," and the "citation of Acts" are dealt with. Here, again, these things are already provided for. Sub-clause 2 of clause 6 says:—

> In any Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the words, sections or other parts mentioned or referred to as forming the beginning and as forming the end respectively of the portion comprised in the description or citation.

There is no necessity for that. Then there is clause 7; that is already the law, and clause 8 is already in force; we have been working under these provisions since 1865. These provisions are found in the Statutes. There is one Act for avoiding unnecessary words, and another for the interpretation and shortening of Acts. I have never heard since I have been here—and there are several hon. and learned members of this House who will agree with me—any complaints as to the law as it stands. The Colonial Secretary has had a good deal to do with the law as a magistrate, and he has never had reason to question the definition of an Act or the words used in an Act. There is no reason why we should have this provision in the Bill, none whatever. Clause 9 deals with the delivery of documents; that is new, but every Act which has been passed contains that provision, therefore it is absolutely unnecessary. The effect of passing this Bill will be to strike that provision out of every Act. That might be very good, but sometimes this provision is necessary, and it would not be well to cut it out of every Act. It may be necessary to provide for the delivery of notices in different ways. In dealing with the Companies Act, notices might have to be sent one way, and in dealing with the Municipal Act notices might have to be sent another way. Then there is a sub-

clause dealing with general presumption in case of service by post. It says:—

In the case of service by post, whether service by post is required by the Act or not, the service shall be presumed, unless the contrary is shown, to have been effected at the time when, by the ordinary course of post, the letter would be delivered.

That is the language of the law of the land now, and what is the use of passing a Bill which lays down that which is now the law?

THE COLONIAL SECRETARY: That provision is generally included in every law.

HON. R. S. HAYNES: I do not think so.

THE COLONIAL SECRETARY: I remember several Acts which contain it; the Electoral Act, for instance.

HON. R. S. HAYNES: I say it is unnecessary to include this provision because it is in the language of the law of the land. A letter through the post, delivered in the ordinary course, is presumed to be service unless the contrary is proved. Then there are further general rules of construction. For some reason it is stated "further general rules of construction," which seems to be unnecessary, because there are no general rules of construction; therefore why "further general rules?" Clause 10 says:

Where any Act, whether passed before or after the commencement of this Act, confers power to make, or issue any instrument (that is to say any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or by-laws), expressions used in the instrument, if it is made after the commencement of the Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

I have never heard that disputed. The meaning of this clause is somewhat obscure, and it took me some time to understand it, but now I do understand it, I see that it is useless. It simply says that two and two are four, and we do not want Acts of Parliament to say that. Clause 11 says:—

Where any Act authorises the Governor or any Minister, officer, body, or person to make by-laws, rules, or regulations, or other instruments"——

And then the clause deals with how it is to be done. That is not a copy of any Act, and it is not in the English Act.

THE COLONIAL SECRETARY: It is a provision at the end of nearly every Act.

HON. R. S. HAYNES: It seems strange, if this provision is necessary, that it should have been omitted from the English Act; and now it is sought to introduce the provision here. Besides, it may be necessary to alter the conditions under which the Governor-in-Council should make by-laws; whereas this clause requires the Governor to make by-laws in the same way. Rules of the Supreme Court, for example, are made in a different way, and they are practically by-laws. There would not be half-a-dozen Acts passed in two years to which this provision would apply. Clause 12 deals with the "Construction of provisions as to exercise of powers and duties;" that is a new provision. Then clause 13 deals with "Provisions as to offences under two or more laws." It says:—

Where an act or omission constitutes an offence under two or more Acts, or both under an Act or at common law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and be punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.

It seems to me that there is no necessity for that. Then clause 15 says:—

In every Act the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

That might look, on first sight, as being of some use. It is the only clause in the Bill which apparently strikes at something which requires amending, but if we look into the clause carefully it does not do that which is sought to be done; it leaves out the question about which there will be dispute. It says the word "commencement" only, not "commence." The point we want to know is when an Act comes into operation.

