

## LEGISLATIVE COUNCIL,

*Monday, 4th September, 1882.*

Volunteer Vote, from 1879 to 1881: How expended—  
 Audit Act: Appointment of Committee of Advice  
 —Excess Bill, 1881: in committee—Eastern Rail-  
 way Extension Bill: in committee—Eastern Rail-  
 way Accounts: Inspection of—Messages Nos. 7, 8,  
 9, and 10—Stamp Duties Bill: first reading—Legis-  
 lative Council Act Amendment Bill: re-committed—  
 Brands Act Amendment Bill: in committee—  
 Statutes (Errors) Amendment Bill: in committee  
 —Land Regulations: Pre-emptive Rights to Re-  
 newal of Leases—Trespass, Fencing, and Impound-  
 ing Bill: further considered in committee—Ad-  
 journment.

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

PRAYERS.

## VOLUNTEER VOTE FOR 1879 TO 1881.

MR. S. H. PARKER, in accordance with notice, asked the Colonial Secretary to furnish the House with a return showing in detail the expenditure on Volunteers during the years 1879, 1880, and 1881.

THE COLONIAL SECRETARY (Lord Gifford) laid on the Table the return asked for.

## AUDIT ACT: APPOINTMENT OF COMMITTEE OF ADVICE.

THE COLONIAL SECRETARY (Lord Gifford) said hon. members were aware that the new Audit Act provided that the Legislative Council shall, at each Session, elect by ballot four unofficial members whose duty it shall be to advise the Governor, during the recess, on questions of public expenditure. He now, in accordance with notice, begged to move for the first election of such Committee, as required by the 16th section of the Act (46 Vict. No. 1).

The motion being agreed to, and hon. members having delivered the names of those for whom they wished to vote,

The CLERK reported to the Speaker the following names of members as having the greatest number of votes: Mr. Steere, Mr. Burt, Mr. Marmion, and Mr. S. H. Parker.

## EXCESS BILL, 1881.

THE COLONIAL SECRETARY (Lord Gifford) moved, That the House should then go into Committee for the consideration of the Bill to confirm the expenditure of £8,137 10s. 4d. for the services

of the past year beyond the grant for the year.

The motion was agreed to.

## IN COMMITTEE.

Clause 1.—Excess of expenditure confirmed and allowed, and declared to be a charge against the general revenue:

MR. STEERE said the Select Committee to which this Bill had been referred discovered that under the head of "Miscellaneous" there was a sum of £2,295 2s. which had been applied towards payment of half the cost of the Water Police at Fremantle, and the whole cost of the Water Police at the various outstations. The Imperial Government having directed that these charges should be deducted from the annual grant for Magistracy and Police, had necessitated that this expenditure should be borne by the Colonial Treasury. It appeared to him that but scant consideration had been shown to this Colony by the Imperial Government in this matter. He thought they had acted most unfairly in thus suddenly casting upon us the burden of maintaining a police force which was solely established for Imperial requirements in connection with convict supervision. The Select Committee, in their report dealing with the subject, came to the conclusion that, as the local Legislature had been entirely uninformed as to the intention of the Imperial authorities to withdraw a portion of the grant hitherto paid for the maintenance of the Water Police Department—and as no opportunity had been afforded that House of determining whether, under such circumstances, it was prepared to undertake the payment of this charge (amounting to £1,791 12s. 6d. a year) out of Colonial funds, without at any rate reducing and re-organising the force now employed,—it became a matter of serious consideration whether the House would sanction, by legislative enactment, the payment of such an item of expenditure. Hon. members would see from the minutes of evidence given by the Colonial Secretary on the subject, that £89 a month was now being advanced from Colonial funds for part payment of the water police, for which no provision had been made in the Estimates, and that a sum of £2,295 2s. was included in the present Excess Bill,

owing to the Imperial Government having directed, without any reference to that House, that these charges should, after the year 1879, be deducted from the annual grant towards magistracy and police. Under these circumstances, he thought it was a matter for the consideration of the House whether it would sanction the payment of this money, and he would move, as a protest against the action of the Imperial Government in the matter, that this item be disallowed. The hon. member then formally moved that the item "Miscellaneous" be reduced by £2,295 2s.

THE COLONIAL SECRETARY (Lord Gifford), while admitting that the Legislature was not without grounds of complaint as to the manner in which the Imperial Government had treated the Colony with reference to this matter, did not think we should improve our position by refusing to vote the item. The money had been refunded to the Imperial Government, as directed, but he believed it would only be a temporary refund; and, as the payment had been made, the local Government now, as in duty bound, came to that House to legalise the expenditure. Hon. members were aware that in his evidence before the Select Committee he had given a précis of the correspondence which had taken place between this Government and the Imperial authorities on the subject, from which it would be seen that Governor Ord had remonstrated against the decision of the Home Government, as late back as March, 1880, and that Sir William Robinson, shortly after his arrival in the Colony, again drew the attention of the Colonial Office to the matter, expressing to the Secretary of State his concurrence in the remonstrances of his predecessor, and urging that a decision favorable to the Colony might be arrived at. An account current was meantime drawn up and submitted to the Imperial Government, with the expression of an earnest hope on His Excellency's part that the surcharge would not be insisted upon. He might say that His Excellency believed, whatever may be done as regards the future, that the decision of Her Majesty's Government will not be retrospective, and that the amount alluded to will be restored to us. Under these circum-

