Legislative Council,

Thursday, 4th December, 1913.

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

QUESTION — POWELLISED SLEEPER CONTRACTS.

Hon. A. G. JENKINS asked the Colonial Secretary: 1, Has the Minister's attention been called to the statement of Mr. John Stewart, the President of the Fremantle Chamber of Commerce, appearing in the *West Australian* newspaper in regard to the letting of large contracts for the carriage by sea of powellised sleepers? 2, Has any contract or agreement been entered into by the State Government for the conveyance of powellised sleepers, etc., for the Transcontinental Railway? 3, If so, the name of the person, firm, or company with whom this contract or agreement has been entered into? 4, Were tenders called through the Government Tender Board and publicly advertised for the conveyance of these sleepers, etc.? 5, If not, why not?

The COLONIAL SECRETARY replied: 1, Yes. 2, Yes. 3, P. McArdell of Fremantle, and James Bell & Co. of Melbourne. 4, No; but all shipping firms likely to do business were invited to quote. 5, Because it was considered that better terms would be obtained by negotiating privately, but in any case the Tender Board deals only with supplies required for Government Departments.

PAPERS PRESENTED

By the Colonial Secretary: Roads Act, 1911—By-laws of the following Roads Boards:—(a) Avon, (b) Murray, (c) Melville.

CORONER FOR METROPOLITAN DISTRICT.

The COLONIAL SECRETARY (Hon. J. M. Drew): In reply to a question asked by Mr. Moss with reference to the appointment of a coroner, I wish to say the Government recognise the necessity of appointing a coroner, and as soon as opportunity offers to combine the duties attaching to some other office in order to save expense, the Attorney General will give the matter prompt consideration.

BILL—LAND AND INCOME TAX.

Second Reading.

The COLONIAL SECRETARY (Hon. J. M. Drew) in moving the second reading said: Last year this Bill was introduced late in the session and rejected on the grounds that there was not sufficient time to consider its provisions. Now it is re-submitted in the hope that it will meet with a happier fate. With the exception of a few minor alterations, the Bill is identical with the measure of last year. It repeals and re-enacts with amendments the Land and Income Tax Act of 1907, and while it repeals the Dividend Duties Act, it includes the provisions of that Act in the Bill and also extends these provisions. The provision of a land tax has already been endorsed by Parliament. It was recognised and adopted six years ago. There have been two general elections since, and as far as the temper of the country is concerned, in connection with this question there has been no change whatever. All parties are pledged to the principle and the only point in connection with the question about which there can be any difference at all is as regards the incidence of the taxation. The Government believe the tax should be levied on all land owners without exception, and the Bill provides that

it shall be so. There are to be no rebates or exemptions of any sort or kind so far as the future is concerned. The only exemption will be in regard to land taken up before the commencement of the Act. In such cases the concession allowed under the existing legislation will continue to apply insofar as land already taken up is concerned. Under the existing legislation town blocks are exempt to the value of £50. They will be exempt no longer. The Government feel that if there is to be a land tax the burden should be borne both by the great and small holders in due proportion.

Hon. W. Kingsmill: Will they not do the same with the income tax?

The COLONIAL SECRETARY: The same principle is not involved. For the same reason the £250 exemption is removed from agricultural land. The necessity for the imposition of increased taxation should need no emphasising. Each year we are called upon to spend huge sums for the provision of facilities demanded by the spread of settlement—agricultural railways and other public works of all kinds, and the provision of educational facilities—all these entail heavy expenditure either from revenue or loan. It has been clearly indicated that there has not been sufficient revenue to meet all the requirements of the situation, and in cases where loan money is used and is justified there must be provision not only for interest, but also for a sinking fund. In mentioning a few items, I may say I have chosen those in connection with which there can be no possible objection from any particular party in the State. During the year 1910-11, the revenue expenditure in connection with the Charities Department, was £37,665 6s. 10d., for 1912-13 it amounted to £56,407 6s. 10d.; Police, 1910-11, £115,233 11s., 1912-13, £127,179; Medical Department, 1910-11, £86,306, 1912-13, £108,219; Education Department, 1910-11, £202,176, 1912-13, £276,555. Buildings constructed out of Revenue, Police, £2,278 in 1910-11, and £5,791 in 1912-13; schools, £11,606 in 1910-11 and £29,466 in 1912-13. The total expenditure in connection with these few items, for 1910-11, was £455,766 and for 1912-13, £603,628. There was £147,851 more spent in connection with the Charities, Police, Medical and Education Departments in 1912-13 than there was in 1910-11, and that expenditure was due to the increasing wants of the country. In addition to the increases which I have mentioned, the Estimates for this year provide for a further increase of over £42,000 in connection with education. All are prepared to urge the expenditure of public money. From day to day and week to week Ministers are interviewed, demands are made for the erection of schools, the provision of educational facilities, the erection of police stations; but when the question comes for Parliament to consider whether further taxation shall be imposed, then at any rate one section of the Legislature is opposed to the step.

Hon. W. Kingsmill: What have the State steamships cost the country?

The COLONIAL SECRETARY: That has been our experience in the past on occasions on which a land and income tax Bill has been introduced in order to increase taxation; although that was not the reason for the rejection of last year's Bill, still I feel inclined to think the reason was the hostility of this House to further taxation. The hon. Mr. Kingsmill just now referred to the State steamships. This is the only charge of extravagance that is made against us.

Member: Oh no.

The COLONIAL SECRETARY: In all the criticism made against the Government, the only charge of extravagance brought against them is in connection with the State steamships and that charge has not been proved.

Hon. W. Kingsmill: You will not give us the material.

The COLONIAL SECRETARY: If the development of the country is to proceed the taxpayer must find the money either in the shape of increased taxation or increases for services rendered by the State.

Hon. H. P. Colebatch: It will just about pay the loss on the steamers.

The COLONIAL SECRETARY: If the development of the country is to pro-

ceed, the taxpayer must find the money either in the shape of an increase in taxation or an increase for services rendered by the State. By adopting the latter course the man who is holding his land and doing nothing with it would escape that form of taxation if it were called taxation.

Hon. W. Kingsmill: Remove the exemption on the income tax.

The COLONIAL SECRETARY: If we are to continue our progress we must have more money.

Hon. W. Kingsmill: What progress?

The COLONIAL SECRETARY: And the land and income tax seems to be the most equitable form of taxation.

Hon. W. Patrick: Remove the exemption.

The COLONIAL SECRETARY: This tax cannot possibly fall heavily on agriculturists. The amount we propose to raise under this Bill is £24,000 and that will to a large extent be gathered from town and city lands.

Hon. J. D. Connolly: The Treasurer said £19,000 in the Budget.

The COLONIAL SECRETARY: I have the details here and the total which the Commissioner for Taxation furnishes is £24,000.

Hon. A. G. Jenkins: What do you expect to lose by raising the exemption?

The COLONIAL SECRETARY: I will give the information as soon as I come to it. There are to be no exemptions but there is an additional impost as regards absentees. The absentee is penalised to the extent of 100 per cent., while under the existing law he is penalised to the extent of 50 per cent. Under this Bill he will have to pay 2d. in the pound. That is, I think, a fair impost on the owner of land who does not live in the State, and who is not undertaking in any way the responsibilities of citizenship.

Hon. M. L. Moss: We are getting pepper from the Federal Parliament and now we are getting it from the State Parliament.

The COLONIAL SECRETARY: Miners' homestead leases, have in the past been exempt from taxation, owing to a difficulty in the Act. There is no good reason why they should be exempt, and they will be exempt no longer if this Bill becomes law. There is another amendment. Owners of resumed land under existing taxation escape taxation for the whole year if the land is resumed before the 31st December. If land were resumed say on the 30th December they would pay no taxation whatever for that year. But under the Bill it is proposed that they shall pay on a pro rata basis. If land is resumed in June they will pay six months taxation. The income tax rates are arranged as at present, but companies carrying on business in the State and not elsewhere will have to pay 1s. in the pound on their profits. At the present time if they are doing business in Western Australia, but not elsewhere, they escape this form of taxation.

Hon. R. D. McKenzie: They pay it on dividends.

The COLONIAL SECRETARY: Yes, but they take fine care that no dividends are declared. They cut up all the profits amongst themselves—these profits are shared and called salaries.

Hon. J. D. Connolly: Are you referring to gold mining companies also?

The COLONIAL SECRETARY: They adopt other courses but they get there just the same.

Hon. J. D. Connolly: What other courses do they adopt?

The COLONIAL SECRETARY: I have not gone into the matter. In fact I cannot say positively that the mining companies do this.

Hon. J. F. Cullen: Or any other.

The COLONIAL SECRETARY: I understand that a great many companies do this in order to avoid taxation. It is proposed that in future all these companies shall pay 1s. in the pound on their profits. Clubs also will have to pay a tax on their profits. The taxation of "business" as it appears in the Bill will enable this to be done. "Business" includes any business carried on by any club by virtue of a license granted under the Licensing Act, 1912. If a club does not make any profit it will not have to pay a tax; if it does, is is only just that it should pay a tax, like anyone else. We

also provide that profits on sales of land shall be taxed, but losses on sales shall be deducted from the profits. The exemption from income tax has been increased from £200 to £250.

Hon. M. L. Moss: For what reason?

