

MR. SPEAKER: The votes being equal, it becomes my duty to give my casting vote, and I consider it my duty to give it with the "Ayes." The question is therefore resolved in the affirmative.

Amendment so resolved in the negative.

Question—That this House approves of the "site" lately occupied by the Garden Palace being set apart and appropriated as the site of a national gallery of art—put, whereupon the House divided with the following result:—

Ayes 32 }
Noes 36 } Majority; 4.

AYES.

Mr. Abigail,	Mr. Lackey,
Mr. Andrews,	Mr. G. A. Lloyd,
Mr. Bowman,	Mr. Lynch,
Mr. Brunker,	Mr. Lyne,
Mr. Burdekin,	Sir Henry Parkes,
Mr. Burns,	Dr. Renwick,
Mr. Cameron,	Sir John Robertson,
Mr. Carter,	Mr. See,
Mr. Cooke,	Mr. R. B. Smith,
Mr. T. G. G. Dangar,	Mr. Suttor,
Mr. Davies,	Mr. Vaughn,
Mr. Eckford,	Mr. James Watson,
Mr. Fawcett,	Mr. Wisdom.
Mr. W. J. Foster,	
Mr. Henson,	<i>Tellers,</i>
Mr. Hungerford,	Mr. Combes,
Mr. Kidd,	Mr. Fullford.

NOES.

Mr. J. P. Abbott,	Mr. O'Connor,
Mr. R. P. Abbott,	Mr. Pigott,
Mr. Beyers,	Mr. Pilcher,
Mr. Byrnes,	Mr. Reid,
Mr. W. R. Campbell,	Dr. Ross,
Mr. William Clarke,	Mr. Slaterry,
Mr. Copeland,	Mr. Stuart,
Mr. H. C. Dangar,	Mr. Tarrant,
Mr. Farnell,	Mr. Teece,
Mr. Fraser,	Mr. Tooth,
Mr. Fremlin,	Mr. Trickett,
Mr. Hay,	Mr. Wilson,
Mr. Holborow,	Mr. Withers,
Mr. Jacob,	Mr. Wright,
Sir Patrick Jennings,	Mr. Young.
Mr. Loughnan,	
Mr. McCulloch,	<i>Tellers,</i>
Mr. McLaughlin,	Mr. Garvan,
Mr. Murray,	Mr. Melville.

Question so resolved in the negative.

Question—That this House approves of a suitable portion of the land now occupied by the Benevolent Asylum and the residence of the Inspector-General of Police, in Pitt-street South, being set apart and appropriated as the site of a free public library—put, whereupon the House divided with the following result:—

Ayes 23 }
Noes 41 } Majority; 18.

AYES.

Mr. Abigail,	Mr. Lackey,
Mr. Andrews,	Mr. Lynch,
Mr. Cameron,	Sir Henry Parkes,
Mr. Carter,	Dr. Renwick,
Mr. Cooke,	Sir John Robertson,
Mr. T. G. G. Dangar,	Mr. Suttor,
Mr. Davies,	Mr. Vaughn,
Mr. Eckford,	Mr. James Watson,
Mr. Fawcett,	Mr. Wisdom,
Mr. W. J. Foster,	<i>Tellers,</i>
Mr. Henson,	Mr. See,
Mr. Kidd,	Mr. Wright.

NOES.

Mr. J. P. Abbott,	Mr. Loughnan,
Mr. R. P. Abbott,	Mr. Lyne,
Mr. Beyers,	Mr. McCulloch,
Mr. Bowman,	Mr. Melville,
Mr. Brunker,	Mr. Murray,
Mr. Byrnes,	Mr. Pigott,
Mr. W. R. Campbell,	Mr. Pilcher,
Mr. William Clarke,	Mr. Reid,
Mr. Combes,	Dr. Ross,
Mr. Copeland,	Mr. Slaterry,
Mr. H. C. Dangar,	Mr. R. B. Smith,
Mr. Farnell,	Mr. Stuart,
Mr. Fraser,	Mr. Tarrant,
Mr. Fremlin,	Mr. Teece,
Mr. Fullford,	Mr. Tooth,
Mr. Garvan,	Mr. Trickett,
Mr. Hay,	Mr. Wilson,
Mr. Holborow,	Mr. Young.
Mr. Hungerford,	<i>Tellers,</i>
Mr. Jacob,	Mr. McLaughlin,
Sir Patrick Jennings,	Mr. O'Connor.

Question so resolved in the negative.

Sir HENRY PARKES: I think it would be better if, with the permission of the House, I withdrew the remaining resolutions.

Resolutions 3 and 4 withdrawn.

House adjourned at 15 minutes past 1 o'clock a.m.

Legislative Assembly.

Thursday, 12 October, 1882.

Mining Act further Amendment Bill—Dubbo Gas Company's Incorporation Bill—Criminal Law Amendment Bill—Crown Lands Bill—Consolidated Stock Bill—General Savings Bank Bill—Watering-places and Reserves Bill.

MR. SPEAKER took the chair.

MINING ACT FURTHER AMENDMENT BILL.

Bill presented (by Dr. RENWICK), and read the first time.

DUBBO GAS COMPANY'S INCORPORATION BILL.

Resolved (on motion by Mr. CASS),—

That leave be given to bring in a bill to incorporate the Dubbo Gas Company, Limited, and to enable the said Dubbo Gas Company, Limited, to construct gas-works within the town of Dubbo.

CRIMINAL LAW AMENDMENT BILL.

In Committee (consideration resumed from 4th October),—

Postponed clause 39 (Rape).

Mr. JACOB moved,—

That the clause be amended by the omission of the words "suffer death" with a view to insert in lieu thereof the words "penal servitude for life."

He did not suppose that he was likely to succeed in his effort to have the death penalty abolished in the case of rape as some honorable members who felt strongly on the subject were absent. Had they been present they would have supported his amendment and would have given expression to their views respecting the case of the man Plomer. In his opinion this fiend in human shape was wrongly reprieved. He was astonished that the Government should refuse to publish copies of the report of the judge on the case. He had read the report hurriedly in the House, and a more horrible case he could not conceive. If the man had a hundred lives, every one of them, ought to have been taken from him as a punishment for the atrocious crime which he committed; but as he had been reprieved, honorable members ought seriously to consider whether any other man ought to be hanged for rape. After reading the report of the judge he could not conceive how the Minister of Justice could possibly suggest the idea that there was consent on the part of the unfortunate girl. The honorable member distinctly said on a former occasion that the evidence taken by the commission which was appointed by the Government did not disclose consent on the part of the girl, and the judge said that there was nothing in the evidence given at the trial to show that there had been consent. The judge told the jury that if they thought that there had been consent on the part of the girl they would have to return a verdict accordingly; but their verdict was that the man committed the capital crime. After the reprieve of this man no man ought to be hanged for the crime of

rape. He should call for a division if he were alone in his advocacy of the abolition of the death punishment.

Mr. PIGOTT would support the amendment. Persons who had had anything to do with trials in courts of law must know that there had often been miscarriage of justice. It was well known that persons had been sentenced to death and afterwards it was found that they were innocent, and rather than risk the taking of the life of an innocent man it would be better to abolish the death penalty for rape. Galley's case showed how easy it was for a serious mistake to be made. He was tried in a formal way by a judge and a jury and sentenced to death, but the sentence was reduced to transportation for life; and after being in banishment for forty years it was found that he was quite innocent of the charge which was made against him. Five or six months ago a case came before the quarter sessions in which a woman charged a man with attempting to commit a rape on her. Her evidence was as clear as any he had ever heard in any court, and would have carried conviction to the mind of any man; but fortunately some well-known and respected residents in the neighbourhood where the offence was alleged to have been committed saw the case reported in the papers, and as they could contradict the woman's statements in regard to events which she said occurred prior to the committal of the offence, they came forward. They were total strangers to the prisoner, and after hearing their evidence the judge caused the woman to be cross-examined. The judge was then so satisfied that she had told a deliberate and unqualified lie that he asked the jury whether they desired to hear any further evidence for the defence. They said that they did not, and the man was discharged without the slightest stain on his character. If the witnesses for the defence had not been forthcoming, the man would have been convicted for a certainty. In ninety-nine cases out of every hundred of this class of cases the only parties present were the man and the woman, and honorable members must know how easy it was for a woman to trump up a charge against a man against whom she had a grudge. There were some women who would not stick at anything under such circumstances. There was more chance of

a mistake being made in these cases than in others, and therefore the death penalty ought to be abolished. In England the punishment of death had been abolished for all crimes save that of murder. The Capital Punishment Commission, which made inquiries in England in 1866, reported in favour of that amendment of the law. The commission made inquiries of all civilised states, and they discovered that in all cases the punishment of death was inflicted only for the crime of murder.

Mr. WISDOM: That is not the case. In France and Denmark there are a number of crimes punishable by death.