stances he did not think the House would facilitate a satisfactory solution of the difficulty, or improve our position in any way, by refusing to sanction an expenditure which had already been incurred, but which he had reason to believe, from recent correspondence, would be refunded. If the House desired to express its sentiments on the subject, he thought that might be done hereafter by way of a resolution, expressing its disapproval of the action of the Home Government in withdrawing the grant without affording the local Legislature an opportunity of considering the matter in any way. For his own part, he had every reason for believing that the Imperial Government would come to terms with us, and that this money would be refunded to the Colonial Treasury. He therefore hoped the hon. member for Swan would not press his motion. It appeared to him that a much better way of dealing with the subject would be for the House to pass a resolution, expressive of its feeling in the matter, which would furnish the Governor with a fresh weapon wherewith to fight the Colony's claim against the Imperial authorities.

MR. BURT thought the best course for the House to adopt was to agree to the motion to strike out the item, so as to show the Secretary of State that the local Legislature kept a watchful eye over these matters, and that, if such a Bill as this is attempted to be foisted upon the country, we would not have it. He did not suppose, after what had fallen from the noble lord, that the Home Government would insist upon perpetuating this act of injustice towards the Colony, nor did he suppose it would be more likely to do so, if the House adopted this course of protesting against its action in the matter. At any rate he thought it was the right course to pursue in order to show the Secretary of State that we are not going to submit tamely to have charges of this kind imposed upon the Colony.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said, so many stones had been flung at the devoted head of the Secretary of State for the Colonies in that House of late, that he confessed he was not at all sorry to be able to ward off this particular stone aimed at Lord

Kimberley, and to divert its course in the direction it ought to be flung, namely, the Home Department, for it was that department, and not the Colonial Office, that had to deal with this matter. He thought this Colony certainly had some reason to complain of the treatment it had received, but he had no doubt whatever that, when the matter was fairly represented to the Home authorities, this little grievance would be set right, and he did not think the Council would either forward its own views or the interests of the Colony, or render it more easy for the local Government to deal with the matter if it adopted the course suggested by the hon. member for the Swan, and which he had been sorry to see the hon. member for the Murray and Williams supporting. He could not help thinking that the proper course to adopt would be to move some more substantial resolution at a later stage of the Session expressive of the views of the Council on the subject, and which would show the Imperial authorities, quite as much as the course proposed by the hon. member for the Swan would, that the local Legislature was not unmindful of its duty as the guardian of the public interests, and that it watched closely over those interests. He would ask, as had often been asked in that House before—what advantage after all was to be obtained by refusing to pass a vote on the Excess Bill? The money had been paid and a receipt must be given for it, sooner or later; and if the only object which hon. members had in view was to point out to the Secretary of State that this House is fully alive to the way in which the money had been spent, surely that could be done in another way, and in a way that would bring it as forcibly home to the Secretary of State as if they were to strike out this item. It might be done by a resolution of the House—such a resolution as would not only furnish this Government with another weapon wherewith to do battle with the Imperial authorities, but also at the same time afford the Home Government a golden opportunity to retire from the position which it had taken up in relation to this matter.

MR. S. H. PARKER could not help thinking with his hon. and learned friend the Attorney General that the Colonial Office was not to blame in this matter,

but the Home Department. He did not think the Colonial Office, with all its faults, would willingly do such an act of injustice as this towards the Colony. But, inasmuch as it had been committed, he thought it was the duty of the Legislature to protest against it, and he could not think of a more effectual way of doing so than by refusing to sanction this expenditure. If the House were simply to pass a resolution on the subject, the Home authorities would probably say we did not think much about the matter after all, otherwise we would not have agreed to this vote. He did not think, if the Colonial Office found that we really had no right to be called upon to pay this money, it would think any the worse of us for showing an independent spirit and a bold front in the matter.

The motion to strike out the item was then put, and carried on the voices, and the Bill as amended agreed to, and reported to the House.

#### EASTERN RAILWAY EXTENSION BILL.

The House then went into Committee for the consideration of the Eastern Railway Extension Bill.

Clause 1.—Power to construct and maintain the railway from Chidlow's Well to York:

Agreed to *sub silentio*.

Clause 2.—Power to Commissioner of Railways to deviate from the line as described in the schedule, to the extent of two miles on either side:

MR. CROWTHER pointed out that the Select Committee to whom the Bill had been referred had not agreed as to the best site for the terminus at York, and that they had recommended that no alteration should be made in the Bill until the position of the terminus shall be decided by the final survey. The Committee came to the opinion that point 'B,' which is about a mile from Craig's hotel, would not be sufficiently central for a terminus, as it is situated outside the present township, in the direction of Northam, a distance of about a mile from the public offices, whereas it was evident that for many years to come the line would be largely dependent upon the heavy goods traffic from the direction of Beverley and Moorambine. Holding these views the Committee recommended

that certain alternative lines should be surveyed, with the view of ascertaining the most desirable site for the terminus, and that at the next Session of Council the Government should bring in an amending Bill for fixing the site of the terminus in a central position, as far as practicable, with reference to the present town. He did not know whether, under these circumstances, it would be necessary to alter the wording of the present Bill.

