

Legislative Council,

Thursday, 5th January, 1893.

Officers of Parliament Bill: first reading—Fremantle Harbor Works and Tramway Bill: first reading—Bills of Sale Act Amendment Bill: first reading—Transfer of Land Bill: recommittal—Scab Act, 1891, Amendment Bill: recommittal—West Australian Trustee, Executor, and Agency Company (Limited) Bill: recommittal—Adjournment.

THE PRESIDENT (Hon. G. Shenton) took the chair at 8 o'clock.

PRAYERS.

OFFICERS OF PARLIAMENT BILL.

THE COLONIAL SECRETARY (Hon. S. H. Parker) by leave, without notice, moved the first reading of this Bill.

Question—put and passed.

FREMANTLE HARBOR WORKS AND TRAMWAY BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

BILLS OF SALE ACT AMENDMENT BILL.

This Bill was received from the Legislative Assembly, and was read a first time.

TRANSFER OF LAND BILL.

RECOMMITTAL.

Clause 1.—Short title, commencement and division:

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the figures "1892," in the first line, be struck out, and "1893" inserted in lieu thereof.

Question—put and passed. Clause, as amended, agreed to.

Clause 4.—Interpretation:

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "or for years" be added to the interpretation of "Grant." He said that the amendment was to make the definition accord with clause 18, by which a grant for years as well as in fee was contemplated.

Question—put and passed, and the clause, as amended, agreed to.

Clause 15.—"Surveyors under Act how licensed:"

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "as a surveyor" be inserted between the

words "practise" and "under" in the second line of the clause.

Question—put and passed.

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "from any person other than," in the sixth line, be struck out, and the words "unless drawn, made, or performed by," be inserted in lieu thereof.

Question—put and passed, and the clause, as amended, agreed to.

Clause 78.—"Registrar may call in certificate."

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "Or for the purpose of registering any instrument subject to a first mortgagee," in the second and third lines, be struck out. He said that clause 127 provided for the production of the title for the registration of any subsequent instrument, and therefore there was no necessity to have it in this clause.

Question—put and passed, and the clause, as amended, agreed to.

Clause 133.—"Sale under writ of *fi fa* or decree or order of Supreme Court:"

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that all the words between "writ," in the 21st line, and "but," in the 25th line, be struck out, and the following words be inserted in lieu thereof: "After the commencement of this Act, no unregistered instrument, document, or writing, and no equitable mortgage or charge by deposit or otherwise, without writing, affecting any land, lease, sub-lease, mortgage, annuity, or other charge, shall prevail against a sale of the Sheriff under a writ of *fiери facias*, unless a caveat in respect of such unregistered instrument, document, or writing or equitable mortgage, or charge, shall have been lodged with the Registrar in pursuance of the provisions of section 137 of this Act, or the similar provisions of 'The Transfer of Land Act, 1874,' before the service of the copy of the said writ of *fiери facias* on the Registrar as aforesaid." He said that the intention of the Act was to make the registration compulsory. The law as laid down by the Judges was that a sale by the Sheriff was subject to all equities, but it was intended to alter this and make the registration of all dealings in land compulsory, and also to enforce notice being given by caveat of all equitable mort-

gages or deposits. The section, as it stood, did not carry out the intention, and hence the amendment.

Question—put and passed, and the clause, as amended, agreed to.

Clause 137.—“Caveat may be lodged where land already under Act.”

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words “document or writing, or under any equitable mortgage or charge by deposit without writing,” be inserted between the words “instrument” and “or,” in the third line.

Question—put and passed, and the clause as amended, agreed to.

Clause 151.—“Crown survey boundaries as marked on the ground to be deemed the true boundaries.”

THE HON. J. A. WRIGHT said it seemed to him that this clause was an innovation and a departure of an entirely new kind. They were taught that a man's title deed was about the most sacred thing he could possibly hold, but under this clause it was put entirely in the back ground, and the survey marks made the true boundaries. Everyone knew that these posts might be destroyed by bush fires, or by white ants or by the mischief of some person, and in that case there would be nothing left to indicate the position of the land. He had always understood that the title deed was to show the boundaries, but now they were told it was nothing of the sort, but that the true boundaries were to be found from the pegs, which in all probability had been wrongly put down. The clause had, no doubt, been brought forward to cover the *laches* of surveyors of the olden time, when instruments were not as good as they were now; but the clause not only sought to remedy the blunders of the past, it also dealt with the future. He considered the clause one of a most mischievous kind, and likely to lead to litigation of a most serious character.

