moving. I know the hon. member is making an appeal for fair treatment on behalf of those men, and I can promise him, on behalf of the Government, that they will get fair treatment even to the extent of generosity.

Question resolved in the affirmative.

House adjourned at 5.36 p.m.

Legislative Council.

Wednesday, 29 August, 1917.

Banks and Bank Holidays (Amendment) Bill—Statute of Limitations Bill—Special Adjournment—Adjournment.

The PRESIDENT took the chair.

BANKS AND BANK HOLIDAYS (AMENDMENT) BILL.

Bill read a third time.

STATUTE OF LIMITATIONS BILL.

In Committee (consideration resumed from 15th August, *vide* page 542—the Hon. N. J. BUZACOTT in the chair):

Postponed clause 6. (1) After the commencement of this Act, the following actions and proceedings shall be commenced within the respective times and limitations hereinafter expressed and not after:—

(a) actions of covenant or debt upon any specialty;

. . . . . .

(e) actions to recover from the executor or administrator any share of the real or personal estate as to which any person dies intestate;

within twelve years;

. . . . . .

(g) actions of detinue, trover, replevin, trespass on the case other than actions for slander;

(h) actions of account or for not accounting and upon the case, including suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, where such actions are not founded upon any specialty;

. . . . . .

(n) actions of assault, menace, battery, wounding, and imprisonment;

within four years;

(o) actions for penalties, damages, or sums of money given to the party grieved by any law now or hereafter to be in force;

(p) actions for slander;

within two years;

. . . . . .

(3) No claim in respect of any matter arising more than six years before the commencement of any action or suit for account or for not accounting as aforesaid shall be enforceable by action by reason only

. . . . . .

(5) If in any of the said actions judgment be given for the plaintiff, and the same be reversed by error or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff that he take nothing by his plaint, writ, or claim, the plaintiff, his executors or administrators, as the case requires, may commence a new action or proceeding within a year after such judgment reversed or such judgment given against the plaintiff, and not after.

The Hon. J. GARLAND: I propose to omit from paragraph (g) the word "trespass" and insert the word "and." Later I propose to omit the words "and upon the case" in paragraph (h). The result of that will be that all actions in the case will be dealt with under paragraph (g) and the repetition of the words "and upon the case" will be taken out.

The Hon. Sir THOMAS HUGHES: There is an alteration in the time for recovering specialty debts!

The Hon. J. GARLAND: I understood that the only change the hon. member objected to in the substitution of twelve years for twenty was in connection with land.

The Hon. Sir THOMAS HUGHES: Before we pass the amendment we are now invited to consider I should like the Committee to understand that there is a substantial alteration in the law under paragraph (a), and that the time for recovering in such cases was formerly twenty years, whereas it is now proposed to reduce it to twelve years!

The Hon. J. GARLAND: I pointed that out on the second reading.

The Hon. Sir THOMAS HUGHES: So long as the Committee understand it, well and good!

The Hon. J. GARLAND: Might I explain to the Committee: When the second-reading debate took place it was explained that the bill, so far as actions on specialties were concerned, proposed to reduce the present term for recovery, which is twenty years, to twelve, and to reduce the period in connection with the recovery of land from twenty to twelve. The hon. and learned member, Mr. O'Conor, and the hon. member, Sir Thomas

Hughes, called attention to the fact that, so far as land was concerned, some objection might be offered to the proposed change, and I was asked to reconsider the matter. I have reconsidered the matter, and I am quite prepared to accept the amendment which I understand will be moved so far as land is concerned, to retain the present period of twenty years.

The Hon. Sir THOMAS HUGHES: I would draw the attention of the hon. and learned member to the fact that there is a further alteration in the law relating to land under paragraph (e)!

The Hon. J. GARLAND: That only relates to shares of a deceased person's estate.

The Hon. Sir THOMAS HUGHES: I am only suggesting to hon. members who are lawyers that these are matters requiring consideration!

The Hon. J. GARLAND: I have considered these matters, and am prepared to yield on the matter of land. If the hon. member will look at clause 15, which deals with land, he will find it reads:

> After the commencement of this Act, no person claiming any land or rent shall make an entry, or distress, or bring an action to recover the same, but within twelve years next after the time at which the right to make such entry or distress or to bring such action first accrued to him.

I am prepared to accept an amendment making the period within which action to recover land may be brought twenty years instead of twelve. But so far as specialty debts are concerned, and so far as paragraph (e) is concerned, which deals with "actions to recover from the executor or administrator any share of the real or personal estate as to which any person dies intestate," I do not propose to make any amendments.