THE COLONIAL SECRETARY: That question has arisen lately.

HON. R. S. HAYNES: The question as to when an Act comes into operation is a much discussed one; that is the "commencement" of the Act, but this clause says that the commencement of the Act is when it comes into operation. Define, if you like, when an Act shall come into operation.

THE COLONIAL SECRETARY: The Bill does that, I presume?

HON. R. S. HAYNES: It does not; that is the point. The rule is that an Act shall come into operation on the date named in the Act, unless some hardship intervene. The court will use certain discretion as to what "coming into operation" means. Sub-clause 2 says:—

> Where an Act, or any Order-in-Council, order, warrant, scheme, letters patent, rules, regulations, or by-laws made, granted, or issued under a power conferred by any such Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

That is as to regulations; and I do not think there is any doubt about that. The case which came before the Supreme Court for decision was in reference to an Act being passed on one date and coming into operation on another date. It was not the commencement of the Act that was disputed, but the date of its coming into operation. The provision in this Bill is like saying that an Act shall come into operation after the next comet; but we do not know when the next comet will appear. My objection to the clause is that it does not set right that which it seeks to remedy. I do not think the hon. member will find the word "commencement" in any statute that has been passed up to the present time. The word "commence," or the word "commences," may be found, but not the word "commencement." The word "commencement" means, of course, the time of coming into operation: but we want to know the time the Act does come into operation. Clause 16 refers to the "Exercise of statutory power between passing and commencement of Act"; that power is already in force. Then there are "definitions for the future" in clause 17. This provision is apparently copied from section 18 of the Victorian Acts Shortening Act.

THE COLONIAL SECRETARY: Is not this a valuable Bill, inasmuch as it consolidates?

HON. R. S. HAYNES: There is no necessity for it. I would not be a party to consolidating one Act, but I would willingly help to consolidate a number of Acts. I say this: anyone looking through the statute book of the colony could not find a more inoffensive Act than the one which this Bill endeavors to consolidate, yet the Government selects this Act to consolidate. There are all the other laws of the colony reeking with contradictions and mistakes, but they are passed by. I do not know why this Act has been selected; I suppose because it was the least objectionable. I was referring just now to clause 17, which is supposed to be a reprint of the English Act, but I may state at once that it is not. This clause contains some of the provisions of the English Act, or the gist of some of them. When we see the English provisions quoted in the margin, we naturally take it that it is a verbatim copy of the enactment. Sub-clause 1 says:—"The term 'British possession' shall mean any part of her Majesty's dominions, exclusive of the United Kingdom, and, where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purpose of this definition, be deemed to be one colony." That provision was passed in England because it was necessary. The House of Commons has a right to legislate not only for the United Kingdom, but for all British possessions. Inasmuch as we have no power to legislate outside of our colony, we cannot legislate for a British possession. Such a provision was, however, necessary in the English Act. In the Fugitive Offenders Act, the words "British possession" are used as opposed to "foreign possession." This provision is absolutely unnecessary. We simply make our Acts of Parliament cumbrous by including such provisions, and it is a rule of this House not to pass any Bill which is not necessary. Sub-clause 2 is also apparently a copy of the English Act. It says the expression "person" shall include any body of persons corporate or unincorporate. The term "court of summary jurisdiction" does not appear in any of our Acts; but the words used in our Acts are "court of petty session;" so that in one part of an Act we would speak of a "court of summary jurisdiction," and in another of a "court of petty session." The object of legislation is to keep the same word throughout the whole of an Act. Would the definition of "court of summary jurisdiction" not include the warden's court? I think it would, and that the court of summary jurisdicion would clash with the

warden's court. The Bill, as I have said, is a copy of the English Act, and in England the local court is presided over by a judge and not by a magistrate at all. The next definition is that of "petty sessional court," which is said to mean "a court of summary jurisdiction." The expression "petty sessional court" does not appear in the Acts of this or any other colony; and yet we find the words introduced from the Summary Jurisdiction Act of 1872 in England. This duplication of terms must lead to confusion. When the late Attorney General (Hon. S. Burt) drafted the Police Act, he incorporated the Summary Jurisdiction Act of 1872, and that Act provided for everything.