THE HON. G. W. LEAKE said he would vote for the expunging of this clause, because it would introduce into all questions of title a most intolerable uncertainty. How were people to know what their boundaries were unless they looked to their title deeds? If they were wrong in the deeds there were modes of rectifying the errors; but to make the survey pegs the true boundaries was to intro-

duce the largest, the widest, the most unusual and unconstitutional doctrine of uncertainty. If a man held a piece of land in the Darling Hills how was he to ascertain the boundaries unless he looked at his deed? This Bill had been suddenly introduced, and hon. members had not had time to digest or discuss it, and he hoped such a pernicious innovation would not be allowed to pass unless after the fullest consideration. He moved that the clause be struck out.

THE COLONIAL SECRETARY (Hon. S. H. Parker) said that both hon. gentlemen who had spoken did not seem to have grasped the clause. The object of it was to confirm the boundaries of the land a man was in possession of. The holder of land did not look at his title to see where his land was; he looked at the pegs, and indeed there were very few men who were capable of understanding the technical descriptions given in the deeds. A man might see the land surveyed and the pegs put down. He might fence along the boundaries as thus laid out, and what would he say if, 20 years after, his neighbor came and claimed part of the land because he had a title deed which showed that the pegs were wrong. Even now, if the land had been held against an individual, his possession for this period would entitle to retain it; but the statute did not run against the Crown, and this clause simply placed the Crown in the position of the individual and said that if a man has held his land according to the survey pegs he shall be allowed to retain that land, notwithstanding that an error has been made in the survey. The Hon. Mr. Leake had said they had had no time to consider the Bill; but it had been before the House for three weeks, and he had purposely postponed its further consideration over the recess in order to give the fullest opportunities for hon. members to look into it. Exactly the same provision prevailed in Canada, Victoria, and Tasmania, and it was adopted in consequence of the recommendations of a conference of land surveyors, who came to the conclusion that this was the only way of dealing with the matter. So as not to make the clause quite so stringent as those which prevailed in the other colonies, the Government had inserted in this Bill the follow-

ing proviso: "But it shall be lawful for the Surveyor General to alter the survey boundaries marked upon the ground as aforesaid so that however such alteration does not interfere with any improvements which may have been in good faith effected by the lessee or grantee from the Crown." The clause was introduced simply in the interests of the public. If a man had fenced and planted his ground in accordance with the survey posts, it was not right that he should lose part of it because the posts did not agree with the technical description in the title deed.

THE HON. J. A. WRIGHT said that the clause evidently went further than he had anticipated. He could not describe it other than the surveyors' white-washing clause. Was there to be any limitation to the mistakes of surveyors?

THE HON. G. W. LEAKE said they had been told that this clause was the law in the other colonies, but they had not been informed whether an Act, passed in the fourth or fifth year of the Queen, which provided a remedy in the case of errors in the description of titles, was also in force there. The effect of this clause would be to make the title deed nothing more or less than a simple piece of waste paper. It would create an uncertainty which never should exist, and it was establishing a means by which surveyors who did not understand their work might expunge their errors.

THE HON. J. MORRISON said he thought this clause was one intended to cover up the mistake of allowing people to select before survey, and it was one more calculated to protect careless surveyors than the public.

The committee divided on the amendments.

Noes...	7
Ayes...	4

Majority against ... 3

AYES.

The Hon. R. E. Bush
The Hon. J. Morrison
The Hon. J. A. Wright
The Hon. G. W. Leake
(Teller).

NOES.

The Hon. J. G. H. Amherst
The Hon. D. K. Congdon
The Hon. G. Glyde
The Hon. E. Hamersley
The Hon. E. T. Hooley
The Hon. J. A. Wright
The Hon. S. H. Parker
(Teller).

Clause agreed to, and the Bill reported, with amendments.

SCAB ACT AMENDMENT BILL.

RECOMMITTAL.

Clause 2.—"Scab Districts."

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "scab district of Victoria," in the seventh line, be struck out, and the words "central scab district" be inserted in lieu thereof. He said that the amendment was necessary, because there was no scab district of Victoria.

Question—put and passed, and the clause, as amended, agreed to.

Bill reported, with amendment.