The Hon. Sir THOMAS HUGHES: There is a further question. In subclause (c) the limiting of the time for recovery of a debt on any mortgage surely very largely affects houses and land. I want the Committee to understand what we are doing. The Solicitor-General offers that if we agree to this clause to-night he will recommit it if any hon. member desires. If we are going to retain the term of twenty years in actions for recovery of land it will be very anomalous to limit the time for recovery of money secured on mortgage on land to twelve years. However, on the assurance of the Solicitor-General I shall not press my point now.

The Hon. Sir JOSEPH CARRUTHERS: I think we ought to make it clear to the Solicitor-General that we shall require this clause to be recommitted. I do not want it to be assumed that because we agree to the clause to-night we *primâ facie* give our consent to it.

The Hon. J. GARLAND: That is clearly understood!

The Hon. Sir JOSEPH CARRUTHERS: If you are to have the right to bring an action for debt, as at present, within twenty years, in regard to land, by the same logic the man who holds a security over land ought to have twenty years to enforce his security. What the hon. member proposes is to retain the twenty years' right of action for the recovery of debt on land, but to limit the right of action to recover money secured on land or rent on land to twelve years. It is inconsistent. If, in the case of a man who has paid no rent for twelve years, you have not brought any action for twelve years, you cannot bring an action. The hon. member is quite prepared to admit that the owner of land ought to have his right continued for eight years more to enable him to recover possession of the land. After all, the security which a man gets for his loan on land is the land itself; the covenant is a mere collateral security on which he may sue in order to avoid the other remedy which is much more severe, namely, taking possession. If a man chooses to waive for twelve years or longer the right to recover the debt I do not see why he should lose it altogether. But that is what this practically amounts to. I know that the hon. member is following the English law, but the circumstances in England are not applicable here. There everything that takes place in regard to land tenancy is known, because it is a small country with a teeming population. Here there is the contrary case. There are only as many people in the whole of the continent as in any one county in England. A man would require to be all eyes and have agents everywhere to look after his

interests here. I am concerned in property in many parts of the State. I employ agents, and have the greatest difficulty to get the agents to attend to my business. That is the experience of nearly everyone.

But a much more serious point is this: We are at present engaged in a war, the duration of which it was supposed would be three years. As far as we can see it is to be of much longer duration. 400,000 men have left these shores. From New South Wales 150,000 men went, many of them property-owners having engagements of the character affected by this clause. During the period they are away their affairs cannot be looked after as well as in normal times. This is no time to take away from a man the security which is given to him under the Statute of Limitations. It is no time to reduce the period so that by his inaction he may lose his property entirely if the war goes on for another six years. Some men whose affairs have fallen into neglect because they are attending to the larger affairs of the country may find legislation passed which robs them of their benefits. A man may, before he went to the front, have allowed six years of the period of his mortgage to have gone by, and before he returns the whole twelve years may have elapsed. I suggest to the hon. member to eliminate entirely from this clause the time not only in regard to recovery on land but in relation to debts of all kinds where the security is land. Let the law be kept as it is to-day.

Amendment agreed to.

Amendment (by the Hon. J. GARLAND) proposed:

That in paragraph (h), the words "and upon the case," be struck out.

The Hon. S. R. INNES-NOAD: I should like to ask the Minister for some explanation for the necessity of this subclause (h). I know it is taken from the English Act, but the conditions of trade here are very different.

The Hon. J. GARLAND: This is a statement of the law as at present in force in New South Wales. This is only a consolidating clause!

The Hon. S. R. INNES-NOAD: Then if it is part of the present law, I do not quite see why it should be inserted as an amendment here.

Amendment agreed to.

Amendments (by the Hon. J. GARLAND) agreed to:

That in line 28 the words "four years" be struck out, with a view to insert "one year."

That in line 33 the words "two years" be struck out, with a view to insert "one year."

That in line 37 the words "or suit" be struck out.

The Hon. J. B. PEDEN: I desire to move an amendment in subclause 5. This is rather a technical matter. The clause as it stands at present is open to this serious objection—that part of it has no meaning. It provides: "If in any of the said actions judgment be given for the plaintiff, and the same be reversed by error." We have never had error in civil actions in New South Wales.

The Hon. Sir THOMAS HUGHES: That is, in its technical sense!