The COLONIAL SECRETARY: To provide a good margin to enable all to live comfortably without being called upon to pay this tax.

Hon. M. L. Moss: That is quite wrong.

The COLONIAL SECRETARY: It seems to me that £250 a year is a reasonable margin. The question was asked, what amount we expected to get under this Bill. In the year 1912-13 the land tax amounted to £46,519, the estimated revenue for 1913-14 is £62,000, an estimated increase of £15,481. In 1912-13 the income tax actually received amounted to £72,775, and the estimated revenue for 1913-14 is £80,000, an estimated increase of £7,225. In 1912-13 the dividend duty actually received amounted to £98,464, and this year the estimated revenue is £100,000, or an increase of £1,536. The actual revenue under the Land and Income Tax and Dividend Duty Act in 1912-13 amounted to £217,758. This year the estimated revenue is £242,000. Consequently the total increase expected is £24,242. I wish also to lay before the House the increase in the interest bill and sinking fund which has to be met. In 1910-11 the interest bill amounted to £809,981 and sinking fund £236,254, a total of £1,046,235. In 1911-12 the interest bill was £856,285, and the sinking fund £245,274, a total of £1,101,560. In 1912-13 the interest amounted to £963,412 and the sinking fund £244,554, a total of £1,207,967. The position is that the total increase in interest and sinking fund since 1910-111 has been £161,998.

Hon. C. A. Piesse: A waste of good revenue.

The COLONIAL SECRETARY: I will now direct attention to the different clauses of the Bill. Clause 2, paragraph (b) provides that all rights and liabilities under the present Act are preserved in respect of land owned prior to the 31st December, 1913, or income or profits received prior to the 1st January, 1913. This saving clause is necessary to meet cases where returns for back years may not have been sent in or furnished or assessed prior to the repeal of the existing Act. Clause 3 includes a definition of "absentee." The definition is new and is taken from the New South Wales Income Tax Act, 1912. It renders only those persons absentees whose ordinary residence is beyond the confines of the Commonwealth. Under Sections 9 and 16 of the existing Act a person is treated as an absentee if he is absent for 12 months from the Commonwealth, even if he is only away on a visit, unless he has a permit. The definition of "business" is extended to apply to the whole Bill. It further makes the sale of liquor by a club under license to be the carrying on of a business for the purpose of profit, and that profit becomes taxable under the Bill. The definition of "Crown lands" agrees with the definition in the Land Valuation Bill, which, however, has been rejected. The definition of "Crown lease" also agrees with the definition in that rejected measure. The definition of "improvements" is omitted as the tax on improved land and on other land is the same. In regard to "income," the definition is extended so as to exclude some items which are not usually taxable, and which in the past have been taxed, namely, legacies and life assurance. The definition of "income tax" is extended to make it clear that fines, etc., imposed under the Act are to be treated, when being sued for, as income tax. The definition of "land tax" is extended to make it clear that fines, etc., imposed under the Act are to be treated, when being sued for, as land tax. The definition of "magistrate" is that in the court of review the presiding magistrate selected may be either a resident or police magistrate. The definition of "local authority" is extended beyond simply municipal councils and roads boards. It includes water, drainage or irrigation boards. Three terms are used in the Act in regard to income. "Taxable income" means the gross income liable to tax. "Net income" is defined as the income, namely, taxable income less the expenses of earning that

income: and "taxable amount" is the net income less the special deductions of £250, life assurance premiums, and £10 per child. The definition of "non-resident agent" is the same as it is in the existing Act. It relates chiefly to visiting commercial travellers. The definition of "non-resident trader" is the same, with slight corrections, as in the existing Act. It relates chiefly to people who trade here as principals for a short time only each year. The definition of "notice" is new and is taken from the Victorian Income Tax Act, 1895. It is to obviate the necessity of registering notices of assessment when posted. The definition of "person" is practically the same as it is in the present Act, while the definition of "prescribed" is precisely the same. The definition of "property" is new. The definitions of "public notices," "registered," and "regulations" are as they appear in the present Act. The definition of "taxpayer" is the old definition slightly extended. The definition of "unimproved value" is transferred to Clause 8 of the Bill. The definition of "trustee" is as it is in the present Act. Clauses 4, 5, and 6 are the same as in the existing Act. Clause 7 provides that the Governor may declare that any magistrate shall be a court of review within such limit as may be determined. Section 8 of the Act is slightly altered so as not to limit the magistrate sitting as a court of review to the magistrate of a local court. Clause 8 Subclause 1 enacts, the same as in Section 9 of the Act, but in shorter language, that the land tax is imposed on the unimproved value. Subclause 2 defines "unimproved value." Subclause 3 provides a special method of valuing certain lands for land tax purposes, and the basis in Subclause 1 is the same as that in force for grazing leases; and in Subclause 3 the same as that for Shark's Bay pearling and fisheries areas. Under Subclause 4 miners' homestead leases will be taxed on the basis of an unimproved value of 5s. per acre. By Subclause 5, metals, minerals, coal, and phosphatic substances are excluded from consideration in the valuation. Subclause 6 relates to possible cases where a timber lease and pastoral or other lease may overlap. Subclause 7 provides for the rate of the land tax being fixed in the second schedule instead of, as formerly, in a separate Act, and prescribes that the rate shall continue until altered by Parliament. The proviso to Clause 9 is for the purpose of imposing a pro rata portion of the tax in any case where land by being resumed becomes exempt before the 31st December. Clause 10: land wholly exempt from land tax is here the same as in Section 11 of the Act. Section 11 of the Act is here amended to exempt only mineral leases other than miners' homestead leases. These are used like conditional purchase and grazing leases. Subclause 2 limits the five years exemption to land taken up prior to the passing of the Bill. The clause also defines the terms "cultivable land" and "grazing land," a definition which has not existed in the past. Clause 11 simplifies Section 13 of the Act. Clause 12 is the same as Section 15 of the Act. It puts the agent of an absent owner in the same position of liability as the owner for payment of taxation as if the land were his own. By Clause 13, Subclause 1 provision is made for the rates of the income tax being fixed in the third schedule instead of, as formerly, in a separate Act, and prescribes also that the rate shall continue until altered by Parliament. Subclause 1 is the same in effect as Section 16 of the present Act. Under Subclause 2 the profit arising out of the sale of any product outside of Western Australia is deemed income. The subclause is new and is for the purpose of ensuring that the profit on the sale of wool, timber, wheat, fruit, etcetera, produced in this State and sold elsewhere shall be taxable.

Hon. J. F. Cullen: This is a drag net.

The COLONIAL SECRETARY: I do not see that it is. Subclause 3 is not in the present Act. It makes the profit realised on the sale of any freehold or leasehold land taxable, whether the seller makes a business of selling land or

not. The profit made on the sale of any business or enterprise or undertaking as a going concern is clearly made taxable.

Hon. J. D. Connolly: Suppose he inherits the land.

The COLONIAL SECRETARY: I think there is some provision for that case. Subclause 4 is the same as Section 29 of the Act, with the addition of the last three lines.

Hon. J. D. Connolly: What about the live stock that have died?

The COLONIAL SECRETARY: You would have to take that into consideration; this is in connection with the sale of a station.

Hon. J. D. Connolly: But read the last three lines.

The COLONIAL SECRETARY: They read as follows:—"The value of all live stock, produce, goods, or merchandise not disposed of at the end of the year shall be taken into account." That is always so. If you make up the balance-sheet of a station you must show your assets; you cannot discover the profits until you are in a position to show the assets.

Hon. J. D. Connolly: One will have to pay income tax on the very chaff used.

The COLONIAL SECRETARY: Subclause 5 is the same as Section 16 of the Act and requires no explanation. Clause 14 Subclause 1 prescribes the general exemption of £250 to all except companies. Previously the exemption was £200. Subclause 2 is the same in effect as Section 19 of the Act. By Subclause 3 Section 19 of the Act is extended so as to include other than Government institutions. Subclause 4 is the same as Section 19 of the Act. Subclause 5: this is new. It exempts from taxation the income of any agricultural society——

Hon. J. F. Cullen: Oh, you cannot spare that.

The COLONIAL SECRETARY: Or literary society or mechanics institute. Subclause 6 corresponds with Section 19 of the Act, but is extended to exempt the profits of clubs only in respect of income other than that derived from carrying on a business. The definition of "business" appears in Clause 3. Clause 14 Subclauses 7, 8, 9, and 10 are the same in effect as other sections of the existing Act. Clause 15 prescribes that the income tax is to be calculated on the income earned during the calendar year, and is the same in effect as Section 29 of the Act. In the fourth to seventh lines the commissioner is authorised in certain cases to accept returns for other twelve months' periods. This has been found necessary in the past because many businesses cannot take stock and close their accounts on the 31st December. The provisions in Subclause 2 are the same in principle as those of Section 30 of the Act. They are chiefly business expenses incurred in earning the income. The deduction of four per cent. allowed by Section 30 of the Act to persons who use their own business premises in their business is omitted from the Bill. By the High Court judgment, Burt *versus* the Commissioner of Taxation, pastoral leases were deemed to be business premises. I do not think this was ever intended by the Legislature. Such a position cannot arise under the Bill. Paragraph (f) is new, and enables persons engaged in mining to deduct the full cost of development work from the income earned. Paragraph (h) is new also. It applies to ingoing or premium paid for hotels and other leases. It enables, for example, where a lease of ten years is granted on payment of a bonus of £10,000, the deduction of one-tenth of such sum each year during the ten years. The lessor will be taxed on the whole of the £10,000 in the first year, as at present, but the lessee will have the £10,000 distributed equally every year for ten years. Paragraph (i) corresponds with Section 30, Subsection 8 of the Act. Subclause 3 corresponds with Section 31. Paragraph (e) makes it clear that the Federal land tax as well as the State land tax is not allowable as a deduction. In paragraph (g) it is provided —what has been the practice in the past —that bad debts cannot be allowed as a deduction unless previously included in the credit sales. This is regarded as the only business method of dealing with bad debts. Subclause 4 contains special de-

ductions which are not incurred in the earning of the income.

