

Legislative Assembly in the following manner, that is to say:—A Minister of the Crown shall within thirty days after the commencement of the first session of every Parliament deliver to the Speaker a nomination in writing . . .

The Speaker submits the nomination to the Assembly and the election takes place in that way. That subsection is not affected by this bill. All the bill does is to omit subsection (9) and insert a new subsection in its place. Subsection (9) merely provides for the nomination and election of the first committee to be appointed under the provisions of the Act. The subsection reads:

The nomination and election of the first committee to be appointed under the provisions of this Act shall take place in the manner aforesaid and within thirty days after the commencement of this Act.

Of course, the operation of that subsection is exhausted. I am not sure whether the provision in the bill covers the ground that is intended to be covered. The provision made in subsection (6) is not affected by this bill. Subsection (6) provides for the appointment of the committee generally after the first committee has been appointed. It provides that a Minister of the Crown shall within thirty days after the commencement of the first session of every Parliament deliver to the Speaker a nomination. That cannot be done in the case of this Parliament. That provision is not affected by this bill. Clause 3 will permit of the appointment of the committee for the present Parliament, but I am not quite clear about the effect of merely repealing subsection (9) and retaining subsection (6). If subsection (6) is left in the Act, although the appointment of the committee for the present Parliament may be provided for, it does not seem that future Parliaments will be provided for.

Dr. EVATT: Subsection (9) is exhausted and the section that will replace it is really in substance a proviso to subsection (6). That meets the position!

Mr. BAVIN: Yes, I think it does.

Clause agreed to.

Bill reported without amendment; report adopted.

[*Mr. Bavin.*]

ADMINISTRATION OF JUSTICE BILL.

Mr. McTIERNAN (Western Suburbs), Attorney-General [5.8 p.m.], moved:

That leave be given to bring in a bill to extend to Northern Ireland the provisions of Part II of the Administration of Justice Act, 1924; to amend that Act; and for purposes connected therewith.

He said: This is a small bill of two clauses for the purpose of curing certain defects in the Administration of Justice Act, passed last year by the Nationalist Government.

Question resolved in the affirmative.

Bill presented and read a first time.

House adjourned at 5.10 p.m.

Legislative Council.

Thursday, 15 October, 1925.

Constitution (Amendment) Bill—George's River Bridge (Guarantee) Bill—William Clift Trust Estate Bill—Abolition of Capital Punishment Bill.

The PRESIDENT took the chair.

CONSTITUTION (AMENDMENT) BILL.

Bill presented and (on motion by the Hon. A. C. Willis) read a first time.

GEORGE'S RIVER BRIDGE (GUARANTEE) BILL.

Bill read a third time.

WILLIAM CLIFT TRUST ESTATE BILL.

Bill read a second time and reported from Committee without amendment; report adopted.

ABOLITION OF CAPITAL PUNISHMENT BILL.

In Committee (consideration resumed from 1st October, *vide* page 1194—the Hon. W. T. DICK in the chair):

Clause 1 (short title).

The Hon. F. S. BOYCE: I move:

That the clause be postponed.

My reason is that the title of this bill is the "Abolition of Capital Punishment

Act, 1925." It may be that the Committee will see fit to preserve capital punishment in some cases, and the bill then would be wrongly named and we should have to alter the title to a "Crimes Amendment Act." I suggest that this clause be postponed until the ideas of the Committee are obtained.

Clause postponed.

Clause 2. (1) Sentence of death shall not be passed upon or recorded against any person for any crime for which if this Act had not passed he would be liable under any Act or Imperial Act in force in this State to suffer death.

(2) Any person who is convicted of treason, murder, rape, or carnally knowing a girl under the age of ten years shall be sentenced to penal servitude for life, and in such a case section four hundred and forty-two of the Crimes Act, 1900, shall not apply.

(3) Where a person is convicted of any other crime for which, if this Act had not passed, he would be liable under any Act or Imperial Act in force in this State to suffer death he shall be liable to penal servitude for life.

The Hon. J. B. PEDEN: I move:

That after the figure (1) in subclause (1), the following words be inserted:—"except in the case of."

Possibly there may be some difference of opinion as to particular crimes in regard to which capital punishment should be retained. My own view is that it should be retained for three crimes—for treason, for murder, and for carnally knowing a girl under 10 years of age. Those are offences which are mentioned in subclause (2).

The Hon. J. ASHTON: You omit rape!

The Hon. J. B. PEDEN: Yes, I omit rape. What I am at present saying is simply that capital punishment should not be entirely abolished. Some hon. members may think it should be retained for all offences; some may think it should be retained for four offences—such as treason, murder, carnally knowing a girl under 10 years of age, and rape, or even for other offences. If so, they can vote for this amendment, because it leaves open the question as to what exceptions exactly shall be made. What I am proposing is that there should be at least one exception, though personally I think there should be more than one exception.

That is why I am moving it in this form—simply to raise the question that there should be at least one exception.

The Hon. A. C. WILLIS: I will have to oppose the insertion of these words, because their insertion would destroy the bill. The bill is a bill for the abolition of capital punishment, and if these words are inserted—if only one crime is allowed to remain—it is not an abolition bill. It would place the Government in an invidious position if it agreed to an amendment of this kind, for this reason: so long as the Labour Government remains in office it will not give effect to the extreme penalty. That is well known. Even if this bill is not passed, the Government will not give effect to the extreme penalty. But if in a Government bill we allow an amendment to provide that penalty even for one crime, well, then, it is our bill, and, to be logical and consistent, if the death sentence were passed we should have to carry out the penalty. But as the Government has no intention of carrying out that penalty, it would be placed in a false position.

The Hon. Sir HENRY BRADDON: But you would be no more bound than *than* you are now!

The Hon. A. C. WILLIS: The present Government is not responsible for the law as it stands now, and thinks it should not stand.

The Hon. T. M. SHAKESPEARE: Then you should have said so when you were at the polls!