The Hon. J. B. PEDEN: I mean "error" in its technical sense. That has no application to our law. I may mention that when we were copying the English Common Law Procedure Act of 1852, there were in the English Act twenty-one sections dealing with that very technical subject of error, and we deliberately omitted the whole of those twenty-one sections, because they had no reference at all to our law. This depended on the existence of a Court of Exchequer Chamber, which we have never had in New South Wales. The second part, which provides for motions in arrest of judgment, is applicable to our law. Curiously enough, both these parts have absolutely gone in England, through alterations of procedure; but, curiously too, that section still has a force in England through an old construction put upon a statute some couple of hundred years ago—which I have embodied in paragraph (c) of the draft amendment I am about to move—that is, in the case of a plaintiff or defendant dying. There is not a word in the section about that, but it was held 200 years ago—though it could not possibly be held to-day—that that was within the spirit of the statute.

The general notion of subclause 5 is, that if the plaintiff brings an action and

fails through no fault of his own—practically through bad luck—and has to commence a new action, he is to have a period of grace, although the statutory period of limitation may have expired. Although the six years, or whatever it was, may have elapsed, he was really to have another year in which to remedy the trouble that had arisen through his "hard luck." I have endeavoured to bring into the section matters which might fairly come under the category of a plaintiff failing in an action more or less through hard luck. A man may be nonsuited largely through misfortune; a witness may fail to turn up at the last moment, and so forth. It may be through no fault of the party, or of his counsel. What I suggest as to that part of the clause is that it is a fair thing, if a man brings an action late in the day, and is unfortunately nonsuited, and has to start another action, that then he shall have his year. Paragraph (b) of my suggested amendment is simply what is in the bill. Paragraph (c) of my suggested amendment is to make perfectly clear what is the law in England and what is the law here to-day—to simply put into clear words that if a man brings an action, and he dies, or if the man against whom the action is brought dies, and if for any reason some new proceeding or action has to be taken, and the period of limitation has expired, he is to have his year. That is based upon 21 James I, chapter 16, section 4. That section does not correspond exactly with this provision—there is some very old matter in section 4, dealing with outlawry, and so on, which has very wisely and properly been omitted, but when we are putting law in place of section 4 of the old statute, we ought to repeal that section. In the bill as it stands, section 4 is not repealed—it is not included in the schedule—so I shall ask the Solicitor-General to recommit the schedule, which I understand has been passed, so that in the event of this amendment being agreed to, the law can be cleared up by repealing in that schedule section 4. I move:

That all the words after "actions" in line 41 be struck out with a view to inserting in lieu thereof the following:—

Commenced within the time and limitation expressed therefor—

(a) The plaintiff be nonsuited; or

(b) A verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff that he take nothing by his plaint, writ, or claim; or

(c) The plaintiff or the defendant dies,

the plaintiff his executors or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit, or after the judgment given against the plaintiff, or after the grant of probate or letters of administration to the executors or administrators of the plaintiff or defendant, as the case may be, notwithstanding that the time and limitation expressed for commencing the action or proceeding may have then elapsed.

The Hon. Sir JOSEPH CARRUTHERS: Why is it necessary to have paragraph (c)? If there are parties to a lawsuit and the plaintiff dies, that fact can be put on the record.

The Hon. J. GARLAND: This gives him an additional year!

The Hon. Sir JOSEPH CARRUTHERS: There is no need to bring another action.

The Hon. J. B. PEDEN: There might or might not be need. In many cases under paragraph (c) it might be unnecessary, but in England it has been found to be necessary in some cases.

The Hon. Sir JOSEPH CARRUTHERS: What becomes of the old action? Brown sues Jones and he is neither nonsuited nor does the verdict pass to the plaintiff. The first two paragraphs (a) and (b) do not apply, because these are three alternatives; but Brown dies. Why should his executors have the right to commence a new action or proceeding within a year when under the existing law they can enter the fact of Brown's death on the record? Again, take the case of the defendant dying. That fact also can be entered on the record, and it makes the parties, the executors or administrators of the defendant, parties to the suit. I am not practising law much, but I do not think the law has been altered in that respect. I am sure the hon. member has not moved this without good reason, but I am afraid it will amount to a multiplicity of actions.

The Hon. Sir THOMAS HUGHES: It is optional; it is "may"!

The Hon. Sir JOSEPH CARRUTHERS: It may be read as if the original suit cannot be carried on. What necessity is there to give a man a second remedy when he can, under the existing law, in a much simpler way enter a statement of fact on the record and that statement of

fact, being on the record, the executors or administrators take the place of either the plaintiff or the defendant?

The Hon. J. B. PEDEN: May I explain that this is applying, as the original bill applies, not merely to an action, but to a proceeding in an action. There are certain cases in which it may be desired to amend the proceedings. You can revive the action, you still have your original action; but suppose you wanted to amend your proceedings, the question would arise whether the amendment was out of time. In most cases it would not be necessary so far as the action is concerned, but it would be necessary in some cases to amend the proceedings in the action.