THE COLONIAL SECRETARY (Lord Gifford) said the Bill now before the Committee only provided for taking the line as far as the point marked 'B,' and as in any case it would be necessary to go as far as that point, wherever the station might be ultimately decided upon, no harm would be done by passing the Bill as it stood. He hoped, when the House met again next Session, to be in a position to submit a definite proposal as to the site of the terminus at York, based upon the final survey, and after personal inspection of the various sites proposed, by the Commissioner of Railways. He would then ask the House to amend the Bill, so as to extend the line from point 'B' to such a site as in the opinion of the Commissioner it would be most desirable to have as the terminus. The Government, when calling for tenders for the construction of the line from Chidlow's Well to the point marked 'B,' would endeavor to come to an understanding with the contractor that he shall extend the line beyond that point to such point as may hereafter be decided upon as the site for the terminus, at the same rate as the other portion of the line is contracted for.

The clause was then agreed to.

*Schedule:* Description of line from Spencer's Brook to York:

MR. STEERE pointed out that according to this schedule the line would terminate at the point marked 'B,' already referred to, and did not contemplate its proceeding beyond that point. He thought the schedule ought to be amended, so as to admit of the line being taken beyond point 'B,' in the event of its being decided hereafter to have the terminus at some other and more central site.

THE COLONIAL SECRETARY (Lord Gifford) pointed out that the Bill em-

powered them to deviate to the extent of two miles from the route described in the schedule. Moreover, it was out of the question that the line will have been constructed as far as point 'B' before next Session of Council, and, in the event of the Commissioner coinciding with the views expressed by the amateur engineers who sat on the Select Committee, and recommending some other site for the terminus at York, the schedule could then be amended. Hon. members might rely upon it that the only consideration which would weigh with the Government in dealing with this matter would be the selection of the most convenient site and the best route.

MR. MARMION thought, under the circumstances, they might safely leave the matter in the hands of the Government, and let them arrange with the contractors.

MR. BURT was utterly confounded to hear such a suggestion as that coming from the hon. member for Fremantle. Had the hon. member forgotten all the trouble they had with reference to Stirling Square, at Guildford? Did not the noble lord on that occasion assure the House that the Government did not intend taking the line through Stirling Square, but, notwithstanding that assurance, was not the House engaged for weeks in a hand-to-hand conflict with the Commissioner, who insisted upon having his own way? Yet the hon. member proposed to leave this question of the terminus at York in the hands of the Government. He was astounded at the hon. member; and, so far as he was concerned, he was not inclined to do anything of the sort. What assurance had they that the Government would be able to carry out their intentions with reference to this terminus, unless the Commissioner happened to agree with them? If the House thought the line ought not to stop at point 'B,' the schedule ought to be amended to that effect. It appeared to him, if they provided that the line should go as far as York, that would answer every purpose for the present; for by the time the House assembled next year the Government would then be in a position to propose some site for a terminus which would meet with the approval of the House. He thought it would be very dangerous indeed to leave

the schedule as it now stood, relying upon the Government to be able to do what he was sure they were anxious to have done,—to carry out the views of the Committee as to obtaining the best site for the terminus. But the position which he submitted the Government were in was this: they were not always able to fulfil their pledges to that House in the matter of railway routes. There was the all-powerful Commissioner behind them.

THE COLONIAL SECRETARY (Lord Gifford) said the hon. member had put a somewhat strained construction upon the action of the Government with regard to Stirling Square. The Government never altered their opinion with regard to that matter. In order to meet the views of the Committee, he would move that the schedule be amended, so as to leave it open for the line to be taken through "York town lot 284" or its vicinity, southward, without defining the terminus.

The schedule was then agreed to, and the Bill reported.

#### INSPECTION OF RAILWAY ACCOUNTS.

MR. STEERE, in accordance with notice, moved, "That an Humble Address be presented to His Excellency the Governor, praying that he will be pleased to cause the Inspector of Accounts to make a report for the information of the Council as to the manner in which the Railway Accounts at Fremantle have been kept, and whether the length of time that he has been engaged in auditing the said accounts has been caused by the inefficiency of the system adopted in keeping them." Hon. members were aware, from the information already furnished, in reply to the question put by the hon. member for Toodyay, that the length of time which had been occupied in auditing these accounts extended over several months, although the railway had only been a short time open, and he thought it would be satisfactory to the House to know what was the cause of the long period which had been occupied in examining the accounts.

The motion was agreed to.

MESSAGE (No. 7): MESSRS. JOUBERT AND TWPENY'S CLAIM FOR REBATE OF DUTY.

THE SPEAKER announced the receipt of the following Message from His Excellency the Governor:

"The Governor forwards, for the consideration of Your Honorable Council while the Estimates are before you, a claim put forward by Messrs. Joubert and Twopeny for the refund of the duty paid by them on the iron and timber imported by them for the use of the Perth Exhibition.

"Government House, Perth, 30th August, 1882."

The consideration of the Message was made an Order of the Day for September 6th.

MESSAGE (No. 8): RAILWAY THROUGH KIMBERLEY ON LAND GRANT SYSTEM.

