the measure was one which did not require that critical attention at the hands of the House as if it had been prepared by himself, and involved a principle which had not already received the assent of the Imperial Parliament.

Motion for second reading agreed to.

IN COMMITTEE.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) suggested, for the reasons already referred to, that instead of reading the whole of the various clauses of the Bill in succession, the short marginal notes which explained their object should be read.

MR. BROWN said he had no objection to such a course being adopted with respect to the present Bill, for it might as well be Greek or Hebrew, so far as he was concerned; but such a proceeding was contrary to the usual parliamentary practice, and he thought it was very desirable that they should adhere as closely as possible to precedents. He had on former occasions opposed the adoption of the course proposed to be pursued with reference to this Bill, for he did not think it was a wise or safe course to adopt, although no doubt it might be the means of saving a good deal of time.

Marginal notes only read, and Bill agreed to in Committee *sub silentio*.

The House adjourned at half-past eight o'clock, until Friday.

LEGISLATIVE COUNCIL,

Friday, 14th June, 1878.

Crown Agents—Point of Order; Confirmation of Expenditure Bill: resumption of debate—Wines, Beer, and Spirit Sale Act, 1872, Amendment Bill, 1878: second reading; in committee—Real Property Limitation Bill: second reading; in committee—Trespass Act, 1872, Amendment Bill, 1878: further considered in committee—Wild Cattle Nuisance Act, 1871, Amendment Bill, 1878: further considered in committee—Waste Lands Unlawful Occupation Act, 1872, Amendment Bill, 1878: third reading—Vaccination Bill, 1878: re-committed—Perth Drainage Rate Act, 1875, Amendment Bill, 1878: re-committed—Adjournment.

THE SPEAKER took the chair at 7 o'clock, p.m.

PRAYERS.

CROWN AGENTS.

MR. S. H. PARKER, in accordance with notice, asked, Whether it is a fact that it is incumbent upon the Local Government of this Colony to employ the Crown Agents to conduct all business in England relating to this Colony; or whether the Local Government is at liberty to effect purchases without the intervention of the Crown Agents, and to employ ordinary Commission Agents in the conduct and management of business in the Mother Country.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) replied as follows:—It is the practice in Crown Colonies to employ the Crown Agents to send out supplies for the public service, but His Excellency the Governor is not aware of any order of Her Majesty's Secretary of State for the Colonies making it incumbent upon him to do so.

POINT OF ORDER: CONFIRMATION OF EXPENDITURE BILL.

MR. S. H. PARKER (who moved the adjournment of the debate on the previous day) said the Point of Order raised by the hon. member for the Vasse was one of considerable interest and importance. As for himself, he had simply voted that the Bill in dispute should be referred to a Select Committee rather than to a Committee of the whole House in order to enable the members of the Committee to go into the details of the Bill, and to obtain every information with reference to the various items of over-expenditure. He had not the least wish or intention to burk the matter, and he was sure the hon. member for Geraldton when he proposed that the Bill should be referred to a Select Committee was actuated solely by a desire to elicit every possible information. His Honor the Speaker had however ruled that the resolution referring the Bill to a Select Committee was out of order, as being in contravention of the standing rules of the House and of parliamentary practice; and he (Mr. Parker) had no desire—and he was sure the House had no desire—to question the Speaker's ruling, but would readily agree to the amendment that the order be rescinded. Nevertheless, he felt sure that His Honor the Speaker would have no objection, if any hon. member doubted the correctness of his ruling, that he should say so; and, so far as he (Mr. Parker) was con-

cerned, he could not help saying that he agreed with the view taken of the subject by the Attorney General, and that the obvious intention of Standing Order No. 19 was that questions of finance should be considered in Committee of the whole in contradistinction to the ordinary sittings of the House. Having expressed this opinion, he was quite prepared to bow to His Honor's ruling, and to vote for the amendment of the hon. member for Vasse.

MR. SPEAKER: If hon. members wish to maintain the dignity of the House, it will not be by continually disputing the ruling of the Speaker—even though such ruling should happen to be wrong.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said the Government would be prepared to go into Committee on the Bill, on any day the House would wish to name.

Question—That the order referring the Bill to a Select Committee be rescinded—put and passed.

WINES, BEER, AND SPIRIT SALE ACT, 1872, AMENDMENT BILL, 1878.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved the second reading of a Bill to further amend "The Wines, Beer, and Spirit Sale Act, 1872." The first amendment proposed had reference to the allowing of masters of vessels—persons not being resident in the Colony—to sell liquor on board their ship, when lying in port, in quantities of not less than twenty gallons, provided immediate notice of the sale be given to the Customs authorities. The master of a ship which was lying in harbor, in one of our colonial ports, some time ago, happened to have a considerable quantity of spirits on board, and the captain—who acted perfectly *bonâ fide* in the matter—sold a quantity of it, and duly informed the Customs officers of the transaction; but some ingenious person discovered that the captain had no license for the sale of spirituous liquors and that therefore he had no right to dispose of the spirits in the manner which he did. As similar cases might occur in the future, the second clause of the Bill before the House rendered it lawful for the masters of vessels while in harbor to sell spirituous liquors in any quantity not less than twenty gallons, conditionally upon their giving such information to the principal officer of Customs as would prevent the revenue being defrauded by the transaction. The next two clauses of the Bill embodied certain proposals which the Government had brought forward last Session, having reference to permitting a licensed person charged with supplying liquor to an intoxicated person to give evidence for the defence, in the same manner as any other witness, and also admitting the evidence of the licensed person's wife in like cases. The House would observe from the notice paper that the hon. member for Geraldton had also intimated his intention of re-introducing the clauses which he had brought forward last Session when the Publican's Bill was under discussion, so that virtually the House was in the same position now as it was then, both as regarded the Government proposals and the hon. member for Geraldton's propositions. Were the matter left with him (the Attorney General) to decide personally, he certainly must say that he regarded the amendments suggested by the Government as far more satisfactory than the alterations proposed by the hon. member opposite (Mr. Brown); but as that view of the matter was strongly contested last Session, His Excellency the Governor, looking at the division list on the occasion when the House divided on the question, and looking also at the composition of the Council at the present Session, and believing there was no chance of carrying the Government propositions rejected by the House last Session, thought discretion would be the better part of valour on the part of the Government, and that the best thing they could do was—to use a somewhat unparliamentary expression—"cave in." He therefore proposed, when the House went into Committee on the Bill, to withdraw the third and fourth clauses, and to accept the amendments which stood in the name of the hon. member for Geraldton. The fifth and last section of the Bill raised a somewhat important question. Hon. members were aware there were sections in the Licensing Act which empowered all sorts and conditions of men—corporate bodies,