The Hon. Sir JOSEPH CARRUTHERS: Why not say so?

The Hon. J. B. PEDEN: It does say so. It says he may commence a new action or proceeding.

The Hon. Sir JOSEPH CARRUTHERS: Would it not be better to give the right to amend the proceeding, and get over the difficulty in that way?

The Hon. J. B. PEDEN: He may commence a new proceeding. I do not see that the amendment can do any harm; it certainly may do good. It covers that case of the difficulty where you are taking a new proceeding in the same action. If you apply for an amendment of the statement of claim you may be too late. The statement of claim which you have filed may be all right as regards the Statute of Limitations, but if you want to amend that statement, you may be faced with the argument that you are putting up a new cause of action, and that the one you are seeking to raise by amendment is out of time.

The Hon. Sir JOSEPH CARRUTHERS: Why not make provision for an amendment of the statement of claim?

The Hon. J. B. PEDEN: It would take a good deal of drafting to distinguish between them, but as the amendment is drawn it can do no possible harm, and it does meet the case I have referred to.

The Hon. Sir JOSEPH CARRUTHERS: I have listened to the hon. member and I think he would be well advised to make an amendment in accordance with what he has said. As I understand, a man may be precluded from making an amendment of the proceedings because of the limitation of time. Therefore it may be necessary for him to institute fresh proceedings, and in order that he shall not be met by the Statute of Limitations, he is to get his extra year. Would it not be better for the hon. member to accept the situation he himself puts, and insert a proviso that not only may a man commence a new action, but he may amend the proceedings, notwithstanding the fact that the time limitation expires before the commencement of the action. The hon. member knows that law is a pretty costly thing, and if a man is to have two actions, an old one the costs in which he will have to pay because he does not carry it to a finish and a new one, he will have a heavy burden to carry. It would be far better to give him an opportunity to get out of his trouble without having to start a fresh proceeding and having to pay the costs in that.

The Hon. J. GARLAND: The hon. member, Sir Joseph Carruthers, will see that, in point of fact, what the hon. member, Professor Peden, contemplates in his amendment is merely what is in the bill in subclause 5. That subclause provides that "the plaintiff, his executors or administrators, as the case requires, may commence a new action or proceeding within a year after such judgment reversed." The words used in the amendment are, "The plaintiff, his executors or administrators, as the case requires, may commence a new action or proceeding within a year after the nonsuit." The existing law is laid down by Halsbury, in volume 19 of the "Laws of England," "Limitations of Actions," paragraph 89: "If a plaintiff brings an action and dies, his personal representative may within a year of probate of his will or of grant of administration commence a fresh action." That is all this clause provides for, so that the hon. member will see there is no danger of any multiplicity of suits if the amendment should be adopted.

The Hon. Sir THOMAS HUGHES: There is one case in which it would be an advantage if the executors or administrators had the right to commence a new action. In an ordinary case of injury, for example, a man may issue a writ for damages commensurate with what he believes to be his personal injury. But he may die from the effect of that injury.

Under this amendment the executors would be able to bring another action for very much heavier damages in the interest of the widow and children.

The Hon. J. A. BROWNE: The purpose of this bill, as I understand, is to bring the law with regard to limitations of actions into line with the present English law, at any rate in certain respects. In order to do that, the draftsman of the bill adopted what I may call a rather clumsy method. He took a section of an old English Act which ceases to have any application at all in its ordinary meaning, and the only use it has is by reason of an extraordinary meaning given to it many years ago in the English courts. In order to arrive at that, instead of adopting the old verbiage, the hon. member, Professor Peden, has drafted an amendment which I think exactly meets the case, putting in plain words what the draftsman tried to get at by a roundabout method. In that way we shall have the law here exactly as it is in England. It has been suggested that the same thing might be done in some other way. It is inadvisable at this stage to depart from what is the plain law of England. There is this difficulty, too: that although, as the hon. member, Sir Joseph Carruthers, pointed out, part of what is aimed at by the amendment might be got at in another way, the whole of it might not, and I think would not, be got at by that other method. The method suggested by the hon. member, Sir Joseph Carruthers, of continuing an action when the defendant or plaintiff dies, by entering the fact on the record, is not applicable to all courts. It is applicable in some courts, but not to others, and what the Committee desires will be well met by passing the amendment as it stands, and will be better met in that way than by drafting a fresh amendment on the lines suggested by the hon. member, Sir Joseph Carruthers.

Amendment agreed to.

