on with the motion at this hour of the night. I am inclined to move the adjournment of the debate.

HONORABLE MEMBERS: No, no!

Mr. DAVIES moved,—

That the resolutions be put *seriatim.*

He did this in order that honorable members might have an opportunity of deciding on each motion separately, and particularly on the first. He thought the first motion very objectionable for the reasons assigned by the honorable member for East Sydney (Mr. H. C. Dangar).

Mr. W. R. CAMPBELL considered that the resolutions ought to be dealt with as a whole. Honorable members ought not to make these sort of charges against each other; and he by no means approved of the motion of the honorable member for South Sydney. All the motions ought to be got rid of at once, and this kind of thing ought not to be tolerated any longer.

Question—That the resolutions be put *seriatim*—negatived.

Original question resolved in the negative.

House adjourned at 5 minutes past 11 o'clock p.m.

Legislative Council.

Wednesday, 15 November, 1882.

Income of the Colony—Third Reading—Criminal Law Amendment Bill.

The PRESIDENT took the chair.

INCOME OF THE COLONY.

Mr. PIDDINGTON asked the REPRESENTATIVE OF THE GOVERNMENT,—(1.) What is the total aggregate income of the colony received since the present Government came into office, namely, for the years 1879–80–81, and actual and estimated for 1882, inclusive? (2.) What is the total amount of loans contracted since the present Government came into office, and the dates when contracted, and the total amount of proceeds received?

Mr. A. CAMPBELL answered,—(1.) Revenue for the year 1879, £4,481,666; for the year 1880, £4,911,991; for the year 1881, £6,714,327; actual and estimated revenue for 1882, £7,160,914; total, £23,268,898. (2.) Statement showing particulars of loans contracted since the present Government came into office—December, 1878:—39 Vic. No. 18, contracted, £5,700 (sold in Sydney); interest payable from 1st January, 1879; net proceeds, £5,358. 39 Vic. No. 18, contracted, £22,000 (sold in Sydney); interest payable from 1st July, 1879; net proceeds, £21,560. 38 Vic. No. 2, 40 Vic. No. 12, and 41 Vic. No. 4, contracted, £3,249,500 (sold in London); interest payable from 1st July, 1879; net proceeds, £3,178,374 1s. 5d. 39 Vic. No. 18, contracted, £4,200 (sold in Sydney); interest payable from 1st January, 1881; net proceeds, £4,200. 41 Vic. No. 7, and 43 Vic. No. 11, contracted, £2,050,000 (sold in London); interest payable from 1st July, 1881; net proceeds, £2,108,429 14s. 6d. 41 Vic. No. 7, and 43 Vic. No. 11, contracted, £2,000,000 (sold in London); interest payable from 1st July, 1882; net proceeds, £2,031,548 15s. 11d. (this is an estimate only, as the particulars of the full charges on the negotiation of the loan have not yet been received, nor the whole proceeds paid up). Total contracted, £7,331,400; total net proceeds, £7,349,470 11s. 10d.

THIRD READING.

Wharfage and Tonnage Rates Act Amendment Bill.

CRIMINAL LAW AMENDMENT BILL.

In Committee (consideration resumed from 8th November),—

Clause 73. Whosoever steals any cattle shall be liable to penal servitude for ten years And whosoever wilfully kills an animal with intent to steal the carcase or skin or any part of the cattle so killed shall be liable to the same punishment as if he had been convicted of stealing the animal.

Amendment (by Sir ALFRED STEPHEN) agreed to,—

That the words "an animal," line 3, be omitted, with a view to insert in lieu thereof the words "any cattle."

Mr. BRODRIBB said that from his own knowledge he was impressed with the opinion that the penalty in this clause would be an obstacle to convictions. Juries now frequently disagreed, and even after being locked up for a considerable time were discharged. He wished to point out that the punishment of penal servitude for ten years was excessive, and would add to the difficulties in getting convictions even in very clear cases of guilt. It ought to be reduced to three years.

Sir ALFRED STEPHEN: Ten years is the maximum, and the sentence may be for only three years. Many cases of wrongful acquittal were not due to the severity of the punishment, but owing to the squeamish, foolish, and utterly unfounded opinion that every case ought to be proved beyond a possibility of doubt.

Clause, as amended, agreed to.

Clause 90. Whosoever robs or assaults with intent to rob any person or steals any chattel money or valuable security from the person of another shall unless where a greater punishment is provided by this act be liable to penal servitude for ten years.

