

bullion; and they did not want this clause at all. A simple way of dealing with the question would be to provide that any person exporting gold without making the necessary declaration should forfeit the gold. They would find there wouldn't be much exported without the declaration.

Clause agreed to, provisionally.

Clause 5—Act to come into operation on 1st January, 1889:

Agreed to.

Clause 6—Short title:

Agreed to.

Preamble and Title agreed to.

The House adjourned at a quarter to eleven o'clock, p.m.

## LEGISLATIVE COUNCIL,

*Tuesday, 23rd October, 1888.*

Merchandise Marks Bill: in committee—Boat Licensing Amendment Bill: in committee—Supplementary Estimates, 1888: reported—Bank Holidays Act Amendment Bill: second reading—Poor Houses Discipline Bill: second reading—Adjournment.

THE SPEAKER took the Chair at noon.

PRAYERS.

### MERCHANDISE MARKS BILL.

On the order of the day for going into committee on this bill,

THE ATTORNEY GENERAL (Hon. C. N. Warton) said he wished to be allowed to make one or two observations, which had escaped him in moving the second reading, with regard to one clause of the bill, to which he desired to call the particular attention of the House, because it involved a very important principle. In our criminal law procedure we had followed the course of English legislation in most respects, but there was one comparatively modern amendment in the procedure in England which had not yet, so far as he was aware, been adopted here, and that was as regards the law of evidence. In this colony, under

the present criminal law procedure, you could not put an accused criminal under examination, nor could you examine his wife, nor allow her to give evidence. But, in one or two cases, in England, as hon. members were aware, this was permitted, though a comparatively recent innovation. A great number of eminent authorities were in favor of altering the law of evidence in this respect, so as to allow accused persons in all cases to give evidence; but that had not yet become part of the criminal procedure, though, as he had already said, there were one or two exceptions in which this was permitted. The same principle was introduced in the present Act—it would be found in the 9th clause—and as it involved a very serious change in our criminal procedure he had thought it was only right he should direct particular attention to it, otherwise it might possibly escape attention in committee. It was considered desirable that, under this Act—where the offence perhaps might be a false representation as to the number of yards in a reel of cotton, or as to the weight or measure of any goods, or as to the mode of manufacture or production—it was considered desirable that the offender should be allowed to give evidence, and to have an opportunity of offering an explanation.

The House went into committee.

Clauses 1 to 8:

Agreed to.

Clause 9—"In any prosecution for an offence against this Act,—

"(1.) A defendant, and his wife, or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

"(2.) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced."

THE ATTORNEY GENERAL (Hon. C. N. Warton) said this was the clause he had referred to, as introducing a change, and an important one, in our criminal procedure here. He referred to the first sub-section. It would be for the committee to say whether the change was one which should be adopted in this

instance. Many persons, strong reformers, were in favor of its being adopted in all cases; but he left it to the committee here in the alternative—whether to strike it out altogether, or to adopt it with a limit as regards the present Act.

MR. PARKER asked whether this provision was contained in the English Act?

THE ATTORNEY GENERAL (Hon. C. N. Warton) said it was, and that was the reason he wanted to know whether the committee desired to assimilate our own law in this respect with that of the mother country.

MR. PARKER said the principle referred to was not altogether novel in this colony, as the Attorney General appeared to imagine. We had similar legislation provided in the Wines, Beer, and Spirits Sale Act, under which a defendant might be called to give evidence on his own behalf, and also his wife. He thought there was particular reason why in that Act this should be allowed, because the onus of proof, which usually rested with the prosecution, was thrown upon the defendant by that Act. It appeared to be the same in the present bill. He noticed that in several of the clauses the burden of proof was cast on the defendant, and not upon the prosecution; and, he should say, if ever there was an Act that ought to contain this provision, entitling a defendant to give evidence in his own behalf, it was an Act like this in which the burden of proof—contrary to the general course of procedure in criminal law—was cast upon the person accused. Therefore, he thought this was a very wise and proper provision that was introduced in this clause.

MR. HORGAN said that, under the summary jurisdiction of magistrates, the existing law enabled a magistrate, under certain circumstances, to examine a defendant; this section, therefore, would not be new to the procedure already adopted in this colony, and he thought the extension of the principle in this instance would operate in a satisfactory manner in the working of this Act. He was therefore inclined to support the clause.

The clause was then put and passed.

Clauses 10 to 13:

Agreed to, without comment.