The Hon. L. F. HEYDON: My opinion as to voting for or against this clause would be influenced by the terms of subclause 2. Where a man has gone to the war, putting off a remedy on a specialty for which he knew he had twenty years, when he comes back from the war he finds one year has elapsed from the passage of this measure, and his remedy is gone. As to claims under paragraphs (a), (b), (c), (d), and (e), the time might well be made three years instead of one. It is a great change from twenty years to twelve years for recovery on specialty, and I would suggest that one year's grace in such cases as I have outlined is altogether too little. It would be only a temporary alteration. After the three years had elapsed its effect would be at an end. I cannot quite see any reason for making it so short a time. As to subclause (f) onwards, the time might remain at one year.

The Hon. J. GARLAND: I shall give the hon. member an opportunity later. I am quite prepared to recommit clause 2.

Clause as amended agreed to.

Postponed clause 15. (1) After the commencement of this Act no person claiming any land or rent shall make an entry, or distress, or bring an action to recover the same but within twelve years next after the time at which the right to make such entry or distress or to bring such action first accrued to him.

. . . . . .

The Hon. J. B. PEDEN: This clause raises the most important question in the bill. I move:

That the word "twelve," line 5, be struck out and the word "twenty" be inserted in lieu thereof.

The Hon. J. GARLAND: I am prepaed to accept that!

Amendment agreed to.

The Hon. L. F. HEYDON: This clause says that after the commencement of this Act no person claiming "any" land, &c. That refers to all land whether under the Torrens Act or not. The effect will be to repeal section 45 of the Torrens Act, which says that no time shall run against a Torrens title. It is an important alteration of the law and I quite agree with it. That provision in the Torrens Act is silly. The object of our land laws is to have someone in active occupation of the land of the country. That is the reason why land under certain tenures is taken from the lawful owner after a number of years. Why, then, should Torrens land be exempted? The Torrens title is only a title. I quite approve of what I think would be the effect of this clause if we pass it as it stands, but it might be only inferentially a repeal, and I think it better to make it clearly a repeal, and insert a provision regarding Torrens title in the

schedule. I am aware that the whole of the profession would welcome a repeal of that rather silly provision in the Torrens Act. There is no difference between land held under one title and that held under another. It is equally in the interests of the people that all land whether under Torrens title or not should be used for the people. I recommend that that should be made clear by putting it in the schedule.

The Hon. J. GARLAND: I may inform the hon. member that it is not the intention of the Government to repeal section 45 of the Real Property Act, and I propose to introduce a clause at the end of the bill to make that perfectly clear. The new clause I shall propose will read as follows: "Provided that nothing in this Act shall affect the provisions of the Real Property Act, 1900." I join issue with the hon. member on the advisability of repealing the provisions of the Real Property Act by which an indefeasible title can be obtained. That is a provision which makes for absolute security of title. It is one of the cardinal provisions of the Act. One of the great inducements for bringing land under the Act is that you can get a title which no one can question by any length of possession.

The Hon. L. F. HEYDON: That is against public policy!

The Hon. J. GARLAND: It is not against the policy of the Act.

The Hon. L. F. HEYDON: For what do we have limitations at all if it is not in the public interest?

The Hon. J. GARLAND: I can only say I cannot agree with the hon. member. When we established this system under which persons can cheaply and effectively get a title to land that no one can dispute we conferred a boon on landowners.

The Hon. L. F. HEYDON: No!

The Hon. J. GARLAND: I think we did, and I shall, as strongly as I can, oppose any suggestion that the Real Property Act should be amended in the way suggested. I do not personally think that this clause does in any way affect the provisions of that Act, but to make assurance doubly sure, I propose to add a new clause at the end of the bill.

The Hon. Sir THOMAS HUGHES: I entirely support what the Solicitor-General has said as to the inadvisability of tampering with the Real Property Act in that regard. When it was passed, the system was established that the Crown would give a certificate to an owner of land that he had an indefeasible title to that land, and in this respect the title conferred under the Torrens Act differs very widely from the title acquired by a person who buys land in the way of business. In the one case the owner had conferred on him a statutory title of ownership; in the other case the owner of land gets what title he can, through the documentary evidence in the possession of the former owner. There is the widest distinction to be drawn between the right of one man to uninterrupted possession under a statutory title which is indefeasible, and the right of another to enjoy land to which he has only a common law title. It will be most regrettable if any attempt be made to tamper with the law in that respect. Why should we go out of our way to extend the slightest consideration to a man who is as plainly stealing another man's land as he would be stealing his money if he put his hand into his pocket? If a man has been given a good documentary title to land, I should be inclined to make his title indefeasible, whether he held it at common law or by statute, rather than encourage a system of theft in the ownership of land. Was it not to prevent an owner being deprived of his land that we refused to cut down the period from twenty years to twelve years during which action for ejectment could be taken? The feeling of the Committee was against giving a trespasser a title by possession after so short a period of occupation as twelve years. By limiting the time during which the true owner of land could institute proceedings to recover his land to twelve years, we would have been indirectly creating a title by occupation for twelve years in a man who had no title. Surely that is not a policy that the hon member, Mr. Heydon, would desire to encourage.