ratepayers, ministers of religion, and officers of police—to object at any licensing meeting to the granting or renewal of a license. There was another clause in the existing Act which rendered the application for licenses a judicial proceeding, and which required the licensing magistrates, upon the granting of a license, to issue a certificate testifying their satisfaction that the person to whom the license was granted was a person of good fame and reputation, and fit and proper to be licensed. As would be in the knowledge of hon. members, a short time ago an application was made by a Mr. Hosken to the licensing bench at Geraldton for a gallon license, but the majority of the sitting magistrates refused to grant the license—although no objection was made to the granting of it by any person privileged to take such objection. The magistrates, in fact, initiated the objection themselves, and thereupon proceedings were taken in the Supreme Court to obtain a rule calling upon the magistrate to show cause why the license should not be granted. When the case came to be argued before the Chief Justice, His Honor decided that it was not competent for the magistrates to initiate any objection themselves, but only to deal with objections made by persons privileged under the Act to object. It was now proposed to alter the law in this respect, and to empower the licensing magistrates, or any one of them, to initiate an objection to the granting of a license,—which, it appeared to him (the Attorney General), was a very desirable provision. If the granting of licenses was to be made discretionary with the justices at all, it appeared to him that the very essence of the exercise of that discretion must be not merely to deal with objections made by other persons but that they should have power to initiate objections themselves. He would ask the House to consider the position in which the justices might otherwise find themselves. The House would bear in mind that he was not now speaking of the Geraldton case—his sympathy in that case was entirely with the person who applied for the license—he did not think the grounds of objection were good—but he would ask the House to consider in what position the magistrates might find themselves, if denied the right to initiate objections to the granting of licenses. A man who had been previously convicted before the same bench, scores of times, as a rogue and vagabond, might have the effrontery to apply for a license, and would it be contended for a moment that simply because no corporate body, or minister of religion, or police officer made any objection to the granting of the license, the magistrates should be compelled to issue it, and to certify that the applicant was a person of good fame and reputation. The clause in the Bill now before the House was intended to remove this absurd anomaly. It was proposed to render it competent for the licensing justices to exercise their own unfettered discretion, and to initiate any objection that may be lawfully made, as matter of their own knowledge, to the granting of a license, without waiting for such objection being made by any of the privileged persons or bodies at present empowered to do so. The objection raised by the magistrates in the Geraldton case was that there was already a sufficient number of gallon licenses in force in the town. In his own opinion he did not think much of that objection—he did not see why they should not have free trade so far as gallon licenses and spirit licenses were concerned—but it was a very different thing with respect to public houses. And even with regard to these, his own opinion always had been that, to a great extent, it was an utter fallacy to consider that the more public houses there were, the more drinking there would be. Of course, if there were no public houses at all, there would be no drinking; but if there were already three taverns in a town he very much doubted if drinking would be increased to any extent if another were added. That, however, was only a matter of opinion; the ordinary principle upon which the law went with respect to the granting of these licenses was that their number should be limited. And, if the licensing magistrates were of opinion that two public houses were quite sufficient in a place, why should they be required to grant a license for a third, if no objection thereto happened to be made by the parties at present privileged to make such objection? As he had already said, it was now proposed to invest them with power to state an objection, in open court, as

matter within their own knowledge, why a license should not be granted. Upon such an objection being made, it would be competent for the applicant to apply for an adjournment of the case in order to enable him to produce witnesses, and to otherwise afford him a better opportunity of answering the objection. With these observations explanatory of the object of the Bill, he would now move that it be read a second time.

Motion for second reading agreed to.

IN COMMITTEE.

Clause 1.—"Short title and incorporation with 36th Victoria, No. 5:"

Agreed to.

Clause 2.—"It shall be lawful for any person being resident in the Colony, whether holding any license or not under the said Act, to sell or dispose of any liquor that may be on board any ship lying in any port or harbor of the Colony, or in any 'Queen's Warehouse,' in quantities of not less than twenty gallons; provided that immediate notice of such sale be given to the principal officer of Customs at the port where the said ship may be lying, or where the said 'Queen's Warehouse' may be, and that the said liquor be sold in the casks or cases in which the same was imported:"

MR. SHENTON thought the Committee should carefully consider the provisions of this clause before agreeing to it. He thought the clause was one which would be liable to a great deal of abuse, and he failed to see any necessity for it. At any rate, the person selling ought to be compelled to pay a small license fee.

MR. MARMION asked what particular necessity there was for extending the charity of the House in this direction to masters of vessels, and persons not resident in the Colony. If any person in the Colony wished to sell twenty gallons of spirits he could not do so without paying a license, and he would like to know why strangers should be permitted to do so. If the master of a vessel was anxious to dispose of any spirits he might have on board, he could do so through the agency of a licensed person; —in the majority of cases the agents of the ship would be found to be spirit merchants, and no difficulty would be experienced in disposing of any surplus stock of spirits on board. As the hon. member for Toodyay had pointed out, the clause would be liable to all sorts of abuse, and he failed to see any necessity for it whatever.

MR. CAREY: I certainly shall oppose it. The practice referred to by the Attorney General, of selling spirits in port, has been abused more than once by the captain of the vessel referred to by the hon. gentleman.

THE ATTORNEY GENERAL (Hon. H. H. Hocking): If that be the case, it cannot be anything else but sheer smuggling, and if the hon. member has such information as will lead to a conviction, he should communicate with the detective office.