Mr. DE SALIS said that ten years' penal servitude was a severe penalty for an assault with intent to rob. Most of these cases would be brought in the district courts, the judges of which were so much distrusted that they were not allowed to try civil cases over £200, and yet we were giving them power to inflict a penalty of ten years' penal servitude. Certainty of punishment was better than severity for the repression of crime, and to have certainty we must have reasonable punishments.

Mr. KING did not think juries would convict with the prospect of their verdicts being followed by such a heavy penalty. It might be inflicted for an assault with intent to steal something insignificantly small in value or a very small sum of money.

Mr. DE SALIS said that if the jury had some voice in the punishment to be inflicted he should not object to the clause; if they had the power of discriminating as to the grade of the offence he believed that they would more frequently convict. Juries were not rogues and vagabonds. Australians generally were honest, independent men; but it would not be honest to sentence a boy to three years' penal servitude for a trivial offence of this nature.

Sir ALFRED STEPHEN: My own opinion as to the duty of the Legislative Council, judges, and juries is that it ought to be to put down crime, and to sympathise with the victim, not with ruffians who perpetrate wrong—with the person who is robbed in the highway with force, which the word robbery implies. It is a crime which leads to wounding and to death. If the assaulted party be armed the life of the other party may be taken; and such also may be the case if an attempt be made to take money from another person, which is a very serious trespass upon both personal right and the right of property. Prisoners tried for the offence have generally been twice or thrice convicted; and we too frequently hear in opposition to adequate punishments being provided that they may be inflicted on boys who commit the offence in the exuberance of youthful spirits. We are not dealing with mere possibilities or contingencies of that kind. If a boy commits this offence he may be properly punished with three years' imprisonment. Should there be grounds for mitigating the punishment the Executive would diminish the sentence, and under the prison regulations he may suffer only two years' servitude.

Mr. DE SALIS could not agree with the honorable and learned member. A young lad must have a commencement in crime; but on his first conviction he must, under this bill, get at least three years' penal servitude. He coincided with the honorable and learned member in his views as to the duty of putting down crime; but he differed with the honorable and learned member as to the best means of doing it. Criminals who ought to be, and would be convicted, if the sentences were not unreasonably severe, were now turned free on the world. For hundreds of years severe penalties had been tried in England and they had totally failed to realise their object; and were we to have our criminal code twice as severe as that of England? He should be satisfied if the responsibility were cast on the judge, with a quasi jury to advise as to the sentences, as recommended by Bentham.

Clause agreed to.

Clause 92. Whosoever being armed with any offensive weapon or instrument or in company with any other person robs or assaults with intent to rob any person or stops any mail or vehicle or person conveying a mail with intent to rob or search the same shall be liable to penal servitude for *life*.

Amendment (by Sir ALFRED STEPHEN) agreed to,—

That after the word "vehicle," line 5, the words "or train" be inserted.

Sir ALFRED STEPHEN: I propose to substitute fourteen years' penal servitude for penal servitude for life, as this is not so dangerous or wicked an offence as robbery with arms, in company, and

wounding, dealt with in the next clause, for which the punishment is penal servitude for life. I move,—

That the word "*life*," last line, be omitted with a view to insert in lieu thereof the words "*fourteen* years."

Mr. MACINTOSH thought the offence dealt with in the clause before the Committee was a very grave one, and as the prisoner might not be sentenced for life, although that appeared in the clause, he did not see any necessity for altering the punishment.

Amendment agreed to; clause, as amended, agreed to.

Clause 96. Whosoever sends delivers or utters or directly or indirectly causes to be received knowing the contents thereof any letter or writing accusing or threatening to accuse any person of felony or an attempt to commit an infamous crime as hereinafter defined with a view or intent to extort or gain any property from any person shall be liable to penal servitude for fourteen years.

Sir ALFRED STEPHEN: It will be observed that any person accusing another of attempting to commit an infamous crime is punishable; but if he charges the person with having committed the crime the punishment does not attach, and the clause therefore requires modification. I move,—

That the words "an attempt," line 5, be omitted with a view to insert in lieu thereof the words "of having committed or attempted."

Amendment agreed to; words substituted.

Sir ALFRED STEPHEN moved,—

That after the word "defined," line 6, there be inserted the words "or an offence against decency in a public place."

I have heard of what is called levying black-mail on persons on the pretence that they had committed an offence against public decency. At Maitland a lady and gentleman walking in a public place at night were accosted by an individual who accused them of this offence; and they were so frightened by the possibility of being even suspected that to get rid of the fellow they gave him £5 each, though afterwards on oath it was proved that they were innocent of any offence of the kind.

Amendment agreed to; clause, as amended, agreed to.