The Hon. A. C. WILLIS: The Labour party has stated this in season and out of season, when it has been in office and when it has been out. Repeated deputations waited upon the last Government in connection with this matter. The present Premier was twitted, when the matter was brought up in the House, with the fact that the Labour party had not taken steps to abolish it when it was in power before. Not only was the Government twitted with this in Parliament, but, when a deputation waited upon Sir George Fuller, then Premier, he directed attention to the fact that the Labour party, when it was in power, had not done anything to remove this penalty. In view of that the Government did the

right thing, when it came into office, in endeavouring to remove this penalty, and that is the reason for this bill. We are not responsible for the law as it now stands, but we would be responsible for this bill as amended, and to be consistent, if it became law we should at least carry it out to the limited extent provided for. Hon. members will see that it is impossible for the Government to place itself in such an invidious position. You would say, "It is your own law, and you accepted the amendment by the Upper House, yet now you are not prepared to carry out your own law?"

The Hon. S. R. INNES-NOAD: Would not clause 4 excuse you?

The Hon. A. C. WILLIS: No, I do not think so.

The Hon. S. R. INNES-NOAD: You would still have the prerogative of mercy!

The Hon. A. C. WILLIS: Clause 4 does not touch the principle behind this. If we allow the death penalty to be retained in any particular instance we accept the principle. I would like to direct the attention of hon. members to the position as it is now. The penalty will not be carried out while the Labour Government is in power. I would ask hon. members to see this from our viewpoint, and to understand that we cannot place ourselves in the invidious position of being parties to a bill containing such an amendment, when it is with us a matter of principle. As such a proposal is not likely to be acted upon during the tenure of office of the present Government, I do suggest to this Committee that it should pass the bill as it now stands, and not press the amendment. If this Government goes out of power, and its opponents make this matter an election cry, they can very soon re-enact it if they desire to have it restored to the statute-book, either altogether, or in the limited sense suggested by the Hon. Mr. Boyce and others. I do not wish to appear captious in this matter, and I want to meet the wishes of the Committee, but I feel sure that after the explanation I have given hon. members will realise that the Government could not possibly place itself in that position.

[The Hon. A. C. Willis.

The Hon. F. S. BOYCE: The Hon. the Vice-President of the Executive Council says that the Government will be in a very invidious position if this amendment is carried, and unless the Committee agree to the entire abolition of capital punishment. I think the Government will be in a very invidious position if it does not agree to the amendment, for this reason: Under the Commonwealth Crimes Act, section 24, which deals particularly with treason, provision is made that the law of the State or territory with respect to executions is to be followed. The section reads thus:

Any person, who within the Commonwealth or any territory, instigates any foreigner to make an armed invasion of the Commonwealth, or any part of the King's dominions, or assists by any means whatever any public enemy shall be guilty of an indictable offence, and shall be liable to the punishment of death. Any sentence of death passed on an offender in pursuance of this section shall be carried into execution in accordance with the law of the State or territory in which the offender is convicted.

The Hon. J. ASHTON: What Act is that?

The Hon. F. S. BOYCE: It is the Commonwealth Crimes Act of 1914, passed, I believe, by a Labour Government. The invidious position in which the Government will find itself is that if it abolishes capital punishment, then should a man be found guilty of treason under section 24 of the Commonwealth Crimes Act, which by that Act is punishable by death in accordance with the law of New South Wales, there will be no law of New South Wales to apply. The consequence would be that the State of New South Wales would override the Commonwealth in what is peculiarly a Commonwealth matter. If for no other reason, we ought to keep in this bill the words "except in the case of treason," so that we shall have something as a complement to the Commonwealth Act to provide the machinery to carry out the terms of the Commonwealth Act. I have already indicated that I am in favour of the abolition of capital punishment in a number of cases. I am prepared to come into line with the law of England and

many other British-speaking communities, and I have indicated that for murder, notwithstanding the arguments put forward by the Vice-President, the Hon. Mr. Coates, and others. I am still in favour of retaining the punishment of death. I do not surrender to the pistol presented to us by the Vice-President, that we must accept the whole bill or nothing. I came into this House with no more experience in conducting the affairs of the House than my hon. friend. The first bill with which I had to deal was a divorce bill. It was not mentioned in the policy speech of the then Government any more than this bill was. Furthermore, the divorce bill was not mentioned in the large sheaf of proposed legislation which had been issued by the Nationalist party, any more than the Abolition of Capital Punishment Bill was paraded before the country in the full sheet of the *Sydney Morning Herald*, which the Labour party advertised as its programme. But the House took the inside out of the divorce bill. The very thing for which the bill was introduced, to provide that insanity should be a cause for divorce, was taken out of the bill by this House. I did not take up the attitude, nor did the Government of which I was a member take up the attitude, that therefore the whole bill had to go. We recognised that the collective wisdom of this House might very well put in or omit matters which had escaped the vision of the Government. I ask my hon. friend to adopt the same attitude and not to lay it down to the Committee that if we do not accept this, that, or the other thing, the whole bill goes. I think there is some good in this bill—a great deal of good in some ways—and I am prepared to vote for it, with certain amendments which no doubt will be proposed. I strongly advocate the necessity for keeping the death penalty for the crimes of murder and for treason, for the reasons which I have given.

The Hon. J. ASHTON: On many occasions I have not been able to see eye to eye with the representative of the Government in this House, but on this occasion I agree with the attitude taken

up by the Hon. the Vice-President. I do not think the Government can be expected to accept the amendment, in view of the well-known attitude of the Labour party on the subject of capital punishment. Whether the Government should drop the bill in the event of capital punishment being retained for two or three offences, is, however, a matter the Hon. the Vice-President might take into consideration. I understand that at the present time there are twelve or fourteen offences punishable by death. It would be some gain, from the Government and the Labour party's standpoint, if ten or eleven of those offences were removed from the category of capital offences. I agree with the Hon. the Vice-President that it would be unreasonable to expect the Government to accept the amendment, but I think he might fairly consider the question of accepting the remainder of the bill, even if capital punishment is retained for two or three offences.