MR. CAREY: I think after what has fallen from the hon. gentleman I shall be perfectly justified in informing the House that no one better knows the whole circumstances connected with this smuggling transaction than the hon. gentleman himself. The captain in question having, at the Vasse, made such sales, the matter was brought under the Attorney General's notice, for his legal opinion, by the police, and that opinion was circulated among, and initialed as read by, the magistrates at the various ports of the Colony. Not very long afterwards, the same captain visited Bunbury, and actually in the face of the circular, received from the magistrate of that port permission to sell. The police, more alive to their duties, or better remembering the Attorney General's memo., prosecuted, and had the Captain fined £50 by the very magistrate who gave the permission. The hon. gentleman now brings in a clause to legalise such transactions.

MR. MARMION moved, That the clause be struck out. He objected, on principle, to the enactment of measures brought forward to favor individual persons. He did not think such a provision was called for in any way, and if adopted, it would unquestionably open the door to a great deal of abuse.

THE ATTORNEY GENERAL (Hon. H. H. Hocking): So far as the Government is concerned, we have brought this clause forward to meet a difficulty that has occurred, and which may occur again.

It is alleged, as an argument for not introducing the clause, that there is no necessity for it, because, as a rule, the agents of vessels coming here are themselves gallon license holders, and it may seem somewhat strange that the two hon. members who have put forward that argument are shipping agents themselves, and, I believe, also gallon license holders. At any rate, as no one seems to take much interest in the question, and as no one rises to support the clause, I am sure I do not at all care; and if the feeling of the House is against it, I am not at all prepared to insist upon pressing the motion for the adoption of the clause.

Clause struck out.

Clause 3.—"Section six of 'The Wines, Beer, and Spirit Sale Act, 1872, Amendment Act, 1875' is hereby amended by omitting the words 'less than £2 nor' in the fourth line:"

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved that this clause be struck out.

Agreed to.

Clause 4.—"Whenever any charge is brought against any licensed person under section six of 'The Wines, Beer, and Spirit Sale Act, 1875,' it shall be lawful for such licensed person, and for the husband or wife of such licensed person, to be sworn and give evidence in the same manner as any other witness:"

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved that this clause, also, be struck out.

MR. S. H. PARKER pointed out that the amendments put forward by the hon. member for Geraldton did not in any way meet the necessity for allowing a licensed person's wife or husband to give evidence, which he (Mr. Parker) regarded as a very desirable provision. Cases might arise in which, were such evidence admissible—and publicans and their wives were as a body as respectable as any other class of the community, and their evidence was entitled to as much credence as other people's—cases might arise in which were the husband or wife allowed to give evidence would clear up the whole matter at issue, and show that the charge made against the licensed person was without foundation. As the law stood at present, neither the publican nor his wife was allowed to give evidence, and, to his own knowledge, this restriction had worked a good deal of hardship in more than one case.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) thought that, on reconsideration, the hon. member who had just spoken would view the matter in a different light, and be induced to withdraw his opposition to the striking out of the clause. The House ought to be chary in altering the law which provided that accused persons may not give evidence in their own defence. The question involved was a very important one, and had already been discussed in the Imperial Parliament, and in the leading periodicals of the Mother Country. It was a question which some day might form the subject of debate in that House, when it would have to be considered on its merits; but he did not think it was desirable or expedient at present to depart from the general practice, unless for very good and sufficient reasons. The Government, in the Bill which they had brought forward had proposed to make a departure from the usual practice, and for a very good reason, for in the Bill as it originally stood it was intended to depart from another principle of law and to throw the onus of proof upon the accused instead of on the accuser; and, under those circumstances it was deemed that it would have been but fair that the husband or wife of a publican should be allowed to give evidence. But the clause of the Bill which proposed to throw the onus of proof of his innocence on the accused had been withdrawn, and the clause proposed by the hon. member for Geraldton substituted. In the substituted clause there was no departure from the usual course pursued in cases of criminal procedure of casting the onus of proof upon the accuser, and the necessity for any exceptional legislation in favor of the accused had been withdrawn. However much the rule of law might work injustice, it would not do to make exceptions in particular instances unless the surrounding circumstances themselves were exceptional.

MR. MARMION, while agreeing to a great extent with what had fallen from the Attorney General, thought there was in the case of publicans charged under the clause of the existing Act

referred to some reason for departing from the usual rule of practice; that reason was this—in ordinary cases a person accused was accused of some act of his own, for which he was accountable; but in the case of the publican, the accused was held liable for the acts of his servants, his barman, or his agent, and not alone for his own acts. Under these circumstances, he thought it would be no injustice or unfairness to depart from the usual rule of law and allow the husband or wife of a publican to give evidence. He had no particular wish to press this matter, but he must say that he agreed with what had fallen from the hon. member for Perth.

MR. S. H. PARKER: I consider that the new section proposed by the hon. member for Geraldton only refers to the offence of allowing a drunken man to remain on the premises; but, as hon. members are aware, publicans are liable to be subjected to a number of other charges at the hands of an energetic police. With regard to the particular offence referred to, it may not be altogether desirable to depart from the usual rule of law, but in other charges to which publicans are liable I think it would be very wise and very expedient to allow the husband or wife to give evidence. In most cases the accused person really knows more than any one else; and this is true not only in instances where the accusation is just, but also where it is unjust. The justices are not bound to believe the evidence of the wife or husband—they would be the parties who would be best able to judge whether the evidence was worthy of credence or not, and they would attach as much value to it as it was worth. I cannot help thinking that the majority of those charges made against publicans which render them liable to a fine only, are more in the nature of a civil than a criminal offence; and, as hon. members are aware, the defendant in a civil action is allowed to give evidence, as, for instance, under the Bastardy Act. It appears to me there is just as much reason why a publican should have the same privilege. I certainly coincide with the hon. member for Fremantle (Mr. Marmion), that it would be nothing but fair to allow the husband or wife of an accused publican to give evidence, as was proposed by the Government, and I trust other hon. members will regard the matter in the same light.