THE SPEAKER notified the receipt of the following Message from His Excellency the Governor:

"The Governor forwards to the Honorable the Legislative Council a letter from Messrs. McKenzie Grant and H. W. Venn, having reference to the proposed construction of a Railway on the Land Grant System in the Kimberley District.

"There can be no doubt that the development of the Kimberley District would be greatly promoted by a Railway through the territory, and the Governor suggests that the question is one deserving of your careful consideration.

"Government House, Perth, 4th September, 1882."

The consideration of the Message was made an Order of the Day for September 11th.

MESSAGE (No. 9): *IN RE* PROPOSAL OF JARRAHDALE TIMBER COMPANY.

THE SPEAKER also announced the receipt of the following Message from His Excellency the Governor:

"In reply to Your Address No. 13, of the 31st ultimo, the Governor begs to inform Your Honorable House that information relative to the Country in the neighborhood of the 50-mile post on the Perth and Albany Road will

"be found in Sessional Paper No. 2, presented to you at the opening of the Session. That paper contains reports by the Surveyor General and by Messrs. Forrest and Price on the country which was last year proposed to be traversed by Mr. Joubert's contemplated Railway to the Sound. The four localities mentioned in the Report of the Select Committee as likely to be benefited by the extension of the Jarrahdale Railway, and as to which information is asked for by Your Honorable Council, are situated, three of them within the belt of country specially examined and reported upon by Mr. Forrest, the fourth in close proximity to it, and therefore the Governor apprehends that to institute a further examination of the country would be to postpone the consideration of the proposal of the Jarrahdale Company for no adequate result.

"Maps explanatory of Mr. Forrest's Report are forwarded for the consideration of Members. The Governor requests that they may be returned when finished with, as only a few copies have been colored for the use of the Government. The Governor observes that your Select Committee concur with him in thinking 'that the completion of a Railway from Rockingham to the Albany Road would be a great benefit to and promote the development of the districts contiguous to the Eastern Terminus of the line,' and should you now arrive at any definite recommendation in the matter he will be happy to forward it for the consideration of Her Majesty's Government. It will of course be the duty of this Government to see that the detailed conditions and stipulations of any agreement with the Company are so framed as to protect the interests of the public.

"Government House, Perth, 4th September, 1882."

The consideration of the Message was made an Order of the Day for September 11th.

MESSAGE (No. 10): CORRESPONDENCE WITH MR. AUDLEY COOTE RELATIVE TO RAILWAY TO KING GEORGE'S SOUND.

THE SPEAKER announced the receipt of the following Message from His Excellency the Governor:

"The Governor forwards to the Honorable the Legislative Council a correspondence with Mr. Audley Coote, of Tasmania, relative to the proposed construction of a Railway on the Land Grant System to King George's Sound. Government House, Perth, 4th September, 1882."

The consideration of the Message was fixed for Thursday, September 7th.

#### STAMP DUTIES BILL.

THE ATTORNEY GENERAL (Hon. A. C. Onslow), in accordance with notice, moved the first reading of a Bill intituled "An Act to repeal 'The Stamp Act, 1881,' and to re-enact the provisions thereof, with amendments."

Motion agreed to.

#### LEGISLATIVE COUNCIL ACT AMENDMENT BILL.

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

THE ATTORNEY GENERAL (Hon. A. C. Onslow) moved that the Order be discharged and the Bill recommitted, with a view to the introduction of a new clause.

Agreed to.

#### IN COMMITTEE.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said the new clause he had to introduce was as follows: "No householder shall be entitled to vote under the provisions of the 10th section of the 34th Victoria, No. 30, unless such householder shall have been duly registered in accordance with the provisions of the 33rd Victoria, No. 13." This clause was rendered necessary in consequence of the ambiguity, or rather the conflict, which existed between the two Acts referred to, relating to the representation of the people. The original Act (33rd Vict., No. 13) required that all electors shall be registered in accordance with certain provisions embodied in the Act, whereas the subsequent Act (34 Vict., No. 30) laid it down most plainly that every householder shall be entitled to vote, without reference to the condition contained in the original Act as to registration; and it was in order to remove this conflict between the two enactments that the present clause was

introduced. He did not suppose there would be a word of objection offered to it by any hon. member.

The clause was agreed to without discussion.

Schedule A—reverted to:

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said that when this schedule was considered the other day, defining the boundaries of the new electoral districts at the North, the Committee, in dealing with so vast a territory, lost sight altogether of some islands, on which there are some inhabitants, and it was considered desirable that these good people should be included in the electorate. He had therefore to move that the following words be added to the schedule: "including all islands lying between the North and South boundaries."

Agreed to, as also a similar provision relating to Schedule B.

Bill reported.

#### BRANDS ACT AMENDMENT BILL.

The House then went into Committee for the consideration of this Bill, when clauses 1 to 4 were agreed to *sub silentio*.

MR. BROWN moved that Progress be reported, and leave given to sit again on September 6th, for the purpose of introducing some further amendments in the Brands Act.

Agreed to.

Progress reported.