THE COLONIAL SECRETARY: These are courts of summary jurisdiction.

HON. R. S. HAYNES: Yes, and courts of petty sessions.

THE COLONIAL SECRETARY: They are referred to particularly in that way.

HON. R. S. HAYNES: Only when referring to whether a man is acting summarily or magisterially. They are never referred to in Acts of Parliament as "courts of summary jurisdiction."

THE COLONIAL SECRETARY: I think I have met with the phrase in some Acts.

HON. R. S. HAYNES: That may be so, and if it is, then we know what the "court of summary jurisdiction" is, and this provision is superfluous.

THE COLONIAL SECRETARY: Do not leave the consolidating business out of sight.

HON. R. S. HAYNES: I am saying you are introducing clauses from England which do not apply in this colony. The Bill says, "petty sessional court" shall mean a court of summary jurisdiction. consisting of two or more justices. I want to point out that a petty sessional court may consist of one justice.

THE COLONIAL SECRETARY: Of a police magistrate or a resident magistrate.

HON. R. S. HAYNES: Certain offences are triable before one justice of the peace.

THE COLONIAL SECRETARY: Evidently the Bill draws a distinction between summary jurisdiction and petty sessional cases. In the one case it is one justice, and, in the other, two justices.

HON. R. S. HAYNES: That is the point I am endeavouring to make. You would have a court of summary jurisdiction which could be presided over by one justice, and another court of summary jurisdiction which must be presided over by two, and therefore you are altering the whole of the Acts. Whoever drew the bill did not notice that one justice of the peace—not a resident magistrate—has power to sit in some cases. It has already been decided what cases two justices can try, and what cases one can try. Directly a magistrate sits, technically the court assembles, although there may be only one person.

THE COLONIAL SECRETARY: The plural includes the singular.

HON. R. S. HAYNES: Unless the context of the Act suggest the contrary. If the Colonial Secretary be right, one justice could sit where two are mentioned in the Bill. That would alter the whole of the Acts.

THE COLONIAL SECRETARY: Look at the fourth line of the sub-clause dealing with "petty sessional courthouse."

HON. R. S. HAYNES: It shall mean "also any place at which any magistrate is accustomed" to assemble for the holding of petty sessions.

THE COLONIAL SECRETARY: Go on.

HON. R. S. HAYNES: "And also any place at which any magistrate is accustomed to do, alone, any act authorised to be done by more than one justice of the peace." What is the meaning of that?

HON. A. B. KIDSON: It means the case of a resident magistrate.

HON. R. S. HAYNES: The words, "resident magistrate" do not appear There is already an Act which gives power to one resident magistrate to sit instead of two. As to the definition of "financial year" I understand an amendment will be moved; and it would be just as well to use this Bill to carry out a necessary reform.

THE COLONIAL SECRETARY: Where would be the reform?

HON. R. S. HAYNES: We do not get information in time to thoroughly understand and debate matters. The financial year closes at a time so closely following on the opening of Parliament that it is impossible to properly inquire into affairs.

THE COLONIAL SECRETARY: That would still be the case if the year were to close on the 1st April or the 31st March.

HON. R. S. HAYNES: Parliament would be called together earlier.

HON. W. T. LOTON: The Government want supplies.

HON. R. S. HAYNES: The Government do not want supplies.

HON. W. T. LOTON: A Supply Bill has just been passed to-night.

HON. R. S. HAYNES: Oh, that is all spent. I need not refer to the clause dealing with the effect of repealing future Acts, but will come to clause 19, which is a *bon bouche* of the whole measure. This clause provides:—

> When in any enactment a power is conferred on any officer or person by the word "may," or by the words "it shall be lawful," or the words "shall and may be lawful," applied to the exercise of that power, such word or words shall be taken to import that the power may be exercised or not at discretion; but where the word "shall" is applied to the exercise of any such power the construction shall be that the power conferred must be exercised.

