vocating this measure advise us, on what they regard, after seeing the country, as being a gamble that is likely to turn out successfully. [*The Minister for Works*: There was only one member said that.] Two members alleged that other railway gambles had proved prosperous, had led to great development of our mining resources, therefore this new gamble should be adopted. I contend that argument should not be submitted to this House, and in any case we should have an inquiry before any of these railways are agreed to. I am not urging it more in regard to this than in regard to other railways that follow it. Just as I am urging it now I urged it last year in regard to the agricultural railways. This country is launching out very heavily in railway expenditure without having the best guarantee that we shall obtain that return in the way of development we have a right to expect from the heavy expenditure of loan funds involved.

Question passed.

Bill read a second time.

BILLS (2)—FIRST READING.

1, Marriage Act Amendment; 2, Police Force Consolidation; received from the Legislative Council.

ADJOURNMENT.

The House adjourned at 10.33 o'clock until the next Tuesday.

Legislative Council,

Tuesday, 20th August, 1907.

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

Prayers.

ELECTION RETURN, EAST PROVINCE.

The PRESIDENT announced the return of writ for the election of a member for the East Province in the place of the Hon. C. E. Dempster, deceased; showing that the Hon. George Throssell had been duly elected.

The *Hon. G. Throssell* took the oath and subscribed the roll.

PAPERS PRESENTED.

By *the Colonial Secretary*: Fremantle Harbour Trust, Annual Report to 30th June, 1907.

MOTION—AGRICULTURAL RAILWAYS, COMMISSION TO INQUIRE.

Debate resumed from the 14th August, on the motion by the *Hon. J. W. Wright* for a Royal Commission to inquire into the construction of the Goomalling-Dowerin, Wagin-Dumbleyung, and Katanning-Kojonup Railways.

The COLONIAL SECRETARY (Hon. J. D. Connolly): While the Government are always desirous of offering every facility for inquiring into any public works by Royal Commission or otherwise, I think the House will readily agree with me that Mr. Wright has not put up a sufficient case in this instance to justify our agreeing to the appointment of a Royal Commission. The only contention of the hon. member was that these railways could have been constructed cheaper by the contract system than by the de-

partmental or day labour system, had they been carried out to the same specifications. Certain specifications and plans were prepared for these railways, tenders were called, and the department put in tenders—of course tendering on the same plans and specifications—and in the three instances the department's tenders were lower than those submitted from outside. On that account it was decided to have the work carried out departmentally to the same plans and specifications as the work was tendered for. The hon. member now asserts that these specifications were altered considerably, and that the railways were not constructed in accordance with the specifications tendered on, but on much cheaper and, as he maintained, worse specifications; but the only instance the hon. member gave of any departure from the original specifications was that sleepers—some, not all—were somewhat under the size laid down in the specifications. I am prepared to admit that some of the sleepers used in these railways were not, strictly speaking, up to the standard size laid down in the specifications. For instance, the sleepers were supposed to be 10in. by 5in., hewn and half round, but about 20 per cent. of them might not have been of this size, they might have been 9 inch, or 9½ inch frequently; but the engineers decided that they were quite good enough for light railways, and therefore did not throw these sleepers aside but used them. If these sleepers had not been used, the difference between their cost and that of sleepers of the specified size would have amounted to not more than £1,000 for the three railways; but against that, additional sleepers were put to each rail. If the length of the rail took 12 sleepers in the ordinary way, to make up for these lighter sleepers there were perhaps three or even more put in; so that there was no great saving effected. I maintain that if the engineers decided that these sleepers were quite good enough, and if they thereby saved the country £1,000, they were justified in doing so. It would have been different had the work been carried out by contract, the £1,000 would have gone then into the pockets of the contractors, but in this instance it was a clear saving to the country, and so was quite justifiable. Of course if these light sleepers had been allowed to go into the contract the country would have received no advantage in the price; it would have been a distinct loss to the country. Against that saving of £1,000, I may point out also that £700 odd extra was spent on earthworks over and above the specifications; and so it was give and take. Where the engineers thought the specifications needed improving, they were improved; on the other hand where the specification could be eased without detriment to the railways and with a saving to the country, they were altered. That is all the hon. member advances to justify the House in agreeing to the appointment of a Royal Commission, simply a question of proving that the work put into these railways could have been put in cheaper by contract than departmentally. Of course the main point in view is to get these railways at a minimum cost, because members will naturally see that the cheaper these railways can be built, the more of them the country will be able to build to open up farm lands and increase settlement on the lands. So, after all, the engineers were quite justified in reducing the cost in this instance, because the construction of these railways on a cheap scale was to a great extent an experiment. They have stood very well all through the winter. That was clearly borne out by the answers I gave in reply to the questions put by Mr. Wright some days ago. He asked me—

> "1, How many chains of formation and banks respectively, on the Wagin-Dumbleyung and Katanning-Kojonup Railways, have been either washed away or submerged during the recent rains? 2, What is the estimated cost of repairing the damage to same in each instance? 3, Have trains been able to proceed the whole length of lines in consequence of damage caused to the railways by flood waters?"

I replied:—

> "1, Wagin-Dumbleyung: six chains of formation flooded, and ballast

washed away. Banks neither washed away nor sub-merged. Katanning-Kojonup: eighteen feet of formation flooded and ballast washed away. Banks neither washed away nor submerged. 2. Wagin-Dumbleyung: £5. Katanning-Kojonup: 6s. 6d. 3, Wagin-Dumbleyung: Yes. Train tabled for 31st July was cancelled but ran on the following day instead. Katanning Kojonup: No. Trains have continued to run over the full length of line."

That is sufficient proof that the lines are well enough constructed to carry the traffic they were estimated to carry. To give an instance that the country really obtained value for the money on these railways, the cheapest agricultural railway we had previously built was the Northam-Goomalling, and the line cost £1,925 per mile; and the average cost of these lines, with rails at a price considerably higher than in the former case, was £1,081 per mile—a large saving. It has been amply shown that these lines are quite good enough to carry the traffic for which they are intended. The estimated cost of the three lines, and the lowest tenders, are as follow:—Goomalling-Dowerin: departmental estimate, £6,825; lowest tender received, £7,172; actual cost of construction, £6,500—about £300 under the departmental estimate and about £700 under the amount of the lowest tender. Wagin-Dumbleyung: departmental estimate, £12,347; lowest tender, £13,800; actual cost, £12,792—again a considerable saving. Katanning-Kojonup: departmental estimate, £18,075; lowest tender, £21,089; actual cost, £17,947. The State therefore obtained the same railways as would have been built by private contractors, except that in one instance the sleepers were a little lighter than those specified; and on the three lines there was a total saving of £4,841, being the difference between the actual cost and the total of the lowest tenders, together with a sum of £121 representing traffic earnings while the lines were in course of construction, which sum would of course have gone to the contractors had the lines been privately built. It is well known that personally I believe in having most public works carried out by contract, and that they can be done better by contract than by day labour. I do not depart in the least from that position; but I am now considering only the work with which we are dealing, and I ask whether the hon. member has advanced sufficient facts to warrant the House in committing the country to the expense of a Royal Commission to prove that these works could have been done cheaper by contract than by departmental day labour. I say I have given ample proof that they could not; that we have practically the same railways that we could have obtained by contract, and we have probably made a saving of £1,000, not allowing for the extra earthworks put in; that is, we have saved £1,000 by using light sleepers, while the difference between the total of the lowest tender for the three railways and the actual cost of the railways was £4,800. I maintain the hon. member has not shown that there is anything like this difference between the specifications on which the lines were built and the specifications on which the contractors tendered. I ask the House not to agree to a Royal Commission, as the expense is not warranted. One other point I forgot to mention. I think the hon. member said in his speech that the Premier gave evasive replies, or was misled by his departmental officers into giving such replies when a similar Royal Commission was mentioned during December last in another place. The Premier said then there was no necessity for the Royal Commission, as the lines were practically complete. The Commission was moved for on the 13th December; and the progress reports on the 30th November—a fortnight previously—were as follow. Wagin-Dumbleyung: clearing complete, formation complete, bridges complete to the 21-Mile, culverts to the 23-Mile, and plate-laying 13 miles. About the same proportion applied to the other lines, with the exception of the Katanning-Kojonup, of which 1½ miles had been completed, the whole clearing completed, and the earthworks completed with the exception of the backing to

bridges and culverts. There was only 1½ miles of plate-laying completed. One other point the hon. member mentioned: that the white ants had made serious inroads on the sleepers. The reports to hand show that the white ants have not interfered to any extent with the sleepers, except in one or two instances where they are slightly affected. White ants have attacked the timber in some of the culverts, but the sleepers have not as a rule been attacked at all. Granting they have been attacked, that is not an argument for a commission to inquire whether the lines could have been better built by contract than by day work; because the contractor would have used exactly the same timber for sleepers. For the reasons already stated local timber was specified, because the Government were extremely anxious to have the railways built as cheaply as possible, and the specification of local timber was somewhat in the nature of an experiment, to see whether local timber would suit, thus avoiding the expense of carting jarrah sleepers from a distance. The contractors would have had to do the same work as the officers of the department.