#### STATUTES (ERRORS) AMENDMENT BILL.

The Order of the Day for the consideration of this Bill in Committee being read,

MR. BURT moved, as an amendment, that the Bill be considered in Committee that day six months. He did not see the object of the Bill, when there were dozens of other "errors" to be corrected. It would be far better to bring up the Bill again, when the Revision Committee had gone through the statutes for the purpose of re-printing them. If a competent person undertook the superintendence of printing, every error would then be discovered, and such a Bill as this might then be of some use. The few errors now proposed to be rectified had existed for years: they had been

known to the profession ages ago, and the statutes had been carried out just as well and just as effectually.

THE COLONIAL SECRETARY (Lord Gifford) failed to see what possible harm the Bill could do. There might be many more errors in the statute book, but that was no reason why those embodied in the schedule to the present Bill should not in the meantime be rectified.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said the Bill was not brought in simply with reference to the work of the Statutes Revision Committee; the measure was a necessary one whether the House sanctioned the re-printing of the revised statutes or not. It contemplated certain amendments which would have to be made whether the statutes were reprinted or whether they were not reprinted.

The amendment, on being put, was negatived, and the House went into Committee.

#### IN COMMITTEE.

Clauses 1, 2, and 3 were agreed to *sub silentio*, and also the schedule, with the exception of the last item, relating to the Scab Act Amendment Act, which, on the motion of the Attorney General, was struck out.

Bill reported.

#### LAND REGULATIONS: PRE-EMPTIVE RIGHTS TO RENEWAL OF LEASES.

##### ADJOURNED DEBATE.

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) moved the resumption of the debate upon the following resolution, previously submitted by Mr. Venn:—"That an Humble Address be presented to His Excellency the Governor, praying that he will be pleased to obtain the sanction of the Secretary of State to such an amendment in the present Land Regulations as will provide that lessees of Crown Lands, on making application for a renewal of their leases at any time within one month previous to the expiration of such leases, shall have a prior claim to a renewal thereof, under such provisions as may be in force at the time, and thus ensure that present leaseholders shall not be disturbed in favor of new applicants; for, although the Council believes that the Govern-

"ment would not willingly sanction leases which have lapsed being capriciously taken from one man and given to another, still the legal obligation of the Government might compel it to do such an injustice; and the Council is of opinion that all doubts as to renewals should be removed, and that express provisions should be made by a further regulation for granting a prior claim to existing lessees for a renewal of their leases."

THE COMMISSIONER OF CROWN LANDS (Hon. M. Fraser) said he had moved the adjournment of the debate when the hon. member submitted this resolution, simply because it appeared to him a very important question, and one with regard to which the House would desire to have an opportunity of forming a mature judgment. From all he could now understand, the resolution was one which met with the general approval of hon. members, and, such being the case, he was not aware that there was any necessity for him or that it devolved upon him to initiate any discussion on the subject. He would therefore merely add that, so far as he was officially concerned, he had no objection to raise to the resolution.

MR. STEERE had much pleasure in supporting the resolution. It merely asked His Excellency the Governor to do what would be a simple act of justice, and the resolution itself expressed all that need be said on the subject. He believed there was an impression on the minds of a great number of people that our Land Regulations were merely permissive regulations, and that the Governor can do almost what he likes with them; whereas, the fact of the matter is, these regulations possess all the force and vitality of statute law. They were promulgated under the provisions of an Imperial Act of Parliament, and were as much the law of the land as any legislative enactment passed by that House. And although, in the words of the resolution, "the Council believed that the Government would not willingly sanction leases which have lapsed being capriciously taken from one man and given to another, still the legal obligation of the Government might compel it to do such an act of injustice." There might be cases in which the Gov-

ernment could not help itself, for if a lessee, either through neglect or inadvertence, did not apply for a renewal of his lease within the time provided by the regulations, and another applicant sought to lease the land, the Government would be bound to entertain that application, although it might be contrary to its wish or intention to do any act of injustice.

MR. CAREY feared his would be the only dissentient voice that would be raised against the resolution; but that would not deter him from doing what he conceived to be his duty. He thought this was a matter which might safely be left in the hands of the Governor, to deal with all applications on their merits. He had never heard of a single act of injustice being done under the existing regulations, whereby a man's lease had been taken over his head, and his just claims ignored. We did not know what might happen within a period of fourteen years,—the duration of these leases; questions of compensation might arise and other complications, and he thought it would be far better to let the regulations remain as at present in this respect.

MR. MARMION thought the hon. member for the Vasse had misunderstood the position of affairs. None of the existing leases had yet expired by effluxion of time, and therefore it was impossible that any act of injustice could have been brought under the attention of the Government with regard to the question of renewal. It had been stated in one of the public prints that the argument put forward by the present leaseholders in support of their pre-emptive right of renewal was simply this,—that, inasmuch as they had had the land in their possession for some years, and had complied with the terms of the regulations as regards improvements, they had a right to be allowed to remain in undisturbed possession of the land; and the section of the press referred to maintained that this position was not a tenable one, as these people had no more right to a renewal of their leases because the Crown was their landlord than a tenant on a private estate had such right. This argument might be all very well in theory, but, he contended, that in practice it would be found to be a bad one. He thought it might be said that, as a rule, the majority of