We always treat with respect a Bill which has been discussed in another place by members who are capable of discussing it, and I understand the Attorney General said this clause was in the English Act, and no one took exception to it. Well, the provision is not in the English Act. But there is the clause now, and it is bad. I do not know any clause which any person could draft which would so materially alter the laws and constitution of this colony as this clause. Remember, this Bill not only affects Bills which will be passed in the future, but also Acts which have already passed and were in force before 1829. The word "shall" and the word "may" are subject to a great deal of judicial construction and argument in the courts. The courts are guided by the context and general scope of the Acts, as to whether the words are mandatory or permissive. I suppose there are hundreds of decisions under English Acts before 1829, and it is now proposed to alter all this.

HON. C. E. DEMPSTER: This would make it final and imperative.

HON. R. S. HAYNES: But there are a number of cases in which the word "shall" at present gives the magistrate or other officer discretion. Under this Bill, however, the word would be made absolutely imperative. Under these circumstances, it seems to me that this Bill would constitute a dangerous precedent. I have been informed that the Colonial Secretary is prepared to let this Bill go to a Select Committee. If that be so, I shall not oppose the second reading, although I do not think the Bill is necessary. With the exception of the last clause I have referred to, the Bill will do no harm. But why should we waste our time in passing Acts which will do no harm?

Question—that the Bill be read a second time—put and passed.

Bill read a second time.

SELECT COMMITTEE APPOINTMENT.

HON. R. S. HAYNES moved that the Bill be referred to a Select Committee.

Put and passed.

HON. R. S. HAYNES moved that the number of the Select Committee be five instead of three, as provided in the Standing Orders.

Put and passed.

A ballot for the Select Committee having been taken, the following members, in addition to the mover (Hon. R. S. Haynes), were elected:—Hons. F. T. Crowder, A. B. Kidson, G. Randell, and F. M. Stone.

Ordered that the Committee report to the House at the next sitting.

CROWN SUITS BILL.

SECOND READING.

THE COLONIAL SECRETARY (Hon. G. Randell), in moving the second reading of this Bill, said: This is a Bill the provisions of which, to a large extent at any rate, have been previously before this House. It was introduced by the late Attorney General (Hon. S. Burt) in 1895, in the Legislative Assembly, and in due course came on to the Legislative Council. This House thought it desirable to increase the amount of compensation for which the subject could sue the Crown from £1,000 to £2,000. I believe it was ruled by the Speaker that it was beyond the privileges and powers of the Legislative Council to carry such an amendment, and therefore the Bill was dropped. The Hon. S. Burt in introducing this Bill described it as a very liberal measure, which placed the subject in the same relation to the Crown as was subject to subject. In moving the second reading of the Bill,

Mr. Burt said it was, at least, more liberal than some of the legislation in the other colonies, and he believed the Bill, as introduced, would commend itself to hon. members as being in the right direction. The Bill, Mr. Burt said, afforded better means of obtaining redress for injuries which might be sustained by the public at the hands of any servant of the Government. Inasmuch as the Government take up work such as the running of railways they become liable to inflict damage on the individual, and it is only right the Government should be subject to actions at law in the same way as one subject is liable to another. At the present time it is only by petition of right that an individual can sue the Government. Difficulties have arisen from time to time in respect to these petitions of right, but I believe the general rule is to grant them if there is reason to think the claim made is legitimate and proper. The Bill is, however, still more liberal, inasmuch as it has undergone considerable alteration while passing through the Legislative Assembly this session. The maximum compensation for which a person can sue the Government is limited to £2,000. In the first Bill it was limited to £1,000. Recently, in the Legislative Assembly some attempt was made to do away with any limit. But the dangers are so great of the Government being made the object of speculative actions that the £2,000 limit was retained. In some colonies the limit of damages in similar circumstances is £1,000, and in other places it is, I think, more. Every one will agree with the principle of the Bill. Every facility should be given for a person to obtain his remedy where wrong has been sustained, and the Government should not have the power it has hitherto exercised of preventing men from obtaining reasonable and lawful redress. From a cursory reading of the Bill, which has only just been received, I should say it makes every provision in the direction desired.