The Hon. J. F. COATES: I would like hon. members to look at the clause as we have it. I do not think the Government would be justified in accepting the amendment proposed by the Hon. Professor Peden. The Government came in pledged to abolish capital punishment, and I do not think it right to have a law upon the statute-book the administration of which will depend upon which political party is in power. The Labour party has never yet executed a man.

The Hon. E. H. FARRAR: Previous Labour Governments have done so!

The Hon. J. F. COATES: Not the present one.

The Hon. N. J. BUZACOTT: It has not yet had the chance!

The Hon. J. F. COATES: We have never yet had a deputation protesting against the non-carrying out of the death penalty. When the party to which I have the honor to belong was placed in power, the public expected that the death penalty would not be carried out. We have never yet had a public protest because of the action of the Government,

but public protests were made when under previous Governments an execution was about to take place.

The Hon. G. R. W. McDONALD: They hanged a man from my electorate!

The Hon. J. F. COATES: Not the present Government nor the previous Labour Government under the Storey Administration. There is not a single hon. member who would expect a Labour Government to carry out an execution.

The Hon. F. S. BOYCE: What would you do in the case of treason?

The Hon. J. F. COATES: I am always chary to answer a question from learned King's Counsel, because there is generally a "catch" in it. Even in the case of treason I would not carry out the death penalty. My learned friend is aware of the celebrated Dreyfus case in France, where a man was found guilty of treason and many years afterwards was found to be innocent.

The Hon. S. R. INNES-NOAD: He was not tried by a properly constituted court!

The Hon. J. F. COATES: Unfortunately we are getting all sorts of courts in New South Wales. Some of them are burlesques on justice.

The Hon. J. ASHTON: Had they the death penalty in France?

The Hon. J. F. COATES: I am not sure. My hon. friend may know about it. The most famous treason case in modern years was the Dreyfus case. The world proclaimed him to be guilty, and he was afterwards found to be innocent. If the Hon. Professor Peden's ideas had been carried out, Dreyfus would have been dead long ago.

The Hon. J. ASHTON: Don't you think there was a law against treason in France at the time Dreyfus was found guilty?

The Hon. J. F. COATES: No doubt there was.

The Hon. J. ASHTON: This is not a question of whether we will put a man to death for treason, it is a question of whether we may do so!

The Hon. J. F. COATES: My hon. friend forgets that it is perhaps the only law on the statute-book that will not be enforced by a Government, and it is the only law on the statute-book in connection with which killing depends upon

what Government is in power. If we are going to have the administration of our laws dependent upon a parliamentary election, we are going to have a very serious state of affairs.

The Hon. E. H. FARRAR: All laws depend on elections!

The Hon. J. F. COATES: Not by a long way. The history of the world shows us how mistakes of this kind can be made. A few days ago a learned man in England, and evidently a great authority, went through the famous casket letters upon which Mary Queen of Scots was convicted, and it was shown by that eminent authority that the letters on which she was convicted were the forged letters of her secretary, so that the last Queen of Scotland was beheaded unjustly.

When we come back to the present day we find, time after time, that some person has been unjustly executed. Hon. members think capital punishment is a deterrent to crime. The last man to be hanged in New South Wales was that unfortunate wretch Williams, who asked that he should be hanged. Hanging was no deterrent to him, and that man, up to the day of his death, asked that there should be no attempt to reprieve, because, having killed his children, he believed that they had gone to Heaven, and he asked that his life should be taken because of his love for his children and because he wanted to join them. That man was the last to be hanged in this State. To my mind there is nothing in the law that we should support when the man who carries out the law becomes repugnant to every citizen in the State. What is the position in which you put this law officer? Every man connected with the law of this land should be held in the highest respect—our judges, our police, and all our law authorities, until we come down to the common hangman, who is detested by every man.

The Hon. J. ASHTON: Not more so than the man he hangs!

The Hon. J. F. COATES: That is perfectly true. It is he who gets punishment, but what type of man is he who hangs him? There are two types. There is the degenerate who does it for some

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reason, and there is the other type of man who will do it for money, but neither of these types of men will carry out the law because they respect the law. One type will carry out the law for money because it pays them to take human life for the cash that goes into their pockets. To my mind it is wrong for Parliament to retain a law that makes one of its own law officers the most detested man in the State. Such a law should not be on the statute-book. Is there a single member in this House who would permit his daughter to marry even the son of a hangman? Not one. Is there any hon. member who would live in a house in which a hangman lived? Not one. And still you would perpetuate such a law. The most repugnant character one finds in literature is that of Dennis, the common hangman whom Dickens has so well described in "Barnaby Rudge." About every man he had to hang he asked, "What sort of a drop shall I give him? How shall I tie the rope around his neck?" His one idea was hanging until he himself was led shrieking to the gallows. The executioner who hanged the last man in England committed suicide because he would not again go through the act of hanging a woman. That is the type of man some of you want to perpetuate in Australia. As an Australian I hope to have our laws respected. Every man connected with the law should be respected. I shall always give my vote to wipe off the statute-book any provision that causes horror to the people, as does a law officer who is a hangman.

The Hon. Colonel ONSLOW: The hon. member who has just resumed his seat has gone perfunctorily into various historical events in support of his case for the abolition of capital punishment. I may say that in the oldest civilisation in the world—China—the executioner is highly honored and is an eminent individual. I would remind hon. members that history shows us that the executioner who executed several of the French kings in the middle ages was a distinguished or prominent individual.

The Hon. J. F. COATES: He was prominent all right!

The Hon. Colonel ONSLOW: A further objection advanced by the Hon. Mr. Coates to the amendment of the bill is that it is a very bad thing that this law should remain on the statute-book if the Government has no intention of carrying it out. That may be all very well, as far as it goes. But it applies to all other laws. There is a great body of legislation on our statute-book much of which provides for penalties. But I venture to say that when those penalties are inflicted the present Government will in many cases see that they are not enforced. I refer to some of the penalties in connection with the Arbitration Act. We have not to go back far to find penalties by way of fines inflicted by judges in the Arbitration Court having been remitted or not enforced by the Labour Government in power. I am merely showing the hon. member that he cannot have it both ways. That argument, coming from the mouth of a statesman with his political inclinations, is indeed a two-edged sword. I take it argument of that kind applies to all laws.