private landlords, if they had a tenant who had done justice to the land and honestly fulfilled the conditions of his lease, would not, upon the termination of the lease, take the land out of this tenant's hands, without at any rate conferring with him as to a renewal of his lease; and, if that tenant was prepared to pay the same amount of rent and to undertake the same obligations as regards the estate as a strange tenant would, he ventured to say the majority of landlords would give that man the preference. And this was all which the resolution put forward by the hon. member for Wellington contemplated as regards the lessees of Crown Lands. These people did not ask any more than a tenant on a private estate would be justified in asking, or more than any just landlord would grant. They merely sought to have the right of renewing their leases recognised, provided they were prepared to comply with such Land Regulations as might then be in force, and to undertake such obligations as the Crown, as their landlord, might insist upon. If they were prepared to accept the conditions which the Government in its wisdom might choose to impose upon them at the termination of their existing leases, he thought they had a right to regard themselves as having a prior claim to a renewal of those leases. That was all they asked for, and it certainly was not unreasonable. He had much pleasure in supporting the resolution.

MR. CAREY said the position of a private landowner as regards his tenants, and the position of the Crown as regards leaseholders, was altogether different.

MR. S. H. PARKER had no objection whatever to this address being presented; on the contrary, he thought that lessees who had expended money in improvements were certainly entitled to some consideration, and had a prior claim to a renewal of their leases. He did not think that was asking very much. All he wished to say was, that he supported this resolution on the distinct understanding that, should the Government deem it expedient to resume any portion of these lands for agricultural areas, they should not be debarred from doing so, by the terms of any renewed lease. [MR. STEERE: Of course, that is thoroughly understood.] He trusted that

one of the results of the extension of the railway to York, in conjunction with the resolutions which he had submitted for the affirmation of the House with regard to free grants of land, would be that agricultural settlement would increase largely, and that the Government would take an early opportunity of setting apart suitable areas, with that object in view, and that these renewed leases would not be a bar to the Government resuming the land for such a purpose.

The resolution was then put and carried, *nem. con.*

#### TRESPASS, FENCING, AND IMPOUND- ING BILL.

The House then went into Committee for the further consideration of this Bill.

Clause 16.—Penalties and compensation for damages on enclosed country, town, and suburban land: municipal councils to publish scale of penalties:

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said that when this clause was under consideration the other day it was pointed out by the hon. member for Geraldton that one of the sub-sections referred to penalties recoverable for trespass on country lands, whereas the principal section had reference to such penalties as may be recovered by municipal councils. In order to remove this anomaly, he proposed to strike out sub-section 3, and, on the recommittal of the Bill, to include it in the 13th clause. The sub-section in question was as follows:

"In addition to the sums specified in "The Trespass Scale for trespass by "cattle only, a Justice of the Peace may "on the complaint of an owner of land "with reference to each distinct act of "trespass assess damages by reason of "such trespass (in all cases where such "damages shall not be otherwise herein "provided for) on the following scale:

"On enclosed country land, a sum "not exceeding Thirty pounds.

"On enclosed town or suburban "land, a sum not exceeding "Fifty pounds."

MR. BROWN said that since the former discussion on the clause he had looked through it again, and the more he looked at it the less he liked it. He would ask the Attorney General whether he could point out any connection be-

tween the principal section and any of the sub-sections. It struck him that if sub-section 3 were made into a separate clause, the object in view would be attained, and he thought the clause now under consideration would be further improved if the remaining sub-sections were brought into greater harmony with the main clause itself. At present it seemed somewhat mixed.

The clause as amended—by striking out sub-section 3—was then agreed to.

Clause 17.—Nothing in the Act shall be construed to apply to town herds:

Agreed to without discussion.

Clause 18.—“If a Justice of the Peace hearing any case herein provided for shall, upon the merits, deem the offence not to have been proved, or that the trespass and all consequent damage was justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the party against whom such complaint was preferred or whom it shall affect.

“1. If any such party shall have obtained such certificate: or shall have paid the whole amount adjudged to be paid; or shall have suffered the imprisonment consequent in default of payment of such amount; in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.”

MR. BROWN thought some provision ought to be made for awarding compensation, in the event of a man being fined or imprisoned without just cause.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said the power to dismiss a complaint when of too trifling a character to merit punishment was given by the 13th clause and not by the present one. This clause merely provided that where that power had been exercised certain things shall follow. If the hon. member would read the clause more carefully he would see that any such amendment as he had suggested would spoil it, rather than improve it.

The clause was then agreed to.

Clause 19.—“The owner of any town or suburban land, not being a street or public thoroughfare in a city or town, shall not be entitled to recover under this Act any compensation for damages committed by trespass of cattle, unless the land be enclosed by a sufficient fence.”

MR. MARMION asked whether the compensation for damages contemplated by this clause included the fine for trespass, or whether it was distinct from that penalty?

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said all this clause provided for was the compensation for damage; it had no reference to the trespass penalty.

MR. MARMION thought there should be a distinction, and a wide distinction between the amount of compensation payable in respect of damages on land enclosed with a sufficient fence, and unenclosed land, and that, when the Bill came to be recommitted, it would be necessary to make such distinction in the 13th clause.

The clause was then put and passed.

Clause 20.—Proprietors of any town or suburban land failing—under the provisions of the Ordinance No. 4 of 4th William IV 1834—to join in erection of fences, not entitled to compensation for damage caused by stray stock:

MR. RANDELL asked if there was any objection to place owners who refused to join in the repair of a boundary fence under the same disability as those who refused to join in the erection of such fence?