Clause 14—Prohibition on importation:

THE ATTORNEY GENERAL (Hon. C. N. Warton) said it would be observed that this was a rather elaborate clause; it was taken from the English Act, and he was not quite certain in his own mind whether it was necessary to have these words here. Of course in the United Kingdom, with its varied and extensive manufactures, such a provision was necessary, to prohibit the importation from abroad of goods which might purport to bear the trade mark of an English manufacturer; but here, where there was no likelihood of goods being imported into the colony purporting to bear the name or trade mark of any local manufacturer, it almost looked like having too ponderous machinery to provide against such a contingency, to introduce an elaborate clause like this into our local Act. However, if the committee thought it desirable to retain it, in view of future contingencies, and the advancement of the colony, there it was.

MR. PARKER did not think the clause was likely to become operative for some time to come, but it could do no harm, and the time might come, with the development of our manufacturing industries, when the clause would be useful.

The clause was then adopted.

Clauses 15 to 17:

Agreed to.

Clause 18—"Any person who falsely represents that any goods are made by "a person holding a Royal Warrant, or "made for the service of Her Majesty, "or made for any of the Royal Family, "or made for any Government Department either in the United Kingdom or "in any of Her Majesty's possessions, "shall be liable, on summary conviction, "to a penalty not exceeding Twenty "pounds:"

THE ATTORNEY GENERAL (Hon. C. N. Warton) said this clause was introduced into the English Act because of a practice resorted to by tradesmen of putting the Royal Arms and other indications of Royal patronage upon their signs, to encourage custom, when in reality they had no authority for using such representations. Curiously enough, soon after his arrival in the colony, he was consulted by the Colonial Secretary with reference to the right of some person here who had assumed the Royal Arms, or represented himself as being patronised

by the Government; and it had occurred to him that it would be as well to introduce the same provision into our local Act.

Clause put and passed.

Title and preamble:

Agreed to.

Question—That the bill be reported:

MR. PARKER pointed out that although it was provided by clause 2 that any person convicted of an offence under this Act, by a court of summary jurisdiction, could appeal to the Supreme Court, yet no provision was made in the Act giving justices any special jurisdiction under it to try cases summarily; and unless that was done, or some statute passed for the purpose, there would be no special jurisdiction which would enable justices to deal with these cases. He could not help thinking that a person summoned under this Act, as it now stood, would have a perfect right to ask the magistrate where his jurisdiction was, giving him power to try the case.

THE ATTORNEY GENERAL (Hon. C. N. Warton) felt there was much force in what the hon. and learned member said, and that it would be better to give magistrates special jurisdiction under the Act, although it might almost be said that this was already contemplated by the 6th sub-section of the clause referred to, and other portions of the bill. However, he should be happy to adopt the hon. member's suggestion, on the re-committal of the bill.

Bill reported.

#### BOAT LICENSING AMENDMENT BILL.

This bill was passed through committee, *sub silentio*.

#### SUPPLEMENTARY ESTIMATES, 1888.

THE CHAIRMAN OF COMMITTEES reported the granting of supplies amounting to £16,659 3s. 1d.

#### BANK HOLIDAYS ACT AMENDMENT BILL.

THE ATTORNEY GENERAL (Hon. C. N. Warton) moved the second reading of this bill (for the purpose of establishing a holiday to commemorate the Foundation of Australia), without comment.

Motion agreed to.

Bill read a second time.

#### POOR HOUSES DISCIPLINE AMENDMENT BILL.

THE ATTORNEY GENERAL (Hon. C. N. Warton), without comment, moved the second reading of this bill.

Motion agreed to.

Bill read a second time.

The House adjourned at one o'clock, p.m.

### LEGISLATIVE COUNCIL.

Wednesday, 24th October, 1888.

Grants-in-Aid to Municipalities for Roads and Streets—Roads Bill: second reading—Inquests on Infants Bill: second reading—Quarantine Bill: second reading—Adjournment.

THE SPEAKER took the Chair at seven o'clock, p.m.

#### PRAYERS.

#### GRANTS-IN-AID TO MUNICIPALITIES, FOR ROADS AND STREETS.

MR. SCOTT, in accordance with notice, moved: "That an humble address be presented to His Excellency the Governor, praying that he will be pleased to place a sum of money on the Estimates towards the maintenance of the roads and streets in those Municipalities which have entered into responsibilities in the way of loans for the making of their roads and streets." The hon. member said he did so with some amount of diffidence, owing to the fact that, in his opinion, the revenue of the colony was almost sufficiently taken without any member daring to suggest any fresh demands upon it; but, if the resolution introduced by the hon. member for Plantagenet the other night, asking the Government to increase the vote for country roads, had been passed, and passed by a large majority, he thought, as a member representing one of the municipalities of the colony,