MR. BROWN: The section referred to by the hon. member for Perth (Mr. Parker)—sec. 6, 39th Vic. No. 11—is not so wide in its scope as the hon. member thinks, and only applies to the offence of allowing a drunken man to remain on the premises; and the section which the Attorney General has moved to strike out of the Bill now before the House has reference only to the sixth clause, and would not have applied to any offence other than referred to in that clause. Therefore if the section were allowed to remain, as desired by the hon. members for Perth and Fremantle, the husband or wife would not be allowed to give evidence when they were charged with any other offence than allowing a drunken man to remain on the premises, any more than under the existing rule of law. I admit there is a good deal in what has fallen from the two hon. members as to the expediency of allowing the husband or wife to give evidence, but I do think the preponderance of arguments is against it, and my feelings in the matter are entirely with the Attorney General. I would ask hon. members to bear in mind that the Government have come forward without prejudice to meet us in the matter of these amended sections; and, inasmuch as the clause which the Attorney General proposes to strike out did not emanate from us in any way, and was proposed by the Government specially to meet a special case, I think the House would do well to adopt the suggestion of the Attorney General, and allow the clause to be expunged.

MR. S. H. PARKER said he would not oppose the motion.

Clause ordered to be struck out.

Clause 5.—"Whenever any application "shall be made for any license, or for "the transfer of any license under the "twentieth section of the said Act of "1872, it shall be lawful for the licensing "magistrates, or any one of them, "although no objection is made to such "application by any person or by any "corporate body pursuant to the pro-"visions of section twenty-three or "section twenty-four of the said Act, to "make any objection that may be law-"fully made to the granting of such ap-

"plication by stating the same in open "Court as a matter within his or their "knowledge, and thereupon the applicant "shall be heard by himself and his "witnesses upon the matter of such ob- "jection, and may, if necessary, apply "for an adjournment of the case, to "afford him a better opportunity of "answering such objection; and after "hearing such objection and the appli- "cant as aforesaid, it shall be in the "absolute discretion of the licensing "justices to grant or withhold the certi- "ficate set forth in the seventeenth "schedule of the said Act, as they may "see fit:"

MR. S. H. PARKER moved, that this clause also be struck out. It appeared to have been introduced by the Government in consequence of the Geraldton case referred to by the hon. the Attorney General, and it did seem somewhat strange that in the solitary instance quoted in support of its introduction, the magistrates who exercised the power which it was here proposed to vest in them, had exercised it wrongfully. Yet, the hon. gentleman asked the House to give the justices absolute discretion in the matter of initiating objections. The effect of granting such a power would be simply this: no person would be safe as regarded his license. It was all very well for the hon. gentleman to put an extreme supposititious case, such as that of an often-convicted rogue and vagabond applying for a license; but they should also consider the other side. To go to another extreme, it was just possible that a whimsical justice might object to a man obtaining a license because he had red hair, or that the color of his eyes were black, or some other equally absurd reason, as was the case at Geraldton where the ground of objection was that a sufficient number of gallon licenses were already granted, whereas, in fact, the number was notoriously insufficient to meet the requirements of the town. Extreme cases were much more likely to occur under the proposed alteration than under existing circumstances. He had not heard of any abuses arising out of the present state of the law in the matter. Applicants for licenses were compelled to advertise in the newspapers, and to otherwise make public their intention to apply for a license, thus giving every opportunity for the ratepayers, corporate bodies, the police and other privileged persons who had the right to object, to make their objection. He thought it would be a most unwise proceeding on the part of the House to invest the licensing justices with absolute discretion in a matter of this kind, for after all they were but human, and as such, liable to be swayed by prejudice and personal antipathy. He hoped the clause would be struck out.

MR. BURT said he certainly could not congratulate the Government on the introduction of the present measure. The Bill contained but five sections, inclusive of the title clause, and already the second, third, and fourth clauses had been struck out, and there was every probability of the fifth sharing the same fate. Under these circumstances, he thought the Government must admit it would have been better had they left others to deal with the question, and acknowledge their own incapacity to do so. He agreed with the hon. member for Perth in the reasons he had assigned for opposing the clause under the consideration of the Committee. He (Mr. Burt) certainly was not in favor of extending the discretionary powers already possessed by magistrates in this Colony. There were magistrates and magistrates. Some of them resided far away from head quarters, and were beyond the reach of counsel and advice from the law officers of the Government: the discretion of some of these justices meant a great deal more than many people imagined. As the law now stood, it was within the province of any ratepayer and of other privileged persons to exercise the right of objection, and if these persons did not come forward to do so, in the face of every publicity being given to the applicant's intention to apply for a license, it was the fault of the community upon whom the licensed person intended to prey, if any unfit or improper person obtained a license. He failed to see why the House should be asked to go out of its way to afford protection to people who would take no steps to protect themselves, when the means of doing so was placed in their hands. Another objectionable principle involved in the clause under review was that it allowed the accuser to be the judge of the accused,—a course which would