The Hon. J. F. COATES: Are you an admirer of the man who is the hangman to-day?

The Hon. Colonel ONSLOW: I do not know him. I cannot base my argument on that.

The Hon. J. F. COATES: Would you care to know him?

The Hon. Colonel ONSLOW: It depends on him. There are a great many people whom I do not care to know, yet whose existence may be very necessary. The number of people whom I want to know intimately is quite limited. A great appeal has been made by the Hon. Mr. Coates, who in supporting the abolition of capital punishment almost sympathised with the hangman.

The Hon. J. F. COATES: The hon. member is wrong there!

The Hon. Colonel ONSLOW: I am by no means unsympathetic to human misery or suffering, but I have the utmost sympathy with the victim who is murdered, and I have the greatest sympathy with his relatives and friends.

The Hon. J. F. COATES: So has every man in the House!

The Hon. Colonel ONSLOW: And I have far more sympathetic feeling for them than I have for the man who committed the crime. I believe that the retention of the death penalty is a deterrent in very many instances and therefore I think it should remain as a protection for society, which is all that laws are ever intended for. I shall vote for the amendment.

The Hon. F. H. BRYANT: Whilst I am quite in accord with the principle that has been enunciated here from time to time and which underlies the constitution of this Chamber and whilst I realise its powers and its rights, I say that its method of dealing with measures has somewhat changed of late. It is passing strange that this is the second measure this session which is to meet its fate on the second clause at the Committee stage. I would far prefer the system I have seen in operation in this Chamber for so long under which those who are opposed to a measure definitely settle that measure on the second reading and do not allow it to reach the stage which this bill has reached. The bill in itself is absolutely and wholly to prevent hanging for murder. The proposal to exclude murder and carnally knowing a girl from the provisions of the bill destroys the essence of the measure. It is of no use for hon. members to try to beat about the bush. That is the plain intention of the amendment. They do not intend to take murder out of the list of crimes for which hanging is the punishment although that is the very object of the measure. Therefore I say it is quibbling to attempt to amend the measure and ask the Vice-President of the Executive Council to accept it, not amended, but absolutely distorted and made into another measure altogether. As has been explained by the Vice-President of the Executive Council it is a bill to abolish capital punishment in its entirety without variation or differentiation in the slightest degree, and for those who oppose the measure to ask the Minister to accept the bill in the form in which they propose to leave it is from our point of view beyond all pro-

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priety or justice. I hope the amendment will not be agreed to, because if it is it will altogether kill the bill.

The Hon. MARTIN DOYLE: I voted against the bill on the second reading because I held then as I hold now, in spite of all the speeches made, many of which were of a sentimental character, that hanging, or the death penalty, for murder is a deterrent. I have not heard any argument to prove to me that it is not a deterrent. This method of bringing in a bill, putting it on the table and telling us we must not amend—the “whole hog or none” policy—is altogether a new departure in this House. It is an absurdity in a Chamber such as this, which is a deliberative and revising chamber. The position I take up is that I would hang a man for murder alone because in my opinion the fear of hanging is a deterrent. All the other crimes might go. I would not hang a man for treason or rape or such things as that. Any man who has had long experience on matters of this kind knows it is a difficult thing to find the truth in sexual offences and it is a very dangerous thing to hang a man for such a crime. I understand that no hanging has taken place in this State for such an offence for a considerable time. I shall vote for the amendment.

The Hon. T. WADDELL: We should be satisfied to allow capital punishment to remain on the statute-book in the case of men who commit murder, but to be applied only under such conditions as have in the past induced Governments to sanction the sentence being carried out. After a man is tried and convicted by a jury of twelve of his fellow-citizens the matter goes to the Cabinet. The usual course is that a week or ten days after the man has been convicted and sentenced each Cabinet Minister is given a copy of the depositions. Each takes his copy home and reads it very carefully. Next day the members of the Cabinet sit round a table with the judge who tried the case. Every member of the Cabinet is most anxious to know if there is any possible reason for not inflicting the most severe penalty. If Mr. Willis and his colleague look at the matter in the

right way and in the knowledge of that practice they will see that after all it would be a very great mistake for the Government to abolish capital punishment. I should like to read some statements contained in a pamphlet which Mr. Lang published and distributed after he made his policy speech at Auburn. The pamphlet contained his speech. I am informed by statements I have here that in that pamphlet Mr. Lang used the following words:—

If the Labour party is returned with a working majority it will endeavour to carry into legislation the policy which I shall enunciate to-night and not any fantastic and absurd policy which our opponents will invent for the purpose of catching the unwary electors.

Hon. members know that nowhere in that speech did he mention capital punishment. The Minister last night spoke of a statement made in the Labour paper which to some extent explained away omissions from the speech. But these words were in the pamphlet which Mr. Lang issued and sent to the electors all over the country so that they might know exactly what it was in the mind of the Government to do if the party were returned to power.

The Hon. J. F. COATES: Is that the original pamphlet you have or merely extracts from it?

The Hon. T. WADDELL: These are extracts from the speech which have been made by somebody else.

The Hon. J. F. COATES: Who was the other person?

The Hon. A. C. WILLIS: Mr. Lang said he would carry out the things he would enumerate that night, and not any fantastic proposals or schemes which his opponents were suggesting he would carry out. That was the reason for his answer at that time. He said that that was the line he was going on. He was quite lucid and distinct.

The Hon. T. WADDELL: May I read it again. This was at the forefront of his speech. He said:

If the Labour party is returned with a working majority it will endeavour to carry into legislation the policy which I will enunciate to-night, and not any fantastic

and absurd policy which our opponents will invent for the purpose of catching the unwary electors.