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said the clause was, word for word, in accord with the existing law as regards fencing, and he did not think it would be advisable to alter it. The clause, if altered as proposed, might be in contravention of the Ordinance referred to.

MR. BURT suggested that the words relating to the Ordinance in question be struck out.

MR. RANDELL said the Ordinance specified the time within which the thing required shall be done, and it would be necessary to make the same provision here, if the words referring to the Ordinance were struck out.

MR. STEERE thought it would be a

great improvement if the suggestion made by the hon. member Mr. Randell were adopted. He failed to see why a man should not be called upon to contribute towards the repair of a boundary fence as well as to contribute towards putting up such a fence, in the first instance. He found, on reference to the Ordinance mentioned, that provision was therein made to compel a man to join in the repair of a fence.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) said, in that case, there could be no objection to adopt the same wording here.

MR. RANDELL then moved that, between the words "erect" and "the," in the 14th line, the words "or repair" be inserted.

This was agreed to, and the clause, as amended, adopted.

Clause 21.—"No more damages shall be awarded in respect of trespasses committed upon any grain or other crops in any land, not being a townsite, unless the same shall have been at the time of such trespass enclosed by a sufficient fence (as hereinafter defined), than if such trespass had been upon uncultivated land."

MR. BROWN thought some proviso ought to be added with reference to wilful or malicious trespass. An unprincipled man might take advantage of this clause by wilfully turning stock into his neighbor's field of corn, if it should happen that the field was not completely fenced. In many parts of the Colony—he could answer for the Champion Bay District—crops of wheat were grown in fields that were not entirely fenced in, and, although he held with the principle that the owners of these fields should take the risk of having no damage awarded them, still, if it could be shown that a man had maliciously driven stock into a crop of wheat simply because the owner of the crop could not, under this clause, obtain any more damages than if the land had been altogether unenclosed, he thought some provision ought to be made to meet such a case of wilful and malicious trespass.

MR. CROWTHER, on the other hand, would do away with all claims for damage, unless the land was enclosed with a fence, and he would like to see the word "more," in the first line, struck out.

THE ATTORNEY GENERAL (Hon. A. C. Onslow): That would render the section meaningless, and would be altering the law from what it is at present.

MR. BROWN then moved that the following words be added to the clause: "Provided, nevertheless, that such trespass shall not be wilful nor malicious."

This was agreed to, and the clause, as amended, adopted.

Clause 22.—"It shall be lawful for any lawful owner of private land, whether within the limits of a townsite or not, having cleared and kept clear his own side of any boundary fence from rubbish, brushwood, fallen trees, blackboys, and other dangerous fuel, to call upon the owner of the adjacent private land to clear such boundary fence between the said lands to the distance of 10 feet from the fence," &c.:

MR. STEERE: What is the meaning of the expression "private land" in this section?

THE ATTORNEY GENERAL (Hon. A. C. Onslow): I am not prepared to answer the hon. member's question at present. The wording of the clause is precisely the same as in the Act now in force.

MR. BURT said, perhaps he might be allowed to assist the hon. and learned gentleman, if he would allow him. At one time you could not compel the occupiers of Crown Lands to join in keeping clear a boundary fence, and the Act had reference only to the owners of private land; but since then we had extended the same provision to all lands; and, now, the word "private" was no longer necessary. It was originally introduced in order to exclude Crown Lands from the operation of the clause.

MR. STEERE moved, That the words "lawful owner of private," in the second line, be struck out, and the words "owner of" inserted in lieu thereof.

This was agreed to.

MR. STEERE also moved that the word "private," in the ninth line, be struck out.

MR. BROWN: It strikes me that this clause will require a great deal of amending, and that, unless we mind, we shall be drifting into the Fencing Bill of last Session. There are occasions in which you cannot compel a man to fence ad-

jacent land. We are now asking the owners of leasehold lands to submit themselves to penalties which they are not under at present. I think this a matter which requires very serious consideration at our hands.

MR. MARMION: On the other hand, the amendment confers privileges which are not now enjoyed.

MR. STEERE: A mere act of justice to leaseholders holding their land from the Crown.

THE ATTORNEY GENERAL (Hon. A. C. Onslow): I cannot accept the proposal to strike out the word "private" in the ninth line. The Government might then be called upon to do what this clause contemplates private owners to do. I do not think that the striking out of the words which have been struck out in the second line will affect the Government in any way; but I cannot agree to the present amendment.

MR. STEERE said the words "not being Crown Lands occupied by the Crown," would protect the Government.

THE ATTORNEY GENERAL (Hon. A. C. Onslow): The clause applies to special occupation licensees now, which it did not before.

The question was then put—That the word "private" proposed to be struck out stand part of the clause—and the Committee divided, with the following result:

Ayes	...	...	9
Noes	...	...	9

There being an equal number of votes, THE CHAIRMAN OF COMMITTEES gave his casting vote with the Ayes, in accordance with the usual parliamentary rule, in order that there may be another opportunity of considering the question, at a future stage of the Bill.

MR. BURT then moved that the words enclosed in brackets—"not being Crown Lands occupied by the Crown"—be struck out.