HON. R. S. HAYNES: The Bill introduces imprisonment for debt—imprisonment for life. Do you approve of that?

THE COLONIAL SECRETARY: I believe there should be imprisonment for debt in some cases.

HON. R. S. HAYNES: But this is imprisonment for life.

THE COLONIAL SECRETARY: I have read the Bill, and I am not sure there is such a provision.

HON. R. S. HAYNES: The imprisonment is at the will of the Attorney General.

THE COLONIAL SECRETARY: The Bill is divided into three parts. The first part contains general provisions, defines certain words, and repeals certain Acts. This part of the measure also preserves the rights of the Crown as at present existing. The second part of the Bill provides for the recovery of debts and property by the Crown. This is a very necessary measure, wide-reaching in its operations. It is in many parts highly technical. On the whole, notwithstanding the fact that some hon. members see blemishes, it is a bill which will commend itself to the country. In the past there have been considerable dissatisfaction and heart-burnings on the part of some would-be litigants.

HON. R. S. HAYNES: What is the meaning of a writ of *fieri facias* or a writ of *fieri capias?*

THE COLONIAL SECRETARY: I will leave legal members to explain legal terms. The reason for moving the second reading of this Bill at such an early date is to get on with the business of the House. I have not had a great deal of time to consider the measure, so as to enable me to introduce it to the House in a manner such as I would desire. After reading the Bill I can commend it to hon. members for their careful consideration, because the object of the Bill is a good one, and if the measure is passed, it will accomplish a great deal of good. If this Bill does not become law, we shall remain in our present unsatisfactory position. This Bill will be the means of repealing two Acts, one of which was passed so long ago as the reign of William II., and the other was passed 30 years ago, since which time there has been an advance in knowledge and an increase in legal acumen. The Government are becoming, as it were, common carriers, and I have always held, and I have expressed my opinion before, that I can see no reason why the Government should not be as liable to be sued by a subject as one subject is liable to be sued by another. I hope hon. members will accept the Bill. I would like it to go

to a committee of the whole House, and not to be referred to a Select Committee. I have read the debate which took place on this Bill in the Assembly, and I find hon. members there gave considerable attention to the measure, especially the hon. and learned members of that House.

HON. R. S. HAYNES: They passed the Cemeteries Bill, you know.

THE COLONIAL SECRETARY: This measure has been liberalised very much, even from its introduction; very much more so than when a Bill of this character passed the Assembly in 1895. I move the second reading of this Bill.

HON. R. S. HAYNES: I would ask the hon. member to allow this Bill to go to the Select Committee which has already been appointed to inquire into another measure.

THE COLONIAL SECRETARY: If hon. members think it is necessary, I have not the slightest objection.

HON. R. S. HAYNES: I notice in one portion of this Bill that the Crown may enforce a judgment for costs by writ of *fieri capias*. I have heard of a writ of *fieri facias* and of a writ of *capias ad satisfaciendum*, but this writ seems to be a composition of the two. It is a rule of law that if you take a man's body you cannot take his goods—that is a well-known principle of law; but a writ of *fieri capias* seems to be a combined writ of *fi. fa.* and a writ of *ca. sa.* A man can issue a writ of *fi. fa.* or a writ of *ca. sa.*, but if a man issues a writ of *ca. sa.*, he cannot issue a writ of *fi. fa.* This is a liberal Government introducing the laws of the dark ages. Let us look at the writ of *fieri capias*:

> We command you that you take if he shall be found in your bailiwick, and him safely keep so that you may have his body before our Supreme Court at Perth immediately after the execution thereof, to satisfy us pounds which lately in our said Court we recovered against the said whereof the said is convicted, together with the sum of £ for interest upon the said sum, at a rate allowed upon judgments in our court until this day.