Hon. R. W. PENNEFATHER (North): Having regard to the many complaints which have from time to time appeared in the Press, and to the utterances of various gentlemen who have an intimate knowledge of the construction of such railways, I think it desirable that every opportunity should be given for ventilating the question, and for ascertaining whether the work has been properly and efficiently carried out. If it has been properly and efficiently carried out, then the knowledge of the fact will for some time to come silence the criticisms that are being levelled at the departmental construction of such works by the day labour system. If on the other hand it is shown that the railways have been most expensive and faulty in construction, then the question will necessarily occur to one's mind whether the system by which these works have been done should be any longer continued. We must bear in mind that when a Government department undertakes to construct work in which that department is its own supervisor, there is a tendency and a danger that the supervision will not be so strict as it would be if the work were performed by a contractor. That is one of the weaknesses of the system by which the Government does the work itself. But I venture to point out that as we are on the question of a Royal Commission, the language of this motion might with great advantage, and I think in the interests of the public generally, be widened to cover not only the construction of the three railways mentioned, but to authorise the commission to inquire into the working of the railway system generally. The question arises whether that is not too great an undertaking; but what is the present position of affairs? The former Commissioner of Railways has been retired; there is an acting Commissioner in his place. In consequence of the letters and the articles that have from time to time appeared in the Press, particularly those articles written by Mr. Chinn, the public mind has been aroused, and it will take something to quieten it; and nothing less I think, will be effective than a thorough inquiry into the working of the railway system, to see whether that system has been carried out with reasonable economy having regard to the public safety, or whether, as is alleged, the management has been so extravagant that we have been losing a large revenue which with proper management might have been saved. Before I mention any of the figures in support of my contention, I will point out that the number of miles open in this State is 1,612; in Queensland, 3,137½; and in South Australia, practically 130 miles more than in Western Australia. But the conditions in Queensland approach more nearly to ours than do the condition in any other State. For instance, the Queensland gauge is exactly the same as ours. In 1905-6, the latest year for which returns are available, the gross earnings of the railways of Western Australia were £1,634,444; while Queensland, with double the mileage, did not earn so much by £100,000, but earned only £1,546,083; and in South Australia

the gross earnings were £1,349,765. To put it therefore in a few words, Western Australia, with a shorter mileage than South Australia and with only half the mileage of Queensland, actually earned more than Queensland by nearly £100,000.

The PRESIDENT: Does the hon. member think he is speaking to the motion?

Hon. R. W. Pennefather: I intend to move an amendment.

The PRESIDENT: I would point out, the amendment must be relevant to the motion proposed.

Hon. R. W. PENNEFATHER: The amendment I shall move is that the words "and to inquire into the working of the railway system generally of the State," be added to the motion. We have staring us in the face the question, With this enormous income which our railways earn, why do they not make a greater profit? The figures show clearly where the leakage occurs. The working expenses of our system make the enormous total of £1,201,753, as against the total for Queensland, with double the mileage, of £863,356, and the total for South Australia of £764,385. A large discrepancy is at once apparent between the expenditure here and the expenditure in those two other States. The number of train miles run is also an important factor in showing how the returns are made up. The train mileage of this State for the year 1905-6, of which I am speaking, was 4,359,633 miles; that of Queensland 5,281,611; that of South Australia, 3,875,167. In other words, Queensland ran, during the period mentioned, nearly a million train miles more than Western Australia. Now I come to some of the other expenditure. It has been ascertained that the total number of persons employed in the accountant's, auditor's, and stores branches in this State numbered 242 against 121 in Queensland and only 59 in South Australia. The number of persons employed per train mile is four in this State, one and a half for Queensland, and two for South Australia, so that we practically employ, as against Queensland, nearly three times as many persons and twice as many as in South Australia. Now there is one item which when it was published at first made a great impression on my mind showing that there was something radically wrong, and I cannot understand how there can be such a discrepancy in this item alone between the three systems of railways. Under the item "greasing and oiling" the wages in this State amounted to £14,045, Queensland, with a system of twice the mileage, only paid £5,304, not even half the amount here, and in South Australia the amount was £1,545. Then there is the material for that purpose. The material for this State for oil and waste cost £4,158 as against Queensland's expenditure of £967, and South Australia's of £1,994. There is such an enormous difference between the amount spent here in that material and that spent in the other States that that item alone ought to challenge criticism and investigation. Then we come to the traffic expenses. Under the head of salaries the amount is £91,051 here as contrasted with £74,307 in Queensland and £40,481 in South Australia. Wages, £177,961 here, Queensland £115,019, and South Australia £88,362. Then there is an item which I know will at once attract the attention of some members. Under the head of advertising, printing, and stationery this State expends no less than £13,107, whereas Queensland only expends £3,749, and South Australia £6,189. Then if anything else were wanting, it might be said that although the item for grease and oil which is very necessary for lubricating purposes, particularly machinery, perhaps would be the means of saving a great number of accidents, yet under the head of compensation one is woefully disappointed when one ascertains that this State paid for the period I have mentioned £9,174.

Hon. M. L. Moss: There is an answer for that. We have the Workers' Compensation Act applied to the railways; they have not in the other States.

Hon. R. W. PENNEFATHER: Scarcely entirely, because the amounts expended by Queensland under that head is £686, and for South Australia £1,940. The explanation may help to some extent to swell the total, because every man

injured on the railways has to be compensated, but that would not account for the great difference. Under the head of general charges, including the Chief Accountant, and the Chief Auditor here, there is an amount of £20,230 as against Queensland's £11,730 and South Australia's £11,533, practically double is spent in this State as against Queensland with twice the mileage and South Australia with 100 miles more. (Interjection.) They run the trains evidently more efficiently than we do because their returns are more than ours. In addition to these figures it has been ascertained that during the last quarter, that is the quarter ending 30th June this year, the percentage of expenditure on these railways amounted from 73½ to 75. That is during the last available quarter, whereas Queensland reduced her expenditure during the last quarter from 55¾ to 54 and South Australia reduced hers from 56½ to 55. In regard to the profit for the financial year of which I have been speaking, Queensland earned by £287,000 more than it did the year before, the total amount of revenue being £1,822,000. South Australia increased her return by £227,000 and reduced her percentage of working expenses from 56½ to 55. Having regard to the fact that every member here will be faced very soon with the consideration of a Bill known as the land tax, and probably as things do not look better, very shortly afterwards with an income tax, I think it is absolutely necessary that the House ought to get all the available information they can with regard to this subject. An admission has practically been made by those in charge of the railways that since this agitation has been created a large reduction has been made in the railway staff, and the Colonial Secretary some week or two ago in answer to a question pointed out that 333 hands had been dispensed with. We can arrive very easily at what is the extent of that saving, putting down each hand at £3 a week, which would practically mean a saving of £50,000 a year on that alone. Not only can a saving be made in the fair reduction of superfluous hands but it is in the material and other working expenses to which my attention is directed that a greater saving can be made, and if already a saving of £50,000 a year has been made by the Government, the Government could make a saving on the railway system generally. That is one of the strongest arguments to use to show the absolute necessity of a Commission being appointed to inquire into the working of the railway system generally. The Commission can also extend their labours in the direction of ascertaining whether it is better that the system should be worked by a commissioner or three or two commissioners, and it will be the means of satisfying the public at large that this great spending instrument we have, as also this great revenue-earning instrument, is either being efficiently or inefficiently worked. If it is being extravagantly worked as I contend, and as other people with justice contend, the appointment of a Commission and the labours of the Commission bestowed on the subject will do much to relieve the position at present and relieve the State of the tension into which the minds of the people have fallen. I would point out to the Colonial Secretary that this motion is not in any way hostile to the Government. I want to assist the Government and give the Government every opportunity of finding out where the leakage is in this great department, where it can be cured and where it can be effected. There is no more efficient means to do that than by the appointment of a Commission to inquire into the subject. I therefore move as an amendment that the following words be added to the motion :—

And into the working of the railway system generally.