Hon. Sir E. H. Wittenoom: Why do you increase the exemption to £250?

The COLONIAL SECRETARY: To provide reasonable allowance for a man to gain a decent and comfortable livelihood. Paragraph (b) allows an exemption up to £50 on life insurance premiums paid, and extends the privilege to premiums paid to widows' and orphans' funds. Clause 16: This restricts the abatement where the income is derivable directly from the land, previously allowed to farmers and pastoralists. Under the old system they paid very little income tax. The clause makes it apply in future only to cereal, sheep, and cattle farmers and fruit growers. Among these will be included conditional purchase and grazing lands. Clause 17 extends the provision in Section 18 of the Act to include as income the use of a house or building given for services rendered. This applies to bank clerks, school teachers, and those to whom the use of the house if given as part of the salary. At present there is no income tax on the value of the privilege. The provision in Section 28 of the Act is extended by Clause 18 so as to protect the revenue against bogus business partnerships being entered into in order to escape taxation by both partners claiming the deduction of £250.

Hon. Sir E. H. Wittenoom: Will that not clash with Married Women's Property Act?

The COLONIAL SECRETARY: I do not think so. Clause 19: this is new and will replace the provision in the Dividend Duties Act of 1906, by which the profit of shipping companies is fixed by varying agreements made with the Governor-in-Council, or, in the absence of an agreement, a sum equal to five per cent. of the inward and outward traffic.

Hon. C. A. Piesse: Do you make provision to tax the profits of your own steamers?

The COLONIAL SECRETARY: No, they are excluded. Clause 20 (1), (a), (b), (c), and (d) are, in effect, similar to sections in the present Act. Clause 20 (e) is new. It supplies an omission in the Act, the provision being taken from the 1903 Victorian Income Tax Act, which is quoted in the margin. Clause 20 (f) is new. It provides for taxing bookmakers on a fixed sum each year according as they field within the enclosure or on the flat. No other system is practicable, as evasion is easy if bookmakers are assessed only on the profits shown by their betting books. Clause 20, Subclause 3 is new, but agrees with the present practice. It is necessary in order to prevent claims from arising for expenses incurred in earning the stakes. The tax on these persons is assumed to be a net tax. They will be allowed, of course, the £250 and other deductions on any income from other sources. Clause 20, Subclause 4, is the same as the last three lines of Section 20, Subsection 2 of the Act. Clause 21 is the same as Section 21 of the Act with the addition of the second proviso. Clause 22 is practically identical with Section 22 of the Act. Clause 23—Section 25 of the Act is here repeated with some modification. Instead of the profit being fixed definitely at 5 per cent. on the total sales, power is given to fix it at more or less according to the facts. This is necessary in order not to clash with the Federal Constitution, Section 117 of which requires that no discrimination shall be made by the laws of a State between the residents of that State and the residents of any other part of the Commonwealth. Clause 24, Subclauses 1 and 2, are the same as Section 26, Subsections 4 and 5 of the Act. The provisions in Subsections 1, 2, and 3 of the Act requiring visiting commercial travellers to take out warrants are amended as necessary arrangements can be made by regulations under Clause 23, Subclause 2, of the Bill for continuing the work of following up such visiting agents and assessing profits and income made by them and their principals. Subclause 3 of Clause 24 is new and is one of the provisions recommended by the conference of Taxation Commissioners held last January. It applies especially to persons employed by firms doing business in

more than one State; at present the full £200 or so is claimable in each State; under the new provision a proportionate part only will be claimable in this State. Clause 25 is new. It applies to visiting theatrical, musical, and other public entertainers and their troupes. It allows a proportionate part only of the £250 deduction according to the time spent in the State. The principles of this section are already in force in the State, as provided in Regulation No. 12. Clause 26 is the same practically as Section 27 of the Act. The provisions of Clause 27 are practically the same as Section 32, but it has been re-drafted. The proviso to paragraph (c) is new; it enables the Commissioner to dispense with the land returns in any years in which he finds that all the necessary data are in his possession. The amendment will be the means of saving taxpayers from the worry and expense of preparing returns every year. Subclause 5 is new and is for the purpose of enforcing the furnishing of necessary returns of partnerships. This is required in order to protect the revenue. Clause 28 is new; it is necessary in order that the Commissioner may have early knowledge of change of ownership of land. Much land is sold on terms in respect to which a search at the Titles Office gives no information. Clause 29 is new; it prohibits all persons from inspecting land or income returns except their own, but a person may authorise his agent to inspect his return on his behalf. Although the land returns are now not open for general inspection, any person paying a prescribed fee may inspect them, and under the amendment it is proposed that that state of affairs shall not continue. Clause 30 is the same in effect as Section 33 of the Act, and Clause 31 is the same in effect as Section 34 of the Act. Clause 32 is the same in effect as Section 35. Clause 33 enables the Commissioner to adopt the values made under the Land Valuation Bill and although that measure has been rejected this will not require amendment. Clause 34 is the same as Section 39 of the Act; Clause 35 is the same as Section 40; Clause 36, the same as Section 41; Clause 37, the same as Section 43; Clause 38, the same as Section 44; Clause 39, the same as Section 35; Clause 40, the same as Section 46, and Clause 41 is the same in effect as Section 47, but has been re-drafted. Clause 42 is a new provision adopted from the Federal Land Tax Act and gives power to the Crown to resume any land at the value given in the land return plus 10 per cent. and a fair value for the improvements in any case where the value of the land is understated by 25 per cent. or over. Clause 43 is new and makes compulsory the adoption by the Commissioner of the values fixed under the Land Valuation Bill which was rejected by this House. Clause 44 corresponds with Section 48 of the Act. Clause 45, Subclause 1 makes all companies taxable on their net income, that is on their profits without general deduction of £250. Under the Dividend Duties Act companies doing business only in this State (including all mining companies) have in the past paid tax on dividends declared only. With reference to Subclause 2, the present law is not clear as to taxing the interest earned on debentures issued by the companies doing business in this State and by local bodies, and as the debentures frequently change hands, it is difficult, if the interest is taxable, to find out who actually receives the interest. The proposal therefore is to tax all such interest at its source, by requiring the company or municipality to deduct the tax before paying the interest on the debentures and to pay the tax to the commissioner. Of course if any person affected satisfies the commissioner that he has not been allowed the £250 and other deductions, an adjustment will be made. The proviso is for the purpose of providing for cases where the money borrowed on debentures is invested in undertakings outside this State. Subclause 3 of Clause 45 is to protect the revenue, namely to disallow as a deduction from profits any excessive payments made to directors or managers in order to escape taxation at the higher 1s. rate payable by companies on their profits. With reference to Clause 45, Subclause 4, there is growing into existence a system by which a company buys

its stock not direct from the English manufacturer but from another company carrying on business outside the State at such a price as to show no profit, and it is found that the shares in the two companies are practically all held by the same persons. Thus the company is in effect buying from itself under another name. This is clearly a scheme to avoid showing a profit and thus to escape taxation. This scheme it is proposed to circumvent in this subclause by taxing the first named company as if it had bought direct from the manufacturer, thus ignoring the intermediary company which is not doing business in this State. Clause 46 (a): this provision is necessary in order to protect the revenue. It applies only to local companies which have under the Dividend Duties Act been taxable in the past only on dividends declared. The principle of this provision agrees with that of Section 14 of the Dividend Duties Act, 1902, where undstributed profits become taxable on the winding up of a company. As soon, therefore, as any undistributed profits which have not yet been taxed come to be distributed, they will in future be taxable. The provision to which objection was raised last session which deemed all future dividends to be paid out of past undistributed profits until they were all accounted for, has been cut out of the Bill. Paragraph (b) is the same in effect as Section 14 of the Dividend Duties Act, 1902. Section 47—Fire, guarantee and indemnity insurance companies have in the past been taxable under the Dividend Duties Act at 1s. in the pound on 20 per cent. of their premium income, equal to 1 per cent. of such premium income in this State. This clause now makes life assurance companies taxable on the same basis in lieu of, as in the past, at income tax rates on their rent and interest. This tax, equal to one per cent. of the premiums in this State, is the same as such life companies pay in Victoria. Clause 48 corresponds with Section 49 of the Act: but it is made clear that on any appeal the amount of tax must be deposited. Clause 49 is the same as Section 50 of the Act. Clause 50 is the same as Section 51 of the Act. Clause 51 is new and is for the purpose of making it clear that if a taxpayer does not exercise his right of appeal, he cannot raise the question of over-taxation when he is subsequently sued for the taxes in arrears. Clause 52, Subclause 1 is the same as the Act with the addition of the last two lines; these words are added to assist in proving that the income was received when prosecuting for failing to send in returns. Subclauses 2, 3, 4 and 5 are the same as the Act. Subclause 6 is new and is to enable necessary information to be obtained respecting business done by dealers in pearls at places long distant from Perth. Clause 53—The provision in Section 53 of the Act is here altered to make the due date of the tax in each case the date given on the notice sent to the taxpayer in lieu of on the date published in the *Gazette*. The publication of the due dates in the *Gazette* costs a considerable sum which will by this provision be altogether saved. Clauses 54, 55, and 56 are the same in effect as Sections 54, 55 and 57 respectively of the Act. In Clause 57 the legal procedure of Section 58 of the Act has been brought into line with the more recent Local Court practice. Clauses 59 to 66 are the same as Clauses 60 to 67 of the Act. Clause 67 is new. Its object is to hurry up dilatory taxpayers to furnish their returns. Clauses 68, 69 and 70 are the same as the corresponding sections in the Act. Clause 71 is new. This is one of the provisions recommended by the conference of taxation commissioners held last January. Clauses 72, 73, and 74 are the same as the sections in the Act. The first paragraph of Clause 75 is the same as that in Section 74 of the Act. Clause 76 is new and has been copied from the Victorian Act and enables the Commissioner to obtain an opinion from the Supreme Court on questions of law. I think I have dealt with the chief provisions of the measure and I now beg to move—