He referred to the matters which he would enumerate, and said that he would carry out a policy embracing all the different things he would mention that night. That is what his statement means, and not anything else. The reason I am referring to this matter is that it was contained in the pamphlet. I should be sorry to make any statement that was not correct. Perhaps some member supporting the Government may have a copy of Mr. Lang's pamphlet, which can be read to this House, and if it can be shown that Mr. Lang left any reasonable room, in the mind of any man who wishes to read his remarks in a fair way, for say that this would be one of the things he would bring in legislation for, then I shall be prepared to vote against the amendment, and to vote for the bill, and I make that statement much as I should regret to see the change made.

If the electors of this country had known the Government would try to pass this measure, I am confident the Labour party would not have been returned. That applies not only to this, but several other very important matters which have been brought forward, and the most important matter any Government could bring forward is a matter dealing with the lives of the people. The penalty of capital punishment for murder has always existed in the great Old Country from which we have sprung, whose laws we have always so much admired, and not one of the Governments of Great Britain has ever proposed to abolish it. I do not think that even the Government of Mr. Ramsay Macdonald made any proposal of that kind. In Switzerland, some years ago, several of the cantons abolished capital punishment, but cases of murder afterwards became so much more frequent that those cantons altered the law again, and went back to the system of having capital punishment as a deterrent to crime.

I recognise that the Government is in a very awkward position. It is a very serious thing for the Government, after having been elected on one programme,

and after having told the electors all over the country that it would not do anything else, to pass a lot of measures dealing with the most contentious questions possible, which were never indicated in the Premier's policy speech. I should be quite satisfied if the death penalty were retained for murder only. As the Hon. Mr. Boyce has pointed out, the Commonwealth law, which I suppose would apply to all the States, provides the penalty of capital punishment for treason.

The Hon. MARTIN DOYLE: Let the Commonwealth do its own hanging!

The Hon. T. WADDELL: It would be a good job if they hanged a lot more than they have. I may say, as regards treason—suppose a number of armed men went down to the Government offices and threw the Ministers out, and took possession, for the time-being, and tried to overthrow the Government of this country, would the Government be very delicate, then, about using the police, if necessary, to shoot these men down, in order to stop them from throwing the Government out? I do not think the Government would hesitate. If 5,000 or 6,000 communists rushed down to the Government offices and threw out Mr. Lang and treated him very badly, or threw the Hon. Mr. Willis out of any office he might be in, and turned things upside down, and if Mr. J. S. Garden set up as the Dictator of New South Wales, I think that if the Government could get enough police together to overthrow those people, and, if necessary, to shoot a lot of them down, the Government would do it. If I were in a Government in such circumstances I would be delighted to shoot them down.

The Hon. Mr. Boyce has pointed out that under the law of the Commonwealth capital punishment is the penalty for treason, so I am quite agreeable to cutting that out of the amendment. Further, I am quite agreeable to cutting out hanging for carnally knowing a girl under 10 years of age, and to altering that to imprisonment for life, simply retaining capital punishment in cases of murder only. If the Government can succeed in passing the bill in that form, it will be getting rid of the capital penalty for

[*The Hon. T. Waddell.*

ten or eleven other offences which are now included. As the law stands to-day there are about a dozen different offences for which capital punishment may be inflicted. I should be agreeable to abolish capital punishment in all cases except that of murder.

The Hon. T. M. SHAKESPEARE: I am surprised and disappointed at the stand-and-deliver attitude which has been adopted by the representative of the Government. It looks to me as if the time has arrived when we should just give the Government power to carry out what is on its platform, and leave it at that. It seems as though it gives us no margin in which we can legislate at all. There is a very important bill before the Committee, in regard to a matter which has been under consideration in this country from its very infancy, and which has been connected with the law of England from earliest history. The time has arrived when we should consider it, and suggestions have been made whereby the laws of the past should and could be liberalised, and the number of crimes for which the death penalty can be inflicted reduced to four—it has even been suggested that it might be reduced to two. I think there is every reason in the world for retaining the death penalty for murder in the first degree. Everyone who has had anything to do with murderers will agree that a man who uses brute force towards another, from simple garotting downwards, is a coward; when he is faced with punishment he is the greatest cringer known. The man with a brutal temperament who has no pity for others is the first to cry to God for protection the moment anything in the way of pain threatens his own miserable carcass. Because of that, I hold it is necessary to retain the death penalty as a deterrent for the crime of murder in the first degree. It is unfortunate that the Government should take up the attitude it takes in regard to this matter, in view of what we see happening around us. At the present time there is a man in gaol in this State who, when he was 18 years of age, killed another; when he was 25 years old he was convicted of murderous assault. In this city he was

charged with three offences, one of which was stabbing a returned soldier. He was finally sentenced to death for putting a bullet through a man, after battering his head in. That man is in gaol to-day.

The Hon. Dr. WALL: He ought to be in the lunatic asylum!

The Hon. T. M. SHAKESPEARE: I am quite with you, but for the point I wish to make. He happens to be a sailor and already stop-work meetings have been held to demand his liberation because he happens to belong to a certain union.

The Hon. A. C. WILLIS: Who is he?

The Hon. T. M. SHAKESPEARE: McCall.

The Hon. T. J. SMITH: Do you say that the men in the union are aware of the facts which you allege?

The Hon. T. M. SHAKESPEARE: I say they do know them and they are agitating for his release.

The Hon. T. J. SMITH: I am amazed at you!

The Hon. T. M. SHAKESPEARE: I make the statement to the Committee. The unfortunate victim, Mr. Dettman, was nursed back to life and is walking about to-day with a bullet within an inch of his heart. He will never be capable of working again. The criminal is in gaol but, because he happens to belong to a certain group, they are agitating for his release and although I do not say it will happen to-day, we can apprehend that in time an obscure judge from another State, seeking notoriety, may give him his release.

The Hon. J. F. COATES: That is a bit rough on the judiciary, is it not?

The Hon. T. M. SHAKESPEARE: If we import obscure men from another part of the Commonwealth, if they know the job they have to do and what they will get for doing it, it will be done.