On motion by the *Colonial Secretary*, debate adjourned.

BILL—POLICE OFFENCES (CONSOLIDATION).

In Committee.

Resumed from the 15th August.

New Clause: Right to claim trial by jury in case of offences otherwise triable summarily:

Hon. M. L. MOSS (who had proposed the new clause) now moved an amendment—

That the clause be amended by striking out the words "of summary jurisdiction," in lines 10 *and* 23.

The object of this was to provide that the cases dealt with under the clause should be tried not only by a court of summary jurisdiction, but by a court of petty jurisdiction as well.

The CHAIRMAN: It was somewhat unusual for a member to move an amendment to his own clause.

Hon. M. L. Moss: The Hon. Mr. Pennefather would move the amendment.

Hon. R. W. PENNEFATHER moved to amend the clause in the form suggested.

The Colonial Secretary: What was the effect of the alteration?

Hon. M. L. MOSS: Under the Interpretation Act 1898, there were two courts mentioned, a court of petty sessions and a court of summary jurisdiction. The former was presided over by one justice of the peace, and the latter by two or more. There were a number of offences in the Bill some of which were triable by one justice and others by two or more. It would be stupid to give the right to an accused person to demand a jury where he was tried in the first place by two justices, and to deny that right where only one justice had heard the case. It would be necessary to give the right to the accused whether he was brought before the court of petty sessions or the court of summary jurisdiction.

Amendment passed; new clause as amended agreed to.

New Clause — Offences against the Pharmacy Act 1894:

Hon. M. L. MOSS moved that the following be inserted as Clause 110:—

It shall be the duty of any police officer at the request of the Council of the Pharmaceutical Society of Western Australia to prosecute any person who offends against the provisions of the Pharmacy and Poisons Act 1894.

The regulations as to the issue of licences for the selling of poisons and the punishment of persons breaking the Act were under the control of the Pharmaceutical Society, a body that carried out a very important function without any cost to the State. The sole sources of revenue to the society were the fees paid by the members and the fines imposed upon those committing breaches of the Act. The society undertook the important duty of preventing the indiscriminate sale of poisons. At the present time the society were placed in a difficulty in prosecuting for breaches of the statute, and they desired to be able to insist upon receiving assistance from police officials. At present they were unable to get the police readily to assist them in these prosecutions. If the society did not exist it would cost the Government a considerable sum of money to carry out the duties now undertaken by that body. As far as the metropolitan district was concerned the society were willing to undertake the duties of prosecuting offenders themselves, but the difficulty arose in the outlying portions of the State, when it was necessary that persons should be proceeded against for breach of the provisions of the statute. He had been informed recently by the registrar of the society that a number of prosecutions were instituted at Kalgoorlie, and that it had been necessary, owing to the obstacles put in his way, to go to Kalgoorlie himself. A number of persons were found guilty, but the amount of the fines imposed which went to the society did not compensate for the cost incurred by the registrar having to go the fields to prosecute. It was very dangerous to the community at large that persons should be able indiscriminately to sell poisons, and as the society carried out the highly important duty of preventing such breaches of the law, it was the duty of Parliament to give them the extra assistance they asked for.

Hon. C. A. PIESSE: The hon. member evidently wanted the police to prosecute at the State expense, and the society to obtain the fines imposed on the offenders. That was a very unfair proposition, for why should the State do the work and allow the society to take the fines? If the hon. member would go farther and say that in such instances

the police should receive the fines, then he would not oppose the amendment. If a storekeeper on the Arthur River had to be proceeded against for a breach of the Act, it would mean that the police would have to incur some considerable sum in prosecuting, the distance from Wagin being about 24 miles. It would not be fair in that instance for the society to receive the amount of the fine and the police to bear the burden of cost.

Hon. M. L. MOSS: The position of the society was, they were unable to prosecute for offences committed outside the metropolitan area. If the assistance they asked for were not granted to them it might possibly mean that lives would be lost through poisons being sold in the country districts in an indiscriminate manner by persons who were not licensed. If this happened there would very quickly be an outcry on the part of the people against the neglect on the part of the authorities, and inquiries would be made as to why prosecutions had not been instituted against these persons. Even if the prosecutions by the police cost the State a few pounds occasionally, surely that could not be said for one moment to weigh against the taking of steps to prevent these commodities being sold in an indiscriminate manner by unlicensed persons. Even supposing that the paltry costs had to be borne by the Government, that was but little argument to use against the passage of the clause, seeing what might result from its excision. As a matter of fact he could not see where the cost of the prosecution would come in. [*Hon. C. A. Piesse*: There would be the service of a summons 24 miles away.] That was comparatively small, considering the issues involved. The amendment was safeguarded, for it did not rest with the registrar of the society to request the police officer to take action, but it was for the council of the Pharmaceutical Society on having been informed that poison was being sold by unauthorised persons, to call upon the police to assist them in carrying out the work of prosecution. He had been rather astonished at the information given him by the society with reference to what was going on in connection with the sale of poisons by persons having no authority. If the proposed new clause were rejected, the responsibility must rest on the Chamber.

Hon. C. A. PIESSE had heard of no cases along the Great Southern line where unlicensed persons sold poisons. The hon. member would have to go farther than he now proposed, if he was to stop the danger of poisons being sold, for almost everyone connected with sheep in the Great Southern districts carried a bottle of strychnine in his pocket. How was that to be prevented? The people must be trusted, because when travelling stock, those in charge (if so minded) had ample opportunity of causing tragedies. The carrying of these poisons in such circumstances was a matter of necessity, and the mover of the amendment had been making a mountain out of a molehill. The object of the amendment would not be achieved without proceeding to greater lengths, for it would also be necessary to prevent these necessary poisons being passed from one stockman to another, and that would be ridiculous.

Hon. J. A. THOMSON could not support the amendment, as the object of the Pharmaceutical Society in asking for this amendment of the law was not so much the welfare of the people as to protect the interests of chemists, because storekeepers in different parts of the country were cutting into a branch of trade which chemists thought rightly belonged to them. Self-interest was the underlying motive for the request.

Hon. W. PATRICK: Had he had no knowledge of the question, he might have supported the amendment; but recollecting that cyanide of potassium, one of the most deadly poisons known, was freely sold all over the goldfields; remembering also that when he was managing a large station in another State he had to distribute strychnine in ounce bottles to stockmen as required, the thought often occurred to him that it was a tribute to the absence of criminality in Australia that instances of poisoning by strychnine were so rare. That poison was not then sold solely by chemists, but might be purchased in any quantity from

wholesale grocers. The object of the Pharmaceutical Society now was to restrict the sale of poisons in parcels of a few grains; but was it worth while to accept the amendment, seeing that the poisons now sought to be restricted had in the past been sold in tons without injurious results?

Hon. M. L. MOSS: One would suppose from the arguments against the amendment that it was sought to place fresh obstacles in the way of selling poisons. As a fact, there was on the statute-book of this State, as well as in most other States and in England, a Pharmacy and Poisons Act. A pharmaceutical society similar to that here had been in existence in Great Britain many years, and its duty was to see that the provisions of that statute were observed. It was surprising to hear Mr. Thomson say the sole object of the local pharmaceutical society was to protect the business of chemists. Many important duties devolved on the society, such as holding examinations into the qualifications of persons desiring to become chemists. In addition to strychnine and the one or two other poisons mentioned in the debate, there was quite a number of others referred to in the schedule to the Bill which people were debarred from dealing in unless properly licensed by the society. It was narrow-minded and unfair to assert that the society existed merely for the protection of chemists in this State. Were that society not in existence, a serious duty would devolve on the Government in carrying out the Act; and all that was asked here was that when an offence for which the society should prosecute was committed in the back country, the police should undertake the prosecution when requested so to do by the society. [*Hon. W. Patrick*: Were not the police bound to do so now?] No; the Commissioner of Police took the position that as this duty of prosecuting had been placed on the society, his department should not be called on to take action. If, however, it were made a mandate from the Legislature, the Commissioner would raise no objection. While this legislation remained on the statute-book, it was the duty of Parliament to endeavour to make it effective by providing the necessary machinery for giving effect to it in districts outside the metropolitan area.