Mr. PIGOTT said that his remarks certainly applied to a great number of states—to Ohio and New York, to Brunswick and other German states, and to Switzerland, whose laws in many particulars we might copy with advantage. It would be admitted that in every case in which punishments were severe they had not the effect of lessening the crime for which they were inflicted. It was not long since the crime of theft was punishable by death in England; but thefts were not fewer in those days than at the present time. In all cases of capital offence, save that of murder, juries showed the greatest disinclination to convict. The punishment of death was not in all cases a severe punishment. There were men not only in the lower, but in the higher, walks of life, who did not regard death as a very terrible thing. If we desired to prevent the commission of the crime of rape, it would be far better to imprison offenders for life, giving them one or two thrashings in the course of every year. In 999 cases out of 1,000 offenders would deem that the most severe punishment which could be inflicted.

Mr. WISDOM: My honorable friend was not at all happy in his illustration of the crime of attempted rape alleged to have been committed at Marrickville. The fact that the accused person was acquitted shows that there is very little danger to be apprehended from the operation of the existing law. Persons may be wrongly accused of the crime of rape; but that is no reason why we should abolish the punishment of death for that crime. This, however, is a question which cannot be decided by the consideration of cases on one side or the other. A great deal has been said by eminent men in favour of the

abolition of capital punishment; but the balance of opinion is in favour of the retention of that penalty for certain grave offences. The honorable member said that the punishment of death for the crime of rape had been abolished in all other countries; but if he reads carefully through the report of the Capital Punishment Commission he will find that that is not the case. He will find that in France there are a great number of crimes which are still punishable by death—I think thirty or forty. Certain crimes committed a second time are punishable by death. A crime against the head of the state or his family, and many other offences of that character are punishable in the same manner. It is true that the punishment of death for rape has been abolished in nearly all other countries; but the punishment is retained in some countries for cases in which the crime is committed with great violence, or by more than one person. And it seems to me that whatever may be said in regard to the commission of the crime of rape by an individual, it certainly ought to be punishable by death when it is committed by more than one person. I can conceive of nothing more cowardly, unmanly, and atrocious than when several persons conspire together to commit an outrage of this kind; but the honorable member for Canterbury makes no distinction between that and an ordinary case. A cogent reason why the punishment of death for this offence should not be abolished in this country is that the population is so scattered. I have no doubt that this was the reason which influenced the Criminal Law Commission in the retention of this punishment. Women in the interior are left in an almost defenceless state. There are many cases in which they are left alone for days and weeks together, and if the punishment of death for the crime of rape were abolished there can be no doubt whatever that in these parts of the country the crime would be of more frequent occurrence. The honorable member talks of imprisonment for life and whipping being a greater deterrent than capital punishment; but that is not so. The far greater number of members examined by the commission said that there was no punishment which had so great an effect on the prevention of crime as the punishment of death. In the case of imprisonment for

life the prisoner always hopes that by good behaviour he will one day regain his liberty. And, as a matter of fact, that would happen. If a man were imprisoned for (say) forty years, and all recollection of his crime had passed away, public sentiment would not permit you to keep him in confinement if he had behaved well. He would be released sooner or later; public sentiment would demand it.

Mr. PIGOTT: That is an argument against the punishment of death.

Mr. WISDOM: It is true that mistakes have been made; but I do not think they have been so frequent as stated by the honorable member for Canterbury. Mistakes will be made no matter what you do. I altogether deny the doctrine that it is better that ninety-nine men should escape rather than that one innocent man should suffer. It certainly would not tend to the good of society if that doctrine were carried out. With regard to Plomer's case, whether the Government acted rightly or wrongly in remitting the death penalty their action furnishes no ground for the abolition of the penalty in such cases. If Plomer escaped wrongfully, that is no reason why other persons guilty of a similar offence should escape. But the Committee would act with singular inconsistency if they decided to abolish the penalty of death in cases of rape, seeing that, without discussion, they have just retained it for attempts to murder and certain other offences. No one surely will contend that the crime of rape is not more atrocious than those I have just mentioned! I can conceive of nothing more horrible to a pure-minded woman than the commission of this offence upon her. A truly modest woman would prefer death, and her friends would rather see her dead than that she should be subjected to such an outrage. I think, considering the circumstances of the country, and that men of great experience in dealing with such cases are in favour of retaining the penalty, considering also that it is still retained in some other countries, and that in Scotland, where it has been in abeyance for some years, though not abolished, the crime of rape has increased, as stated by Lord Wensleydale before the Capital Punishment Commission, it would not be wise on our part to abolish the penalty. If we were now for the first time proposing to affix the penalty of death to

crimes of this description, I should perhaps hesitate before voting for it; but it is already the law, so that we are not proposing any novelty. We have already abolished the penalty of death for a number of offences, and we do not propose to inflict it in the case of any offence not now punishable with death. It behoves us, then, to proceed with caution, and not to disregard the opinions of those who have had great experience in these cases—eminent lawyers like the late Chief Justice, the present Chief Justice, the late Mr. Butler, and others who framed the bill. I believe that if the opinion of all the members of the legal profession who have had a considerable experience of criminal trials were taken, a large majority of them would be in favour of retaining the death penalty for this offence above all others in the bill, except murder, and I believe many persons would rather abolish it for murder than for this abominable crime. I hope, therefore, that the Committee will not assent to the amendment.

Mr. FAWCETT thought that while in most cases the fate of a criminal sentenced to death might be safely left in the hands of the Executive, it seemed necessary to make some provision that in cases where the offence was committed by two or more persons, as was done in the well-known Sodwall's case, the criminals should not escape the penalty, as in that case they did. His chief object in addressing the Committee was to confirm a statement made by him during a previous debate, and contradicted by another honorable member, to the effect that the punishment of death had not been abolished in Switzerland. He made inquiry at the Swiss Consulate, and a gentleman there furnished him with a memorandum stating that the penalty of death was maintained in most of the Swiss cantons, and that in one where it had been abolished it was afterwards revived in consequence of the increase of crime. He learned, further, that in Switzerland when a criminal was condemned to death the Parliament of the canton was convened the same night to review the whole case, and the punishment was either remitted or confirmed; in the latter case the criminal was executed on the following morning. He was also informed that appeals were allowed in civil but not in criminal cases.

[*Mr. Wisdom.*]

Mr. JACOB was opposed to the death penalty altogether, for the simple reason that a mistake made could never be remedied. In all other cases in which a man was unjustly convicted reparation could be made; but that was impossible where the life of the accused was taken. He agreed with a great deal of what the Attorney-General had said with reference to the crime of rape; it was an offence which; rather than murder, he would make punishable by death; but the question was: would the retention of the penalty accomplish the object in view? The argument of the Attorney-General as to the scattered character of our population would be a good one in favour of retaining the penalty were it not the fact that many men summoned as jurors avowed their determination to find no man guilty of rape while the penalty of death was attached to the offence. A virtuous woman would no doubt rather be murdered than be subjected to outrage; but there were many virtuous women also who, when a man had been convicted of an outrage upon them, endeavoured to save him from the gallows. Many eminent men who were examined before the Capital Punishment Commission gave it as their opinion that the death penalty did not act as a deterrent to crime; among them were the Honorable George Denman, M.P., Sir Fitzroy Kelly, H. N. Nissen, Esq., Lord S. G. Osborne, and others. One argument used by the Attorney-General, and which had some influence upon him, was that prisoners sentenced to imprisonment for life would probably be released after some years' incarceration. It was repugnant to think that a man like Plomer should meet with that consideration; for if ever a man deserved death for his crime Plomer did. Feeling strongly upon the subject, he would divide the Committee upon it; but he would not occupy any further time in discussing it.

Mr. HUNGERFORD said if the argument of the honorable member for Gloucester amounted to anything, it led to the conclusion that lest we should make a mistake we ought not to punish a man for any crime. In a country like this, sparsely peopled as it was, where women were frequently left without protection, the severest punishment ought to be inflicted as a deterrent to the perpetration of the offence now

under consideration. It was admitted on all hands to be a heinous crime, and under some circumstances it might be worse than murder; and it was for us to consider whether, if virtuous women would prefer to be murdered, it was not our duty to protect society from the crime by imposing the extreme penalty. For the opinions of the men of note which had been quoted we need not care a straw; they were mere opinions for which no reasons were given. He hoped the Committee would very seriously consider the matter before supporting any amendment which was prompted by the sympathy that would protect crime and not by the sympathy which would protect the virtuous.