That the Bill be now read a second time.

On motion by Hon. J. F. Cullen, debate adjourned.

MOTION—PREROGATIVE OF MERCY.

Debate resumed from the 25th November on motion by Hon. D. G. Gawler as follows:—That in the opinion of this House the advice tendered to His Excellency the Governor by the Hon. the Attorney General in the cases mentioned in the returns laid upon the Table of the House, as moved for by me on the 17th September last, was not in the best interests of the administration of justice.

Hon. J. E. DODD (Honorary Minister): The hon. member in bringing forward this motion stated that he desired to cast no reflection on the Government in connection with the remissions, and he pointed out very truly that the Minister, through the Executive Council, was responsible for these acts of clemency which had been made. The Attorney General is not shirking responsibility in connection with these matters, and is prepared to justify every action he has taken, both from the view points of justice and of the prisoners. In order that members might be fully seized of the procedure followed in regard to the exercise of clemency, I might just read a few notes which have been placed before me by the Crown Law Department in connection with the methods which have always been adopted in regard to these matters—

> The question was brought up in 1902 by the then Premier, Sir Walter James, and after particulars had been obtained as to what was done in the other States, the then Administrator, Sir Edward Stone, who was also at the time Chief Justice, approved of certain practices being followed which was similar to that followed in the other States, and under which we have acted ever since. In May, 1909, on retiring from office, Mr. Keenan left a memorandum setting out in detail the practice which he had always followed for the use of his successors, if they deemed it desirable to follow the same course, which course has never been altered. A copy of this memorandum is attached.

I will read that memorandum in the course of my remarks.

On receipt of a petition by the Crown Law Department, sent either through His Excellency, the Premier, submitted by a member of Parliament, deputation or posted direct, the action taken up to a certain point is purely mechanical and is carried out by the department without consulting the Minister. (a) As a preliminary, the prisoner's history and record are obtained; (b) If the case was a Supreme Court one, or one which was dealt with by the Crown Law officers, the Crown prosecutor or the Crown Law officers concerned are asked to report; (c) Where the grounds of the petition are of such a nature as to enable the judge who presided on the case to properly assist, for instance, where fresh evidence which might have affected the decision is available, or where some mistake had apparently been made, the judge who presided is also consulted. Where, however, the grounds of the petition are foreign to the actual case, and can in no way affect the sentence, the presiding judge is not consulted. (At one time the presiding judge was consulted, but the judges strongly protested against such action where the subject matter forming the basis of the petition had nothing whatever to do with the merits of the case before the court.) (d) Where the case is one which has been heard at petty sessions, the presiding magistrate or justices are consulted more freely, because whereas in the Supreme Court the Crown Prosecutor was present and could give full information, there are, as regards courts of petty sessions, neither departmenal files, briefs, nor any other documents available at the head office, for reference and the local authorities alone are able to give full particulars as regards the case, and can often, from personal knowledge of the delinquents, give advice affecting them on matters quite unknown to the department. (e) In addition to the above, where any point raised demands such action, the police, the gaols authorities, or the medical authorities are consulted, as required. When all these preliminary matters have been completed,

the file is brought before the Hon. Attorney General, who advises the Governor, after taking into full consideration all of the points for and against. In the details given above, reference is not of course made to capital offences. Those are dealt with differently. This practice has been followed in the State for years, irrespective of what Government is in power. Apart from the merits or demerits of individual cases there is of course great necessity for some central revision where sentences, imposed by a number of judges and magistrates, under statutes allowing considerable flexibility, vary, according to the views and opinions of the gentlemen of the bench. The policy followed is of course a matter I cannot touch on but as the length of sentence served forms an important part of any moral reform measures, it may not be out of place to quote authorities showing that throughout Australia the present day administration tends to more reasonable treatment of offenders. In this State during the last two years petitioners have been somewhat more liberally dealt with, the remissions averaging about 36 per annum. The increase of remission is however not unduly marked, nor has it been inaugurated in a hasty manner, as the previous year when Mr. Nanson was Attorney General, a search of the files for a period of one year show that some 21 remissions were granted out of 59 applications.

There is not such a deal of difference between the last year of Mr. Nanson's regime and the first year of that of Mr. Walker.

Hon. D. G. Gawler: I did not compare the present Attorney General's record with that of anyone else. Two wrongs do not make a right.

Hon. J. E. DODD (Honorary Minister): It is only during the control of the present Attorney General that the agitation has been raised against the remissions, and the report shows that during Mr. Nanson's last year of office there were 21 remissions granted out of 59 applications.

Hon. D. G. Gawler: Perhaps he had justification for doing that.

Hon. J. E. DODD (Honorary Minister): I have not the return, but I think many of these remissions were acts of mercy, irrespective of the merits of the case, and similar to those Mr. Walker had made. I will read Mr. Keenan's memorandum to hon. members—

> The procedure in relation to the remision of sentences for offences against the laws of the State in non-capital cases: 1, Every petition by or on behalf of a convicted person for the remission by the Governor of the sentence passed upon him shall be addressed to the Governor and shal be forwarded in the first instance to the Attorney General. 2, The Attorney General shall (a) as far as practicable submit the petition to the judge, magistrate or justices by whom the petitioner was sentenced for a report; (b) obtain from the Comptroller General of Prisons the prison record (if any) of the petitioner; and (c) obtain from the Commissioner of Police a report on the character and antecedents of the petitioner. 3, The report of the judge, magistrate, or justices shall deal generally with the case and specifically with reference to the matter of the prayer of the petition. 4, The petition with the Attorney General's recomendation thereon and the reports and record obtained as aforesaid appended thereto shall be forwarded by the Attorney General to the Governor. 5, On receipt by the Attorney General of the Governor's decision, the Secretary to the Crown Law Department shall inform the petitioner, and if the petitioner is in prison, the Comptroller General of Prisons, of such decision.

In a footnote Mr. Keenan wrote—

> The above practice has been followed I think with considerable advantage to the administration of justice and I leave it as a guide for you. Of course it always remains for any succeeding Chief Law Officer of the Crown to institute any other procedure he thinks fit.

Hon. D. G. Gawler: It is a great pity that the Attorney General did not follow that advice.

Hon. J. E. DODD (Honorary Minister): He has followed it to the letter, that is, up to the points mentioned here.

Hon. D. G. Gawler: He has not referred the cases to the judges at all.

Hon. J. E. DODD (Honorary Minister): In every case which it was thought should be referred to the judge the Attorney General did so, and I shall show the hon. member where he is wrong. Every care has been taken to inquire into a prisoner's career, his conduct and character, and the possibility of reform were he liberated. Mr. Gawler went back to Shakespeare for a quotation on mercy, and quoted Chitty, an old economist of 1820 in support of his views. I propose to quote one older and greater authority than even Shakespeare, and a more modern one than Chitty. When our Saviour revolting against the old doctrine of the prophets and law givers of an eye for an eye, a tooth for a tooth, and gave utterance to these memorable words, "Let him who is without sin cast the first stone," and later warned his hearers that it might be necessary to forgive seventy times seven, he laid down to some extent the foundations of our modern prison system. He also said "Take heed to yourselves; if thy brother sin rebuke him, and if he repent forgive him." Particular care is taken to inquire into the conduct of the prisoner in gaol and the possibility of his reform when he comes out, and although the Attorney General might possibly be advancing along the lines a little ahead of what has been done in the other States, I do not think that if we summed up everything we would find that he had acted with bad judgment. There is only one case I know of where the Attorney General's clemency has been violated, and I am not sure whether good reasons cannot be shown in that case. From the Commonwealth *Year Book* of this year I will give a more modern quotation than that of 1820, the period when it was possible to hang a man for stealing a sheep and when capital punishment was meted out in connection with 250 offences. It would be to our purpose to quote authorities a little more modern than old time economists. Mr. Knibbs, on page 909 of the Commonwealth *Year Book*, writes—

> In general, punishment has declined in brutality and severity, and has improved in respect of being based to a greater extent upon a scientific penological system, though in this latter respect there is yet much to be desired. Recent advances in penological methods will be referred to in a subsequent section. Here it will be sufficient to remark that under the old regime, a prisoner on completion of a sentence in gaol was simply turned adrift on society and in many cases sought his criminal friends, and speedily qualified for readmission to the penitentiary. Frequently he was goaded to this by mistaken zeal on the part of the police, who took pains to inform employers of the fact of a man having served a sentence in gaol.