Hon. J. M. DREW: If the amendment were carried, the effect would be to take the control out of the hands of the Colonial Secretary's Department and place it in the hands of the Pharmaceutical Society, who would then need only to instruct the police to take action; and if prosecutions so instituted were successful, the society would receive the amount of the penalties imposed. If the amendment passed, we might expect to hear of hundreds of prosecutions for selling carbolic acid, laudanum, spirits of salts, and other poisons which now were freely sold by storekeepers all over the country.

Hon. W. MALEY: The amendment did not aim at the institution of prosecutions by the society, nor at increasing the powers at present possessed by the society; but proposed merely that the society might be in the position, if in receipt of information that the Act was being contravened, of informing the police of such breach. The society would act merely in the capacity of detectives for the protection of the community and the preservation of the existing law.

Hon. J. W. LANGSFORD: The Pharmaceutical Society was responsible for the carrying out of the Pharmacy and Poisons Act, and every facility should be given in discharging that duty. The question arose, however, whether the Government could take action independently of the society. Under the amendment, which he supported, he thought the Government would scarcely be in a position to take such independent action.

The COLONIAL SECRETARY had no objection to the amendment, and was surprised at the opposition shown to it by some members, through a misunderstanding. Mr. Piesse appeared to fear that the intention of the amendment was to create a monopoly for chemists in the sale of poisons. [*Hon. C. A. Piesse*: None of his remarks would bear that meaning.] If he had misunderstood the hon. member, it was regretted. The passing of the Act of 1894 repealed the Poisons Act of 1879, which was thereby

embodied in the Pharmacy and Poisons Act 1894, and with the passing of the latter Act it became the duty of the Pharmaceutical Society to administer the Poisons Act. In the schedule to the Bill were enumerated some twenty different poisons, the sale of which was prohibited except by persons licensed for the purpose by the society. The duty was cast on the Pharmaceutical Society without any remuneration. The amendment simply gave the society the assistance of the police to carry out their work.

Hon. J. W. Hackett: Could not the society get that through the Minister?

The COLONIAL SECRETARY: That could be done; but if the police had instructions at all times to carry this out, it would be better. The Pharmaceutical Society were not likely to instruct the police to prosecute unless there were good grounds for prosecuting.

Question passed, the clause added.

Postponed Clauses 58 and 145—agreed to.

Schedule, Title—agreed to.

Bill reported with amendments; report adopted.

BILL—BANKERS' CHEQUES.

Second Reading moved.

The COLONIAL SECRETARY (Hon. J. D. Connolly): In moving the second reading of this small but important Bill, I would like briefly to state the facts that led to its introduction. I may say that a Bill of similar character is now before the Federal Parliament, but it is not certain that the Bill before the Federal Parliament will become an Act and it does not quite cover everything we desire in this State. If it does become law and the two Bills are in force, of course the Federal measure will prevail. In 1904 there was an action brought in Victoria by a Mr. Marshall and another trustee against the Colonial Bank of Australasia Ltd. to recover moneys overpaid on a cheque purporting to be drawn by Mr. Marshall and two other trustees. The bank held that the two trustees, Mr. Marshall and his co-trustee, had drawn a cheque carelessly so that their co-trustee was enabled to alter the cheque and increase the amount for which it had been originally drawn by Marshall and his co-trustee, and thereby received from the bank the excessive amount to which he had altered the cheque. The contention of the bank was accepted by the Supreme Court of Victoria, judgment being based on a decision in the English law courts in 1827 in the case of Young against Grote, but the judgment was afterwards upset by the High Court of Australia, and the case on appeal was then referred to the Privy Council, which upheld the decision of the High Court of Australia, thereby upsetting the case of Young against Grote. That was the position to the beginning of this year. Although that decision applied to the whole of Australia, in February last the associated banks of this State issued a notice consequent on which the necessity arises for introducing this small Bill. The notice was as follows:—

> "Notice is hereby given, that from and after this date it is to be deemed to be an express condition of the contract between the bank and every customer with respect to every account now opened or hereafter to be opened that if any cheque, draft, bill or note drawn on or made payable at any banking house or place of business of the bank has been so drawn, accepted or made by the customer or by any person authorised to operate on the account or otherwise on behalf of the customer as to afford facility for any fraudulent alteration in the amount thereof, and the cheque, draft, bill or note has been so fraudulently altered, such alteration shall as between the bank and the customer be deemed to have been made by the customer's authority, and that after this date no account will be continued or opened except upon such condition, and that every customer who operates either personally or by his agent on any account after this date will be deemed to have thereby agreed to such condition unless he shall have previously thereto have objected in writing and his objection shall have been accepted in writing by the bank."

I draw special attention to the words, "as to afford facility for any fraudulent alteration in the amount thereof." It was only the associated banks in this State who issued this notice. The Chief Justice of the High Court of Australia (Sir Samuel Griffith) in delivering the judgment of the High Court pointed out :—

> "It is manifest that a rule of law must be capable of being stated with sufficient precision to enable an ordinary person to know what are his duties under it."

This has an important bearing on the notice issued by the banks especially in regard to the words to which I have already drawn attention, "facility for any fraudulent alteration." The mere drawing a cheque, no matter how carefully it may be drawn, is offering facility. If the cheque had not been drawn there would not have been any facility. It is held that the mere drawing of the cheque is offering facility. Therefore if the notice was adhered to, no matter how carefully one might draw a cheque and it is afterwards altered, the bank accepts no liability, the drawer would have to accept the whole of the liability because of the words of this notice "facility for any fraudulent alteration." That is very different from drawing a cheque in a careless manner. Sir Samuel Griffith, in his judgment suggested the proper course that the bankers should take and the legislation which Parliament should adopt in order that the dealings between the parties should be fair. He said:—

> "A rule that the drawer of a cheque must use such care to avoid forgery as a future jury may think he ought to have used, would not afford any definite assistance to drawers. If the rule is put in the form that he must use reasonable care to prevent forgery, the question arises what is meant by "reasonable care?" Usually, in considering whether a thing is reasonable or not, all the circumstances must be taken into consideration. In this view, what would be reasonable care in an illiterate farmer might not be reasonable care in a skilled accountant. A rule which would make the question depend upon the capacity or education of the drawer of the cheque can hardly form part of the mercantile law. In the present day in Australia, banking accounts are kept by all sorts and conditions of men and women, who must equally be bound by the mercantile law. If bankers think that an intending customer is so unskilled as to be likely, from his carelessness in drawing cheques, to give opportunity for forgery, they can decline to accept him as a customer or they can stipulate, by a note printed in the cheque book or otherwise, that certain precautions shall be taken in drawing cheques. There is, therefore, no inconvenience in applying to cheques the general rule which applies to other cases of forgery."

Those are words of Sir Samuel Griffith, Chief Justice of Australia. If hon. members will turn to the Bill they will see that it clearly lays down the procedure the banks must adopt in order to protect themselves. Clause 3 says :—

> "1, Any banker may, by notice in writing, give specific instructions to his customer as to how cheques shall be drawn, so that the banker may not be unreasonably exposed to the risk of having to pay more than the proper amount of the cheque as drawn by the customer by the fraudulent alteration of the cheque. 2, Such notice shall be deemed sufficient if it is written or printed on the cheque form or counterfoil, or the cover of the cheque-book containing the cheque form, delivered to the customer or a person authorised by the customer to receive it on his behalf."

Bankers can have reasonable instructions printed on every cheque or counterfoil ; therefore they can lay it down in a contract between themselves and the customer how cheques should be drawn, and if the customer departs from the conditions stated in the contract, the law is that—

> "If such notice is given, it shall be the duty of the customer to follow the instructions set out, and the omission of the customer to do so shall, if the court is of opinion that the instruc-

tions were reasonable, be evidence of negligence in any action by the customer against the banker."

These two clauses lay down clearly how the contract shall be expressed as between banker and customer, or how the banker considers the cheque should be drawn; and if those instructions are reasonable —*Hon. R. W. Pennefather*: What is the definition of "reasonableness"?] — Clause 4 says the omission of the customer to follow instructions will be evidence of negligence. This leaves it to the court to say whether the instructions in that case are reasonable; but this Bill seeks to make it a contract.