Mr. WISDOM: The honorable member for Canterbury (Mr. Pigott) cited the example of Switzerland as one to follow in the direction of leniency, and desired that honorable members should read the law of that country. But if we followed the law as it is there we should increase the number of cases in which the death penalty is inflicted. I find from the report of the Capital Punishment Commission that in the canton of Zurich the punishment of death is awarded for murder, and in certain aggravated cases for incendiarism; in Berne it is awarded for murder, infanticide, and robbery; in Lucerne for poisoning, incendiarism, and murder, with the exception of infanticide; in Uri for murder alone; in Schwyz there is no criminal code, and sentence of death is pronounced only in cases of murder; in Unterwalden ob Den Wald wilful murder alone is punishable with death; in the other canton of Unterwalden there is no criminal code; in Freiburg the punishment of death no longer exists; in Solothurn the penalty of death is awarded for murder and some cases of incendiarism; in Bale-Ville the following crimes are punishable with death:—high treason, treason against the country, murder committed in a state of excitement, rape with ill-treatment, wilful murder, exposing child with intent to cause its death, robbery, arson in various forms. The penalty of death prevails generally in the cantons; but it is not carried out in all cases. Such is the case here; though the sentence is passed, the punishment is not always inflicted.

Mr. PIGOTT: Then why keep it on the statute book.

Mr. WISDOM : Because there are some cases in which it ought to be carried out. We do not hang for rape in many cases, because the offence is committed in so many varying circumstances that we cannot make a general law equally applicable to every case ; but the punishment is retained so that in very atrocious cases it may be inflicted. In other cases there may be mitigating circumstances, and the sentence is not carried out. There are only one or two cantons of Switzerland where the death penalty is not inflicted. In reply to the honorable member for Canterbury, who cited the laws of Switzerland as an example of leniency, I have shown that the death penalty is inflicted there for murder and other crimes of a grave character.

Amendment negatived.

Mr. JACOB said there was a provision in the clause that if the crime of rape were perpetrated, the consent of the woman obtained under a belief induced by the language or conduct of the accused that he was her husband should be no defence to the charge. He could not understand how such a case could occur.

Mr. W. J. FOSTER : It has happened often in England.

Mr. JACOB could scarcely conceive that a woman in her right senses could be a victim to such a crime, and such a provision as this would be opening the door, when a woman was detected in a sexual offence with her consent to the charge by her that the offence was perpetrated under circumstances which led her to believe that the man was her husband. An actual crime of the kind contemplated in this provision would not occur in one case in ten thousand which might be trumped up. He moved,—

That the words “ or under the belief induced by the language or conduct of the accused that he was her husband ” be omitted.

Mr. WISDOM : I feel inclined to agree with the amendment on condition that the honorable mover will consent to the addition of a proviso to the clause which was in the bill as introduced in 1874, to the effect that if in a trial for rape it appears that the accused had carnal knowledge of the woman with her consent under the belief induced by his language or conduct that he was the woman's husband, the jury may find those facts specially, and there-

[*Mr. Wisdom.*

upon the offender shall be liable to penal servitude for the term of fourteen years. The offence has occurred in England, and may occur here. If a jury thinks the alleged offence improbable under the circumstances, they will not believe the accuser ; but there may be cases in which a woman when ill or partly unconscious for a time may in this way be taken at a disadvantage. Juries no doubt ought to be very cautious in such cases. It is a most difficult thing to get a conviction for rape, and I think properly so, for I believe that actual rapes are very rare. When a woman gets into a peculiar condition she naturally wishes to escape the consequences, and charges are often trumped up to cover disgrace. That is the reason why juries are reluctant to convict of rape. But the fact that charges are often trumped up affords no proper ground for refusing to punish the offenders when there can be no doubt that the crime has been committed.

Mr. W. J. FOSTER said that a crime of this nature might be committed when a woman was asleep or in a state of semi-consciousness from some cause or other. In making an investigation in reference to a criminal he found that such a thing had actually occurred. A woman was sleeping with her husband under a dray when a man took the husband to a public-house to drink, and afterwards returned and committed the offence. He had reason to believe that this sort of thing had occurred in other cases. Women were very much exposed to the violence of unscrupulous ruffians when travelling in the bush, where they might sometimes be obliged to sleep in the open air, and some stringent enactment was really necessary for their protection. Sometimes women in the bush who had been obliged to walk long distances, and who had retired to rest utterly overcome with fatigue, were placed in very great danger.

Amendment agreed to.

Motion (by Mr. Wisdom) proposed,—

That the following words be added to the clause :—“ Provided that where on the trial of any person for rape it shall appear that he had carnal knowledge of the woman with her consent under the belief induced by the language or conduct of such person that he was the woman's husband it shall be lawful for the jury to find those facts specially and thereupon the offender shall be liable to penal servitude for the term of fourteen years.”

Mr. COPELAND intended to vote against this proviso, because he thought the idea upon which it was proposed was altogether too far-fetched. He could not understand how the offence could be committed under the circumstances referred to. It was very probable that if a woman was about to do wrong, and was discovered, she would try to get herself out of the scrape by saying that she was asleep, or that she had been under some mistake. A man might be entrapped through the conduct of an unscrupulous woman, and thus become liable to fourteen years' penal servitude.

Question—That the words proposed to be added be so added—put, whereupon the Committee divided with the following result :—

Ayes	46	} Majority, 37.
Noes	9	

AYES.

Mr. Abigail,	Mr. Kidd,
Mr. Andrews,	Mr. Lackey,
Mr. Bodel,	Mr. Loughnan,
Mr. H. H. Brown,	Mr. Martin,
Mr. Brunker,	Mr. McCulloch,
Mr. Burns,	Sir Henry Parkes,
Mr. Byrnes,	Mr. Quin,
Mr. W. R. Campbell,	Mr. Reid,
Mr. Henry Clarke,	Dr. Renwick,
Mr. Cramsie,	Sir John Robertson,
Mr. Davies,	Mr. R. B. Smith,
Mr. Day,	Mr. S. Smith,
Mr. Eckford,	Mr. Suttor,
Mr. Farnell,	Mr. Teece,
Mr. Fawcett,	Mr. Tooth,
Mr. W. J. Foster,	Mr. Trickett,
Mr. Fraser,	Mr. Vaughn,
Mr. Fremlin,	Mr. James Watson,
Mr. Fullford,	Mr. Wilkinson,
Mr. Hay,	Mr. Wisdom.
Mr. Henson,	
Mr. Hezlet,	<i>Tellers,</i>
Mr. Holborow,	Mr. Carter,
Mr. Hungerford,	Mr. H. C. Dangar.

NOES.

Mr. Beyers,	Mr. Stuart,
Mr. Copeland,	Mr. Young.
Mr. Forster,	<i>Tellers,</i>
Mr. Jacob,	Mr. Garvan,
Mr. O'Connor,	Mr. Heydon.

Question so resolved in the affirmative.

Clause, as amended, agreed to.

Postponed clause 54 (Bigamy).

Amendment (by Mr. JACOB) agreed to,—

That there be added to the clause the following words :—"And whosoever whether married or unmarried marries the husband or wife of a person not continually so absent knowing him or her to be married and the former wife or husband to be alive shall be liable to penal servitude for five years."

Clause, as amended, agreed to.

Postponed clause 69 (Exception from jurisdiction).

Mr. JACOB pointed out that under the Act 19 Vic. No. 24 justices had power to deal with cases of assault on bailiffs; but this clause would take that power from them.

Mr. WISDOM : It will not interfere with the existing law.

Clause agreed to.

Postponed clause 84 (Trees of the value of one shilling &c.—third offence).

Mr. YOUNG thought it desirable to alter the clause by increasing to 10s. the amount of damage which would render an offender liable to punishment.

Mr. WISDOM : I will agree to 5s.

Clause amended (on motion of Mr. YOUNG) by the substitution of the words "five shillings" for the words "a shilling."

Clause, as amended, agreed to.

Postponed clause 85 (Dead wood—third offence) similarly amended (on motion by Mr. YOUNG), and agreed to.

Postponed clause 352 (Proof of lawful authority of excuse).

Mr. JACOB said that he had given notice of a new clause to the effect that in every case, whether the jurisdiction was by indictment or summary, the accused or the husband or wife of the accused should be a competent witness. This clause would do away with the necessity for the clause under consideration; but he could not move it until this had been disposed of. Would the Attorney-General consent to the omission of the clause?

Mr. WISDOM : We had better have the discussion on this clause.

Mr. JACOB said that during this session we had passed an act to enable defendants in all summary cases to give evidence on their own behalf. This law would be applicable to a number of indictable offences if the accused persons preferred to be dealt with summarily. Unless the clause which he intended to propose were agreed to there would be the anomaly that if a man chose to be tried by the inferior court he could give evidence; but if he were tried by a superior court he would be precluded from doing so. What did the clause mean? Was the accused in the cases stated to give evidence only as to lawful authority or excuse, or generally in regard to his defence?