Clause 103. Whosoever burglariously breaks and enters any dwelling-house and while therein or on any part of the premises occupied therewith assaults with intent to murder any person or inflicts any grievous bodily harm upon any person shall be liable to suffer death.

[*Sir Alfred Stephen.*

Sir ALFRED STEPHEN: If a man breaks and enters a dwelling-house, this sentence attaches; but if he breaks and enters a kitchen he is not liable; yet, in the country, kitchens, although not part of the dwelling, are so very near as scarcely to be out-houses, and they are very like parts of the dwellings, and the crime committed with regard to them is of the same nature as if it were done in the case of an actual dwelling. I move,—

That the word "burglariously," line 1, be omitted, and that after the word "house," line 2, the words "or any building appurtenant thereto" be inserted..

Amendment agreed to.

Mr. DE SALIS said we had now applied the punishment for burglary to the crime of breaking and entering any dwelling and assaulting with intent to murder or inflict grievous bodily harm. The English law had abolished the death penalty except for murder. But here was an offence falling short of burglary in its gravity, and yet the death penalty was retained. This was not the way to put down crime—to ask juries to convict persons who were to be subjected to a punishment disproportioned to the offence. He moved,—

That the words "suffer death" at the end of the clause be omitted, and that the words "penal servitude for life" be inserted in lieu thereof.

Sir ALFRED STEPHEN: No doubt the word "burglariously" has been struck out, because a man may break and enter another's kitchen, which may be only a few feet from the dwelling—of which there are scores of instances in the interior. He is to be punished though he does not do it burglariously, which implies that the crime is committed in a dwelling. Suppose this crime is committed at night in the interior where there is little protection, perhaps no other house within 20 miles. The master hears the noise of breaking and entering, and walks out of his dwelling to the burglar—which he is in reality though not technically,—and the burglar assaults the master with intent to kill him. That is the offence dealt with by the clause. Intending to kill he may fail, but may inflict grievous bodily harm, break a limb, or destroy an eye. If we are to retain the punishment of death, is not that an offence fully deserving of it? We profess to protect two things—a man's dwelling and his life, and to protect him against grievous

bodily harm which would endanger his life or leave him maimed for the remainder of his existence. Let it be remembered that there was a time when no man in the country felt safe at night in his house on account of the prevalence of this sort of crime.

Mr. DE SALIS had always understood that burglary was connected with robbery, but that feature had been taken out of the crime dealt with in the clause. Now we were told that the offence was not to be robbery but breaking and entering a house and assaulting with intent to commit murder. Yet this great change was brought before us at five minutes' notice. It ought to be looked into very carefully. The crime now was one simply of violence to the person.

Amendment negatived; clause, as amended, agreed to.

Clause 116. Whosoever steals or plunders any part of any vessel in distress or wrecked stranded or cast on shore or any property of any kind to the value of twenty shillings belonging to such vessel shall be liable to penal servitude for fourteen years.

Mr. DE SALIS thought there ought to be inserted the words "before being deserted by the crew." The punishment would be very severe for an offence after the vessel was abandoned.

Sir ALFRED STEPHEN: A crew may quit a wreck to save their lives and may leave property in the vessel, and it would be a cruel, wicked, and cowardly offence to take that property away.

Mr. DE SALIS pointed out that the vessel might be derelict; surely then it would not be cruel or cowardly to take property which had been absolutely abandoned, or an offence properly punishable with fourteen years' penal servitude. He moved,—

That after the word "vessel," line 5, there be inserted the words "before being deserted by the crew."

Mr. WATT thought the penalty ought to be any term not exceeding fourteen years. If a person took a piece of old timber or a plank from a vessel, however long it might have been wrecked, he would, by the clause as it now stood, be liable to penal servitude for the full term of fourteen years. Some discretion ought to be left to the magistrate.

Mr. FLOOD desired some explanation on a difficulty which appeared to him to exist as to the value. The property stolen might be worth 19s. and the provision would not apply, but it would apply if the property were worth 1s. more. This looked like an anomaly.

Mr. DE SALIS was told that in the case of one vessel lost on our coast, parties in the neighbourhood had been using for three years the kerosene taken from the wreck, which was absolutely derelict, and he believed the wool in the vessel was not collected by parties on behalf of the owners.

Sir ALFRED STEPHEN: If it is derelict, it cannot be stolen; it is not then the property of anybody.

Mr. KING was of opinion that if the extreme penalty in the clause were retained there ought to be some discretion in the hands of magistrates or judges to deal with very trivial offences of this kind.