Hon. M. L. Moss: Would it be a legal contract?

The COLONIAL SECRETARY: I have some of the best legal opinions in this State on the point, and they are to the effect that this would be a legal contract.

Hon. M. L. Moss: Will the Minister be satisfied to have the Bill referred to a select committee?

Hon. J. W. Wright: Has the Government been asked to bring in this Bill?

Hon. J. W. Hackett: Have the bankers seen the Bill? Has the Minister taken the opinion of the associated banks?

The COLONIAL SECRETARY: No; the Bill was introduced by the Attorney General, in another place.

Hon. J. W. Hackett: Has the Government taken the opinion of the banks?

The COLONIAL SECRETARY: When a Minister in another House has introduced a Bill and it comes to this House to be considered, the Minister introducing it here will not be up in every detail of the Bill; and I believe I am right in saying the Attorney General did see representatives of the banks on several occasions in reference to this Bill.

Hon. G. Randell: The Attorney General refused to assist the banks in the first instance.

The COLONIAL SECRETARY: These are the provisions of the Bill, stated briefly. It is held that this contract is one-sided, that the bank accepts no responsibility. As pointed out by the Chief Justice of Australia, if a man is too illiterate or too careless in drawing a cheque, the banker can refuse to keep that man's account; but is it fair to throw the whole responsibility on the customer, and that no matter how carefully a cheque may be drawn the loss is to fall on the customer in case of any improper use being made of that cheque? This Bill lays it down that the banker shall isue instructions in any way that may be thought necessary; and if afterwards the instructions are departed from by the customer in his manner of drawing the cheque, and the court decides that the instructions were reasonable, then the liability will fall on the customer and not on the banker. This is simply a Bill to force bankers to make equitable contracts between their clients and themselves; a Bill for the protection of the public. I move—

That the Bill be now read a second time.

Hon. J. A. THOMSON: I have great pleasure in supporting the second reading of the Bill, and have still greater pleasure in hearing that the Government were not approached by the associated banks or by banking people with a view to bringing in this measure, but were actuated by a desire to protect the public, while also reasonably protecting the interests of banking institutions. It would be well if this or any other Government would try to act in the same way as to introducing Bills, rather than that Chambers of Commerce or Chambers of Manufactures or the Pharmaceutical Society should approach the Government and ask to have measures passed into law for protecting some particular body or society, perhaps contrary to the interests of the general public. This is a very short measure, much to the point; and it is reasonable to expect that people doing business with banks shall take proper precautions to prevent any fraudulent use being made of cheques which have been signed.

Hon. M. L. MOSS (West): I want members firstly to understand the circumstances which have led to the Bill being introduced. These appear in the report of a case which was decided by

the Privy Council on appeal from a decision of the High Court of Australia, the same case which the Colonial Secretary has referred to, in which the Privy Council supported the judgment of the High Court of Australia. The statement of the circumstances is given in *Appeal Cases* (1906); and in delivering the judgment of the Privy Council, Sir Arthur Wilson makes this statement:—

"The two respondents, Marshall and Day, and one Myers, were executors of Ann Myers. As such they opened an account with the appellant banking company in Melbourne on March 24, 1900, when they paid in a sum of £1,596 15s. 2d.; and against that account cheques were from time to time drawn signed by the three executors. On May 25, 1900, before any of such cheques were drawn, the three executors addressed a letter to the bank, by which they requested the bank to pay cheques signed by the three, and sent specimens of their signatures. The course of business followed by the three executors amongst themselves was this. Myers, who alone resided in Melbourne, drew each of the cheques, sent it for signature to Marshall, who signed first, then to Day, who signed second, and finally added his own signature. Out of the total number of the cheques so drawn the present controversy relates to five cheques which, as originally drawn by Myers and signed by Marshall and Day, were for £10, £2 6s. 4d., £50, £10, and £10. But each of these cheques was so written out as to leave a space between the left hand margin and the statement of the amount of the cheque, both as given in words and as given in figures, and in that condition it was signed by Marshall and Day. Myers, by acts amounting to simple forgery, added words and figures to the left of those originally written in the cheques, so turning them apparently into cheques for £110, £32 6s. 4d., £150, and £110. The cheques in their altered forms were presented to and paid by the bank. And it has been found (and their lordships accept the finding) that the bank could not, by the exercise of ordinary care and caution, have avoided paying the cheques as altered. When the forgeries came to light, the bank claimed to debit the executors' account with the amounts of the cheques as paid by it in their altered form; whilst the respondents contended that the debit should only be of the original amounts of the cheques. The aggregate of the difference was £450."

The Colonial Secretary has correctly stated the duty of bankers in regard to their customers' cheques, up to this time, that where cheques were drawn in such a manner as afforded facility in the way mentioned in the brief statement and the facts I have read to the House, enabling a person into whose possession cheques came to add words and figures on the left-hand side of the writing and of the figures, and so alter each cheque that it was tantamount to forgery, then in law the banker, an innocent party, should not bear the loss. The law was that having exposed the bank to that risk, the drawer of the cheques was to suffer the loss. The position was that where two innocent persons were concerned in an act, then on the rule that the person who had least to do with the matter and had in no way afforded facilities for the wrongdoing, should not suffer, therefore the party who has given the opportunity for fraud should suffer the loss. That was regarded as the law; but evidently it was not the law, because the High Court of Australia supported by the Privy Council came to this conclusion, that the mere fact that a cheque is drawn, and suppose it can be utilised by alteration for a fraudulent purpose, that is not of itself any violation by the customer of his duty to the bank. In the first paragraph of the report of the Privy Council, it says:—

"The principles there laid down appear to their lordships to warrant the proposition that, whatever the duty of a customer towards his banker may be with reference to the drawing of cheques, the mere fact that the cheque is drawn with spaces such that a forger

can utilise them for the purpose of forgery, is not by itself any violation of that obligation."

So that what we all understand to be the law is declared not to be the law, and that where the drawer of a cheque leaves a space on the left-hand side of the writing and on the left-hand side of the figures, and so affords this facility for fraudulent alteration of the cheque, that does not relieve the banker, and if the banker has paid in absolute good faith, he has to pay over again. I am going to show how defective this Bill is with regard to other kinds of legal proceedings mentioned in Clause 4.

At 6.14, *the President* left the Chair.
At 7.30, Chair resumed.

Hon. M. L. MOSS (continuing): I think I had stated at the time we adjourned, what led up to the decision of that case of Marshall *versus* the Colonial Bank. And the Chief Justice of Australia in giving the judgment made the statement, I believe, that it was quite optional with the bank in dealing with a customer to so alter the basis of the contract between banker and customer, either by special agreement, or by putting a notice in the pass book or cheque book that would come under the notice of every customer, and it would be taken after that, if the customer continued to deal with the banker, on the conditions laid down, it would be deemed that he accepted this notice and waived the ordinary rule of law existing in a contract between a banker and a customer. This is an exceedingly peculiar Bill when one makes an examination of it. I think the Colonial Secretary will be somewhat astonished when I tell him that it is couched in such language that it will not achieve the object the Government have in view. If members will look at Clause 4 of the Bill they will find this statement:—

"If such notice is given it shall be the duty of the customer to follow the instructions set out."

That is the notice given by the bank. It goes on to say:—

"And the omission of the customer to do so shall, if the court is of opinion that the instructions were reasonable, be evidence of negligence in any action by the customer against the banker to recover the excess debited to his account."