Mr. W. J. FOSTER said that it appeared to him that the innovation which the honorable member proposed to make was unnecessary, and would be dangerous. Nothing was more dangerous than to interfere with a course of judicial procedure which had been established for years; if any change were to be made, it ought to be done gradually, so that we might be able to judge as to its effect. By the operation of the law which was passed the other day we should ascertain to a certain extent what the effect of the provision would be in summary cases. The advisableness or otherwise of giving the right to defendants in all cases to give evidence on their own behalf had been discussed for years by lawyers and laymen, and the feeling had been against it because of the chances of abuse, which were very great. If the act which was agreed to the other day worked properly in summary cases, it would be the duty of the Government to apply it generally. One of the difficulties of the principle was that it might force the conviction of an innocent man. If a man had the power to give evidence and declined to do so, would not the jury at once come to the conclusion that he was guilty? On the other hand, of course, an innocent man might avail himself of the privilege and demonstrate his innocence. There were excitable men who, when they were placed in a position of difficulty, lost their self-possession and became confused. A defendant who went into a box and betrayed any confusion would in many cases create a bad impression in the mind of the jury. A defendant could make a statement in every case, and the advantage of this to him was that he could not be cross-examined or bullied. If he went into a box, he would have to be treated as an ordinary witness.

Mr. JACOB said that many acts provided that in cases arising out of them defendants could give evidence in their own behalf. The Minister of Justice had not explained why the principle should be applied only to the cases mentioned in the clause. A defendant, charged with simple larceny, with embezzlement, and other offences of that description, might elect to be tried by magistrates, and he might then give evidence on oath; but if the defendant had no confidence in the magistrates, and preferred to be committed, he would

be unable to give evidence in his own behalf. As to the defendant's refusal to give evidence being accepted as evidence of his guilt, the same might be said with regard to those cases under the existing law in which defendants were allowed to give evidence. If it were found that the innovation operated against the interests of justice, an amending bill might be introduced.

Mr. FORSTER said that although the proposed innovation might operate against the accused in a great number of cases, there was also a great number of cases in which it would operate in the interests of justice. He doubted whether, as had been suggested by the Minister of Justice, an innocent man would refuse to take advantage of an opportunity to give exculpatory evidence, and there could be no doubt that the weight and authority which attached to evidence on oath did not attach to a mere statement. He believed that in a great many cases in which at the present time defendants were examined their examination tended to the interests of justice.

Mr. HEYDON could not understand how any one could argue for the proposed change in the law in the interests of prisoners. He did not think that a jury would attach more importance to evidence on oath than to a statement. The statement or evidence of a prisoner would commend itself to a jury only in so far as it bore on the face of it the appearance of truth; and the proposed innovation meant that a prisoner might be subjected to the trying ordeal of a cross-examination by a skilful barrister, in the course of which he ran a great risk of violating the principle of English law that no man should be held to accuse himself. Even though a man were guilty, it was against the spirit of the English law that he should be made to accuse himself.

Mr. YOUNG said honorable members must not lose sight of the important fact that there were cases in which the evidence of a wife might be the only evidence available for the exculpation of her husband.

Mr. W. J. FOSTER said his observation of the only class of cases in which women were at the present time allowed to give evidence in regard to their husbands was that the evidence so given was of a very unsatisfactory character. He had seen instances in which women of the highest respectability in giving evidence

with regard to injuries inflicted upon them by their husbands made statements by means of which they obviously perjured themselves for the protection of their husbands. In many such cases women would run the risk of punishment for perjury rather than tell the truth.

Mr. JACOB said that if it were wrong that a woman should give evidence on behalf of her husband in criminal cases it was equally wrong that she should do so in civil cases.

Mr. W. J. FOSTER: It has not been found to work injuriously in civil cases.

Mr. JACOB failed to see the distinction. There might be some cases in which the husband or the wife would commit perjury; but there were other cases in which it would be impossible that a prisoner could be exculpated unless a wife were allowed to give evidence on his behalf. The jury should be the arbiters in the question, whether a husband or wife was or was not committing perjury.

Mr. FAWCETT thought it would be well to leave the law as it stood at the present time, until we saw what was the effect of the innovation in regard to minor offences.

Question—That the clause, as read, stand part of the bill—put, whereupon the Committee divided with the following result:—

Ayes	27	} Majority, 16.
Noes	11	

AYES.

Mr. Beyers,	Sir Henry Parkes,
Mr. Brunker,	Mr. Purves,
Mr. H. C. Dangar,	Mr. Quin,
Mr. Davies,	Dr. Renwick,
Mr. Fawcett,	Sir John Robertson,
Mr. W. J. Foster,	Mr. Suttor,
Mr. Hay,	Mr. Trickett,
Mr. Heydon,	Mr. James Watson,
Mr. Holborow,	Mr. Wilkinson,
Mr. Hungerford,	Mr. Wilson,
Mr. Lackey,	Mr. Wisdom.
Mr. Loughnan,	<i>Tellers,</i>
Mr. McCulloch,	Mr. Day,
Mr. Mitchell,	Mr. Fremlin.

NOES.

Mr. Copeland,	Mr. O'Connor,
Mr. Forster,	Mr. Slattery,
Mr. Garrard,	Mr. Stuart.
Mr. Garvan,	<i>Tellers,</i>
Mr. Jacob,	Mr. J. P. Abbott,
Sir Patrick Jennings,	Mr. Young.

Question so resolved in the affirmative.

Clause 450 (Discharge of boy or youth without punishment).

Mr. WISDOM: I intimated to the Committee when this clause was last under consideration that I intended to move an amendment providing that whipping for the offences enumerated in the 448th section shall be inflicted only after a second or subsequent conviction. I was at first disposed to confine the corporal punishment to certain of those offences; but, on further consideration, I am inclined to apply it to all. I move, therefore,—

That the following words be added to the clause:—"And provided also that no boy or youth shall be liable to whipping in respect of any offence named in the said section unless he is proved to have been twice or oftener previously convicted of some offence under that section."

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

Motion (by Mr. JACOB) agreed to,—

That the following stand as clause 345 of the bill:—"In all matters whatsoever in which an oath may lawfully be administered by a judge justice or other person in relation to any criminal proceeding whether indictable or summary if any person who is now or who may hereafter by law be required to take an oath objects or is reasonably objected to as incompetent to do so he may instead of taking an oath make a solemn declaration in such form as is suitable to the occasion. Provided that any judge or justice may at his discretion require a witness or any other person to whom an oath may be administered to make a solemn declaration in lieu thereof."

Mr. WISDOM: I beg to propose,—

That the following stand as clause 370 of the bill:—"Where on the trial of a person for rape it appears that the female was a girl under the age of twelve years but above ten years and the jury are satisfied that the accused had carnal knowledge of her but with her consent they may acquit the accused of rape and find him guilty of such carnal knowledge and the accused shall be liable to punishment accordingly. And where on the trial of a person for carnally knowing a girl under the age of ten years the jury are satisfied that she was of or above that age but under twelve years and that the accused had carnal knowledge of such girl the jury may specially find those facts and the accused shall be liable to punishment accordingly."

As the law stands at present a person charged with rape cannot be convicted of carnally knowing if the evidence establishes that charge instead of the charge of rape, because the offence of carnally knowing a girl between ten and twelve years of age is a misdemeanour. It is sometimes difficult to judge from the depositions what

offence should be charged, and if the offence of rape be charged and cannot be sustained the accused must now be acquitted; but this clause gives the jury power to find him guilty of the minor offence if the evidence warrants them in so doing. Under the second portion of the clause, if a person be charged with carnally knowing a girl under the age of ten years, which is a capital offence, and the evidence discloses the fact that the girl is over ten years, the jury may find the accused guilty of carnally knowing a girl between the ages of ten and twelve years.

Clause agreed to.

Motion (by Mr. JACOB) agreed to,—

That the following stand as clause 468 of the bill:—"On complaint being made before a justice of apprehended injury or violence from any person to the person of complainant his wife or child or any person not exceeding fourteen years of age in complainant's care or service or of apprehended injury to his property or requiring any person to be bound over to be of good behaviour for defamatory or offensive words although not tending to a breach of the peace it shall be lawful for the sitting justice to examine the complainant and defendant and their witnesses if any as to the truth of the matters alleged and if it shall appear that the apprehension stated is reasonable or that any defamatory or offensive words were spoken by the defendant the justice may require him to enter into a recognisance with or without a surety or sureties to keep the peace or to be of good behaviour as the case requires. No such recognisance shall extend beyond the period of six months and in default of its being entered into forthwith the defendant may be imprisoned for not exceeding three months unless the recognisance is sooner entered into. The justice in any such case may award costs to either complainant or defendant to be recovered as costs in summary jurisdiction cases are recoverable.

Mr. FORSTER moved,—

That the following stand as clause 213 of the bill:—"In any case of wounding maiming or otherwise injuring or killing any animal unless with felonious intent it shall be a sufficient defence that the animal was wounded maimed injured or killed in defence or protection of or with intent to defend or protect life or property."

The object of the clause was to guard in certain cases against the infliction of punishment under the clauses relating to malicious injuries to property and cruelty to animals. He had no objection to punishment in those cases except where a person was protecting his life or property, and he thought the Committee would see, particularly in cases of cruelty to animals, that it was most unfair to infer cruelty in a case where a man was protecting life and

property, because it was not easy in such cases to regulate the method in which an animal was killed or wounded. Of course, where an animal was wounded without necessity, he was as willing as any one could be that the person guilty of wounding should be punished, and he thought unnecessary pain a good definition of cruelty; but where the pain inflicted was necessary no penalty ought to be imposed.