Sir ALFRED STEPHEN: Honorable members seem to be too fond of putting minimum offences to show the severity of penalties, forgetting that the provisions extend to cases of very great atrocity. The plundering of a vessel in distress after the crew have gone on shore to save their lives is the abominable crime of which wreckers are guilty. I do not object to reduce the penalty from fourteen to ten years' penal servitude if the Committee think that is right. As to the difference in the offence when the value is 19s. and when it is 20s. it is only necessary to say that we must draw the line somewhere, and in this respect, as well as in regard to the ages of girls, which are allowed to make a difference in offences against them, there always will be some appearance of absurd distinction in the fixed limits. The corresponding clause of the English act provides that the penalty shall not exceed fourteen years; but our Law Reform Commission unanimously recommended that the judges should not have so wide a discretion as is given in England. In my opinion the legislature and not the judge is the authority to say what is the enormity of a crime and to apportion the penalty. We say the penalty ought to be fourteen years for the worst class of offences, and that it ought not to be reduced below three years. That is a just and right principle which has been twice sanctioned by the House, and yet we are again called on to interfere with its application.

Amendment withdrawn.

Mr. FLOOD said no one had a greater respect for the judges than he; he hoped they would always be respected, for it was the safeguard of the public welfare that they should be so regarded. But when we looked at the extraordinarily diverse decisions given by different judges it was clear that they were anything but unanimous as to the proper punishment for offences of the same kind. Why not strike out 20s. as the value of the property? A man might have stolen only 5s. worth, when he contemplated stealing £500 worth of property. He moved,—

That the words "to the value of twenty shillings," line 4, be omitted.

Mr. G. H. COX could not agree with the amendment, which would leave a person liable to the penalty if he took up the smallest trifle remaining of a wreck; indeed, he should himself have been liable for becoming possessed of a few quills which he picked up at Manly Beach, and kept as a memento of the wreck of the *Catharine Adamson*. The provision in the clause was necessary in order to exclude cases of a trivial nature, in which the property was of very little or no intrinsic value.

Mr. A. CAMPBELL: I do not approve of the amendment, and I would make the value £5 rather than 20s. It is a common practice to pick up mementoes of these notable disasters.

Amendment withdrawn; clause agreed to.

Clause 154. Whosoever fraudulently and without any colour of right appropriates to his own use or that of another any property belonging to another person although not originally taken with any fraudulent intent—or in order to procure a reward for its restoration fraudulently and without any colour of right retains any such property—shall on conviction before two justices be liable to imprisonment for any term not exceeding three months or to pay a fine not exceeding twenty pounds.

Mr. KING questioned whether it was expedient to retain the words, "without any colour of right," the absence of which might be very difficult to prove against a defendant.

Sir ALFRED STEPHEN: It is not difficult to prove that a plaintiff is the owner of property which he has neither sold, lent, nor parted with in any other way, and this would negative the colour of right on the part of another person.

Mr. G. H. COX wished to adduce the example of a horse which was taken in mistake; the person taking it might say he believed the horse was his, as he had one exactly similar to it.

Sir ALFRED STEPHEN: If a mistake is made, it is for the magistrates to decide. There may be such a case, and it must be left to their discrimination. I do not think there can be any difficulty if the words are retained.

Mr. KING said the absence of a colour of right was made an ingredient in the offence, which the prosecutor had to prove.

Mr. NORTON said it seemed to him that the provision in clause 351 got over the honorable member, Mr. King's, difficulty—

Wherever by any section of this act the doing of a particular act or having a specified article or thing in possession without lawful authority or excuse is made or expressed to be an offence the proof of such authority or excuse shall lie on the accused.

This relieved the prosecutor of the onus of proof, and threw it on the accused.

Mr. KING said that if the words he objected to were struck out, it seemed to him now that the clause would be unnecessary, and it appeared to be an entirely new feature. He moved,—

That the words "without any colour of right," lines 1 and 2, be omitted.

He was sure they would lead to great confusion in prosecuting, as prosecutors would be called on to prove more than ought to be required of them.

Sir JOHN HAY asked whether the word "fraudulently" was not sufficient to cover the intention in using the words objected to? If so, they were surplusage, and ought to be expunged.

Sir ALFRED STEPHEN: No doubt it must be proved that the accused did the act fraudulently. I do not object to the omission of the words. Frankly, I may say I do not know that it will make any difference.

Amendment agreed to.

Amendment omitting the same words in line 7, agreed to; and clause, as amended, agreed to.