So you see what is attempted to be enacted there is only to apply to an action by a customer against the banker to recover the excess debited against his account. That is, if another set of circumstances arose such as those which arose in the case of Marshall against the Colonial Bank, and the instructions given by the banker were reasonable, the banker would be exempt from liability. But the Government cannot have seen that if the customer takes his title deeds to the banker and lodges them against an overdraft, and no mortgage is given, and the time arrives for the banker to call on the customer to pay up the overdraft and the customer is unable to do so, the banker must go through this procedure: he would be obliged to apply to a Judge of the Supreme Court for an order to sell the property, and after that order is given the usual and necessary procedure for a Judge is to direct the Master of the Court to take an account to ascertain what is due to the bank. That is in a foreclosure. The same thing applies where a property is mortgaged to a mortgagee and the mortgagor is applying for a redemption of the property by means of action. The Court in such an instance will order an account to be taken. In these two instances, if a banker paid a cheque under the circumstances that it was paid in the case of Marshall, the unfortunate banker would have no protection under the Bill; because it is only in an action by a customer against a bank. If a bank brings an action against a customer for foreclosure it does not come within that clause. This benefit is only to be given in an action by a customer against the bank. It is quite absurd, even if we were prepared to swallow the whole Bill, and I shall deal with the Bill presently. I am now dealing with the Bill to see what this arrangement is, and how absurd it is. It does not give the banker the same protection when a banker endeavours to enforce an equitable security which he holds. He has not the

same right to demand that the customer shall remain properly debited with the amount charged to his account, but the facilities are given to the drawer of the cheque. I think I am correct in saying—but I speak subject to correction—that the banks have not been consulted with regard to the Bill; and one would have thought a matter so wrapped up with every-day business in these institutions, at any rate, some opportunity would have been given to them to express an opinion on this drastic proposal attempted to be made. Clause 5 distinctly says that any attempt by a contractor to interfere with the rules of law laid down here is to be null and void. Which means interfering with the freedom of contract between the banker and the banker's customer. And when we are going to do that we must be very careful to see that this provision is put on a proper footing. I do not stand here and say that there are not numbers of instances that have cropped up from time to time, in which it is the bounden duty of Parliament to interfere with the freedom of contract; but when we do so we should be careful in doing what is a fair thing to those persons who are parties to a contract. Let us take Clause 3 of the Bill for a moment. It says:—

> "Any banker may, by notice in writing, give specific instructions to his customer as to how cheques shall be drawn so that the banker may not be reasonably exposed to the risk of having to pay more than the proper amount."

It is the duty according to that, for the banker to give the instructions under Clause 4, which says that it shall be the duty of the customer to follow the instructions set out, and the omission of the customer to do so shall, if the Court is of opinion that the instructions were reasonable, be evidence of negligence. Mr. Pennefather interjected when the Colonial Secretary was addressing the House—"What is to be the standard of reasonableness?" Are we to wait until another Marshall and the Colonial Bank case crops up again to be taken through all the Courts of this country and the Privy Council for the Court to decide what are reasonable precautions? For that is one of the matters left entirely open under the Bill. As I am reminded, the Court can only deal with the facts of that particular case because every case will have to be decided on its own circumstances. It would not be a correct thing for me to quote from *Hansard* of this State; but I do not think I shall be acting unconstitutionally by referring to the Federal *Hansard*; and this question has been dealt with, or they are dealing with it during the present session of the Federal Parliament. I want to show what a different Bill they propose there. They are dealing with the whole question of bills of exchange and promissory notes, and they propose to put this clause in their Bill:—

> "Where—(*a.*) a cheque, drawn on a banker by a customer, has been drawn by the customer with negligence, and (*b.*) the negligence of the customer has afforded facility for the fraudulent alteration of the amount of the cheque, and (*c.*) the cheque has been fraudulently altered so as to increase its amount, and (*d.*) the cheque as so altered has, in good faith and without negligence, been paid by the banker, the banker shall not be responsible or incur any liability by reason of having paid the cheque, but shall be entitled to charge the customer with the amount of the cheque as paid by him."

Senator Keating who introduced that Bill in the Federal Senate—a lawyer practising in Tasmania, in commenting on what I have read, says this—

> "In other words, we say that if a man is negligent in drawing his cheques and leaves opportunities for them to be altered in such a way that an alteration is not detectable by a man in ordinary circumstances carrying on the business of the bank, then he, and not the bank, shall bear the loss. I think we can commend that alteration of the law to honourable Senators. A provision to the same effect has already been made in Queensland since the decision in Marshall v. the Colonial Bank, and another

alteration of the law to a like effect has been made in Tasmania."

The Federal Parliament, with the opportunity of consulting the Federal Law officers of the Crown, the Queensland Government after consulting their law officers, and Tasmania propose putting this thing on a footing which I believe would be entirely acceptable to the banks of this State. Why we want to put the thing differently from the Federal legislation on the point, or the proposed Federal legislation, or the legislation now in force in Queensland as the result of litigation, or the legislation in force in Tasmania, I am at a loss to understand; and I think this Parliament would be well advised not to accept this Bill, but to ask for something on the lines proposed in the Federal Parliament, and which is already the law in two of the States of Australia. [*Member*: Why not wait until the Federal legislation is passed?] As pointed out by the Colonial Secretary, although there is a Bill before the Federal Parliament, like many other measures it is not a dead certainty it will get on the statute book.

Hon. G. Bellingham: It is not like the salary Bill.

Hon. M. L. MOSS: No. The indecency with which that has gone through the Federal Legislature will require some of the gentlemen occupying positions in that Legislature giving an account of themselves when the time arrives. This is an important matter affecting thousands of transactions which occur every day in Western Australia, and it is an unfair thing that bankers should be exposed to the risk and liability of paying back money they have paid in good faith, as in the case of Marshall *versus* the Colonial Bank. I understand the attitude taken up by the banks is this: they would rather have no amendment of the law; but they are satisfied to allow their business to be conducted on the notice which is now posted in the cheque books and pass books rather than there should be any alteration imposing farther burdens on them.

Hon. R. F. Sholl: Burdens on a banker?

Hon. M. L. MOSS: Yes. The hon. member was not in the House when I read the circumstances in which a bank in Melbourne was obliged to pay money twice—one on a fraudulent cheque. [Interjection by *the Colonial Secretary.*] It is quite open for any member of the public dealing with the bank to decline to be bound by the notice. I believe there are a number of instances in this State at the present time where notice was given objecting to the tenor of the notice in the cheque books, with the result that in those cases the bank withdrew them, and no longer made it an implied term of the contract between the parties. The bank always has the chance of saying whether it can trust a particular customer and that he is not likely to afford facilities for fraud; but I think they might hesitate where they are dealing with three executors, two of whom might be so gullible as to allow the first to draw cheques and get them signed by the others in succession afterwards and being able to make such fraudulent alterations as were detailed in the Marshall case. It has always been regarded as a rule of law and equity and, with all due deference to the High Court a rule of common sense, that a bank being the more innocent of the two parties and not having done that which allows fraud to be committed, should not be a sufferer in the circumstances. This Clause 4 is absolutely defective, as it only entitles the bank to protection intended to be given in an action by a customer against the bank; although when a customer is being sued by the bank in a redemption or foreclosure action the latter will not get the protection it should. I am sure the Colonial Secretary will appreciate that if the Bill is as defective as I say, even if he is prepared to support it, it will need very considerable alteration in Committee in order to meet the objections which have been raised. The hon. gentleman in speaking on the Bill says the drawing of a cheque itself affords the facility to alter the cheque and that this Bill is necessary in consequence thereof. Surely he cannot have addressed that argument seriously with the idea of the House accepting it, for this

reason. If the mere drawing of a cheque is itself a facility to alter it, one would have thought there would be some clause put into the Bill to amend that peculiar position even supposing high legal authorities have so advised. I will not dispute that advice for a moment. The Colonial Secretary has told us that is the advice which has been received and I will accept it, but I should have thought there would be some clause saying that the drawing of a cheque itself should not be deemed to afford facility for altering it within the meaning of this law or any other. That would have been a more sensible way of dealing with the point. The argument that the fact of drawing a cheque itself affords a facility for altering it is out of all reason, and I cannot agree with it. It cannot be expected that I will support this Bill. I will be prepared to give due consideration to a measure based on the same lines as the Federal Bill, particularly as the debates in the Federal Parliament, which I have read in the Federal *Hansard,* show that Queensland and Tasmania dealt with the question before the Federal Parliament took it up and put a statute into law in precisely the same terms. [*The Colonial Secretary* : Not in precisely the same, but in similar terms.] The words were "provision to the same effect." I can only give to these plain English words the meaning I think they convey. I cannot say that the Bill before this House is to the same effect, for I have pointed out that it is totally different in certain respects from the measure they have passed in Queensland and Tasmania. I do not know why West Australia wants to embark on a new idea. It is very unfair that legislation of this kind should be suggested without the banks having been consulted, for it seriously affects them, and the business which takes place in those institutions will be greatly affected by legislation of this kind. It is not fair to expose them to farther risks. They should be consulted and, if the Bill passes the second reading and if no other member moves it, I will move that it go to a select committee to get the opinion of those who would probably suffer by legislation of this kind. In the meantime I propose to vote against the second reading.