Hon. J. D. Connolly: What are you reading from?

Hon. J. E. DODD (Honorary Minister): This is a quotation from the Commonwealth *Year Book* of 1913.

Hon. J. D. Connolly: Does that apply to the whole of Australia?

Hon. J. E. DODD (Honorary Minister): It is taken from the Commonwealth *Year Book*.

Hon. J. D. Connolly: It is not true; so far as Western Australia is concerned.

Hon. J. E. DODD (Honorary Minister): The statement he made in the beginning, and which the hon. member did not hear was that—"In general, punishment has declined in brutality and severity."

Hon. J. D. Connolly: But I am speaking of the latter part, where he says they are goaded on by the police.

Hon. J. E. DODD (Honorary Minister): Knibbs says that was so frequently under the old regime. That is what I am pointing out to Mr. Gawler. Mr. Gawler went back to Shakespeare, and to the year 1820, when they

could hang a man for almost anything. Knibbs goes on to say—

> During recent years Australia, in common with most other civilised countries, has introduced considerable modifications and improvements in methods of prison management. Under the old regime punishment partook more or less of the character of reprisal for wrongdoing, and the idea of constituting the prison as a reformative agency was in the background. But of recent years there has been an earnest attempt at effecting a moral reformation in the unfortunates who lapse into crime.

That is altogether different from those old-time methods to which the hon. member referred, and surely no one could object when a man has shown some sign of reformation, some possibility of doing better than before he went into prison, that that man should be given a chance.

Hon. D. G. Gawler: Is the Attorney General to decide all that?

Hon. J. E. DODD (Honorary Minister): I will show the hon. member most conclusively that the Attorney General is the person to decide; he is not acting in a judicial capacity but only in a merciful capacity.

Hon. D. G. Gawler: Can his mercy extend to whatever length he thinks fit?

Hon. J. E. DODD (Honorary Minister): It is only to extend that clemency which he thinks fit. After all the inquiry I have alluded to as to the man's conduct and character, his actions in gaol, and the likelihood of his behaviour when he is liberated, it is then the Attorney General constitutes himself a means of clemency. He has been a constitutional means of clemency, because the hon. member showed by his quotations from *Todd* that in non-capital cases the responsible Minister is the person who should make the recommendation. I will direct the hon. member's attention to the quotation he made from *Todd* in respect of the judges being asked to make recommendations in connection with any petitions for clemency. The hon. member quoted the following section:—

> The twelfth section of the draft of instructions accompanying the letters patent aforesaid further provides that the governor shall call upon the judge presiding at the trial of any offender who may be condemned to suffer death by the sentence of any court within the said colony.

Mr. Gawler said it was the twelfth section of the draft of instructions under which the judge is to be called upon to give a report. If the hon. member had looked up the instructions which had been given he would have found that those instructions have been amended.

Hon. D. G. Gawler: That was from *Todd*. I quoted the twelfth section, in regard to the condition that a person should leave the State.

Hon. J. E. DODD (Honorary Minister): No, the hon. member quoted the twelfth section of the draft of instructions in regard to the instructions to the judge, because that section does not deal with a person leaving the State. In the instructions to the Governor, dated 12th October, 1900, and which have accompanied the appointment of the present Governor, Sir Harry Barron, the twelfth section is not included. The instructions have been amended, and that section does not appear.

Hon. D. G. Gawler: On a personal explanation. I do not think, in the whole of my speech, I mentioned the twelfth instruction. My reference to referring the matter to the judge was a quotation from *Todd* and I referred to the tenth instruction to the Governor only, and that was with a view to showing that they had no power to make it a condition that a person should leave the State.

Hon. J. E. DODD (Honorary Minister): If the hon. member will look at *Hansard* he will find the quotation I have made from his speech is correct. However, the tenor of Mr. Gawler's remarks right through was that the judge has not been called upon for a report in these cases, and yet it shows conclusively in the instructions that it is not necessary for the judge to be called upon to give a report, and, further than that, the judges have shown a decided aversion to make

any report whatever. In some cases they have made it in reference to points of law and judicial procedure, but as a rule the judges do not make a report, and, as is pointed out by this authority, the judge should not be asked to make any report.

Hon. D. G. Gawler: Have you any memorandum from the judges that they do not wish to be consulted?

Hon. J. E. DODD (Honorary Minister): Yes, I have. I thought it was well known to the hon. member that the judges had a decided aversion to making reports upon these matters. This remark is by a judge, and dated 25th February, 1909.

Hon. D. G. Gawler: What judge?

Hon. J. E. DODD (Honorary Minister): I do not know whether I would be justified in stating the name of the judge. There might not be anything wrong in my doing so, but I should like first to get the permission of the Attorney General. That judge said, in the course of his remarks dealing with the petition submitted to him in the case of a prisoner—

> The right, if it be one, to petition does not, so far as I know, depend upon the permission of the judge being obtained.

He goes on to say—

> The importance or value which may be placed upon the matter contained in the petition is not a matter for me to ascertain.

The judge's associate later adds—

> I am directed by the judge to inform you that he desires to say nothing in this case.

In connection with another petition, the judge states—

> The reasons you adduce in your minute do not impress me, nor are they, I think, matters proper for my consideration. They are matters for the Executive Council, and of course that body will act as it thinks just and proper.

Hon. D. G. Gawler: The reasons adduced in the minute probably had nothing to do with the merits of the case.

Hon. J. E. DODD (Honorary Minister): However, he refers to the fact that these are matters for the Executive Council.

Hon. J. D. Connolly: That judge is not speaking generally but on a particular point in that particular petition.

Hon. J. E. DODD (Honorary Minister): The judge says, in another case—

> If the Crown desires to exercise its right to extend clemency towards this prisoner I do not consider it any part of my duty as a judge to offer any opposition in the matter.

Those are three cases in which judges declined to express an opinion, and I think I am not going too far in saying that the judges are averse to making any recommendations in these cases.

Hon. J. D. Connolly: Those quotations do not show that the judges are averse to making recommendations.

Hon. D. G. Gawler: I know that the judges have complained of their sentences having been overridden.

Hon. J. E. DODD (Honorary Minister): In how many instances? Perhaps when a prisoner has come before them after being released they may have done so in sentencing him again and after inquiry into his record. *Todd*, in referring to the prerogative of mercy, goes on to say—

> Not only in capital cases, where the course of procedure to be taken by the governor is prescribed by the royal instructions, but in all cases where clemency is sought at his hands, a governor would do well to consult informally those who could best assist his judgment; more especially the Crown prosecutor and the judge who has tried the case, whose advice would doubtless be readily afforded when thus solicited. But judges should not be required to report beforehand upon every case wherein they have passed sentence, as that would place both the judges and the governor in an untenable and undesirable position.

I desire to draw the hon. member's attention to that quotation from *Todd*.

Hon. D. G. Gawler: That is referring to a report beforehand.

Hon. J. E. DODD (Honorary Minister): That is before any revision of the sentence is made.

Hon. D. G. Gawler: Before the sentence is passed.

Hon. J. E. DODD (Honorary Minister): No. It says "every case wherein they have passed sentence." If the hon. member will look at page 348 he will find those remarks. It would be a most undesirable position in which to place a judge to ask him whether or not a man should be hanged after sentence of death had been passed on him. It is the judge's duty to pass the sentence, but surely the judge is not to decide whether the man is to be hanged or whether the sentence should be commuted?

Hon. D. G. Gawler: I am not referring to cases like that.

Hon. J. E. DODD (Honorary Minister): The hon. member quoted the case of Surradge. It might be interesting to point out that in quite a number of cases, which Mr. Gawler could not have looked up, a report had been made by the magistrates and various other individuals who were capable of forming some judgment on the matter, and if he would study the whole return, instead of a few isolated cases, he would not have made the statements he did make. For instance, in regard to No. 9, the list says "A lad of 16 years of age. Promised that if his conduct during six months showed determination to improve, balance would be remitted on his undertaking to live in the country. Promise made by P.M. and redeemed by Governor on advice of Attorney General." The Police Magistrate had made some report and recommendation in connection with that case. No. 11: this was a case which the previous Government had before them. The return says, "cases 11, 14 and 15 were brought before Cabinet by the late Attorney General (Mr. Nanson) for consideration in June, 1911. His Excellency the Lieutenant-Governor, who, as late Chief Justice, was the Judge who presided in this case, was consulted by the late Attorney General (Mr. Nanson) and strongly supported leniency in all three cases. The matter was brought before the late Government and the request refused. That was one of the murder cases in which three men were sentenced in connection with some brawl, and after serving seven years they were released. In the case of No. 20 this prisoner was released owing to doubt as to the prisoner's guilt having been expressed by the Chief Justice in reviewing the case.