Clause 155. Whosoever takes and works or otherwise uses or takes for the purpose of working or using any cattle the property of another person without the consent of the owner or person in lawful possession thereof—and whosoever without such consent brands or earmarks or defaces or alters the brands or ear-marks

of any cattle the property of another person—and in each case without any colour of right—shall be guilty of a misdemeanour and on conviction before two justices shall be liable to imprisonment for any term not exceeding six months or to pay a fine not exceeding fifty pounds.

Sir ALFRED STEPHEN: I am informed by two honorable members of the other House, and I think it right, that the clause would be more effective for its purpose if it included a provision dealing with the secreting of cattle for the purpose of obtaining a reward for their restoration.

Mr. G. H. COX said it was not uncommon for a person to drive a number of sheep to his own place, shear them, and then send them adrift, and that offence might fairly be included in this clause. We should then provide a penalty for an offence which could not well be provided for in any other way. The owner might trace the wool to another place, yet he could not swear to it as having been taken off his sheep; but if the person accused could be called on to prove whence he obtained it, on failure, he might be made amenable to the penalty under the clause.

Mr. TERRY considered that if the words in the Cattle-stealing Prevention Act "whoever takes uses or works cattle the property of another person" were introduced at the beginning of the clause they would simplify it very much.

Sir ALFRED STEPHEN: The offence is taking and working, or taking for the purpose of working and using; simply taking cattle is a very different matter. I think the clause as I propose to amend it will meet every possible case of the nature contemplated.

Sir JOHN HAY said he thought the object the honorable member, Mr. Terry, had in view was that the man who took cattle from their proper pasture or paddock, and simply turned them away again in order to do mischief or annoy a neighbour should be punished. It was not larceny, there being no intent to steal; it might be done for mere mischief and annoyance to a disliked neighbour for the same reason that cattle were sometimes hamstrung. It was fairly questionable whether it ought not to be punishable to take away another's cattle, not for the sake of reward or restoration, but to injure or annoy the owner. They might be turned on a neighbour's land.

Mr. BRODRIBB said it had come within his own knowledge that horses had been taken from the owners' paddocks and ridden long distances from home and there left; and lambs and sheep were taken away and sometimes came back.

Amendment (by Sir ALFRED STEPHEN) agreed to,—

That the words "otherwise uses," line 2, be omitted, and that the words "or takes any such cattle for the purpose of secreting the same or obtaining a reward for the restoration or pretended finding thereof or who takes them for any other unlawful purpose," be inserted after the word "thereof," line 5.

Amendment (by Mr. A. CAMPBELL) agreed to,—

That the words "and in each case without any colour of right," lines 9 and 10, be omitted.

Clause, as amended, agreed to.

Clause 156. If the justices before whom a person is charged with any such misdemeanour are of opinion that the case is a fit subject for prosecution by indictment they shall commit the offender for trial as for felony or for the misdemeanour as the evidence before such justices may appear to them to require.

Sir ALFRED STEPHEN: If the clause stood as at present the judge would have no more power than the magistrate to punish. I therefore move,—

That at the end of the clause there be added the following words:—"and if convicted of such misdemeanour he shall be liable to imprisonment for any term not exceeding three years."

Amendment agreed to; clause, as amended, agreed to.

Clause 177. Whosoever maliciously sets fire to any place of divine worship or to any dwelling-house any person being in such dwelling-house shall be liable to penal servitude for life.

Sir ALFRED STEPHEN: By the law at present in operation this offence is punishable with death, and the penalty was altered, I believe, in the other House to penal servitude for life. At present the punishment is death, whether the offender knew or did not know that a person was in the house; and I maintain that in case he does know that a person is in the house, the old penalty for setting fire to a dwelling ought to be restored. If any crime deserves the penalty of death it is this; but if a person in the house did not die by the effects of the fire, yet was roasted nearly to death, the crime was not so punishable. I move,—

That at the end of the clause there be added the following words:—"and if the offender knows any person to be then in such dwelling-house he shall be liable to suffer death.'

Mr. DE SALIS said if the person died it was murder, and if a man attempted murder he was liable to death. Then where was the necessity for the amendment? If people were able to escape, was the offence to be punished by death? He thought it was monstrous that if a house was set on fire without any intention to kill human beings, that the extreme penalty should be inflicted.

Sir ALFRED STEPHEN: It cannot be murder if the person in the house does not die; but that person may be roasted nearly to death, or become maimed, crippled, or blinded for the rest of his existence.

Mr. WEBB preferred the clause as it stood. If a man set fire to a house, and it was not known to be occupied by any one, the clause provided that the punishment should be penal servitude for life, and unless death was occasioned, it would be as well to confine the punishment to that degree.