Hon. R. F. SHOLL (North) : The fault that I see with this Bill is that it does not go far enough. The banks want to be protected, but the public should be protected also. While we are legislating with regard to banking it would be as well that some provision should be made that unclaimed balances in banks should be paid after a certain time into the Treasury. At present the banks place an imposition upon their customers by making them pay a guinea a year for keeping their accounts. [*Hon. J. W. Hackett* : That is twice as much as it is in the Eastern States] Yes, and it is owing to an imposition of this kind that the unclaimed small balances are soon absorbed by the bank and that the institutions are enabled to obtain thousands of pounds which they are not entitled to. A case came within my own knowledge some time ago where in an estate there was a small balance of about £4 left in the bank to meet contingent liabilities. With the annual charge by the bank the sum was soon absorbed. This is a specific instance, but there must be hundreds of similar cases. The bankers are not entitled to that money, and if the sums to the credit of customers are unclaimed they should be paid into the Treasury. I agree with Mr. Moss that it would be as well to refer the Bill to a committee to see if some conditions dealing with this iniquitous charge, which I say must have been imposed for the purpose of absorbing these small unclaimed balances, shall not be required. I shall vote for the second reading with a view to allowing the Bill to go to a select committee, for by this means not only the banks but also the public will be able to be protected. The present charge for keeping accounts is most unfair. It is not made in England and it should not exist here. The Government might have brought in a more extensive Bill than they have and so enable the question of banking to be dealt with more fully. I do not wish to impose any stringent conditions on banks ; but I do object to their absorbing the unclaimed balances

to which they are not entitled. There should be a Bill passed whereby after a certain time, say 12 or 18 months, these balances should be placed in the Treasury and that during a certain period the owners should be able to apply to the Treasury for their return. [*Hon. J. W. Hackett*: Who should be liable for fraudulent cheques?] That question can be gone into by the select committee. As to the protection for the bank, they know perfectly well the class of people who are their customers and they should be prepared to take a certain amount of risk. For the bank to say that they will impose conditions to the effect that they will take no risk if the cheque is drawn in a manner which might facilitate forgeries is altogether wrong. I am not prepared to go so far as to agree to that. The bankers should take certain chances, the same as everybody else in business, and they should select their customers. If they do not agree with the way in which some customers do their business they should not accept them as such. I will vote for the second reading of the Bill with a view eventually of having it referred to a select committee to give justice both to the bankers and the general public.

Hon. W. MALEY (South-East): With regard to the circular which was issued by the banks to their customers I have found no objection whatever to it. I think it is only a fair thing that, if one is using a banking account, it is his duty to protect the bankers as far as possible. If through a man's own carelessness or through that of his agent or proxy the work of drawing up a cheque is inefficiently done, then he should be responsible. I see nothing unfair in that. I read the notices which I got from several banks and then destroyed them. I was not prepared to support the proposal that the Bill be passed this day six months, but I am prepared to agree that it should go to a select committee. I have no reason to object to the remarks of Mr. Sholl as to the balances which have been lying at the banks. He refers only to small sums, but I believe very considerable sums have been obtained by the banks owing to the deaths of individuals on the fields and elsewhere. The banks are not entitled to these funds which have been left to the credit of deceased persons or which have not been drawn upon. It is clear that the bank should not get these sums and to my mind the money should be paid over to the Treasury. With regard to the payments there should be some particular system drawn up that the money should be paid in after having remained at the bank for some specified period without being drawn upon. Accordingly when the time comes I will support the referring of this Bill to a select committee, which I have no doubt will deal justly by the bankers and by the trading community.

Hon. J. W. LANGSFORD (Metropolitan-Suburban): The suggestion of the last speaker, supported by others, that after the second reading the Bill should go to a select committee, has I think much to commend it, though I do not altogether agree with the dictum that we should submit the Bill to the consideration of the bankers. We do not as a rule pursue that policy, otherwise the Government would have submitted the amending Conciliation and Arbitration Bill to the labour unions. If we act thus in one instance, I think we should in all; and if not in all I think we should do so in none. But some provision should certainly be made to protect bankers from the danger which now seems to face them. We should endeavour to hold the balance fairly between the banker and his customer. I shall support the second reading with a view to sending the Bill to a select committee.

Hon. G. RANDELL (Metropolitan): There is no necessity for me to discuss at length the merits of the Bill. Certainly I do not think I shall be able to explain them so clearly and explicitly as they have been explained by Mr. Moss, a legally-trained gentleman, who of course is much more competent than a layman to deal with a measure of this kind. My own opinion is that the Bill cannot be so altered by a select committee as to make it a useful Bill which will

protect the interests of the banker and at the same time of the customer. To do that I think the measure would have to be radically changed, not only in its clauses but in its title. However, if the House wishes to send the Bill to a select committee, I do not intend to offer opposition. I think, however, considering the history of the Bill and the clauses it contains, it should be rejected on the second reading. I fail to see that a select committee will be able to make anything very good out of the measure A committee may draft a new Bill which will meet the circumstances, and then perhaps the Bill may be ruled out of order. However, that remains to be seen. As to what Mr. Sholl has said, although I think he travelled beyond the scope of the Bill, a word or two may not be objectionable. The hon. member thinks the bankers are making a great profit out of the customer; but the hon. member I am afraid has not had much experience of banks, or he would know the extreme risks they run from time to time in making advances to people in all parts of the country—in the case of some banks, from Esperance to as far north as Port Hedland. [*Hon. R. F. Sholl*: Without security, of course.] Not without security; but I dare say the hon. member knows that the security sometimes dwindles and disappears. [*The Colonial Secretary*: Not always.] No, but sometimes; and, I am afraid, in a good many cases. Judging from my own experience securities taken by private individuals often disappear. Banks have at all events to take the risk of making advances to those whom they think trustworthy, and in some cases the banks are disappointed; and sometimes the person who gets the advance is disappointed too, for his venture does not turn out satisfactorily, and he finds he is unable to repay the advance and that perhaps he can never repay it. As to the unclaimed balances, I have been for a considerable time a bank director, and never heard anything of them. Are they there is any amount? If the hon. member knows, I hope he will inform the House. I think I should know if they were. I think they are few and far between. But, taking into account the risk banks run in making advances and the considerable sums they pay by way of dividend tax and note issue tax——

The Colonial Secretary: If they did not declare dividends, they would not have to pay the tax.

Hon. G. RANDELL: Would people invest in bank shares if they did not expect to get dividends; and if not, where would you get your capital for this, that, and ten thousand other interests in this thriving and prosperous country? I ought to withdraw that word prosperous, seeing that the Government are now so pessimistic respecting the finances of the State. However, taking it as a whole, I think we may consider this a prosperous country. A great many people have made their fortunes here, though unfortunately some of them have not stopped here to spend them, but have taken them elsewhere. Still, it has been for a great many years a country of development, and very large development too. We hear the *West Australian* sometimes stating that this beats all the other States put together in its rate of increase of population, in its resources, and in many other ways. [*Hon. J. W. Hackett*: That day has gone by.] That newspaper has to the best of its ability, which is very considerable I am willing to admit, advocated in the best possible manner the interests of this State as a place where people can invest their money, where they can come from all quarters of the world and find investments more profitable than they can find in many other countries. I rose only because I think Mr. Sholl has an altogether wrong idea. If a bank occasionally makes a small profit out of unclaimed balances—which I think must be figments of the hon. member's brain—the bank, and not the Government, is entitled to that profit. The Government have never done anything to entitle them to claim such balances.

Hon. R. F. Sholl: Surely you do not say the bank is entitled to unclaimed balances?