Mr. WISDOM: I quite concur in the object the honorable member has in view; but I do not think the proposed clause is required. Clause 212 provides that all offences of the character referred to by the honorable member must be done maliciously, while clause 7 defines malice and maliciously in these terms—

Every act done of malice whether against an individual or any corporate body or number of individuals or done without malice but with indifference to human life or suffering or done recklessly or wantonly or with intent to injure some person or persons or corporate body in property or otherwise and in any such case without lawful cause or excuse shall be taken to have been done maliciously within the meaning of this act and of every indictment and charge where malice is by law an ingredient in the crime.

Acts such as those to which the honorable member alludes would be done with lawful cause or excuse, and could not come within the definition of "unlawfully and maliciously." It is obvious that a person would be justified in killing a wild bull or cow while protecting his own life.

Mr. FORSTER said that if the Attorney-General was satisfied of the correctness of his view, he would not press the clause; but if there was any doubt he thought that for more abundant caution it ought to be inserted. What the honorable and learned gentleman said in regard to malicious injuries to property appeared to meet all that he desired on that point.

Mr. H. C. DANGAR suggested to the honorable member for Gundagai that the clause be now withdrawn with a view to embody it in the Animals Protection Bill, where it would probably be more in place.

Mr. WISDOM: I would draw the honorable member's attention to clause 227, which provides that—

Whosoever maliciously kills maims or wounds any dog or other animal or beast not being cattle or any bird—being respectively the subject of larceny or ordinarily kept in a state of confinement or for any domestic purpose—shall on conviction before two justices be liable to imprisonment * * *

[Mr. Wisdom.

Here it is provided that the act must be done maliciously before it can render the offender liable to the punishment; it applies to animals not being cattle or birds.

Mr. FORSTER said if he was sure that the Animals Protection Bill would be passed he should prefer to have the clause inserted in that bill; but was it not better to insert it for the present in the bill before the Committee, and then when the bill was recommitteed it might, if found unnecessary, be expunged and inserted in the other bill. He did not think that the two clauses referred to by the Attorney-General, together with the definition of malice, excluded the necessity for this clause. They did not deal with the subject of simple cruelty. There might be malice against the owner without malice against the animal, and the malice intended in those clauses was malice against the owner. In the clause now proposed although the word malice was not inserted it was implied. Evidently the interpretation clause referring to malice meant malice against the owner.

Mr. WISDOM: No; it says, "recklessly or wantonly," and that applies not to persons only but also to animals.

Mr. FORSTER said it was quite clear that where the word maliciously was used it was used in its original sense, whatever was the intention of the definition in the interpretation clause. It was intended to apply to malice against the owner of the property, and therefore it seemed necessary to insert the proposed clause to save animals from injury when there was no malice against the owner. But as all the lawyers appeared to be against him in thinking the clause unnecessary he would withdraw it.

Clause negatived.

Mr. FORSTER moved the following as new clause 475:—

After the passing of this act there shall be no summary punishment for contempt of court but every person guilty thereof shall be liable to be tried and to incur the same penalties as in case of misdemeanour and when the contempt occurs in presence or in the precincts of the court or causes any interruption of or interference with the proceedings the judge or president or the court may order the person so offending to be removed and held in custody in any suitable place or to bail so as to prevent any further interruption or interference or to secure his appearance before any competent court.

He submitted the clause with considerable diffidence, and rather with an intention to bring on a discussion of this very important point than with any expectation that the clause would be accepted as it stood. He was somewhat surprised that there was no clause in the bill dealing with contempt of court, for it seemed only reasonable that a bill of this kind should include some provision on that subject. There was a time when, no doubt, it was right to give judges of all courts the extreme summary jurisdiction, which they had retained to the present moment; but it was a provision which seemed old and barbarous, requiring reconsideration now we were advanced to a higher stage of civilisation, and also to a more regular method in dealing with offences generally. In early times, probably, it was difficult, without these summary powers, to carry on the proceedings of courts with order; but he did not see why a judge should require more than full authority to prevent interruption of the proceedings. To that extent we must be prepared to arm every judge with full and extraordinary powers; but with regard to cases of contempt, such as were lately the subject of public discussion in Sydney, he asked the Committee to consider what necessity there was that a judge, in cases not involving the interruption of the proceedings in a court, should have power to deal with contempts in a way different from the ordinary mode of dealing with cases of misbehaviour or misdemeanour? When the proceedings of the court were not interfered with, why should not the accused be tried by jury or by some court, and be dealt with like any other offender? Judges were not infallible; they were, like other men, liable to fits of temper; and a judge irritated at a particular time by any extraordinary proceedings was not always in the best state of mind to deal with such cases. If the power was necessary to preserve order, still, when that necessity for its exercise in such cases did not exist, it seemed obvious that the accused ought to have the chance of a trial in the ordinary way, and it was better that the opinions of other judges or authorities should assist the judge who had presided at the time of the offence. He submitted the clause with the hope of eliciting some improvement on his proposal, or of getting some opinion from the Committee on the subject.

Mr. WISDOM : I am much inclined to go with the honorable member with regard to the proposal. Some time ago I had a bill prepared to deal with contempts of court; but when it was ready there was not time to deal with it. If the honorable member will withdraw the clause for the present, I will look up that bill, and afford the honorable member another opportunity when this bill is recommitted to propose it.

Clause withdrawn.

Mr. FORSTER moved the following as new clause 475 :—

Either house of parliament shall have the powers of any court in the matter of contempt. He submitted this for discussion, and if he found that there was any strong feeling against the proposal he should withdraw it.

Mr. WISDOM : I cannot consent to this amendment. It would not properly be included in the bill which is to amend the criminal law, and if the clause were passed in its present form it would confer a most extraordinary power. But the powers and privileges of Parliament, if dealt with by statute, ought to be dealt with in a bill devoted to that subject alone. I hope the honorable member will withdraw the proposal; but if he intends to bring it on again for discussion, we may as well discuss it now.

Mr. H. C. DANGAR pointed out the extreme impropriety of proposing to confer powers of this kind on Parliament when we did not know what the law as to its powers and privileges was to be. Certainly the power ought not to be given in a bill like this.

Mr. FORSTER admitted that it was at least inconvenient to propose this extension of the powers of Parliament unless we had defined contempt, and that seemed to be the best reason for not pressing the clause. But he was not prepared to admit the force of the other objections taken. He had not been a stickler for the privileges of Parliament; but we were as much entitled to the power to enforce order by the authority of Mr. Speaker as any judge of a court of law was to enforce order in the proceedings before him. Being, however, of opinion that the powers of judges with regard to the punishment of contempt were rather excessive and required to be limited or defined and declared in a more convenient form than that

in which they existed at present under the common law, he did not propose by this clause to confer on Parliament the powers at present held by judges. It was obvious that under these circumstances it would be inexpedient to press the clause.

Mr. WISDOM : My objection is not so much against having the power conferred as against having the provision included in this bill.

Mr. FORSTER did not wish that Parliament should have further powers than to examine witnesses on oath, which power he believed Parliament had already; and, secondly, the power to keep order, which any law court in the country might have. If we passed a clause like, this we might avoid the necessity for passing a bill defining the powers and privileges of Parliament, which might be dangerous to the rights and liberties of the community. But for the reasons assigned he should not press the clause.

Clause negatived.

Mr. YOUNG moved the following as new clause 386 :—

When under the preceding two sections evidence has been taken which shows that a prisoner has been improperly convicted the court may order the conviction to be quashed and a certificate shall be issued to the persons so improperly convicted setting forth the grounds on which this has been done.

He explained that there were previous clauses providing for a rehearing after a prisoner's conviction. When there had been an improper conviction the justices were to hold an inquiry and to transmit copies of the depositions to the Governor; but no provision was made for further action in such a case than quashing the conviction when it was found that a man had been improperly convicted. The course would be, after full consideration, that the man would receive a pardon. This would be a great hardship—to pardon a man who was not proved to be guilty. Honorable members would agree that it was necessary to assert an opinion of the kind proposed in the clause.

Mr. WISDOM : I have already intimated to the honorable mover that I am willing to agree to the amendment, and I would ask him not to move it as a substantive clause, but as an addition to clause 385.

Clause withdrawn.

Mr. WISDOM: It was my intention, when the bill was reported, to ask the House to recommit it to-night; but I shall not now do so, as I find that several honorable members have left the Chamber. I shall move the recommitment of the bill on Wednesday, when I intend to ask the Committee to reconsider clauses 75, 76, and 77, which were negatived, as I think, rather hastily; and I believe I shall be able to adduce good reasons why we should reinsert them.

Bill reported with amendments; report adopted.

CROWN LANDS BILL.

In Committee,—

Sir JOHN ROBERTSON moved,—

That it is expedient to bring in a bill to consolidate and amend the laws relating to the alienation and occupation of Crown lands, and for dealing with certain lands set apart for public purposes.