Hon. D. G. Gawler: We are not complaining so much about that.

Hon. J. E. DODD (Honorary Minister): The hon. member says that no reports were made. He repeatedly said throughout his speech that no reports were made by the magistrates.

Hon. D. G. Gawler: I said that in two cases references were made to the judge and in nine they expressed opinions about the cases.

Hon. J. E. DODD (Honorary Minister): If the hon. member had referred to the whole list he would have seen where reports had been made. In case 21 the prisoner was sentenced on one charge at the police court and committed for trial at the Criminal Sessions on the second charge. At the trial before the higher court attention was drawn by the jury to the very severe nature of the penalty inflicted in the first case. The Chief Justice in forwarding such expressions of opinion to the Crown Law Department endorsed the jury's views. Immediate action was taken to reduce the sentence but it was too late to do much. These are some of the reasons which actuated the Attorney General in releasing some of the prisoners. Again, in case 29, where some of the prisoners were sentenced for receiving, the Crown Law officers advised, on review of the case, that the jury, while finding the prisoner guilty, practically gave a verdict equivalent to one of not guilty. The judge in sentencing the prisoner stated that, but for the fact that he had made a false statement to the police in the first place, he would not have been charged at all. Surely the hon. member in putting up a case against the Attorney General for releasing these prisoners might have drawn attention to these facts where reports were made. In case No. 30, the convicting justices, being subsequently made aware of facts not adduced at the trial, recommended a fine of £1 in lieu of imprisonment imposed.

As 18 days of the sentence had been served, remission of the remainder was recommended and approved. Surely it is not a serious matter on the part of the Attorney General to recommend the release of a man under those conditions. In case 33 a reduction of the sentence was recommended by the resident magistrate. The woman was a stranger looking for work and the case was essentially one in which she should have been treated as an inebriate. There is a case in which I think any man in his senses could not have done anything else than make a reduction.

Hon. D. G. Gawler: Will the hon. member look at case 24?

Hon. J. E. DODD (Honorary Minister): It says, "First offender. Restitution made and doubt expressed by the law officers as to validity of portion of sentence."

Hon. D. G. Gawler: Is not that the law officers constituting themselves a court of criminal appeal?

Hon. J. E. DODD (Honorary Minister): For the life of me I cannot see any harm in the Attorney General exercising the prerogative of mercy in that case.

Hon. D. G. Gawler: You had better put the law officers on the bench.

Hon. J. E. DODD (Honorary Minister): Case 48. A remission was recommended by the chairman of Quarter Sessions, favourable reports being also received from the prison officials.

Hon. D. G. Gawler: I do not object to that.

Hon. J. E. DODD (Honorary Minister): The hon. member stated that reasons were given but he did not quote them.

Hon. D. G. Gawler: I said there were nine cases in which the judge was consulted.

Hon. J. E. DODD (Honorary Minister): Case 57. After the sentence this man turned King's evidence against the principal offender and was released on the recommendation of the law officers, based on the opinion expressed by the judge in open court. Here again we have the report of the resident magistrate.

Hon. D. G. Gawler: How did the resident magistrate report that his own sentences were excessive? That is what I cannot understand.

Hon. J. E. DODD (Honorary Minister): It is hard to say, except at times men may see reasons, after sentencing a prisoner, why the sentence should not be so high. A man may review his sentence and may possibly see something to make him think that his sentence has been too severe.

Hon. D. G. Gawler: That ought to be explained.

Hon. J. E. DODD (Honorary Minister): In case 60 the prisoner was found guilty at a court of quarter sessions with a strong recommendation to mercy. The conviction was quashed by the Full Court and a new trial ordered, the court expressing the opinion that a gross miscarriage of justice took place. Subsequently on the motion of the Crown the High Court restored the conviction on a point of law. The jury (with the exception of three who had left the State) subsequently expressed, by petition, extreme surprise at the sentence imposed, considering that in view of the attitude they took up a short sentence should have met the case. The repeated trials undoubtedly added to the penalty, and the anxiety, worry and expense were taken into consideration. I think the hon. member knows that case. I have an idea, although I do not remember the name, it was a case where the man was released on the motion of the Crown and the High Court restored the conviction, and the man had to go back to gaol again. I do not think the hon. member, if he were the Attorney General, would have acted differently from what Mr. Walker had acted in this case. In No. 61 this was a first offence: a specially well-conducted prisoner. During the hearing of the case it was clearly shown that this man was inadequately paid when the offence took place, this aspect of the case being strongly commented on in court.

Hon. D. G. Gawler: They took that into consideration in passing sentence, surely?

Hon. J. E. DODD (Honorary Minister): I do not know. The aspect of

of that was strongly commented on. The man was inadequately paid. I think mercy was well extended in his case. In case 63, the judge who tried the case and the Crown Law authorities strongly recommended that this girl should be handed over to her mother. I think we all remember the case. It was the case of a man using an instrument to procure a miscarriage, and the girl was also charged. The individual who made the attempt was sentenced to seven years. I should think Mr. Gawler would also have released the girl.

Hon. D. G. Gawler: I hope the man is not out.

Hon. J. E. DODD (Honorary Minister): The last one mentioned is this: on imposing a sentence in this case the Resident Magistrate reported that his sole view was to keep the prisoner away from alcohol until recovered. The action taken both in protecting him and releasing him was for his personal benefit and that of his wife. There are a number of cases in which the Attorney General had not placed himself forward as the sole fountain of mercy without taking every possible precaution he could from those qualified to give an expression of opinion upon the offence of the person to be released, and the circumstances surrounding the sentencing of him. If Mr. Gawler would take a little fairer view of the situation he would have quoted these cases as well as some of those which he did.

Hon. D. G. Gawler: I am quite prepared to admit those.

Hon. J. E. DODD (Honorary Minister): Some reference was made to case No. 8. The hon. member stated this was a case in which the prisoner suffered great loss but that the loss should not be taken into consideration. The circumstances are as follows:—The circumstances which occurred after sentence whereby in addition to the sentence great loss fell on the prisoner were taken into consideration. During incarceration the Midland Railway Company exercised a right they possessed and cancelled the accused's leases, without compensation, the leases in question being subsequently applied for and enjoyed by the prisoner's prosecutors. I would just ask the hon. member if the fact of a prisoner having the whole of his possessions taken from him and those possessions enjoyed by those responsible for him being placed in gaol, is that not a fit subject for the exercise of the prerogative of mercy? It may be said they had nothing to do with the case, but circumstances such as that, after the prisoner is placed in gaol, should be a good reason indeed for the exercise of clemency. Mr. Gawler referred to the case of a man who committed murder by cutting his wife's throat in the Claremont park. That is the case of Surradge. I would point out that this was not a remission of sentence at all. To commute a sentence of death to one of imprisonment for life is not a remission, and I think the hon. member will see that.

Hon. D. G. Gawler: What is it?

Hon. J. E. DODD (Honorary Minister): The case of Surradge was not a remission but a commutation of death sentence to one of imprisonment for life. Let me say here, and in doing so I am voicing my own views, that in a case of murder there are degrees of wilful murder, and if possible, as far as I am concerned, I would endeavour to see that the carrying out of the capital sentence is prevented in every possible case. In my opinion it would be better to do away with the capital sentence altogether.

Hon. D. G. Gawler: Would it not be better to alter the law first?

Hon. J. E. DODD (Honorary Minister): I am coming to that. In every case where there are extenuating circumstances, and where the capital sentence can be reduced, the Attorney General is justified in doing so. There are degrees of murder in the Criminal Code, such as wilful murder, murder and manslaughter, and I say that there are degrees of wilful murder. There is a great deal of difference between some cases of wilful murder. In some cases the deed is done with premeditation. Surely there are differences to be seen even in wilful murder. Take the case of the man Spargo. The case of the man Surradge

who murdered his wife in the Claremont gardens is not to be compared to the cruel and diabolical act of Spargo.

Hon. D. G. Gawler: Do you mean to say that a man who walks into the gardens with a razor in his pocket and cuts his wife's throat has not premeditated it?

Hon. J. E. DODD (Honorary Minister): There were certain circumstances in the case which would justify the exercise of mercy, but in the case of Spargo there was no chance whatever of showing that he deserved any consideration at all. There are quite a number of cases of wilful murder showing vast differences between them, and the Executive Council should be given power to say whether the capital sentence should be carried out, and they could very well exercise their clemency where such a degree of guilt may be seen as——

Hon. D. G. Gawler: Is there any case if a man——

The PRESIDENT: I must ask that the debate be conducted in a proper way. For the last 20 minutes it has been a kind of dialogue. The hon. Mr. Gawler will have an opportunity of making a speech in reply.