The Hon. L. F. HEYDON: Why, then, did you not make the limitation of time forty years instead of twenty?

The Hon. Sir THOMAS HUGHES: I do not mind if it be made unlimited. If a man is in possession of land under a

good title, it does not matter how long he has had it, he has a right to retain it. A Torrens title is practically good against the world in favour of the true owner. In cases where the title is not Torrens, a man who is not in possession for twenty years may at the end of that time be dispossessed. I sincerely hope that this Committee will not attempt to interfere with the Torrens title.

The Hon. Dr. NASH: I understand that if a person in this country possesses land, and has a Torrens title to it, no one can ever get it from him by virtue of residence, or anything of that sort. But if a man has any other kind of title, and he goes away, and does not assert his rights for a period of twenty years, any man can come in and sit down on that land, and after twenty years it will be his. I can understand, in connection with mining properties, where the law says that the possessor must do certain things, that someone else may take possession of it if those things are not done; but I cannot understand its being done without the authority of the law. If a man gets his title he should be able to protect himself for all time, but he cannot unless he sees that the title is Torrens.

The Hon. J. GARLAND: That is what a sensible person would do!

The Hon. Dr. NASH: I know that a sensible person would do it, but it seems to be making fish of one and flesh of another. What is the reason? I would like my legal friends to tell a mere layman wherein is the justification for making fish of one person and flesh of another. Why should an individual with a Torrens title always be protected while a man with an ordinary title is not?

The Hon. Sir THOMAS HUGHES: Because there is a system of public registration of titles by which a man upon payment of 2s. can ascertain who is the true owner!

The Hon. Dr. NASH: Then, if he finds an absentee has not a Torrens title he can jump the land. The hon. and learned member, Sir Thomas Hughes, suggested this line of argument to me by his talk about thieving.

The Hon. Sir THOMAS HUGHES: So it is!

The Hon. Dr. NASH: If it is thieving in one case it is in another. Where is the difference? It is a question of morality. Is it not just as much thieving to steal land from a man who owns it in one way as from a man who owns it in another way?

The Hon. Sir THOMAS HUGHES: But you cannot get it in the other way!

The Hon. Dr. NASH: That is not a question of morality, it is a question of law.

The Hon. Sir THOMAS HUGHES: There is no question of morality, in the one case!

The Hon. Dr. NASH: As I am reminded, in one case you can perpetrate the theft under the protection of the law; in the other case the law says you cannot perpetrate the theft. The doubt was raised in my mind whether we are doing what is correct—and what is the object of the proposal? I have heard no lawyer to-night say what the object is, unless it be, as the hon. member, Mr. Heydon, says, a matter of the policy of the country. Of course it is perfectly correct that all land should be utilised, but you cannot utilise a man's land if he has had sufficient sense to get it under Torrens title. I do not know whether the reason for this proposal is such that no layman can understand it.

The Hon. Sir THOMAS HUGHES: The reason is that this law is much older than the real property law, which is more up-to-date!

The Hon. Sir JOSEPH CARRUTHERS: A very large issue is raised by the hon. member, which perhaps he does not see. Under the Torrens Act a man gets a certificate of title. That piece of parchment gives to him against all the world an indefeasible title. A man buying that piece of land is not put upon notice or question with regard to the possession of it. If the hon. member had his own way and got an amendment made in the law that twenty years' adverse holding would destroy that title, look at the state of confusion there would be in regard to titles all over the country! We have endeavoured to bring about a state of affairs which would simplify the transfer of land and give security of title deeds to the individual. One of the securities is that possession by a trespasser—that is, a man who goes in without the knowledge of another—is not to