The Hon. A. C. WILLIS: I tell you if the facts you state are correct, even if all the trade-unions in the Commonwealth carry resolutions, they will not affect the Government!

The Hon. T. M. SHAKESPEARE: I cast no reflection on the Hon. the Vice-President. I am quite sure he would not

release this man nor do I think the present Government would do so, but I have made it clear that we can apprehend the time, when, under a different set of men, it might occur. We have seen men so moved with foreign ideas that they have started to burn down this city. We have seen them just escape taking the lives of other people.

The Hon. A. C. WILLIS: Do you know that?

The Hon. T. M. SHAKESPEARE: I am stating it from the sworn evidence. If certain people had not escaped from the burning building there would certainly have been a charge of murder. Although men have been convicted of these things, we have seen a very important body of people move at once for their release. We can quite understand that unless this deterrent is left in the law—the right of insisting upon the death penalty—if what we hear spoken of every day is eventually carried out, if revolution takes place, if blood must flow—and these are statements which have been made by more than one person whose word is respected in certain quarters—if we find people willing to take the lives of others, we can quite realise that in the future men will go to gaol convicted of murder, with the sure and certain knowledge that as soon as their friends get strong enough in Parliament, or as soon as influential men are able to pull wires in another place, they will be released. That is not my idea of British justice.

The Hon. J. F. COATES: Nor anybody else's!

The Hon. T. M. SHAKESPEARE: I am glad to hear you say it. We hear a lot about people talking of a bloody revolution.

The Hon. P. M. MCGIRR: That is only in the *Sydney Morning Herald!*

The Hon. T. M. SHAKESPEARE: I have heard it said by at least one person in this House. If that talk is serious, we want a deterrent. If it is not intended, then what I am now claiming should be the law will not affect anyone. In any case, if it is the law of the land, the question whether the death penalty shall be inflicted is, in the last instance, in

the hands of the Executive. If it is the policy of the Labour party that the death sentence shall not be carried out, it is within its powers to exercise the prerogative and to impose life imprisonment if it wishes. If, on the other hand, others are in power who consider that in the public interests the death penalty should be carried out, they should have full scope for carrying out their decision. From my standpoint, the Government will not compromise itself by cutting away twelve of the offences for which capital punishment can at present be carried out.

An HON. MEMBER: It is not carried out!

The Hon. T. M. SHAKESPEARE: All the more reason why it should be abolished. But in regard to the other two offences. I think for the protection of those we love, and those we wish to protect, we should at least retain capital punishment for murder in the first degree and for treason. Indeed, I will agree to a third offence which I think is the worst of all. We have seen in this city the result of crimes by those monsters in human form who interfere with our young girls. I know at least two cases in which it has been a living death for those who suffered. Any monster in human form who is guilty of that crime I would do away with just as quickly as I would pull a noxious weed out of my garden. Beyond those three offences, and then only retaining the death penalty as a deterrent, I am not prepared to go. I will assist anyone who desires to retain capital punishment for those three crimes.

The Hon. P. M. MCGIRR: I am surprised at the arguments used by the Hon. Mr. Shakespeare and the Hon. Mr. Waddell in connection with the bill. They have made electioneering speeches on the abolition of capital punishment. I realise what is the matter. There is a deportation scheme in existence, organised by Prime Minister Bruce, and if it is carried out there will, perhaps be murder. They apparently want to hang the whole of the workers of this country. There are men here who would if possible hang every man Jack of them.

[*The Hon. T. M. Shakespeare.*]

I am sure of that. I am surprised at the attitude which some hon. members have taken up in regard to the bill. They have made electioneering speeches during the Committee stage. I admit that hon. members should be given certain latitude in this matter. But it is a well-known fact that hanging is not a deterrent to crime. It is known that when people commit murder they are mad. A man who commits murder is not sane. If Mr. Lang and Mr. Willis are men as I know them, they will not agree to an amendment of the bill. The abolition of capital punishment has been a plank of the Labour party platform for thirty years. It is the call of the State that capital punishment should be abolished. Is it because the law of capital punishment was on the statute-book of England and other countries of the world in days gone by that we should keep it on our statute-book? Surely we are living in more enlightened times when advancement is taking place all over the world. Are we going to go back to the barbarous age, or are we going to advance and do some good for our country? These men who commit murder are in a state of madness. Keep them in gaol and let them work and earn something there for the benefit of the country. That will be a greater deterrent to them than hanging. The Hon. Mr. Waddell has referred to the promises made by Mr. Lang in his electioneering speech. Does the hon. member want to bind the Premier down to every little possible detail? Surely the Premier of a country must have some latitude when bringing forward legislation which is required by the people of the State.

The time has arrived when this House should be abolished. I have said that in this House, not once, but many times. That it should be abolished is the voice of the people. The Labour Government was put into power by the people to carry out the legislation they want. Yet there is a body of members in this House who, not elected by the people, turn down the Government's measures, thereby going against the wishes of the Premier and the people. I trust that the Government will not agree to any amendment of the bill

and that it will see that the measure is passed. If it is not passed, Mr. Lang will have this House abolished in a very short time, or he is not the man I believe him to be.

The Hon. F. S. BOYCE: Might I suggest to the Hon. Professor Peden that he add to his amendment the word "murder," so that it will read, "Except in the case of murder."

The Hon. J. B. PEDEN: I am agreeable to that. I want to make it clear, that that does not prevent me from moving a further amendment. I will withdraw the amendment and accept the hon. member's suggestion.

Amendment (by leave) withdrawn.

Amendment (by the Hon. J. B. PEDEN) proposed:

That before the word "Sentence" in sub-clause (1) the words, "Except in the case of murder" be inserted.