He said: I may, in making this proposal, be expected to give some explanation of the bill. It cannot, however, be expected that I should say much, for the bill will speak for itself, and that very soon. I shall not, therefore, on this occasion occupy the attention of the House for any considerable length of time in showing what it is contemplated to do. The bill provides for the repeal of ten acts of Parliament, namely, 22 Vic. No. 17, 23 Vic. No. 4, 25 Vic. No. 1, 25 Vic. No. 2, 39 Vic. No. 13, 42 Vic. No. 26, 43 Vic. No. 29, 43 Vic. No. 33, 45 Vic. No. 8, 45 Vic. No. 10. The bill contains 120 clauses, the clauses which it repeals amount to 170, and it runs mainly on the lines of the laws which it is intended to repeal. It will do away with mineral conditional purchases, and make better provision for the discovery and prevention of evasions of the law, and for punishment of those who in any way abuse the land laws. It will prevent land applied for under mineral lease being conditionally purchased. It will provide that forfeited conditional purchases may be selected notwithstanding there being improvements on them—the improvements to be paid for. It will provide that applications for portions of measured portions of land shall hold good until the Minister disapproves; at present, as honorable members are aware, there is a difficulty with regard to land in that position. It will provide that where transferees of conditional purchases, after the

period of the residence is completed, and before the balance of the purchase money is paid, shall reside three years or pay up the balance. It will be found in other respects to be a good measure.

Mr. FORSTER: Will the honorable member tell us when the bill will be laid on the table?

Sir JOHN ROBERTSON: Certainly not later than Tuesday; but I think on Friday.

Question resolved in the affirmative.

Resolution reported, and agreed to.

CONSOLIDATED STOCK BILL.

In Committee,—

Mr. JAMES WATSON rose to move,—

That it is expedient to bring in a bill to authorise the creation and issue of consolidated stock, and to make certain provisions auxiliary thereto.

He said: The object of the bill is to enable those who hold debentures to convert them into inscribed stock. When the last loan was about to be floated in London there was considerable difficulty in issuing debentures, and we had, to some extent, to undertake to introduce a bill to enable holders of debentures to convert them into inscribed stock. Although the bill is to enable holders to convert their debentures into inscribed stock, it will not be compulsory for them to do so, but simply optional.

Question resolved in the affirmative.

Resolution reported, and agreed to.

GENERAL SAVINGS BANK BILL.

In Committee,—

Mr. JAMES WATSON rose to move,—

That it is expedient to bring in a bill to establish a general savings bank with Government guarantee by the amalgamation of the Savings Bank of New South Wales with the Government Savings Bank.

He said: The object is to amalgamate the two savings banks now established in the city of Sydney. These institutions compete one with the other, one giving 5 per cent. interest on deposits and the other only 4 per cent. by act of Parliament. The object is to amalgamate these two banks and give them the Government guarantee, and thereby to afford greater security to depositors. The bill will provide for the amalgamation of the banks and for their being taken under the control of the Government.

Question proposed.

Mr. ROSEBY said that although this was not the proper time to discuss a matter of this kind, he wished to express the opinion held by himself and some other honorable members with whom he had conversed on the subject, that this was a very undesirable step on the part of the Government. The Treasurer had explained that their intention was to give the proposed general savings bank a government guarantee, as though there was any jeopardy with reference to the Savings Bank of New South Wales. If that bank was paying depositors 5 per cent. and using their capital by lending it to other persons at a reasonable percentage, it was doing a far greater amount of good to the people than the proposed amalgamation could possibly accomplish. He thought the Government were making a mistake in trying to abolish an institution which had proved of very great benefit to the people.

Mr. HEZLET, as one of the trustees of the Sydney Savings Bank, intended to oppose this bill, and when the proper time arrived he would give his reasons for so doing. As, however, it was not usual to discuss bills at this stage, he would reserve his observations until the second reading.

Question—That the resolution be agreed to—put, whereupon the Committee divided with the following result:—

Ayes	39	} Majority 34.
Noes	5	

AYES.

Mr. Andrews,	Mr. Lackey,
Mr. Beyers,	Mr. Levin,
Mr. Bodel,	Mr. Levin,
Mr. Burdekin,	Mr. Mitchell,
Mr. Burns,	Sir Henry Parkes,
Mr. Byrnes,	Mr. Quin,
Mr. Henry Clarke,	Mr. Reid,
Mr. Copeland,	Dr. Renwick,
Mr. Cramsie,	Sir John Robertson,
Mr. H. C. Dangar,	Mr. S. Smith,
Mr. Davies,	Mr. Stuart,
Mr. Day,	Mr. Suttor,
Mr. Fawcett,	Mr. Teece,
Mr. Forster,	Mr. James Watson,
Mr. W. J. Foster,	Mr. Wilson,
Mr. Garrard,	Mr. Wisdom,
Mr. Garvan,	Mr. Young,
Mr. Holborow,	<i>Tellers,</i>
Mr. Hungerford,	Mr. Fraser,
Mr. Jacob,	Mr. Wright,

NOES.

Mr. J. P. Abbott,	<i>Tellers,</i>
Mr. Fremlin,	Mr. Hezlet,
Mr. McCulloch.	Mr. Roseby.

Question so resolved in the affirmative.
Resolution reported, and agreed to.

WATERING-PLACES AND RESERVES BILL.

In Committee (consideration resumed from 6th September).—

Clause 8 (Public watering-places may be let).

Dr. RENWICK moved,—

That the blank in the clause be filled by the insertion of the word "five" (years).

This would provide for the watering-places to be let for a term not exceeding five years.

Mr. J. P. ABBOTT thought that five years was not a sufficiently long period. If the lessees were to be expected to make improvements, they must have a much longer tenure, and, if they had a longer tenure, they would be able to pay higher rents. He suggested that the period should be ten years.

Dr. RENWICK: As to the suggestion of the honorable member, I can only say that if long leases are given undoubtedly there will be a greater probability of improvements being made; but, on the other hand, if we give short leases, they will be advantageous in regard to the rental to be derived from tanks and wells. We find by experience that even annual leases are advantageous under certain circumstances, but if we give long leases considerable difficulties may arise, as we shall not have the same control over the lessees as otherwise we should have. It is thought that five years will be the best period to fix.

Mr. J. P. ABBOTT could not understand the argument that the department would not have the same control over the lessees under long leases as there would be under short leases. The lessee would have to conform to the regulations, and the department could make these as stringent as they chose. If they were not complied with, the lease could be cancelled. To talk of the rents for short leases being the same as for long leases was absurd. Any one acquainted with the pastoral business would say that while for an annual lease £1 or £2 would be given for a block of land, £10 or £20 would be given for it if the lease were for ten years.

Mr. QUIN asked whether the clause applied solely to public tanks constructed for the supply of water to travelling stock.

Dr. RENWICK: It applies to tanks made for the special purpose of watering stock.

Mr. HUNGERFORD thought that a lease for a year would be sufficiently long. A tank might be leased to an undesirable person, and there might be some difficulty in getting rid of him.

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

Clause 9. Whenever a drover intends to take or drive stock along a road intersecting or forming the boundary of any holding containing not less than six hundred and forty acres and not belonging to the owner of such stock and not separated from the road by a sufficient fence within the meaning of the law relating to impounding such drover shall leave at or transmit by registered letter through the post addressed to the homestead head station or residence of the occupier of such holding (as the case may be) a written notice of such intention. And such notice shall be given by the drover not less than *twelve* nor more than *ninety-six* hours before he reaches that portion of the road which bounds or intersects such holding and shall state particularly the road by which and the time within six hours when such stock will reach the said portion of road. No notice shall be necessary in the case of horses or cattle *bond fide* used for saddle or draught or in that of stock carried in any vehicle or by railway. Every drover who fails to comply with the requirements of this section shall for every such offence incur a penalty not exceeding *ten* pounds.

Dr. RENWICK: I desire to move the omission of the word "written," line 12. Honorable members will recollect that in the debate on the motion for the second reading of the bill considerable objection was taken to written notice being made necessary in all cases.

Mr. H. C. DANGAR thought that before any amendment was proposed the Secretary for Mines ought to consider whether it was or was not desirable to withdraw the clause altogether. The honorable member could not surely be aware of the extraordinary restrictions on travelling stock which the clause proposed. A drover would require one or two attendant couriers to write the necessary notices, and he would also require a surveyor to point out the holdings. The Minister ought to explain why he had departed from the provisions of the Diseases in Sheep Act in reference to travelling stock. The provisions of the act with respect to travelling stock were irksome enough; but the bill went far beyond them. A man travelling with any number of cattle, sheep, or horses would be required to give written notice. If the Secretary for Mines knew anything about the matter, he would see that it

would be almost impossible for a drover to comply with the provisions of the clause. Such irksome, intolerable, and unnecessary provisions he never heard of. He would give the clause his most determined opposition.