count. I am sure the hon. member must see that the security of the titles to nine-tenths of the alienated lands in the State is on the highest grounds of public policy apart from the desire to conserve public morality; and if he carried out his intention I think he would be doing a very great wrong. All over the country where land is held under the Torrens Act in large areas—grants of 1,000 and 10,000 acres—people in fencing their land are not very particular to go exactly according to the lines of survey. I know that from my own experience. Take all the roads in the interior of the State; the people owning land adjoining, instead of following a straight line, will, according to the turns of the hills, give a chain or so in order to get a better holding fence. If the owner of the land is to lose a chain which he has thus excluded from his area for the purpose of saving money in fencing operations, merely by the adverse public occupation of the land, it will mean that every man must have a surveyor at his elbow when he fences his land. Then take fencing between farms. If twenty years' occupation by one man with a give-and-take fence, where there is a frontage to a river, is to confer on another man a good holding title, you will never have such a thing as give-and-take fencing; people will have to put fences exactly on the boundary lines. I am with the hon. member, and am against this measure myself. I think it is a great mistake to have brought in a bill altering in any shape or form the security which a property-owner has with regard to the limitation of the period of time. It is putting a premium upon thieving, and giving encouragement to the land-robber. In this country, when we have, as at the present time, people in one part of the State openly saying they will not pay rent, but will take possession of property and defy the owners, it is far better, I think, to make the law more severe than to make it lax. The hon. member's proposal is one which I think goes to an extreme, and cannot be assented to for one moment.

The Hon. L. F. HEYDON: It is somewhat of a handicap to have to speak after such authorities as the Solicitor-General and the hon. members, Sir Thomas Hughes and Sir Joseph Carruthers—men who carry extraordinary weight in this House; but I am supported in doing so by the conviction that my logical position is unassailable, and that any common-sense man, even a non-lawyer, must see the force of it at once. Land is only land, and a good title is only a good title. Anything else is artificial. It has been the settled policy of all civilised nations for at least 2,000 years to say that the useful occupation of the land of the country is the first desideratum, and that even honest ownership of land can be lost by neglect—for the good of the country. In saying that that is wise we have the example of the Solicitor-General, who thought it was well to reduce the period within which a good title to land could be lost from twenty years to twelve years, the only reason for which of course could be on this sacred principle of public policy—the necessity for having the land of the country usefully occupied. Then we have a higher authority than even the hon. and learned member; we have the Legislature of England. They have reduced the period from twenty years to twelve years, in order to ensure the useful and profitable occupation of all the land of England. That is a principle which has come down from Roman times—that the man is an enemy of the State who leaves land out of use, and that it should be taken from him; that the condition of ownership should be useful occupation of his land; that a man is not entitled to own land and neglect it, but that he should make some use of it. If he neglects his land for twenty years he deservedly has it taken from him, and given to any man who will make good use of it. That is not my doctrine—I am not preaching robbery; that is the policy of every civilised State since the commencement of history, and those who now laugh know it.

The Hon. Dr. NASH: Land under Torrens title cannot be taken!

The Hon. L. F. HEYDON: That is only since Torrens title. As a matter of fact, other difficulties have grown up. This Torrens title has only come in since about 1861.

The Hon. Dr. NASH: But it is a good title!

The Hon. L. F. HEYDON: Yes, it is very nice; it brings in large fees to the Treasury—much larger than the other titles—and one of our hon. friends here was the gentleman who made the fees higher. There is an interest even at the Treasury in forcing everybody to bring his land under Torrens title—but that is a small matter.

An HON. MEMBER: It costs money to do that!

The Hon. L. F. HEYDON: Rather. The Government fees are terrific, and they have been increased. I would recommend every friend of mine to put his land under the Torrens Act; but this consequence is a most illogical, indefensible, silly consequence, and it was put in to favour the Act—to stimulate the bringing of land under Torrens title. It was in the interest of the office—not of the public at large. It is a bad thing. I take the case which the hon. and learned member, Sir Thomas Hughes, put forward: that a man can get a certificate of title and then go to sleep for a hundred years without losing his land. That is against public interest; that is against the policy which causes all statutes of limitation to be passed. It is a bad thing for the country that a man should be encouraged to do that; but as I say, there is a class of inconveniences growing up out of this indefeasible title. I have talked—and so have the hon. and learned members, Sir Thomas Hughes and Sir Joseph Carruthers—as if a man who had a certificate of title granted in respect of his property lived for ever, but he does not. He does not go to sleep for a hundred years, for if he did he would wake up in the grave—if he woke at all. There are complications which the laws of nature will bring in. Since I have been a practitioner in the country these complications have grown up. A man who had a Torrens title to land left four or five sons—country fellows, who arranged about the occupation of it, but objected to the expense of getting each one a separate certificate for his piece. In the course of a few years the confusion into which that title gets by its very perfection in certain ways is almost incurable. The whole of the profession, except the hon. and learned members, Sir Joseph Carruthers and Sir Thomas Hughes, are against this provision in the Land Titles Act.

The Hon. J. GARLAND: What! Against Torrens title?