MR. MARMION hoped hon. members were not going to accept important amendments, affecting the principle which now regulated our laws as to fencing, without giving them some little consideration. He would move that Progress be now reported, and leave given to sit again on Wednesday, September 6th.

The motion to report Progress was negatived.

MR. RANDELL said, as to the amendment submitted by the hon. member for Murray and Williams, were he to act consistently with the course he had adopted last year when the Fencing Bill was under discussion, he would support the amendment, as the removal of the words referred to from the clause would give all they wanted last year; but, inasmuch as they knew there was no likelihood of the present Bill, if amended in this way, being assented to by His Excellency the Governor, it appeared to him it would only be a waste of time to adopt the amendment, seeing that the Bill would then be almost sure to be vetoed.

MR. BURT said, as to wasting time, he threw all the responsibility in that respect upon the Government, in bringing forward a Bill dealing again with this question. Had he been directing the policy of the Government, he should have hesitated to renew the battle fought last Session.

MR. MARMION said the hon. member for Murray was now showing himself in his true colors; he had disclosed his hand—the object of the amendment was to afford an opportunity of fighting the old battle of the Fencing Bill over again. He would ask the Committee whether it was worth their while to re-discuss the arguments that were worn threadbare at the last Session of the Council? If not, he would ask hon. members not to waste any more time, but to agree to report Progress.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) could not see any necessity for reporting Progress, but he would join the hon. member in asking the mover of the amendment whether he really thought it was wise or expedient to reopen the discussion of last year, even although there might be a greater majority than there was on the former occasion in favor of the principle referred to. But whether the majority would be greater or less in that House, it should not be forgotten that there was a still stronger power behind,—a power which they must know would deal with the present Bill, as he did with the Bill of last Session, if based on the same principle, so that the time expended in discussing this principle would be time thrown away. Was it sensible, was it fair to the Committee, to go on fighting

this Bill, clause by clause, for the mere object of having the Bill vetoed?

MR. BURGESS said the present Bill did not introduce the principle of compulsory fencing, and the clause now under discussion simply referred to clearing the land on either side of a fence from rubbish and deadwood.

MR. BURT said the mere fact that a Bill was likely to be vetoed by the Governor did not concern him at all. The duty of that House might point one way, and the duty of other people might point in an opposite way. He thought it would be a very wrong principle indeed to accept as their guidance—that because they thought a Bill would be vetoed it was therefore a mere waste of time to discuss its provisions.

MR. STEERE said the amendment would not make the clause anything like the Fencing Bill of last Session, nor indeed did it affect the principle of that Bill. He quite agreed with the hon. member for the Murray that they ought not to be deterred from discussing measures in that House simply because they may think the Governor may not approve of them. They were not sent there merely to frame laws which they conceived would be in consonance with the views of the Governor for the time being. The views of the members of that House might not be in accord with the views of His Excellency, but surely that was no reason why they should not discuss and pass measures which in their opinion would be conducive to the welfare of the Colony, as a public benefit.

MR. MARMION: I am not aware of having said anything in the course of this debate, or of any other debate, which would justify the construction put upon my words by the hon. member for the Swan and the hon. member for the Murray. What I say is that the Fencing Bill of last Session was vetoed by the Governor, and afterwards received by the country with scorn and derision (MR. STEERE: No, no). The hon. member himself admitted, at a public meeting at which I was present, that the weight of public opinion was against that Bill.

MR. STEERE: That is a very different thing to receiving it "with scorn and derision."

MR. MARMION: At any rate, the general feeling of the great majority of

the public was against it; and it seems to me sheer waste of time to discuss the same principle in connection with the present Bill. That is all.

The amendment proposed by Mr. BURT was then put, and the Committee divided, as follows:

Ayes	...	...	6
Noes	...	...	11

Majority against ... 5

AYES.	NOES.
Mr. Burgess	Lord Gifford
Mr. Grant	The Hon. M. Fraser
Mr. Randell	Mr. Brown
Mr. Steere	Mr. Carey
Mr. Venn	Mr. Crowther
Mr. Burt (Teller.)	Mr. Glyde
	Mr. Hamersley
	Mr. Higham
	Mr. Marmion
	Mr. Shenton
	The Hon. A. C. Onslow (Teller.)

The clause, as amended (by the omission of the word "private," in the second line), was then put and passed.

Clause 23.—Party using boundary fence to pay half:

MR. BURT moved to strike out the following words: "and the owner of the adjoining land shall, after the passing of this Act, in enclosing the same, avail himself of the dividing fence so erected, or any part thereof."

The motion was negatived, on the voices, without discussion.

Clause 24.—Mutual fences to be mutually kept in repair:

MR. RANDELL said provision was made in the Acts in force in some of the other colonies, whereby a man may proceed to repair a fence immediately, in case of its being destroyed by fire or by a tree falling on it, without waiting to consult the owner of the adjoining land; and he thought, when the present Bill came to be recommitted, it would be a good thing to introduce a similar provision here.

The clause was then agreed to.

Clauses 25 to 29 were adopted *sub silentio*.

THE ATTORNEY GENERAL (Hon. A. C. Onslow) then moved that Progress be reported, and leave given to sit again next day.

Agreed to.

Progress reported.

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