Hon. J. E. DODD (Honorary Minister): I have just drawn attention to this case because I feel sure that, perhaps unintentionally, the hon. member has omitted to show a good many of the surrounding causes which justified the Attorney General in exercising his right to recommend mercy. I wish to refer to the case which the hon. member said was unconstitutional, namely, case 56. The Attorney General did not make it a condition that the man had to leave the State. Employment was found for the prisoner in one of the Eastern States, where his family undertook to look after him. Another case the hon. member referred to was No. 34. This prisoner was released on an undertaking being given by his brothers and sisters in the other States—not on any undertaking being asked for by the Attorney General—that they would look after him, and endeavour to give him a fresh start. This was substantiated by a declaration by a responsible solicitor that the family was in a position to carry it out. It is unconstitutional for the Attorney General to make any stipulation that a prisoner must leave the State, and no one realises that more than the occupant of the office. The hon. member in dealing with this case said it was unconstitutional for the Government through the Attorney General to take the action they did in regard to that case. Let me read two extracts from the file. This first one is from the superintendent of the Fremantle prison, and is dated 19th September, 1913. It is as follows:—

> If the Attorney General decides to recommend the remission of the remainder of his sentence I would suggest that it be on the understanding that he leaves the State, and be so timed as to enable me to place him on board one of the interstate steamers with his fare paid. I could arrange to see him safely away.

This is the recommendation of the superintendent of the Fremantle prison. Now here is a minute from the Attorney General to the Under Secretary of Law, as follows:—

> Please, however, draw special attention that no suggestion must be made with regard to any undertaking or understanding as to prisoners being released on condition that they leave the State. It is absolutely in opposition to the Governor's letters patent, and I particularly desire that matters of that sort should be left in the hands of this department.

That is the case to which the hon. member referred when saying that an undertaking was given by the brothers and sisters in the Eastern State. Nothing was demanded by the Attorney General, and he states emphatically to the superintendent of the Fremantle prison that it is against the Governor's letters patent to ask for such undertaking. I do not know that I can add anything further, except to say that very often a prisoner brings about his downfall through something that is not altogether his own fault. I think we are all beginning to recognise that there are forces surrounding the lives of prisoners, and sometimes they are inherited

forces, which make for bad rather than good. If we could possibly help a prisoner to lead a better life why should we seek by some idea of vengeance to keep him in gaol when there is a possibility of his being better outside? The purpose of the law is not one of vengeance, but one rather of reformation. Of all the cases referred to, in only one instance has the clemency of the Attorney General been abused, and in that case I think it was due to the failure of the prisoner to do what he promised, namely, to keep away from alcohol. Had he not gone back to the drink it is certain he would have been out of gaol to-day. I have nothing further to add. I think this is the ninth or tenth vote of want of confidence moved during the present session in this Chamber against the Government or some member of the Government, and I sincerely hope that members, after looking at this return and studying the reasons given for the release of the prisoners, will see that the Attorney General in almost every instance was justified in making the recommendation.

On motion by Hon. J. D. Connolly debate adjourned.

BILLS (3)—FIRST READING.

1. Factories Act Amendment.
2. Bills of Sale Act Amendment.
3. Boulder Lots 313 and 1727 and Kalgoorlie Lot 883 Re-vesting.

Received from the Assembly and read a first time.

BILL—EVIDENCE ACT AMENDMENT.

Second Reading.

The COLONIAL SECRETARY (Hon. J. M. Drew) in moving the second reading said: I would point out that the wife or husband of an accused person was prior to, and continued under the Evidence Act of 1906, a competent and compellable witness for either the prosecution or defence at every stage of the proceedings in certain cases, for instance, defilement, procuration, rape, assaults on females, and abduction. Under the Criminal Code, Chapter 24, Section 629, an accused person and the husband or wife of an accused person was made a competent, but not a compellable witness at every stage of the proceedings, with a proviso that no accused person might be called on behalf of the prosecution, and that the failure of any accused person or the wife or husband of the accused person to give evidence should not be made the subject of any comment on the part of the prosecution. These provisions of the Code relating to evidence were repealed by the Evidence Act of 1906 and a doubt was raised as to whether, except in those cases where the wife or husband of the accused is a competent and compellable witness, the wife or husband was a competent witness otherwise than as a witness for the defence. The provisions of the Code referred to were intended to be reproduced by Section 8 of the Evidence Act, 1906, and it would seem from paragraph (b) of that section that the intention of the Legislature was to continue the law as enacted by the Code whereby in all cases where the husband or wife, as the case may be, is not compellable the husband or wife should be a compellable witness, not only for the defence, but also on behalf of the prosecution. The question was raised recently in the case of a prosecution for bigamy, and the point was whether the lawful wife of the accused was a competent witness for the prosecution. Except for the provisions of the Criminal Code, which were intended to be reproduced in the Evidence Act, except for those provisions the woman with whom the man went through the form of marriage (his lawful wife being then living) was a competent witness, but the wife herself was not a competent witness to prove the fact of her marriage with the accused. The court, however, before whom the accused was tried, admitted the evidence of the lawful wife, but stated a case for the opinion of the Full Court. The Full Court held that the evidence was rightly admitted, but as the language of the Act is somewhat ambiguous it is

desirable to render the matter free from any doubt. The amendment which is introduced now will fit in with the ruling of the Supreme Court, and there will be no possibility of appeal in the future, as the meaning will be made perfectly clear. The object of Clause 2 of the Bill is to substitute for the words in the first three lines of Section 8 of the Evidence Act, 1906, the language of the repealed section 629 of the Criminal Code. Clause 3 amends the provisions of Section 29 of the Evidence Act, enabling a hostile witness to be questioned as to previous statements in writing by him inconsistent with his testimony on re-examination as well as upon his examination in chief as at present. It is proposed by Clause 4 to facilitate the proof of public registers so as to enable certified copies, or the *Gazette* containing the same, to be exhibited in courts of law and be put in as evidence. There are instances where registers may require to be proved and in order to prove certain points it would be very inconvenient to produce the originals and this Bill will enable certified copies to be produced. Cases may be cited in connection with the register of medical practitioners, dentists, veterinary surgeons, etc., and licenses which are required to be held for sundry purposes. I beg to move—

That the Bill be now read a second time.

Hon. M. L. MOSS (West): I have much pleasure in supporting the motion before the House. The Evidence Act of 1906 is a consolidation of all the statute laws of this State dealing with the law of evidence. I was responsible for the production of that Bill which is now on the statute-book and is known as the Evidence Act of 1906. It was a work undertaken when I had charge of the Crown Law Department, and I consider that three or four amendments in this Bill will certainly be an improvement on that measure. I am aware of the case alluded to by the Colonial Secretary which brings about the proposal to make the law clearer, as contained in Clause 2. The other portions of the Bill are merely formal, it seems, but will facilitate in the case of these registers and other matters, and the only other matter is that of being able to handle a witness who proves hostile at his re-examination as well as in the examination in chief.

Question put and passed.

Bill read a second time.

In Committee.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

BILL—UNIVERSITY LANDS.

Second reading.

Hon. J. E. DODD (Honorary Minister) in moving the second reading said: The Bill we have before us is similar to that which was presented last session for dealing with the exchange of the University lands. The Government and the University Senate are anxious to ratify an agreement for the exchange of these lands and the land to be exchanged is the same as was in last year's Bill. These lands will be found in the first and second schedule of the measure. The lands to be exchanged by the University Senate are certain endowment lands comprising a total area of 361 acres and they are situated at Fremantle, Cottesloe and, I think, Claremont. They are described in the first schedule. The land to be exchanged by the Government is Crawley Park, which was purchased by the late Government just prior to the present Government coming into office. It is unnecessary for me to make any long statement in regard to this Bill. The whole matter has been so thoroughly debated in another place, and thoroughly debated here last session on three different occasions, I think once in connection with the Bill and on two separate motions that came before the House, that there is really nothing new that I can add to the question at all, except to say that since the discussion on the last Bill a development has taken place by the Convocation of the University coming into the field. Convocation have carried certain resolutions in which they have attempted

to override the authority of the Senate. The Senate are the body appointed to control the management of the University, and it is thought that Convocation in taking the action they did have really gone outside the limits of their functions. They are more of an advisory body. The Senate are the governing body of the University and they are looked to by the Government as the body who should give directions in all financial transactions at least, and in all matters relating to those which are now before us in the Bill. The great trouble at the present time is this, that the University finds itself cramped for want of room in its present position, and hampered for want of money, and both the Government and the Senate want to have the question of the site settled. The Colonial Treasurer has stated that he will not go on making advances for temporary buildings on a temporary site. He thinks it is against the interests of the taxpayer and against the interests of the country in general to do this, because a large amount of the expenditure on temporary buildings on a temporary site will be wasted, and so it is desired to bring the matter to a head and let us know where we are in connection with this matter. I am sure that it is the wish of all concerned, now that the University has been established, to see the institution go ahead and it would be a thousand pities to see the University continue to be cramped in the way that it is at present both through want of buildings and through want of funds. Certain efforts have been made to try and get the Government to agree to a part of King's Park as a site for the University. Personally, and I am speaking for myself only, I do not think it will ever come about. I sincerely hope it will not. It would be the greatest mistake in the world to allow one inch of King's Park to be alienated. I think the Premier in his capacity as Colonial Treasurer has offered to provide facilities for the University if it is erected at Crawley Park, in the way of constructing a road around it, and in purchasing certain lands which will be required for University purposes. There is no doubt that Crawley Park is a suitable part for the University. The objection may be raised that we are taking a part which should always remain as a park, but the main purposes for which Crawley would be used as a park would still be preserved. There is a large area on the foreshore reserved for the use of the people for all time. I do not know that there is anything further I can add by way of introducing this Bill here. The Government have already bought some land and are prepared to meet the Senate in every possible way in trying to see the University so established that it will be useful to Western Australia and assist in the advancement of education in this State. I hope hon. members this time will realise the position and realise that we cannot go on making grants for temporary buildings on the temporary site. I have much pleasure in moving—

That the Bill be now read a second time.