The Hon. L. F. HEYDON: Against this provision, and its awkwardness, yes. Very often old people have been careless, and their land has not been occupied strictly in accordance with the plans in the certificates—or with what the surveyors may afterwards say ought to have been the plans in the certificates. There grow up between A and B questions of little pieces of land which there is no solving, except with the sword of possession, which alone will cut the Gordian knot. Possession is often an effective sword to cut through legal tangles. Of course, high up in the "barristerial" portion of the profession there are gentlemen whose feelings are not in that direction—that is the trouble which solicitors have to get right, but cannot get set right. The Torrens title itself has no power to give a certificate by possession; the Registrar-General has not autocratic powers; he has to be certain that a piece of land, which has been occupied by X Y Z for fifty years, and which apparently, by survey, ought to be in A B C's certificate of title, has not become the property of X Y Z, but is still A B C's. He cannot patch up these things. Often and often in the course of time tangles grow up with regard to land which has been more or less in occupation; people have been long years in possession of a certain area to the knowledge of everybody; then an old obsolete title by the grandfather is produced, and there is a lawsuit, after an occupation of, perhaps, forty or fifty years—or, worst of all, there is no lawsuit, but the Land Titles Office say, "We are quite powerless; possession gives no title." Then there is the grandson of somebody who once had a title, but who lost it through neglect; there is another hopeless tangle. It is a complete mistake. I know this is a sacrosanct thing; when the Solicitor-General speaks, of course, we get the voice of the Government, and Governments in New South Wales so far have been wedded to the sanctity of the Torrens Title Act. That is a splendid Act in many ways, but on this point it is a blunder. My voice, of course, is as "the voice of one crying in the wilderness."; I

only point out these things to justify my attitude, but I repeat that land is only land, and any good title ought to be as good as any other good title. There is no earthly reason for treating land which is under Torrens title any differently from land which is under any other good title.

Clause as amended agreed to.

Postponed clauses 16, 17, 18, 19, 26, 31, and 33, dealing with land, were amended by substituting "twenty" years for "twelve," wherever occurring, and "ten" years for "six," and agreed to.

Amendment (by the Hon. J. GARLAND) agreed to:

That the following new clause be added: "Nothing in this Act shall affect the provisions of the Real Property Act, 1900."

Preamble and title agreed to.

Bill reported with amendments.

SPECIAL ADJOURNMENT.

Motion (by the Hon. J. GARLAND) agreed to:

That this House, at its rising to-day, do adjourn until Wednesday next.

ADJOURNMENT.

Motion (by the Hon. J. GARLAND) proposed:

That this House do now adjourn.

The Hon. Dr. NASH: I want to refer again to the matter of a returned soldier, a subject which I dealt with once or twice previously this session. Since my remarks on the last occasion, the hon. member, Mr. Braddon, has been good enough to give an interview to the gallant officer to whom I referred, and I am pleased to be able to say that the interview was entirely satisfactory to the officer concerned. The matter has now been entirely cleared up, and I am very much obliged to the hon. member for his courtesy. If any words of mine caused irritation, I am extremely regretful. I can only assure the hon. member that no irritation was intended. In regard to the other matter to which I previously referred, I desire to express the hope that when the case is proceeded with, upon the instruction of the A.M.P. directors, no slur will be put on the history of that great institution. I feel very much in this case, and I should like to see the directors of the society take a broad view and let this unfortunate man down as lightly as possible.

The Hon. H. Y. BRADDON: I only rise to say that I accept the explanation of the hon. member, Dr. Nash, without any reservation in the admirable spirit in which it is tendered.

The Hon. Sir JOSEPH CARRUTHERS: I understand that next week the hon. and learned member, the Solicitor-General, proposes to submit an insurance amendment bill. I will not discuss that measure, except to say the matter I wish to refer to is in no wise dealt with in the bill. I would suggest to the hon. and learned member that when he brings the measure on, he should make it apply specially to soldiers and treat it as a matter of urgency. The hon. and learned member is no doubt aware that there are cases where soldiers have been insured by their relatives for the purpose of making provision for widows and others dependent upon them. Unfortunately, now that they are dead, it is found that the bankruptcy law takes away the whole benefit of their insurance from their dependents. The hon. member's bill is so drawn that it does not meet that case. The hon. member has had instances submitted to him which show that very grave hardship is accruing owing to the defect of the law. It is really a defect, considering that we are in a time of war. More than that, it is deterring men who enlist, who may happen to be uncertificated bankrupts, from making provision for their relatives should they fall while at the front. I bring this matter under the notice of the hon. member now so as not to take him by surprise later. I hope he will have amendments ready to meet the case.

The Hon. J. GARLAND: I shall be only too happy to receive any specific suggestion from the hon. member, and I shall endeavour to do what I can to meet his views.

Question resolved in the affirmative.

House adjourned at 6.1 p.m.