Amendment agreed to; clause, as amended, agreed to.

Clause 210. Whosoever maliciously destroys or damages any book manuscript picture print statue bust or vase or other article or thing kept for the purposes of art science or literature or as an object of curiosity in any building belonging to the Queen—or kept or deposited in any museum gallery cabinet library school of arts or other repository habitually or from time to time open for the admission of the public whether gratuitously or by the payment of money—or any picture statue monument or other memorial painted glass or other ornament or work of art in any place of divine worship or in any building belonging to the Queen or to the council or body corporate of any municipal institution or to any university or college or in any street burial-ground or public garden or ground—or any statue or monument exposed to public view or any ornament railing or fence belonging to or surrounding the same—or any post office receiving-box or pillar or any drinking-fountain—or any erection place or object notified in the *Gazette* to be of public or scientific interest—shall be liable to imprisonment for any term not exceeding three years.

Mr. G. H. COX questioned whether the provision in this clause was properly limited to the destruction of works of art in public buildings; the crime was equally great if it was committed in the case of works of art in private buildings. He knew the case of a man who destroyed in a private house a picture worth hundreds of pounds.

Sir ALFRED STEPHEN: It is the duty of the legislature to provide for the protection of works of art in public buildings. Owners of private houses can protect their works of art, because they can exercise discretion as to who is allowed to enter their houses; but the public have a right to go to the public places, and the public have a right to have the works of art there protected against the acts of mischievous vagabonds.

Clause amended (on motions by Sir ALFRED STEPHEN) by the insertion after the word "vase," line 3, of the words "monument or other memorial painted glass ornament or ornamental work"; by the omission of the words "kept or deposited," line 6; by the omission of the words "any picture statue monument or other memorial painted glass or other ornament or work of art," lines 11 to 13; by the omission of the words "the Queen," line 14.

Amendment (by Sir ALFRED STEPHEN) proposed,—

That the words "penal servitude for five years or" be inserted before the word "imprisonment," line 24.

Mr. DE SALIS said that in America they took as much care as we did of works of art; but the offence dealt with in this clause was treated there as a misdemeanour, for which the penalty was one year's imprisonment and a fine of 500 dollars.

Mr. STEWART approved of the last amendment. The honorable member, Mr. De Salis, must remember that in America people were better behaved than they were here. Articles of value, if exposed in public, were here destroyed for mere mischief, with a desire to do wrong and vex, and severe punishments ought to be inflicted as a warning to such evil-doers. He was told that in some towns of America with thousands of inhabitants there was only one policeman, who, in cases of necessity, was helped by the people in the performance of his duty; here people obstructed rather than aided the police. The full sentence in any case was seldom inflicted, and in this clause it might be only nominal.

Sir JOHN HAY thought that as they were amending the criminal law so that all might know to what penalties offenders were liable, he did not think it right that people should have to refer to the *Government Gazette* to find out the places in which they might be offenders under the clause. The clause comprised a great variety of offences, including injury to works of fine art, or to railings or inclosures

surrounding or belonging to the same. This latter seemed to him to be a kind of offence very different from that of injuring works of art, and we must not punish for what might possibly follow, but take the crime as committed, not as graver; and the offence should be distinctly indicated by the statute book, and not be dependent upon anything that might appear in the *Gazette*, which was seen by comparatively few people.

Mr. G. H. COX said it was scarcely possible to define in one clause all the objects which required protection. There were pillars in the harbour for sailing directions, trigonometrical survey marks, and an immense number of other marks and monuments, which could not be mentioned here, ought to be protected from injury. The destruction of one of the pillars for sailing directions to which he had referred might cause the loss of life.

Mr. FRAZER thought they might go too far in providing Draconic punishments against property. Persons likely to be deterred from such offences as were dealt with in the clause would be deterred by the prospect of three years' imprisonment quite as strongly as if the term were two years longer. There were other clauses in which the punishments were very much disproportioned in severity to the gravity of the offences, and this was his great objection to the bill.

Sir JOHN HAY in further looking into the bill was led to question whether clause 219 did not get rid of the difficulties to which he had referred, by dealing with malicious injuries to public property and providing adequate punishment. It might be then that the clause before the Committee was not necessary.