render judicial proceedings a mere farce. He thought the Attorney General was very unfortunate in having but one case to bring forward in support of the proposed innovation, and that, too, a case which the Supreme Court had ruled to have been out of order. As to the extreme case, of the "rogue and vagabond" applicant,—which the hon. gentleman had evolved out of the depths of his own inner consciousness,—there were equally extreme instances of magisterial perversity on the other side. He was loth to tell little stories in that House of cases which had come within his knowledge outside, otherwise he might refer to instances in which it was alleged that the renewal of licenses had been refused because the publican would not shut up a door, or bore a hole in a wall. He thought it would be a great mistake to vest such discretionary power in a magistrate as was contemplated in the clause before the Committee. If the licensing bench were cognisant of any good grounds for refusing to grant any particular person a license, they could soon have the objection brought forward by the police. It appeared to him that the privilege of raising objections was already extended quite far enough, and he hoped the Committee would oppose the introduction of the clause. Let it be struck out, like the rest, and the hon. member for Geraldton might then take charge of the Bill, and introduce his proposed amendments.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) said that, so far as he was concerned, he never objected to exchange a few hard blows with anyone, and if hon. gentlemen opposite at any time wished for a war of words, he would be always happy to accommodate them. But, he must say it appeared to him that the constant sneers and the attacks made upon the Government by the hon. member who had last spoken (Mr. Burt) were somewhat out of place, in a member occupying the position which that hon. gentleman held in the House. He (Mr. Burt) had only spoken once or twice as yet in the course of the present Session, but hon. members would remember the frequently sneering tone of his remarks when commenting upon the conduct of the Government during previous Sessions. In referring to the present Bill, the hon. gentleman had thought fit to speak of the Government's incapacity to deal with the question involved. For his (the Attorney General's) own part, he did not regard the fact of the Government having consented to the striking out of some of the clauses of the Bill as evidence of any incapacity on their part to deal with the matter. He had already said that, so far as he was personally concerned, he believed the amendments proposed by the Government were the best, and he had endeavored to explain to the House why the Government did not press those amendments. The hon. gentleman (Mr. Burt) had twitted him—as if he had been addressing a common, very common jury, of very stupid people—that, in the particular case referred to (at Geraldton) in which the magistrates had exercised the power which it was now proposed to lawfully vest in them—the hon. gentleman had twitted him with the fact that in that case he (the Attorney General) did not think the magistrates had exercised the privilege wisely, and on sufficient grounds. But the Court did not grant a mandamus because the reasons assigned by the magistrates for refusing to grant the license were bad—those reasons, in fact, were never brought into dispute; they might have been good or they might have been bad—the decision would have been just the same, for the simple reason that the Court conceived that the magistrates had no right to initiate the objection. The hon. member for Perth (Mr. Parker), in the course of his remarks, suggested the possibility of a magistrate refusing to grant a license on the ground that the applicant had red hair or black eyes, but he would ask the hon. member to see how the clause under consideration guarded against such a puerile objection being entertained. The justice or justices had to state their objections in open court, as a matter within his or their own knowledge, and those objections must be lawful objections, and such only as would be entertained if urged by any other party. The real question for the consideration of the House was, were they to leave the control of these licenses to the licensing justices or to the paramount control of the ratepayers? As the law stood at present, the licensing magistrates were

the only persons who could not originate an objection, whereas he maintained they were the very persons best qualified to make an objection. There was no unfairness, or hardship, or injustice towards the applicant, in the proposed alteration of the law, for he would have the same opportunity of defending himself as if an outsider had made the objection.

MR. MARMION said he intended to support the amendment to strike out the clause. He saw no necessity for altering the existing state of the law, and he thought it would be derogatory to the licensing bench, in their judicial capacity, that they should—as possibly might be the case in many instances—be the only persons to come forward to raise an objection to an applicant being granted his license. The bench would always take care, if they were aware of any valid objection, that it should be brought forward through the instrumentality of the police, who were always at the beck and call of the magistrates, and who, as a rule, were in a better position than the licensing bench to know the character of an applicant for a license. If the clause became law, it would leave the bench open to a charge of partiality, and place magistrates in a very invidious position. It appeared to him that this was only another instance of the practice obtaining in this Colony of legislating to meet individual cases.

MR. BROWN said the justices throughout the Colony were under the impression, until the Geraldton case came before the Supreme Court, that they possessed the very power which the present Bill proposed to grant them.

MR. MARMION: That might have been the case in the country.

MR. BROWN: By that, I suppose the hon. member means to infer that country justices have not as much brains or knowledge as the justices in Perth or Fremantle. Without entering upon that question, I think I may venture to say that a very general impression prevailed among magistrates generally that they had the right exercised by the Geraldton bench. Had the magistrates in the Victoria district not labored under the belief that they possessed this right, very grave abuses would have occurred in the granting of licenses in that district. Persons of the character sketched out by the hon. the Attorney General—men of notoriously bad reputation—would have become possessed of licenses; application after application from such men have been refused by the bench under the impression that they had the power to initiate an objection. But the ruling of the Chief Justice has removed that impression, and it is now proposed to give them the right and privilege possessed by corporate bodies, ministers of religion, the police, and ratepayers generally, who as a rule do not care to come forward to raise objections, even when it is notorious that the applicant is not a fit and proper person to hold a license.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said he had no intention of traversing the arguments used on either side. He was glad to find that on this occasion, as on previous occasions, the hon. member for Geraldton had taken a broad and proper view of the question, but he was very much surprised at the hon. member Mr. Burt making use of the language he had. He hoped the Committee would not be led away by the idea which seemed to have possessed the hon. gentleman himself,—that he sat in that House as an independent member. He either sat there as a nominee and supporter of the Government, or else he had no business in the House at all. His proper course, if he demurred from the proposition put forward by the Government was to have spoken to the Attorney General on the subject; such comments as the hon. member had indulged in the House were very ill-timed and in no way justified. All he (the Commissioner of Crown Lands) had to say was—if such conduct was to be repeated, he hoped this would be the last occasion he should have to sit beside the hon. member in that House.

MR. BURT: Is there any other hon. gentleman who would like to have a shot at me? Had I, in the course of my remarks, made use of any expression derogatory to the dignity of the House or the Government,—had the moral lecture which the hon. gentleman who has just sat down thought fit to address to me been deserved,—I would be inclined to hang my head in abject shame. I may have said some hard things, which were not pleasant to my

hon. friends on the left, but what is the real state of affairs in connection with this Bill? It will be in the recollection of the House that the very amendments which, with the concurrence of the Government, are now about to be introduced by the hon. member for Geraldton, were previously brought forward and vetoed by a previous Administration; and I now find that out of the five sections constituting the present Bill—one of which sections is merely the title of the Bill—three have been withdrawn. Under these circumstances, was I not justified in stating that the Government had proved themselves on this occasion incompetent to deal with the question before the House. I did not say so in any spirit of ill-feeling, and I am at a loss to know what has called the remarks of my hon. friend the Commissioner of Crown Lands. As to his presuming to dictate to me what position I occupy in this House, I beg to tell him that I am perfectly well aware what that position is. I am no more a thick-and-thin supporter of the Government than my hon. friends on the opposite benches are. I am a nominee member, I am aware; but the hon. gentleman on my left (the Commissioner of Crown Lands) is not even a nominee. He simply holds a position in this House *ex officio*. He was not even nominated, or elected, and therefore I consider that my position in the House is much higher than that occupied by him, for I am, at any rate, a nominee. And I consider that I represent the country as well as any other hon. member in the House. The House must not run away with the idea that because I am a nominee member I was instrumental in bringing forward any of these Government measures. I never even saw the Bill now under discussion until it was laid on the table of the House for the information of other hon. members, and had the Attorney General kept his ears open he must have known very well that I objected on principle to the clause now under discussion. These Bills come before me for my observation in this House just the same as any other member. If I had a voice in the policy of the Government, there might be some pungency in the hon. gentleman's remarks; but as I have not, all I can say is, if that policy is such that I can conscientiously support it I do so; but in the present case I am opposed to the principle involved, and therefore I am not prepared to support it, and I shall sit here nevertheless.