Hon. G. RANDELL: I do not think the public have any reason to complain of the action of the banks. I hear they

complain sometimes of the action of the Government bank, and very loudly too. I certainly think we shall have to put the Government bank in the same category as private banks if the suggestion of the hon. member is borne out by facts; but I am sure it is not. I hope that a Bill of this sort, which is positively unjust to the banks, which robs them of the protection they now have, which prevents them from contracting with their customers, and is entirely foreign, so far as I can gather, to the remarks made on the subject by the federal Chief Justice, and seems to me to be opposed to common sense, will be thrown out. It is entirely unjust that a bank should suffer for the wrongful acts of a man who, in conjunction with his co-trustees, obtains advances from a bank which the bank has had to pay twice. Anything we can do to prevent that sort of thing should be done; and certainly I should deprecate anything like telling the House that bankers deserve no consideration at the hands of members, no protection in the lawful exercise of their business, a business of great importance and involving great risk. I hope that members will perceive the Bill is drawn on entirely wrong lines. I believe the Attorney General has misconceived the object which should be held in view. A slight alteration of one section of the Bills of Exchange Act—half a dozen lines— would have put the matter straight and been satisfactory to all concerned. I hope the Bill will not pass its second reading. At all events, I feel sure that the time of the select committee will be wasted on the Bill, or that very drastic alterations will have to be made therein.

Hon. R. W. PENNEFATHER (North) : The whole strength of this Bill lies in Clause 4, which, as Mr. Moss pointed out, is intended to meet the palpable injustice which resulted from the decision in the celebrated case of Marshall. In that case, as members know, it was decided that when a cheque is presented to you for signature, drawn by a man whose handwriting you know, and who has an interest in the cheque because he is one of the parties who signs it, and a fairly large space is left at the left-hand margin, and a corresponding space is left for the insertion of a figure between the mark which indicates "pounds" and the first figure of the amount ; if somebody by fraudulent means, subsequently to your signature, alters that cheque so as to deceive the banker, the banker is liable if he cashes the cheque. In Marshall's case it was proved beyond a shadow of doubt that with all the supervision the bank could possibly have exercised they could not have detected the forgery ; and the jury found that as a matter of fact. No jury could have found differently, because the writing which constituted the forgery was done by exactly the same hand that originally filled in the cheque, and having space to put it in the forgery was absolutely undetectable. The decision was that the bank must suffer, and not the person who gave the opportunity for committing the forgery. I must confess the decision came to me, and I know to many other members of the legal profession, as a rude shock, and seemed to us contrary to what we had considered to be the law of the case. It is intended by this Bill to meet Marshall's case. It is clear, as Mr. Moss has pointed out, and I will not labour the point again, that Clause 4 does not attain the object. It does not cover the case where there is a claim by the banker against the customer, but only covers cases of a claim by the customer against the banker. A rule to be equitable and fair must cut both ways ; and if the protection is given to only one side, it is manifestly unfair and unjust that the other side should not be equally protected. I should like to point out there is now a Bill before the Federal Parliament, which Bill has for its object the codification of the law regulating bills of exchange, cheques, and promissory notes. The Bill is on the lines of the English Act of 1882, which has been virtually adopted in all the States. There have been two or three amendments of that Act, and I am not quite sure that all the States have adopted these amendments. But the object of the Bill now before the Federal Parliament is to codify the law

on the subject, and to include in the Bill the provisions Mr. Moss referred to as dealing with the subject of Marshall's case. In all probability that Bill will be passed. It has been supported on the second reading and carried in the Senate. I have looked carefully through the Federal *Hansard,* and I can find no criticism at all hostile to the Bill, all the speeches being in its favour. If we wait for another month at the outside we shall have this measure passed by the Federal Parliament ; and, as the Colonial Secretary has properly pointed out, it will absolutely supersede all our legislation on the subject. Then why this burning hurry to introduce this Bill that is so highly contentious ? I am sure there is no man, be he banker or customer, who can reasonably object to the provisions of the Federal Bill. It is fair to both sides. It meets the difficulty. But this Bill as it stands I must confess does not carry out what it is intended to do, and it will create much difficulty. A lawyer should not complain of that, but undoubtedly on the face of it the Bill will create plenty of litigation. In Clause 3 it says that it is the duty of the banker to give specific instructions to his customer. In other words he must lay down rules and instructions that must cover every case. He may give instructions in one case that should have been desirable in a certain set of circumstances, and if those are departed from the banker is safe; but if they are not sufficient the banker is not protected. Clauses 3 and 4 are the main portion of the Bill. The last clause makes all contracts between the banker and the customer in conflict with the two preceding clauses null and void. The House will be content in opposing the second reading for the reason that I have urged, that there is a Bill before the Federal House which will become law, and if it becomes law it will be the law through all the States. Therefore, what is the good of having this Bill on the statute book for the sake of a few weeks? If towards the close of the session the Federal Parliament have not succeeded in passing their Bill, there will be plenty of time to bring in a Bill here, but not in this form : it should rather be in the form of the measures passed in other States, namely Queensland and Tasmania, where there are replicas of the same provisions. I think in the exercise of our discretion and determination we should reject this measure. I am sorry that in the discussion of this Bill any reference has been made to the question of unclaimed balances, because it is altogether beside the question. This Bill deals with fraudulent alteration of cheques, and how we can include a provision affecting unclaimed balances I fail to grasp.

On motion by *Hon. J. M. Drew,* debate adjourned.

BILL—STATISTICS.

Assembly's Amendment.

Amendment (one) made by the Legislative Assembly now considered in Committee.

Clause 8—Add the following to paragraph (*e*): "detailing nationality of proprietor and number and nationality of employees":

The COLONIAL SECRETARY moved—

That the amendment be agreed to.

This was to add after the words "factories and manufacturing industries" the words set forth in the amendment. It would give the Bill a little wider scope, and there seemed to be no objection to it.

Hon. J. W. Hackett: Would it apply to joint stock companies?

The COLONIAL SECRETARY : It was impracticable to make it apply to shareholders of a company.

Hon. M. L. MOSS: This would not apply to a limited liability company, but was practically governed by a decision of the Full Court. The Factories Act provided that no member of the Chinese race should be registered who had not carried on a factory before the Factories Act came into force, but See Wah and Company took advantage of the Companies Act and registered as a limited liability company. The company was refused a license for its factory on the ground that the proprietors were of the

Chinese race, but the Full Court decided that, being a company resident in Western Australia, it was an entity different from a person. A company could have no nationality; the proprietor would be the company.

Question passed, amendment agreed to.

Resolution reported; report adopted.

ADJOURNMENT.

The House adjourned at 8.25 o'clock, until the next day.

Legislative Assembly,

Tuesday, 20th August, 1907.

The SPEAKER took the Chair at 4.30 o'clock p.m.

Prayers.

PAPERS PRESENTED.

By *the Minister for Mines*: 1, Papers dealing with the appointment of Inspectors of Mines. 2, Extra papers dealing with the accusations made by the member for Cue against the Inspector of Mines in the Cue District.

QUESTION—RAILWAY REFRESHMENT ROOM, BOYANUP.

Mr. UNDERWOOD asked the Minister for Railways: 1, What rent is paid for the Boyanup Refreshment Room and Book Stall? 2, When does the present lease expire? 3, Were tenders called for the lease, and when? 4, In future will the department give public notice before a lease is granted?

The MINISTER FOR RAILWAYS replied: 1, Refreshment Room, £2 10s. per month; Bookstall, £1 10s. per annum. 2, The Refreshment Room is let on a monthly tenancy. The Bookstall lease expires on the 31st May, 1908. 3, Yes. Refreshment Room, January, 1900; Bookstall, May, 1905. 4, Section 59 of the Government Railways Act provides for tenders being called, and this is always done in the event of a tenancy expiring or a room becoming vacant. In regard to the Refreshment Room, I might add that H. M. Beigle's tender was accepted; on the 12th July, 1900, approval was given to the transfer of the lease to Viola Clowes; and on the 28th May, 1902, the transfer from Viola Clowes to Eliza Jane Dinham, the present lessee was approved.

CHAIRMAN OF COMMITTEES, ELECTION.

The PREMIER (Hon. N. J. Moore): I move "That Mr. Daglish do take the Chair as Chairman of Committees of the House." I submit this proposal with every confidence, as members are acquainted with the special qualifications the hon. member has for the position. His long parliamentary experience coupled with his knowledge of the procedure, qualify him to fill the position with success.

Mr. W. B. GORDON: I second the motion.

Question put and passed.

Mr. E. DAGLISH (on taking the Chair): I have to thank hon. members for the honour they have done me, and the confidence they have reposed in me in appointing me to this position. I shall endeavour as Chairman, to the best of my ability, to apply the Standing Orders with a degree of common sense; and I shall always endeavour to show the strictest impartiality in controlling the proceedings of Committees.