WEST AUSTRALIAN TRUSTEE, EXECUTOR, AND AGENCY COMPANY, LIMITED, BILL.

RECOMMITTAL.

Clause 8.—"Deposit."

THE COLONIAL SECRETARY (Hon. S. H. Parker) said it might be remembered that the Hon. Mr. Morrison had previously referred to the way in which the Company's deposit should be invested, and he now proposed the following amendment:—That all the words between "capital," in the seventh line, and "when," in the fourteenth line, be struck out, and that the following words be inserted in lieu thereof:—"Not less than Five thousand pounds shall be invested by the Company, in the name of the Treasurer, in one or more of the securities or investments hereinafter mentioned, that is to say:—In the purchase of bonds, debentures, Treasury bills or other securities issued by the Government of, or any Municipal Corporation in Western Australia, or upon fixed deposit in one or more joint stock bank or banks carrying on business in the said colony, or upon first mortgages of freehold real estates in the said colony; provided that the amount advanced on mortgage of any one estate shall not exceed two-thirds of the value thereof, and that before any such investment shall be made the same shall be approved in writing by the Treasurer. The Company may from time to time, with the approval of the Treasurer as aforesaid, vary the said investments or any of them into or for other or others of the nature hereby authorised. The title deeds, documents, and securities from time to time representing the said sum of £5,000 shall be deposited with the

Treasurer, who shall hold the same upon trust for the Company, but transferable to the Company only upon the joint consent of the Treasurer and the Company, or upon the order of the Court or a Judge. The interest, dividends, and annual income of the said investments shall belong and be payable to the Company."

Question—put and passed, and the clause, as amended, agreed to.

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "and the securities for the same be deposited" be inserted between the words "invested" and "as," in the 16th line.

Question—put and passed.

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "or deposited with the Treasurer," in the 17th line, be struck out.

Question—put and passed.

THE COLONIAL SECRETARY (Hon. S. H. Parker) moved that the words "deposited or," in lines 20 and 21, be struck out.

Question—put and passed, and the clause, as amended, agreed to.

Bill reported, with amendments.

ADJOURNMENT.

The Council, at 9-10 o'clock p.m. adjourned until Monday, January 9th, 1893, at 8 o'clock p.m.

Legislative Assembly,

Thursday, 5th January, 1893.

Message from His Excellency the Governor: Midland Railway Proposals—Message from His Excellency the Governor: Advances from Revenue of funds required for Loan Works—Companies Bill: third reading—Swan River (Fremantle) Harbor Works and Tramway Bill: third reading—Bills of Sale Act Further Amendment Bill: third reading—Police Act, 1892, Amendment Bill: Legislative Council's Amendments—Midland Railway Proposals: Point of Order—Adjournment.

THE SPEAKER took the chair at 7-30 p.m.

PRAYERS.

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR, FORWARDING MIDLAND RAILWAY PROPOSALS.

THE PREMIER (Hon. Sir J. Forrest) presented the following Message from His Excellency the Governor:—

In accordance with the requirements of section 67 of the Constitution Act, the Governor recommends to the Legislative Assembly the consideration and adoption of the following resolutions:—

Resolutions of Joint Select Committee.

1. That the Government shall guarantee the payment of the principal and interest of £500,000 4 per cent. Bonds, to be created and issued by the Midland Railway Company Limited, for the purpose of providing moneys for the completion of its contract with the Government; the minimum price of Bonds to be fixed by the Government.
2. That the said Bonds shall be redeemable at the rate of £20,000 a year, the redemption to begin 1904.
3. That the Government shall be secured against all liability under the said guarantee by a first charge on the railway and everything appertaining thereto, including the lands on which it is constructed, and also on 2,400,000 acres of land to be selected by the Government—the whole free from encumbrances.
4. That until the Government is released from the guarantee on the said bonds, the Company not to sell any part of the said 2,400,000 acres without the consent in writing of the Government. All purchase moneys and rents arising from such lands, less five per cent., to be lodged with the Government, in trust for the payment of interest on and redemption of the said bonds.
5. That the said bonds and the interest thereon shall be paid by the Company; and in case of default by the Company and as soon as the Government shall have paid under the guarantee £20,000, then after giving three calendar months' notice of its intention, and the Company continuing in default, the Government may enter and take possession of the whole of the railway, lands, rolling stock, and everything appertaining thereto together with any lands re-