THE ATTORNEY GENERAL (Hon. H. H. Hocking): With reference to what has fallen from the hon. member, Mr. Burt, I do not in the least quarrel with him for opposing this particular clause, or any other provision of the Government to which he cannot conscientiously give his adherence; but I do think it appears strange he should retain his seat as a nominee of the Governor and yet indulge in sneers against the incapacity of the Government, which we have not heard from any other hon. member but himself.

MR. MARMION said the hon. member for Geraldton had stated in the course of the debate that, in many cases in the district which he (Mr. Brown) represented, people of bad character might have obtained licenses had it not been that the magistrates were laboring under the impression that they had a discretionary power to grant or withhold a license, and to originate an objection. He (Mr. Marmion) considered that if the police in that district performed their duties, no person of ill-fame would have any chance whatever of obtaining a license. He would regret to see the magisterial bench descend from its high judicial station to that of a witness against an applicant for a license. He could not see how a magistrate who had originated an objection against any person applying for a license could consistently sit to adjudicate upon that person's application. The Attorney General said he could not see why justices should be debarred from originating objections any more than any other section of the community. He (Mr. Marmion) did not think they were debarred. Any magistrate, so long as he was not sitting in his judicial capacity, could come forward in any Court to show cause why an applicant for a publican's license should not have his application granted. He thought the clause was a mistake, and he hoped the House would agree to throw it out.

MR. S. H. PARKER pointed out that, if a magistrate really wished to originate an objection against any person receiving a license, it was quite competent for him

to do so, as remarked by the hon. member for Fremantle; but let him keep away from the bench, and not be his own prosecutor, witness, and judge. As for the Commissioner of Crown Lands, that hon. gentleman seemed to have risen merely for the purpose of saying that the hon. member for Geraldton had taken a "broad and proper view of the subject," because he happened to take the same view of it as the hon. gentleman himself. Being satisfied with that, the hon. gentleman then proceeded, in a fit of virtuous indignation, to deliver his admirable moral lecture on the position of a nominee member—a lecture which he (Mr. Parker) could not help thinking would have been more appropriately delivered outside the walls of the House.

MR. BROWN pointed out that no one had yet replied to the Attorney General's question, namely, if they were not going to allow Justices of the Peace to originate objections in a case which they knew to be objectionable, why did they require (as the existing law provided) that the licensing magistrates shall certify that they are satisfied the applicant is a "person of good fame and reputation." How could they expect magistrates to certify to that which, of their own knowledge, they knew to be false? Again, what would be the result in out-of-the-way localities, where there were no corporate bodies, and no police to originate an objection, if the magistrates were deprived of the power to object? Was every applicant who came forward to obtain a license—although it might be within the knowledge of the justices that the applicant was a person utterly unfit to be entrusted with a license. As to the remarks which had fallen from some hon. members with respect to the great number of amendments which had been proposed in the Bill, the House should bear in mind that it was not to be expected the Government would make their Bills perfect, before they were subjected to a critical analysis, which was the very object of introducing them for the consideration of the representatives of the people in that House. The simple fact of a Bill not being in accord with the views of hon. members, did not prove the incapacity of the Government to deal with the measure.

MR. SHENTON said he would support the clause. As to its being likely to work any hardship, because of prejudice or ill-feeling on the part of a magistrate, he would remind the House that, according to the provisions of the 21st section of the existing Act (36th Vic. No. 5) no certificate shall be granted, or license renewed, transferred, or declared forfeited, unless "three Justices of the Peace" shall be present, of whom the Resident Magistrate shall be one. This being the case, it was not likely that any feeling of personal antipathy on the part of any individual magistrate could operate to the prejudice of an applicant. No doubt, as had been pointed out, the 23rd section of the Act empowered corporate bodies, ministers of religion, and other privileged persons to originate objections; but, as a rule, it would be found that these people did not care to come forward to oppose an application for a license. He thought himself that when a magistrate was cognisant of his own knowledge that an applicant was not a fit and proper person to have a license, he should have a right to state his objection, especially as it was provided that such objection must be made in open court.

MR. MARMION considered that every man who came before a court of justice with an application should be judged according to the evidence adduced, and not according to any circumstance which might be within the cognisance of the magistrates. It was a very unusual thing for a judge to intimate what the probable verdict would be which he would give, before the evidence was adduced upon which that verdict should be based. He regarded it as unfair and unwise that justices should enter into the arena of debate in their own courts as to the character of persons being tried before them.

MR. CAREY asked the Attorney General whether a Resident Magistrate had not the power, under the existing licensing law, to deal with applications, without the assistance of any other justices?

THE ATTORNEY GENERAL (Hon. H. H. Hocking) said though he was not prepared, as a rule, to expound the statutes of the Colony at a moment's notice, he was prepared in the present

case to reply to the hon. member's question. If the hon. member would look at the 30th section of the Act, he would see that, if "three justices qualified to form a licensing meeting for proceeding under the Act shall not be present by one o'clock of the appointed day at the court house," it was not incumbent on the Resident Magistrate to sit there, in silent and solitary grandeur any longer; he was empowered to grant any certificate for a license, under the Act, provided no other magistrates attended.

Question put, "That the clause stand part of the Bill," upon which a division was called for, with the following result:—

Ayes	... ...	8
Noes	... ...	7
Majority for	...	1

AYES.	NOES.
The Hon. M. Fraser	Mr. S. H. Parker
Mr. Brown	Mr. Burt
Mr. Shenton	Mr. Hardey
Mr. S. S. Parker	Mr. Pearse
Mr. Harper	Mr. Carey
Mr. Hamersley	Mr. Monger
Mr. Brockman	Mr. Marmion *(Teller.)*
The Hon. H. H. Hocking *(Teller.)*	

The clause was therefore ordered to stand part of the Bill.