Mr. QUIN said that the honorable and learned member for East Sydney must be aware that under the existing law notice had to be given to holders of areas of land above 200 acres.

Mr. H. C. DANGAR: But fat stock travelling to market are excepted.

Mr. QUIN did not think that they ought to be excepted, because the owners of tanks suffered great hardship owing to fat stock being driven to them. From personal knowledge he could say that fat stock had been driven 2 miles off the road to a tank, and the result was that they destroyed the water. This was a great hardship to the owner of the tank, as he had no remedy. Why a drover in charge of fat stock should not give notice he could not see. A drover of fat stock would be more likely to "loaf" than one in charge of store stock, because he would naturally wish to keep the cattle in good condition.

Dr. RENWICK: My honorable colleague (Mr. H. C. Dangar) is apparently not acquainted with the provisions of the original act.

Mr. H. C. DANGAR: I am well acquainted with them.

Dr. RENWICK: If the honorable and learned member will turn to the act, he will find that its provisions are much more stringent with respect to store cattle than the provisions of the bill. The bill provides that ninety-six hours' notice shall be given, but the provision in the act is forty-eight hours' notice. Further, the bill provides that notice shall be given to holders of 640 acres and over; whereas the act provides that notice shall be given to holders of 200 acres.

Mr. H. C. DANGAR: It says, "runs."

Dr. RENWICK: A run is a holding. The real objection is to treating fat and storestock in the same way. From information which I have received from all the boards throughout the country, and from conversations which I have had with gentlemen who are familiar with the subject, I am convinced that there is no valid reason why there should be a distinction between

fat and store stock. It must be well known that fat stock carry pleuro-pneumonia more readily than store stock, and the disease exists at the present time in many parts of the colony. I have in my hand a circular issued by the Honorable Mr. Brodribb, in which he endeavours to show that it is absolutely necessary in the interests of the parties for whose benefit the bill is intended that the distinction should not be made. I think that the clause is a most important one, and the reports which I have received from the boards impel me to insist on it.

Mr. WILSON thought that it was not necessary to make a distinction between fat and store stock; but he did not think there was any necessity for the clause as it stood. As the country was settled now, there was not any necessity to give notice to every holder along the line of road. He thought that the time had come when it ought not to be necessary to give notice to freeholders. The least that a freeholder could do would be to fence off the roads and thus prevent the trespassing of stock.

Mr. HUNGERFORD agreed with the honorable member for The Murray that freeholders ought to protect themselves against the trespass of stock by fencing the land along the lines of road. As the clause stood, a man travelling with twenty head of stock, or any smaller number, would have to give notice. He thought that the Minister ought to fix a minimum number of head of cattle which could be driven without notice being given to the holders of land.

Dr. RENWICK: I will do that.

Mr. HUNGERFORD suggested that the minimum number should be 200. By making it compulsory to give so many notices we should be severely taxing the great producing interest of the country. Drovers of fat stock did not "loaf" as those in charge of store stock did. The object of a man in charge of fat stock was to get them to market as quickly as possible; whereas, in the case of store stock, there was no necessity to hurry them along. We ought to facilitate the work of the drover, so that stock might arrive at market in good condition. Owing to the way in which cattle were knocked about now in some cases they were not fit for human food when they reached market.

[*Dr. Renwick.*

Sir JOHN ROBERTSON said that it was a new and an extraordinary doctrine that the freeholder and the leaseholder should be placed on a different footing in regard to travelling stock. Why should a man who had bought his land be in a worse position than a mere lessee? Such a distinction would be intolerable. He thought that the minimum number of cattle to be driven without notice ought to be 100, or even lower.

Mr. HUNGERFORD said that it was unreasonable to expect a leaseholder, whose land might be taken from him at any time, to protect himself by fencing his holding; but a freeholder had an absolute indefeasible right to his land, and he ought to be compelled to protect himself. It would be an act of oppression to compel a drover of fat stock to give notice to every landholder along the road, and vexatious suits for impounding would be the natural result. He hoped that in any case the Committee would agree to limit to 200 the number of cattle for which notice must be given.

Mr. J. P. ABBOTT could not see the necessity for imposing this restriction upon travelling cattle. He could understand the necessity for a notice in regard to sheep, because it was well known that sheep on a run could get "boxed" with travelling sheep without the knowledge of the drover; but in the case of cattle the drover could easily detect and cut out strange cattle, which did not readily "box" with travelling mobs. He agreed with the bill in so far as it gave facilities for getting fat cattle to our railways; but this restriction in regard to notice, involving as it did a greater expense in droving, would have no other effect than to increase the price of meat to the consumer. At the present time drovers were frequently detained at towns by vexatious suits, and it seemed to him that this provision would intensify that evil.

Mr. REID said another objection to the provision was that it was foreign to the scope of the bill, which was to provide for the regulation of public watering-places and the protection of certain reserves from trespass. He was at a loss to understand the connection between such a provision as that before the Committee and a bill introduced with such an object.

Dr. RENWICK : It has been represented to me that it is absolutely necessary to make some provision of this kind in a bill dealing with public watering-places and reserves, in order that "loafing" and the "boxing" or mixing of cattle may be effectually dealt with. Judging from the remarks of the honorable member for Gun-nedah, I should say that his observation had been confined to the travelling of small mobs of cattle in the Hunter district. I am told by those whose observation extends to the droving of mobs of 200 or 300 cattle from Queensland to Melbourne or Adelaide that this provision is absolutely necessary, and that stray cattle are frequently picked up on the road. It is such representations as these which have induced me to introduce the clause into the bill. It has been my desire and intention to remove rather than increase any hardships which may exist in regard to the travelling of cattle. I propose that the notice should be verbal or in writing, as may suit the convenience of the drover, and that a limit should be imposed upon the mobs of cattle in respect to the travelling of which notice shall be necessary.

Mr. H. C. DANGAR said that a good many of his objections had been obviated by the consent of the Minister to limit the operation of the clause to a certain number of stock. In the Diseases in Sheep Act the number of travelling sheep was fixed at 300, and he saw no reason why the same number should not be inserted in this clause. The Minister might make the number of cattle as many as he pleased ; but it ought not to be less than 100. Another objectionable feature in this extraordinary bill, although it was somewhat irregular to refer to it now, was that in the interpretation clause the meaning of the expression "travelling stock," as used in the Diseases in Sheep Act, was changed, so that any one who had been used to consider that expression as having a certain meaning in the Diseases in Sheep Act would find on referring to this bill that it had a different meaning.

Mr. J. P. ABBOTT thought the difficulty would be met by fixing the number of sheep in respect to which notice should be given at 300.

Mr. H. C. DANGAR suggested that on a recommittal of the bill the number might be fixed in the interpretation clause.

Dr. RENWICK : With regard to the remarks which have been made by honorable gentlemen, I can plainly see now that the objections arise on account of the distinction made between fat and store cattle. To obviate the objections made I intend to propose an amendment making it optional whether a written or verbal notice be given, and to exempt cattle in mobs of not more than 100.

Mr. HUNGERFORD thought it would be better to fix the number of cattle exempted at 200, which was the number ordinarily driven, because if the number were limited to 100 the obligation to give the notice would be evaded by dividing the mobs. By fixing the number at 200 there would be no abuse of that description. It was quite a mistake to suppose that the people who received notice removed their sheep and cattle out of the way in order to prevent them from being mixed with the cattle *en route*. The chief object of giving the notice was to prevent a too great spoliation of the grass.

Sir JOHN ROBERTSON said the objection of the honorable member who last spoke was a mere pretence put forward in the interests of large holders. In his experience he had found that the holder, when he received notice of the approach of travelling stock, always took care to remove his sheep and cattle out of the way to prevent them from being "boxed" with those which were travelling.

Mr. QUIN hoped the Minister for Mines would adhere to his determination to fix the number at 100. To fix it at 200 would simply be to nullify the whole provision.

Mr. WILSON said it would be a serious inconvenience if drovers were compelled to give notice to every landholder on the road. He suggested that the notice should be required to be given to those holders only whose holdings had a frontage to the road of not less than 2 miles.

Dr. RENWICK : I think it will be best to leave the bill as it stands in the respect alluded to by the honorable member who has just spoken. The discrepancy of opinion which exists among practical men convinces me that those who have no interest in the matter except the good of the country must know best, and I think the retention of the words "any holding

containing not less than six hundred and forty acres" will meet all the requirements of the case. I beg to move,—

That the words "a written," line 12, be omitted.

Amendment agreed to.

Mr. WILSON thought that if the time for driving the stock after notice was fixed so rigidly as in the clause, the drover might have advantage taken of him. He would suggest that the time might be a reasonably short time, instead of six hours, and that notice be required only where persons held not less than 2 miles frontage.