HON. A. B. KIDSON: Where are the bailiwicks of this colony?

HON. R. S. HAYNES: This is the latter part of the writ:

> "And we further command you that of the real and personal estate of the said in your bailiwick you cause to be made and levied the said sums and have the same before our court immediately after the execution hereof to be rendered to us and in what you shall have executed this writ make appear to our said court immediately after the execution hereof and have there then this writ."

That means, to take his body, and to take his goods. There is a little bit of a footnote, so that the person shall know what the writ means. It says:

> "When the full amount is levied the defendant may be discharged without further authority, but if the full amount is not levied the defendant can only be discharged by the court or the judge, or by the written authority of the Attorney-General."

He may be discharged by the court or judge, but it does not say on what grounds. If the amount is not paid, then the man "sails in" for life. Hon. members laugh, but I know a man who was kept in gaol for six years in New South Wales, and they are humane people over there. Under certain circumstances a man may become bankrupt, and get out of gaol, but he is not allowed to do that according to the writ I have read. I am sure hon. members did not know that provision was in the Bill, and I do not think the Colonial Secretary knew it.

THE COLONIAL SECRETARY: I did not.

HON. R. S. HAYNES: Hon. members in another place did not see that when discussing the Bill.

THE COLONIAL SECRETARY: I think they did, although I would not be sure.

HON. R. S. HAYNES: I hope the hon. gentleman will withdraw this Bill. I could understand hon. members in another place passing the Cemeteries Bill, but not this one. If a person takes a contract from the Director of Public Works to build a railway line or a court house, and the contractor fails, and is unable to carry on his contract, the Director of Public Works has a right to sue him for breach of contract, if the Director of Public Works has to carry on that work himself.

THE COLONIAL SECRETARY: He need not exercise the right.

HON. R. S. HAYNES: He has exercised his right in regard to the Theatre, and I would not trust him for anything after that.

THE COLONIAL SECRETARY: It was in the interests of the public.

HON. R. S. HAYNES: It was in the interests of a strolling company. I know all about it.

HON. F. T. CROWDER: He would not have done it for an opera company.

HON. R. S. HAYNES: Any person who enters into a contract with the Government, if the Government breaks that contract, he can sue in court and get damages, and the Government would pay at its own sweet will—when they like; witness the case I referred to the other day. Let the rights be reciprocal. In the case I have mentioned, the Government were sued, and damages were given against them, but they would not pay until a question was asked in this House, then the money was paid. What right has the Government to arrogate to itself such powers? Are we living in an enlightened age, or are we going back to the dark ages? One knows the stories told in Dickens' books, and we do not want a recurrence of that state of affairs. Some people might be most objectionable to the Government, or some people might wish to see others within the four corners of a prison. The Government should have exactly the same right as anybody else, and that is all.

THE COLONIAL SECRETARY: Which clause are you referring to?

HON. R. S. HAYNES: I am referring to clause 18; that is the clause which gives power to put any person in prison. It is a beautiful little clause of two lines. I want to point out that it is a most iniquitous clause. I do not know whether I am making myself plain to hon. gentlemen.

HON. A. B. KIDSON: It is difficult.

HON. R. S. HAYNES: Yes, it is difficult for the hon. member to understand, because I am speaking in plain English. I am standing here a young man, and I am going to stand here until I see this clause knocked out. If it is necessary, I will stop here until everybody is dead, so that it shall not get through. Clause 20 says:—

> Upon the production of a certificate of a law officer that such proceedings have been terminated and the claim of the Crown satisfied, the Registrar of Deeds or Titles (as the case may require) shall make an entry in the registry of Crown debts that such lien has been discharged.

That is an iniquitous clause. If a person has a claim of £20,000 against the Government, the action might not come on for twelve months, and the plaintiff would have to wait all that time. Can anyone say that this is a Bill that ought to be introduced?

HON. A. B. KIDSON: Is that the worst?

HON. R. S. HAYNES: No; it is not.