THE ATTORNEY GENERAL (Hon. H. H. Hocking), in accordance with notice, moved, That the following new clause be added:—"Any person not being the holder of a publican's general license, who shall after the 30th of September next, in any house keep or maintain a billiard table or a bagatelle table open to the public, without being duly licensed to keep and maintain such table in such house, shall, on conviction thereof, forfeit and pay any sum not exceeding Ten pounds."

Question—put and passed.

MR. BROWN, in accordance with notice, moved, That the following new clause be added:—"Section 6 of 'The Wines, Beer, and Spirit Sale Act, 1872, Amendment Act, 1875,' shall be and the same is hereby repealed."

Question—put and passed.

MR. BROWN, in accordance with notice, moved, That the following new clause be added:—"If any person shall in any house licensed under this Act, or upon any of the appurtenances thereof, supply to any other person whilst in a state of intoxication any intoxicating liquor, the person so supplying such liquor shall forfeit and pay, for every such offence, any sum not exceeding Five pounds."

Question—put and passed.

MR. BROWN, in accordance with notice, moved, That the following new clause be added:—"If any holder of any license under this Act, or any agent, barman, or servant acting for or on behalf of such holder, shall knowingly or carelessly allow any intoxicated person to remain in or upon his licensed house or any of the appurtenances thereof, the holder of such license shall in each case be liable to a penalty of any sum not exceeding Five pounds. Provided, nevertheless, that if upon the hearing of any information or complaint against any such licensed person for a breach of this section, it shall be proved to the satisfaction of the Justice or Justices of the Peace by whom such information or complaint shall be heard or determined, that the intoxicated person whom such licensed person, his agent, barman, or servant as aforesaid, has allowed to remain in or upon his licensed premises was, at the time of the alleged offence, a *bonâ fide* lodger at such licensed person's house, and that every due and proper precaution was observed by such licensed person, his agent, barman, or servant as aforesaid, to prevent such lodger from drinking, or expending his money upon intoxicating liquor whilst in a state of intoxication, then such information or complaint shall be dismissed as against such licensed person."

Question—put and passed.

Preamble and Title agreed to, and Bill reported.

REAL PROPERTY LIMITATION BILL, 1878.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) moved the second reading of a Bill for the further limitations of Actions and Suits relating to Real Property. The main object of the Bill was to shorten the period of prescription from twenty years to twelve, and to do away with the extension of the period of prescription at present allowed in case of the absence beyond seas of the person having the right to bring an action for the recovery of land or rent, and of charges thereon.

Motion for second reading agreed to.

IN COMMITTEE.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) proposed that, as the Bill was an exact transcript of Imperial Acts, the marginal notes to the various clauses be read instead of the clauses themselves.

MR. BROWN said that, upon the assurance of the Attorney General that the Bill before the House was an exact transcript of Imperial Acts, he would not object to the adoption of the course proposed to be pursued, but, as a rule, he thought the course was open to objection.

Bill passed through committee *sub silentio*, and reported.

TRESPASS ACT, 1872, AMENDMENT BILL, 1878.

IN COMMITTEE.

Further consideration of New Clause 4:

MR. CAREY said he would withdraw this clause in favor of the amendment of which the hon. member for Swan had given notice, relating to the maximum distance for which persons driving stock to pound shall be allowed mileage payment.

Clause, with leave, withdrawn.

MR. CAREY then moved that the following new clause be added and stand as clause 4: "That it shall be incumbent upon all owners of wire fences now erected, or hereafter to be erected along the boundary of any declared main road, to provide a top rail of wood. Provided, that in the case of fences already erected as aforesaid, a period of twelve months from the date of the passing of this Act shall be allowed to the owners or other person or persons under whose charge such fences may be." The hon. member said he had been asked to bring forward this clause in the interests of those who complained that several accidents had occurred—in consequence of wire fences having no protecting top rail—both to cattle and horses, on the main roads. He did not know much about the matter himself, and would be glad to hear an expression of opinion from those hon. members who did.

MR. BROWN said the hon. gentleman had failed to show any adequate cause, or indeed any cause whatever, for the adoption of so sweeping a course as that which was contemplated in the clause before the Committee. He would ask the hon. member to consider what would be the expense of carrying out his proposition; what would be the expense, for instance, in a district like the Greenough Flats, where the settlers had to import all their timber for post-and-rail fencing. Nor was Champion Bay the only district which would be affected in like manner: the same scarcity of timber, and the same difficulty of carrying out the provisions of the clause, would be felt almost all the way from the Victoria district to Roebuck Bay. It would be utterly impossible for the majority of farmers to comply with such a regulation, for the cost of such a fence as that contemplated would be six times the cost of an ordinary wire fence. He had not heard of any serious accidents to stock, arising from the present condition of wire fences, and he did not think there was cause for much alarm on that score. For the past three or four years his horses had been confined in paddocks with wire fences, and no injurious results had been experienced. He would certainly oppose the clause as unnecessary and impracticable.

MR. SHENTON said no doubt the proposed regulation would be a very good thing in districts where the supply of timber was unlimited, such as the district represented by the hon. member who had brought forward the clause; but, in the Eastern districts, it would be almost impossible to have top-rails of timber on all the wire fences.

MR. S. H. PARKER was surprised to learn that there was a scarcity of timber in the Eastern districts: he would not agree with that. At the same time he would oppose the introduction of the clause on the grounds referred to by the hon. member for Geraldton, and because, it would, in his opinion, incur a great deal of unnecessary expense.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) had no desire to *rail* at the hon. member for the Vasse, for introducing such a clause, but looking at the great hardship and unnecessary expense it would entail in such localities as the Murchison, he could not support the clause.

MR. CAREY was pleased to find that the hon. gentleman who had just spoken

had no intention of "*wiring*" into him on the present occasion; and as the general feeling of the House seemed to be adverse to the introduction of the clause he would, with leave, withdraw it.

Motion withdrawn.