On motion by the Hon. W. Kingsmill debate adjourned.

MOTION—LAND TAX DEPARTMENT, TO INQUIRE.

Debate resumed from the 2nd December on the motion of the Hon. V. Hamersley:—"That a select committee be appointed to inquire into the working of the State Land Tax Department, with power to send for persons, papers, and records, and to report on Tuesday, December 16th."

The COLONIAL SECRETARY (Hon. J. M. Drew): This is a remarkable motion moved at a remarkable time and supported by remarkable reasons. In the first place there is no such department as the Land Tax Department. The official designation is the State Taxation Department, but that is a very small matter indeed. Now for the reasons given, the reasons why the hon. Mr. Hamersley wants to see a full-blown select committee appointed to investigate matters connected with the Taxation Department. He wants to know how many appeals the department has received, and how they have

been dealt with. A few simple questions asked in this House would supply him with a full reply, and I think a satisfactory reply. There have been a few appeals dealt with, but practically all of them applied to the city of Perth and not to the country districts. The lands in the city were valued last year by a professional valuer. There has been only a delay of three months, and the reason is that the Commissioner is waiting for further appeals to come in, in order that the whole of the cases may be taken together, so as to preserve uniformity of principle in dealing with these cases. Then the hon. member said that the most important feature would be to ascertain the difference between the taxpayers' valuations and the valuations of the Department, and finallly after the assessments had been fixed, what scheme had been adopted for the disposal of the surplus. Of what utility would it be to the House or the country to know the difference between the valuations of the taxpayers and those of the Department? It all depends upon circumstances as to what the taxpayers' values would be. Under ordinary conditions they would be very low, but if there was a resumption in sight it would be very easy to come to the conclusion that the valuations would be high. I proved that yesterday by reading a return supplied by the Commissioner of Taxation. What interest it would be to know the difference between the taxpayers' valuations and the departmental valuations I altogether fail to see. With regard to the disposal of the surplus after an appeal and adjustment, the same course is followed now as when the Act came into force. If after an appeal it is found that the taxpayer has been assessed to an unduly high extent, the surplus is refunded, or it is credited to his account in the department. He is notified that there is a certain surplus, and that it will be paid to him or credited to him in the department. To secure this information Mr. Hamersley wants to put the whole machinery of a select committee into motion, and at this particular time, just a fortnight, or perhaps less, of the termination of the session.

Hon. R. G. Ardagh: That is worth knowing.

The COLONIAL SECRETARY: It is just possible that we will close the session within a fortnight. A select committee would have to call the officials of the department and send for papers. I feel sure that if the Legislative Council realises the position they will not agree to such a request. Section 6 of the Land and Income Tax Act pledges the officers of the department to secrecy, and under Section 7 they must take an oath of secrecy, and if that secrecy is violated by the officers, they render themselves liable to imprisonment for six months with hard labour. Now Mr. Hamersley wishes to call the officers of the department to give information in connection with the administration, and not only that, he wants certain records and certain papers to be presented to the select committee. This is asking for something which I am sure the House will not sanction. If the hon. member could bring forward specific instances of maladministration, or if he was in the position to make charges of corruption against the department, it would be an entirely different matter. It would then, perhaps, be possible to have these papers presented, or have the officials examined, but for the purpose for which he wants a select committee appointed, merely to secure information which could be easily obtained by asking questions in the House, I do not think the appointment of a select committee is at all warranted. I must therefore oppose the motion.

Hon. V. HAMERSLEY (in reply): One of my objects in bringing forward the motion was that in connection with the Land Valuation Bill which we had before us it seemed almost necessary to have further information. Under the Land Valuation Bill it seemed to me as if we were going to create a new department to deal with the same subjects that probably were already being dealt with by the Taxation Department. It seemed to me that the information which I wanted should be made available, and I

was anxious to know whether they had adopted any system that would be a guide to us in considering the Land Valuation Bill. Personally, I have an impression that systems have been suggested to that department, but that they have never adopted any of them, although they have spent something like £40,000 in arriving at values. With regard to the matter of appeals, my attention has been drawn to the fact that several of my friends have had appeals pending, and their money has been retained, and twelve months have elapsed before the appeals have been considered, and the department has had the use of that money for the whole of that period. That, to my mind, is wrong. I know for a fact also that people who have paid money into the department have not been able to draw it out, and they have been told that it would be held until the next period of taxation came round. When matters of this kind are brought under notice, it seems to me desirable that there should be an inquiry, so that it might be possible to find out the cause of them, as well as to get an insight into things which do not come before us, and which we have no knowledge of. However, the Land Valuation Bill having been finally disposed of by this House, there is not now that urgent necessity for the motion which I moved the other evening. Therefore, with the permission of the House, I will withdraw it.

Motion by leave withdrawn.

BILL—MONEY LENDERS ACT AMENDMENT.

Second Reading.

The COLONIAL SECRETARY (Hon. J. M. Drew) in moving the second reading said: The object of this Bill is to insert certain words which were in the original Money Lenders Bill, as passed by the Legislative Assembly, and which were struck out in the Legislative Council. The words occurred in Section 3 of the Act, and the effect of them was to make any person who lent money at a rate of interest exceeding 12½ per cent. per annum, a money lender, and so liable to be registered under the Act. The amending Bill will insert these words after the word "business" in Clause 3, and also at the end of paragraph (d). The effect of putting words at the end of paragraph (d) will be that insurance companies and others will only be exempt from the provisions of the measure if the rate of interest charged by them does not in any case exceed 12½ per cent. The necessity for this amendment was forcibly demonstrated during some bankruptcy proceedings which took place last month. I do not wish to reveal the identity of the parties concerned, and I will call them Jones and Smith. Jones was a railway signalman living in Perth. He lent Smith £20 with which to buy furniture, and he got security for the furniture. He was secured under a hire purchase agreement. The money was lent to Smith for three months. He had to pay £6 for its use during that time, and the amount was reduced to £15 10s. in three months. Jones charged Smith £8 9s. for a renewal for four months. Subsequently there was another transaction. Jones lent Smith £10 for one month, and charged £4 interest on that. The rate of interest in the first transaction worked out at 130 per cent. per annum, in the second 162 per cent. per annum, and in the third 430 per cent. per annum. This is a scandalous state of affairs, which was commented upon by both the Official Receiver and the Registrar in Bankruptcy, who pointed out the necessity for legislation to render such a condition of things impossible. If the Bill is passed, such cases as this will be covered. As the law stands at present, these cases are quite untouched. The only people who are within the Bill are those who carry on money lending as a business. The measure will bring the law here into line with that now existing in Victoria—the only difference being that our maximum is fixed at 12½ per cent per annum, whilst that in Victoria is 12 per cent. per annum. I beg to move—

That the Bill be now read a second time.

On motion by Hon. D. G. Gawler, debate adjourned.

ADJOURNMENT—SPECIAL.

The COLONIAL SECRETARY (Hon. J. M. Drew) moved—

That the House at its rising adjourn until Tuesday next.

Question passed.

House adjourned at 5.30 p.m.

Legislative Assembly,

Thursday, 4th December, 1913.

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The SPEAKER took the Chair at 3.30 p.m., and read prayers.

STANDING ORDERS AMENDMENT.

Mr. SPEAKER: I have to present the report of the Standing Orders Committee in accordance with the resolution of the House dated 4th November.

Report read.

Mr. SPEAKER: I recommend that a motion be moved that the report be printed. I do not think it desirable that the House should take the matter into consideration this session because the urgency for the amendment has passed, the Estimates having been dealt with by the House, but if the report is printed the matter can be discussed by the House next session.

On motion by the MINISTER FOR LANDS ordered, that the report be printed.

PAPERS PRESENTED.

By the Minister for Works: By-laws of following roads boards:—(a) Murray, (b) Melville, (c) Avon.

By the Minister for Lands: 1, Annual report of the Charities Department to 30th June, 1913. 2, Annual report of the Surveyor General to 30th June, 1913.

QUESTION—LICENSES TO COLLECT TURTLES.

Mr. MALE asked the Premier: 1, Is it correct that the Government have leased 300 miles of coast line for the right to collect turtles? 2, To whom has this coast line been leased? 3, When was it leased, and for what term? 4, What annual rent is being paid? 5, Is the lease an exclusive one, and does it prevent any other person from collecting turtles?

The MINISTER FOR LANDS (for the Premier) replied: 1, (a) Two exclusive licenses to farm and collect turtles (not being hawks'-bill turtles) have been issued over the coastal waters, including the coastal waters around certain islands, from the North-West Cape to Cape Lambert. (b) One license extends from the North-West Cape to Cape Preston, and the other from Cape Preston to Cape Lambert. 2, The exclusive licenses, as per Answer 1, have been granted to Mr. H. Barron Rodway. 3, (a) Exclusive license from North-West Cape to Cape Preston granted from 1st January, 1912. Exclusive license from Cape Preston to Cape Lambert from the 1st January, 1913. (b) The term of each license is seven years. 4, From North-West Cape to Cape Preston, £100 per annum; from Cape Preston to Cape Lambert, £50 per annum. 5, Yes, for sale, with exception of hawks'-bill turtles.