HON. A. B. KIDSON: Let us have it, then.

HON. R. S. HAYNES: Clause 21 is the bait offered to us by the Government. They are allowing us to have the right which every British subject enjoys, namely, the right of redress against his Sovereign; and, because we ask for that, it is sought to usurp our rights and inflict imprisonment. Clause 21 is the worst of all.

THE COLONIAL SECRETARY: If you have a claim against anyone you will pursue it to the end.

HON. R. S. HAYNES: Wait till you get your judgment. This clause provides for the time before the judgment is got. The clause reads:—

> (1) A memorandum of the commencement of any proceedings under this Part of the Act, in the form contained in the Ninth Schedule to this Act or to the like effect, under the hand of a law officer, may be filed against the personal estate of the defendant in such proceedings in the office of the Registrar of the Supreme Court, who shall enter the particulars of such memorandum in a registry of Crown debts. (2) Every memorandum so filed shall create a lien upon and have precedence over all other debts against the personal estate of such defendant for the sum which shall be recovered and the costs of such proceedings. (3) Upon the production of a certificate of a law officer as in the last preceding section mentioned, the Registrar of the Supreme Court shall make an entry in the Registry of Crown debts that such lien has been discharged.

I ask hon. members if that clause is copied from a Russian Act? Is it some ordinance or ukase? I undertake to say that the Czar would blush at it. I never before saw a person with the effrontery to come in and ask the House to pass a Bill of this kind. The proper way would be to bring up a report showing what the subjects of the Queen are asked to give up. Clause 24 deals with the mode of enforcing of claims against the Crown. The subject is now entitled to sue the Crown. The clause provides:

> (1) Subject to the provisions of this part of this Act, whenever any person has any claim or demand against the Crown which has arisen

or accrued within Western Australia since the coming into operation of this Act, such person may set forth in a petition the particulars of his claim or demand as nearly as may be in the same manner as in a statement of claim in an action in the Supreme Court between subject and subject.

And the Government may reserve the petition, if it affects the Royal prerogative. There is no objection to that. But it is provided that the Crown can ask for security for costs. Why should that be? Nobody else can ask for security for costs, and I see no reason why the Crown should. If the Crown becomes a common carrier and purveyor of lights, embarking in what are commercial enterprises, why should they be clothed with more immunity than any other person or corporation? The only advantage which this Bill gives to the public is that the Crown may be sued for breach of contract. But the Crown is liable now, and always will be liable so long as this colony is in the British dominions. If the Government, under the present Act, will not accept a petition of right, thank goodness Her Majesty will. When the Government refused a petition of right some years ago Her Majesty was appealed to, and her own sign manual was sent out with an endorsement that the right should be granted. If any hon. member will take the trouble to read the correspondence between the Governor and the Secretary of State, he will be satisfied that no Government would refuse a petition of right. My experience in other colonies on this point is not very great, but from such information as I could get, it seems that no Government in any other colony ever refused a petition of right. In this colony, however, the practice seems to be to refuse all petitions of right, and the result is the publication of the correspondence recently laid on the table of the House. We are told that this Bill gives us redress in the case of a contract or in the case of *tort* independent of contract. But we do not want that, because we have it already under certain Acts. The Crown has certain rights under a maxim which says "the Crown can do no wrong." But when the Government embark on what are practically commercial enterprises, and, we will say, appoint a policeman, who drives four horses at random along a street, the Supreme Court has held that it cannot be said the Queen can do no wrong. There is absolutely nothing given to us by the Bill. Since the direction, if I may use the word, of the Secretary of State to the Governor of this colony, we have nothing to fear, and any person can claim to be heard on a petition of right. The Bill seeks to imprison the subject if he bring an action or want any money from the Government. I had a judgment against the Crown for two years, and it was not paid. The Colonial Secretary will, perhaps, be rather surprised to hear that.

THE COLONIAL SECRETARY: Yes, I am.