MR. BROCKMAN moved an amendment to the effect that the maximum distance for which persons driving stock to a pound should be allowed mileage shall be ten miles. His object in introducing such a provision was to interpose some check on a vexatious practice which was becoming altogether too prevalent, namely the driving of stock unnecessarily long distances to a pound, out of a sheer feeling of revenge, animosity, or cupidity. The amendment he proposed would tend, to some extent at any rate, to remedy this very common source of complaint.

MR. BROWN objected to the proposed amendment, which would operate unfairly towards persons who had just occasion to drive trespassing stock a longer distance than ten miles to a pound. He preferred the amendment which stood in the name of the Attorney General, relative to abolishing the existing scale of fees to be allowed as the cost of driving to the pound, and leaving it to the magistrates to allow such expenses to the complainant as they might deem reasonable and sufficient, having regard to all the circumstances of the case.

MR. CAREY would support the amendment. No doubt the greatest injustice had been committed under the law, as it stood at present. In many cases a very good living was made by unprincipled persons taking advantage of the existing Act.

MR. MONGER said he could mention more than one case in the York district in which the present practice had worked great injustice, and was resorted to by dishonest parties merely with a view to make money. One case, in particular, he considered a very great hardship: a person had some cattle which had gone astray, and on hearing of their whereabouts he sent for them. But he could get no assistance from the owner of the run whence they had strayed, who actually drove the cattle a distance of forty miles to a pound, at a great expense to the unfortunate owner, who was compelled to pay the mileage fee. The clause would have his support.

MR. SHENTON also expressed himself in favor of the amendment.

MR. BROWN said the revised scale of fees proposed by the Attorney General would tend to abate the evil complained of. It would be impossible to have a fixed scale applicable to all cases, but the principle which should guide the magistrates in determining the amount to be allowed should be that the person who had honestly and *bonâ fide* driven cattle to a pound should have all reasonable expenses allowed him, and no more. That was the old law on the subject; it had worked well formerly, and he did not see why it should not do so again.

MR. BROCKMAN was afraid that unless there was a fixed scale of charges, it would lead to endless litigation. He was not inclined in any way to encourage trespassing. It was however evident that people could not provide themselves with pounds, and he thought ten miles was a very fair maximum in respect of which to allow mileage allowance.

MR. PEARSE was in favor of the clause altogether, and its provisions were such as appeared to him entitled them to the support of the House.

MR. MARMION thought that in questions of this nature, members who resided in town should be guided to a great extent by the opinions of country members.

MR. S. H. PARKER said the thanks of the inhabitants of the city of Perth would be due to anyone who would devise some means to check the wandering propensities of metropolitan cattle.

MR. BURT said the twenty-fourth section of "The Trespass Act, 1872," provided a remedy for the grievance complained of by the hon. member for Perth.

THE ATTORNEY GENERAL (Hon. H. H. Hocking): That section is repealed.

MR. BURT: Then I think the best thing we can do is to re-enact it, for there is no doubt that wandering cattle are a great nuisance.

The amendment of the hon. member for Swan was then adopted, whereupon

THE ATTORNEY GENERAL (Hon. H. H. Hocking) withdrew the new clause standing in his name relating to abolishing the fees now allowed as the cost of

driving stock to pound, and leaving the magistrates to decide the amounts of costs.

MR. BROWN moved—That the words "in any public pound" in the 2nd section of "The Trespass Act, 1872," be repealed, and the words "in the public pound nearest to the scene of trespass," be substituted in lieu thereof.

MR. HAMERSLEY objected to the proposed amendment. The public pound nearest the scene of trespass might not be large enough to accommodate the stock to be impounded, and this would be very inconvenient, if, as proposed, people were to be restricted to this particular pound.

Motion agreed to.

Preamble and title agreed to.

Bill reported, and ordered to be printed.

WILD CATTLE NUISANCE ACT, 1871, AMENDMENT BILL, 1878.

IN COMMITTEE—FURTHER CONSIDERATION OF

Clause 2.—"No unlicensed person to "kill wild cattle, and licensed persons only "to kill upon lands over which they may "be licensed to do so, under a penalty "of any sum not exceeding £100:"

Agreed to, without discussion.

Clause 3.—"Any person who shall be "shown to have killed or destroyed any "horse or horned stock, except at a "homestead, shall be deemed (for the "purposes of any prosecution under this "Act) to have killed wild cattle, unless "he can show that the animal which he "killed was a branded animal, which he "had lawful authority to kill:"

MR. S. H. PARKER pointed out that the clause was a somewhat dangerous departure from an established principle of law governing criminal prosecutions, namely, that the onus of the proof of guilt shall lie with the complainant and not (to the contrary) with the accused. Such a provision might prove a great hardship on innocent persons, and lead to a great deal of injustice.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) thought that, practically speaking, there was but an infinitesimal chance of such cases arising. On the other hand it was very desirable that every protection should be afforded stock-owners against the depredations of dishonest persons.

The clause was agreed to.

MR. S. H. PARKER moved an amendment to the 7th section of the existing Wild Cattle Nuisance Act, to the effect that any breach of that section—which provides that persons destroying any branded stock shall take the skin to the nearest policeman—shall be deemed an offence, rendering the person omitting to comply with the requirements of the clause liable to a penalty not exceeding £100, instead of (as the law at present stands) being deemed guilty of larceny.

The amendment was adopted.

Progress was then reported, and leave obtained to sit again for the further consideration of the Bill in Committee.

WASTE LANDS UNLAWFUL OCCUPATION ACT, 1872, AMENDMENT BILL, 1878.

Read a third time and passed.

VACCINATION BILL.

On the Order of the Day for the third reading of this Bill being read,

MR. BROWN directed the attention of the Government to the desirability of making some provision for the re-vaccination of adults, and for permitting parents to show cause why a child should not be inoculated under certain circumstances.

THE ATTORNEY GENERAL (Hon. H. H. Hocking) said the suggestion would receive the attention of the Government.

Progress was then reported, and the further consideration of the Bill was made an Order of the Day for Friday next.

PERTH DRAINAGE RATE—AMENDMENT BILL.

This Bill was agreed to (without discussion) in Committee, with amendments, the third reading being fixed for Wednesday.

The House adjourned at half-past eleven o'clock, p.m.