Sir ALFRED STEPHEN agreed with the honorable member, Sir John Hay, that it was a very awkward thing to have to refer to the *Gazette* to ascertain what is a place of public or scientific interest, and he had no objection to strike out that part of the clause. But a number of Goths and Vandals, persons of the description referred to by the honorable member, Mr. Stewart, a most disorderly race, had no respect for anything of great public or scientific interest. Their great delight was in destruction. Railings and fences ought to be protected to prevent these destroyers from getting at the objects within, and the reference to the *Gazette* was to explain what places or objects were intended to be protected. Take the case of the Fish River Caves, interesting particularly in the fantastic forms assumed by stalactites and stalagmites; these have become much less attractive than they were, owing to the mischievous actions of people who visit them. As to the term of imprisonment it may be only an hour, and the judges may be intrusted with the discretion given in the clause. I believe there are judges and legislators called Draconic, who are quite as kind-hearted as those who refer to their policy as Draconic. At the last place to which Governor Macquarie went many years ago there was a tree engraved with his name which was an object of great interest to many people; this would have been destroyed had it not been taken to the Museum for preservation. Another monument, that of the botanist to La Perouse's expedition, had narrowly escaped destruction.

Amendment withdrawn.

Amendments (by Sir ALFRED STEPHEN) agreed to,—

That the words "notified in the *Gazette*," lines 22 and 23, be omitted, and that before the word "imprisonment," line 24, there be inserted the words "penal servitude for five years, or."

Clause, as amended, agreed to.

Clause 211. Whosoever maliciously kills maims or wounds any cattle shall be liable to penal servitude for ten years Provided that where such cattle are at the time unlawfully trespassing on inclosed land under cultivation the killing maiming or wounding of such cattle by the occupier of such land or any person by his order shall be punishable by imprisonment only for a term not exceeding two years or a fine not exceeding fifty pounds And provided also that the word cattle in this section shall not include any pig or goat.

Mr. KING objected that if a person found a beast trespassing on his inclosed land, and in trying to expel him should wound the beast, that person for so doing should be liable to imprisonment for two years, or a fine of £50. The fine, with compensation for cattle so injured, would be quite a sufficient penalty.

Sir JOHN HAY thought there was an obscurity in the clause, owing to the word "maliciously" not being clearly applicable to the proviso, if it was intended to be so. A land owner, in an energetic and earnest attempt to drive a beast from his garden, orchard, or other cultivated land, might inadvertently do considerable injury to a

refractory animal, and it would be extremely harsh to imprison for two years a man who, in the protection of his property against the incursion of a destructive beast, happened to do an injury which might be mainly owing to the difficulty in getting rid of the animal.

Sir ALFRED STEPHEN : The law at present is that the wilful killing of cattle trespassing on inclosed land is felony, rendering the offender liable to penal servitude. They might be turned off, and the protection against loss is by the owner being liable to an action at law. The clause is a great amelioration of the law in favour of the owner of the land ; but it says that he is not to kill, maim, or wound.

Sir JOHN HAY : In endeavouring to put cattle out he may maim them.

Sir ALFRED STEPHEN : If he does not do it purposely he is guilty of no crime. It may be done accidentally, and then it cannot be deemed to have been maliciously. The word cattle will not include pigs or goats. It is not necessary to deal with the subject of compensation, because a person can get compensation if another person improperly shoots his cattle.

Mr. DE SALIS said the penal code of New York dealt with this offence reasonably ; it was made a misdemeanour, and the penalty was only one year's imprisonment and a fine of 500 dollars. A man's income may depend on his crop, and having a wife and children to support it might be expected that he would take the law into his own hands if he found a destructive beast in his cultivated paddock, and he would be justified in doing so. Bulls would sometimes defy any attempt to expel them, and, indeed, endanger the life of those who tried to do so ; and if the owner of the land shot such a dangerous beast, was it right that he should be liable to two years' imprisonment. If the value of the animal was paid as compensation that ought to be the very highest penalty. He moved,—

That after the word "cattle," line 2, there be inserted the words "the property of another."

Sir ALFRED STEPHEN : Can he possibly be guilty of maliciously killing, wounding, or maiming his own cattle ?

Amendment negatived.

Clause amended (on motions by Sir ALFRED STEPHEN) by the substitution of the word "such" for the word "the," line 5, and by the omission of the words "of such cattle," line 6.

Amendment (by Sir ALFRED STEPHEN) proposed,—

That the words "by imprisonment only for a term not exceeding two years or a fine," lines 8 and 9, with a view to insert in lieu thereof the words "by a fine only."

Mr. G. H. COX thought that a fine would not be adequate to meet some cases of this kind. Imported bulls sometimes sold as high as £4,000, and bulls of this description were often very troublesome. Having made the word maliciously apply to the whole of the provisions in the clause, there ought to be more than a paltry penalty of £50.