The Hon. A. C. WILLIS: I do not want to take up the time of the Committee except to reply to some remarks made by hon. members. Otherwise there may be some misapprehension as to my own particular views on the matters referred to. I might say that on this question I do not take up a stand and deliver attitude nor anything of the kind. I am prepared to respect the superior wisdom and knowledge of hon. members of this House and I look forward to having the advantage of their greater knowledge and experience here. I do not want any impression to remain that we are adopting a stand and deliver attitude. That would be childish, and I want to be considered as something above that. But I want to put this to hon. members: We are a political party, bound by a platform, and in that platform there is a definite principle to be carried out. We have no right to flirt with that principle. I do not mind hon. members honestly voting the way they think. If there is a fault anywhere, take it out. But when it concerns my conscience and my duty to my party it is a serious matter for me to have to turn round and say that under certain circumstances I am prepared to make certain promises.

As a member of the Labour party I have no right to do so. That is my position in connection with this matter.

Another matter concerning assaults on young girls has been referred to by the Hon. Mr. Shakespeare. If hanging would abolish the things that he referred to, if I thought for one moment that it would put an end to such crimes, I would support hanging to-morrow. But I think the hon. member is wrong in believing that hanging prevents these crimes, and he has nothing to support his opinion that it does. Hanging is certainly not a preventive of crime. It has not even retarded crime in any shape or form. It has possibly been retained on the statute-book more out of sympathy for the victims, if you like, but at the bottom I believe it is more a matter of revenge or of punishment for something that has been done. But we are not competent to judge all the factors in such cases.

The Hon. Mr. Boyce has expressed a desire that treason should be retained as a capital offence on the statute-book. I want to say that although we may have difficulties and complaints against Governments and institutions and that we may do what we like to try to rectify them I can conceive of nothing more contemptible than the person who is guilty of treason to his own country. There is nothing anywhere more contemptible than that. But treason is frequently determined by the temper of the people at the time of the offence—by the psychology of the people created under a certain set of circumstances. As a case in point, take that of Caillaux, in France. During the war he was accused of everything that was bad, of treason and all that sort of thing. I am not sure he was exactly condemned for treason, but to-day he is brought back and applauded in France as the saviour of France—the great financial genius who is to save France. The very people who at one time would have had him placed against the wall and shot for treason are to-day applauding him. A certain mass psychology can be brought about so that under certain circumstances men are led to do certain things.

Human beings are like musical instruments in certain ways and under certain circumstances they are very easily tuned. Because of that and that one point alone one should be very careful. Take the case of Samuel Plimsoll. It was thought he was an enemy of the Empire, a wrecker of the Empire, in the day when he fought the case on behalf of the seamen.

An HON. MEMBER: The same as Walsh!

The Hon. A. C. WILLIS: I do not want to introduce the name of Mr. Walsh here though I am broadminded and British enough to say that every man is innocent until he is found guilty and the man who before he knows all the facts, prejudices another and says he ought to be put outside the harbour and dumped is a man of such a mental calibre as to make him unfit to try any individual.

Then there is this talk about the streets running with blood. It is a standing disgrace to those who publish such muck in our papers to-day. I claim to know as much as any man in Australia of the working-class movement in Australia. I am connected with one of the most militant organisations in Australia, the miners' organisation. While they are prepared to strike for what they think are their rights those men are at bottom the very best men living—men who love their wives and love their families as deeply as any man. If you were to suggest to them the shedding of blood they would be the first to turn you down. I regret this Council Chamber should be used for the purpose of raising issues the only purpose of which is to obtain some political advantage. I warn hon. members that if they persistently inspire people with an idea they are thereby creating a psychology that induces the cultivation of that idea. If they say over and over again and if the papers keep on saying that a certain man is black then although he may be the whitest man in Australia you will so create a psychology that people will believe he is black. The whole aim of this House should be to counteract that kind

[*The Hon. A. C. Willis.*

of thing. When the Hon. Mr. Shakespeare was speaking I interjected when he said a certain union was going to carry a certain resolution. Suppose that is all true. What an insidious propaganda it is that the Labour movement and the Labour party stands for this kind of thing! I resent it. I say it is not fair.

The Hon. A. K. TRETOWAN: They are doing it in the other States!

The Hon. A. C. WILLIS: You read it in your own Nationalist press. You say it is done in other States. Will you believe everything that is said to be done in the other States? I do not want to lead the House to think I am ignorant of the fact that there is always a group of men—half imbeciles, half lunatics—who will talk a lot of rot, but to say that the Labour Government is standing for that kind of thing is an insult to all intelligent men.

The Hon. A. K. TRETOWAN: They are not raising a finger to prevent it!

The Hon. A. C. WILLIS: I do not want to say anything unkind or disrespectful but I know what is being done throughout the whole of this business. I know that some people have spent hours and hours in trying to bring about a settlement of this dispute, and I know they have received no encouragement from those interested who are carrying on this thing for political purposes.

I apologise for imparting any heat into my remarks. I ask the Committee to believe that so far as I am concerned this is not a matter of stand and deliver. I do not care at all if hon. members turn down the bill if they honestly believe it to be a bad bill. But do not ask me in order to let the bill go through, to make a compromise on the principles for which I stand and do not ask me to compromise my Government in that respect.

The Hon. N. J. BUZACOTT: I agree with the Minister's remarks with regard to his attitude on this bill and I do not think he should be asked to accept the amendment. But I still say that if the Committee decides to amend the bill the amendment could reasonably be accepted by the Government. If the Committee chooses to amend the bill there will be

nothing to prevent the Labour Government from saying that it will not sanction capital punishment. In doing that the Labour party would be quite consistent, for abolition of capital punishment has been on its platform since, I think, 1901. The Government would not give anything away merely by accepting the amendment under protest. It can still abstain from hanging. When the bill was first mooted it was my intention to vote for it and support it right through simply because I did not want to continue the practice under which one Government would sanction a hanging and another Government would not. The great difficulty in my way was in connection with penal servitude for life. Legal men differed as to what penal servitude for life meant. Clearly, it does not mean for the term of man's natural life. It has been asserted in this House that men guilty of murder and sentenced for life are now walking about the streets. Obviously such a sentence is open to review by the Executive Council at any time.

The Hon. A. C. WILLIS: I am prepared to accept an amendment to make the bill definite on that point!