HON. R. S. HAYNES: And such a claim could not be enforced under the Bill. I do not wish to deprive the Crown or the Government of every power they ought to have—I would rather clothe the Crown with a certain amount of immunity; but I do not like to be told there is a boon hanging to this Bill, which I regard as rather a trap. The Colonial Secretary will see that the Bill contains provisions that he does not realise, and it is necessary there should be a proper report by a committee on the measure as to what the effect will be.

THE COLONIAL SECRETARY: There is a special provision for the payment of judgments.

HON. R. S. HAYNES: So there is in the present Act, but I could not get payment.

HON. W. T. LOTON: Perhaps Parliament did not grant a vote.

HON. R. S. HAYNES: The Government then had plenty of money—more than they have now. They have not £10 in their pockets now, and I could understand their refusing to pay at the present time.

THE COLONIAL SECRETARY: Perhaps my hon. friend did not get his costs taxed.

HON. R. S. HAYNES: Oh, yes, I did; and they were paid in London, although the Crown would not pay them here. If the Government refuse to pay, you cannot enforce payment under this Bill. Some time ago a bailiff was put in at the railway station at Coolgardie to collect under a judgment, and it is open to doubt whether the bailiff had not power to seize and sell the station. I represented the matter in the proper quarter, but the money was not forthcoming until I moved in this House in the matter. Under the

present Act there is a provision that His Excellency shall pay by warrant. But His Excellency will not give the warrant unless his responsible advisers direct, and, if they will not so direct, His Excellency cannot pay. That is exactly the position in regard to petitions of right. His Excellency is quite willing to receive the petitions, but is advised not to accept them. Let a committee be appointed to report on this Bill. I have no objection to a great portion of the measure, but let us have a report as to what the exact effect will be.

Question—that the Bill be read a second time—put and passed.

Bill read a second time.

SELECT COMMITTEE APPOINTMENT.

HON. R. S. HAYNES moved that the Bill be referred to a Select Committee.

Put and passed.

HON. R. S. HAYNES moved that the Select Committee consist of five members instead of three, as provided in the Standing Orders.

Put and passed.

A ballot having been taken, the following members, in addition to the mover (Hon. R. S. Haynes) were elected:—Hons. F. T. Crowder, A. B. Kidson, G. Randell, and F. M. Stone.

Ordered, that the committee do report on this day week.

SHIPPING CASUALTIES INQUIRY BILL.

SECOND READING.

THE COLONIAL SECRETARY, in moving the second reading, said: I must tell hon. members that I have not had time to go into this Bill as I should have liked; but, as I know it is desired that the measure should go to a Select Committee, I intend simply to read the preamble of the measure. This is a Bill dealing with matters of the greatest importance to the country. The preamble says it is a Bill "to authorise any court or tribunal to make inquiries as to shipwrecks or other casualties affecting ships, or as to charges of incompetency or misconduct on the part of masters, mates, and engineers of ships." As the Bill deals with the certificates of masters, mates, and engineers, it is perhaps well that it should go to a Select Committee. Without further remarks, I move the second reading.

Question put and passed.

Bill read a second time.

SELECT COMMITTEE APPOINTMENT.

HON. R. S. HAYNES moved that the Bill be referred to a Select Committee. Not being well versed in these matters, he moved the motion at the request of certain gentlemen engaged in mercantile pursuits, and members of the legal profession at Fremantle, who had asked him to consider the measure well. This would not in any way delay the passing of the measure.

Put and passed.

HON. R. S. HAYNES moved that the Select Committee consist of five members.

Put and passed.

A ballot having been taken, the following members with the mover (Hon. R. S. Haynes) were elected:—Hon. H. Briggs, Hon. F. T. Crowder, Hon. A. B. Kidson, and Hon. W. T. Loton.

Ordered that the committee do report on the 9th August.

ADJOURNMENT.

THE COLONIAL SECRETARY moved that the House, at its rising, do adjourn until Tuesday, 9th August.

Put and passed.

The House adjourned at 9.10 p.m. until Tuesday, 9th August.