Sir ALFRED STEPHEN : I understood it to be the feeling of the Committee that a fine was a sufficient penalty.

Mr. DE SALIS hoped the amendment would be carried. If there were bulls worth £4,000, the owners ought to take care of them ; and if such infuriated bulls trespassed on inclosed lands, a man ought not to be punished if he injured them in the attempt to save his own property from destruction by them.

Amendment negatived.

Sir JOHN HAY called the attention of the honorable and learned member, Sir Alfred Stephen, to a point suggested by a member of the House, which he thought deserving of consideration. It was this : How would this clause affect the clause in the Impounding Act, which provided that if any occupant found unbranded horses over two years of age trespassing on his land he might destroy them. There were strong reasons why that clause of the Impounding Act should remain in force ; but if this clause would repeal that clause of the Impounding Act, the effect ought to be indicated in the schedule.

Sir ALFRED STEPHEN : If the clause is allowed to pass it can be reconsidered in reference to that point.

Clause, as amended, agreed to.

Clause 228. Every act of malicious injury to property the doing of which is punishable under this act is hereby declared to be an offence so punishable whether the property belonged to a private person or to her Majesty or was otherwise of a public nature And every act of malicious injury done to property by any person with intent to injure or defraud another shall be an offence within this act although the offender was at the time of its commission in lawful possession of such property.

Amendment (by Mr. DE SALIS) proposed,—

That after the word "nature," line 6, there be inserted the words "not being Crown lands according to the definition in the Crown Lands Act of 1861."

Mr. NORTON could not see why the offence indicated in the clause should not be equally an offence whether it were on Crown lands or private lands. This clause might be the means of protecting the interesting Fish River Caves alluded to by the honorable member, Sir Alfred Stephen.

Amendment negatived; clause agreed to.

Progress reported.

House adjoured at 6 minutes after 10 o'clock p.m.

Legislative Assembly.

Wednesday, 15 November, 1882.

Conditional Purchases Validation Bill—Mort's Bay Improvement Bill—Personal Explanation—Crown Lands Bill (Second Night's Debate).

Mr. SPEAKER took the chair.

CONDITIONAL PURCHASES VALIDATION BILL.

Bill presented (by Sir JOHN ROBERTSON), and read the first time.

MORT'S BAY IMPROVEMENT BILL.

Bill presented (by Mr. CAMERON), and read the first time.

PERSONAL EXPLANATION.

Mr. McELHONE wished to explain, in reply to a remark made by the honorable member for Braidwood last night, that the honorable member who stated that he had said that he brought forward the motion respecting Ryrie's selections as a "lark," had said that which was not true. When the Art Gallery question was under consideration, the honorable member for Braidwood came to him and asked him if it was true that he was going to attack him with regard to selections of land. He replied that if the law were altered to make Monday the free selection day, and the honorable member were in church on Sunday in the act of praying, and a messenger were to come to him and tell him that selectors were making an inroad on his run, he would at once leave the church and protect his run as the law allowed. The motion affected the honor of the honorable member for Braidwood, and he was not in the habit of submitting motions affecting members' honor as a "lark." He was sorry that the honorable member for Braidwood had not allowed the motion to pass.

Mr. RYRIE said that he was told by an honorable member that the honorable member for The Upper Hunter said that he submitted the motion as a "lark," or words to that effect. He had the information from the honorable member for Queanbeyan, who had given him permission to mention his name.

Mr. McELHONE said that the remark which he made to the honorable member for Queanbeyan was that as the honorable member for Braidwood was anxious to get information respecting Day's selections it would perhaps be as well to see how the honorable member stood in the same respect.

Mr. RUTLEDGE said that the honorable member for The Upper Hunter told him that he submitted the motion out of devilment, or something to that effect.

CROWN LANDS BILL.

SECOND NIGHT'S DEBATE.

Debate resumed (from 8th November) on motion by Sir JOHN ROBERTSON,—

That this bill be now read the second time.

Mr. O'CONNOR: The honorable member for Illawarra, when following the Secretary for Lands seemed to crave the indulgence of the House while he dealt with a subject of such wonderful importance as this, and, of course, he paid a high compliment and a just one to the ability and experience of the Secretary for Lands. Well, if an honorable member of such undoubted ability as the honorable member for Illawarra required the indulgence of the House on a subject like this, how much more do I need the consideration of honorable members? I think it only right to myself that I should point out how it is that at this early stage I am addressing myself to this most important question. I consider that I was forced into the position which I now occupy; but I do not in any way shrink from it. When the honorable member for Illawarra concluded his speech it was nearly 11 o'clock, and I suggested to the honorable