The Hon. E. H. FARRAR: You cannot bind future Governments!

The Hon. N. J. BUZACOTT: I recognise the difficulty there. Soon after the first Labour Government came into power there was a horrible murder, an outrage on a girl. A man murdered a girl and attempted to burn her, I shall not mention names. It is said that man will be reprieved, although a minute was left by the Government of the day for the guidance of future Governments that he should never at any time be allowed his freedom. Evidently when a man has served twenty-one years in gaol some influential or even some not influential people can agitate and bring about that man's release.

The Hon. G. BLACK: That can be met by an amendment in clause 2!

The Hon. N. J. BUZACOTT: I doubt if we can meet such a case. That has been my difficulty over the matter.

Another difficulty is that it has not been proved to my satisfaction that hanging is not a deterrent, but notwithstanding what the Hon. Mr. Waddell says, what appeals to me more than anything else is the necessity of retaining the death penalty for an offender guilty of carnally knowing a girl under the age of 10 years. The inhuman monster who is capable of that sort of thing does not need any sympathy. We do not need to pity the poor hangman who executes him. There are thousands of high-minded men in New South Wales to-day who, in the case of a monster like that, would be prepared to put their names into a barrel, and, if their names were drawn, to carry out the duty. They would have no compunction whatever in shooting the bolt to send such a man to his doom. Notwithstanding the tenets of Christianity which have been preached in this House—and I have the highest regard for them—it is quite impossible to put the Sermon on the Mount in the statute-book. Notwithstanding what the teachings of the Christian religion may be, a man who had hanged a monster like that could go home and say the Lord's prayer from the depths of his heart.

The Hon. F. H. BRYANT: We are getting further away from it, every day!

The Hon. N. J. BUZACOTT: When you pray to the Lord to forgive your trespasses as you forgive them that trespass against you, you are not asked to pray for a man who injures your innocent child. Picture an innocent girl, under the age of 10 years, outraged by an inhuman monster. If it were your own child, would you not sooner she were carried to the grave? It would be infinitely better. What has such a child to live for, after being outraged in that manner? I was once in a country town in New South Wales and I saw a girl who had been outraged by somebody, and she was injured in such a way that the effects would last as long as the woman lived, although, when it happened, she was only a child of 10 years. I think that in a case like that, notwithstanding

what has been said about retaining capital punishment for murder only, it would be monstrous to allow such a crime to go unpunished by the extreme penalty. It is all very well to talk about emasculating a man for what he has done, but there is no proposal in this bill to do that. If there was a proposal to do it, it would not be so bad, but no amendment of that kind is foreshadowed.

The Hon. MARTIN DOYLE: Public opinion would not agree with doing that!

The Hon. N. J. BUZACOTT: I am quite sure that public opinion would agree with it, and there are very many men who would volunteer to do it, if they had the necessary surgical knowledge. The Hon. Mr. Coates' remarks about sympathy with the hangman are quite uncalled for. Knowing that hon. gentleman as I do, I believe that, in his heart, he would have great sympathy for anything which was for the protection of the children, and particularly the female children, of our country. While a boy might get over many things of that kind, a girl would be ruined for life. I intend to stand for the maintenance of capital punishment for such crimes as that.

Question—That the words proposed to be inserted (the Hon. J. B. Peden's amendment) be so inserted—put. The Committee divided:

Ayes, 27; noes, 22; majority, 5.

AYES.

Ashton, J.	Meeks, Sir Alfred
Black, R. J.	Onslow, Colonel
Boyce, F. S.	Peden, J. B.
Braddon, Sir Henry	Robson, W. E. V.
Brooks, W.	Shakespeare, T. M.
Doyle, H. Martin	Taylor, Sir Allen
Farleigh, J. G.	Trethowan, A. K.
Farrar, E. H.	Varley, G. H. G.
Hughes, Sir Thomas	Waddell, T.
Innes-Noad, S. R.	Warden, W. D.
Lane-Mullins, J.	Wise, J. H.
Latimer, W. F.	<i>Tellers,</i>
McDonald, G. R. W.	Buzacott, N. J.
McIntosh, H. D.	Kater, Dr. N. W.

NOES.

Black, G.	Flowers, F.
Bryant, F. H.	Hepher, J.
Coates, J. F.	Higgins, J. F.
Cruikshank, R. W.	Holden, T. D. P.
Dewar, G. A.	Kavanagh, E. J.
Estell, J.	Mahony, R.

[The Hon. N. J. Buzacott.]

McGirr, P. M.	Wall, Dr. F. E.
Murray, T. G.	Willis, A. C.
Percival, J. W.	
Storey, T.	<i>Tellers,</i>
Travers, J.	Smith, T. J.
Tyrrell, T. J.	Suttor, J. Bligh

Question so resolved in the affirmative.

Amendment agreed to.

Progress reported.

House adjourned at 5.41 p.m.

Legislative Assembly.

Thursday, 15 October, 1925.

Printed Questions and Answers—Questions without Notice—Industrial Arbitration (Amendment) Bill (second reading).

Mr. SPEAKER took the chair.

PRINTED QUESTIONS AND ANSWERS.

RAILWAY AND TRAMWAY FARES.

Mr. SANDERS asked the MINISTER FOR RAILWAYS,—(1) Is it the intention of the Government to reduce the tram fares and the second-class railway fares, as promised in the Labour party's platform? (2) If so, when will the concessions come into effect?

Answer,—(1) and (2) The whole question is receiving the consideration of the Government.

JACKADGERY HYDRO-ELECTRIC SCHEME.

Mr. STUART asked the SECRETARY FOR PUBLIC WORKS AND MINISTER FOR RAILWAYS,—(1) Are any of the departmental engineers, who framed and presented the adverse report regarding the Jackadgery hydro-electric scheme, responsible in any way in making the report and recommendation of the Murwillumbah water supply works? (2) If any of the engineers were concerned, what are the names of the engineers, and to what extent did such engineers participate in connection with the said water supply?