Mr. HUNGERFORD regarded the clause in its present form as exceedingly oppressive. When we knew what rapine and infamous conduct had found shelter under the law of impounding, we might easily anticipate what unjust exactions might be made for trespass if we imposed penalties of £10 on men driving cattle, who happened to cross the corner of a 640-acre holding, where the grass might not be worth a farthing. He hoped the Committee would agree to the suggestions of the honorable member for The Murray, and provide that a 2-mile frontage should be the least distance to entitle any one to receive notice.

Mr. J. P. ABBOTT pointed out that the penalty was not for trespass, for which there was already a remedy, but for not giving notice before passing through the lands; and in such cases the maximum penalties were seldom imposed.

Mr. STUART said it was true enough that the penalty was for not giving notice, not a penalty for going over the land; but it was a penalty for passing along the road which was the boundary of the land.

Amendment (by Dr. RENWICK) agreed to,

That the word "six," line 18, be omitted, and the word "twelve" (hours) be inserted in lieu thereof.

Mr. JACOB pointed out that unless some limit were fixed to the number of sheep the provision would apply to one sheep according to the interpretation clause.

Dr. RENWICK: The Diseases in Sheep Act deals especially with this matter, and fixes a limitation.

Mr. JACOB explained that the bill was not to amend another act, but would stand by its own terms, by which the word "stock" included horses, cattle, and sheep, and the clause would apply to one sheep as well as to 10,000.

[Dr. Renwick.

Mr. REID considered that the honorable member for Gloucester was correct in his view; this bill would be read by its own terms, and "stock" would mean horses, cattle, and sheep. The notice did not apply to any definite number of sheep, and if a man drove ten, twelve, or twenty, he would be compelled to give notice.

Dr. RENWICK: I admit that there is a practical difficulty, and consent to add the words contained in the Diseases in Sheep Act. I move,—

That after the word "railway," line 22, there be inserted the following words:—"or in that of mobs of cattle not exceeding one hundred head or in that of flocks of sheep of three hundred or less."

Mr. BURDEKIN said the exemption would not include fat stock travelling to market, which were generally driven in mobs of 100 to 180 or 190. The amendment would render the conditions of travelling fat stock very vexatious. He could understand that the clause was a necessary one; but it ought to apply more especially to large mobs of cattle travelling from Queensland, and to the store cattle travelling in different parts of the country. We ought to relax this provision as far as possible in favour of stock coming to our markets. It was a mistake to limit the number to 100, as the mobs which were sent to market generally exceeded that number. It took the same number of men to drive 190 or 200 cattle to market as it did to drive 100. The object of the clause could not be defeated if we excluded mobs of less than 200 head of cattle, because, however they might be divided, the delivery note would show the actual number.

Mr. WILSON was of opinion that the Minister ought to adhere to the amendment. He did not see why there should be such an outcry about giving notice in reference to the travelling of 100 head of fat cattle, the value of which would be £600 or £700, when no one complained about notice having to be given with reference to the travelling of 300 sheep, worth only about £150. He did not see that there would be any hardship inflicted by the clause.

Mr. HUNGERFORD did not think that the honorable member who had just spoken quite understood the matter. He agreed with what had been said as to the propriety of fixing a limit; but it ought to be 200 in preference to 100 in order to

facilitate the bringing of fat cattle to market. He did not think that there was much of what was known as "loafing" now going on in the country, and he thought the Committee ought to pause before they taxed producers unnecessarily. Many experienced persons with whom he had spoken on the subject were of opinion that the limit should be 200, and he did not see that any great injury would accrue to landowners by the travelling of that number of cattle.

Amendment agreed to; words inserted.

Clause, as amended, agreed to.

Clause 10 (Stock trespassing on a reserve &c. may be impounded or their owner prosecuted).

Dr. RENWICK said he knew that some honorable members had an objection to this clause; but it was absolutely necessary in the interests of the country that a provision of this kind should be made. Numerous complaints were constantly received from all parts of the country, showing the necessity of such a provision as this. Only the other day he received a report which he now held in his hand, and which was a specimen of the numerous communications which came to him on the subject. This report stated that in many cases sheep were taken to the pound before the owner knew anything about it, and then the large sum of 8s. 8d. could be claimed. In many cases when the owner learnt that the stock were impounded he claimed them as soon as they were seized, and they were let go immediately the inspector's back was turned. As he had said, complaints on this subject came to him from all quarters. The penalties were high, and it was possible they were too high. The clause had been most carefully framed in consideration of this great public need, and he was quite sure that those gentlemen who were acquainted with the trespassing which took place on the stock routes throughout the interior would consider such a provision absolutely necessary.

Mr. JACOB happened to be neither a squatter nor a selector, and could, therefore, take an impartial view of the matter. What would be the effect of the clause as it was worded? He agreed with the honorable and learned member for East Sydney (Mr. Reid) that the clause was entirely beyond the scope of the bill, except that it was covered by the vague language in

the latter portion of the title—"and for other purposes." His opinion was that the subject was foreign to the bill, and ought to be dealt with in a separate measure. The Minister for Mines said that it was necessary to protect stock routes, and the remark was cheered by several honorable members who were squatters. There were other people, however, besides the squatters who ought to be considered, and while we made provision for the abolition of one evil we must take care that we did not create another and a greater evil. A selector who took up 640 acres on a run would not only be liable to have his cattle seized but he would be liable to be fined for every head of cattle that was caught straying. The squatter might "double-shot" him by suing him for damages and impounding his cattle. As he had remarked during the debate on the motion for the second reading of the bill, the measure created new crimes, imposed most severe penalties, and would really be a most tremendous instrument for persecution. Unless the bill was materially altered it would afford the means of ruining small owners on squattages. In order to test the opinion of the Committee on the subject he moved,—

That the following words be omitted:—"or the owner of stock so trespassing may be prosecuted by any such person and on conviction shall for the first offence be liable to a penalty not exceeding *five* pounds for the second offence to a penalty not exceeding *ten* pounds and for the third or any subsequent offence to a penalty not less than *five* pounds and not exceeding *twenty* pounds and in the case of a second or subsequent conviction whether the trespass be proved to have been committed by the same or any other stock belonging to the offender."

Mr. REID wished to draw attention to these words—

Stock trespassing upon any public watering-place or on any reserve road park unoccupied or other Crown lands may be impounded.

He found from the interpretation clause that—

The word road means any driftway reserve or road on which stock may lawfully be driven.

How, then, could stock be found trespassing on roads when roads were described in the interpretation clause as places where cattle might be lawfully driven?

Mr. HUNGERFORD said that the clause was one which required very little alteration indeed, and it made a provision which had been urgently required for many years. If the honorable member

for Gloucester had more fully considered the matter, he would not have thought the objection he had raised to be so serious as it seemed. It would be admitted that the impounding could only be done by a person duly authorised by the Minister. We had reserves throughout the country, and what were they for? To facilitate the getting of stock to market. Surely these reserves were not kept for any squatter or selector who chose to stock them! He had known them to be fenced in and claimed as private property.

Sir JOHN ROBERTSON: That is the abuse.

Mr. HUNGERFORD had known squatters to impound cattle found on the reserves. The provision that cattle should be impounded by persons duly authorised by the Minister would get over the whole difficulty. The reserves were made for a particular object, and they ought to be kept intact. A free selector in the county of Hunter, who had taken possession of a reserve and put a thousand sheep on it, came and asked him if the Government had the power to interfere with him, and he seemed to think it a great piece of audacity on the part of the Government to do anything of the sort.

Mr. FAWCETT thought that the language at the commencement of the clause was most indefinite. The words were—

Stock trespassing upon any public watering-place or any reserve road park or any other unoccupied Crown lands.

Some amendment ought to be made defining more distinctly what these lands were. It would be a cruel thing to impose penalties where stock were found on any unoccupied lands whatever.

Mr. J. P. ABBOTT was of opinion that the clause ought to be retained. The stock inspectors were continually reporting that the reserves were trespassed upon. They had large districts to supervise, and they travelled long distances to detect the trespassers; but the fact of their going into any district was known to the men who did this sort of thing, and the inspectors could never find any one trespassing, although they had ample evidence that there had been trespassing. When the inspector impounded stock the owner could release them, and inasmuch as there were no damages under the Impounding Act the owner got off scot-free.

[Mr. Hungerford.

Dr. RENWICK: If the honorable member who moved the amendment will withdraw it, I will consent to the postponement of the clause.

Mr. WILSON suggested that the difficulty would be overcome if after the word "reserve" the words "a travelling stock route" were inserted.

Amendment withdrawn.

Progress reported.

House adjourned at 2 minutes before 11 o'clock p.m.

Legislative Assembly.

Friday, 13 October, 1882.

Fire Brigades Bill—Tamworth Gas and Coke Company's Bill—Dubbo Gas Company's Incorporation Bill—District Courts Acts Amendment Bill—Sale and Supply of Gas Bill—Adjournment (Government Business).

Mr. SPEAKER took the chair.

FIRE BRIGADES BILL.

Mr. G. A. LLOYD asked the COLONIAL SECRETARY,—When will the bill to regulate fire brigades be brought in?

Sir HENRY PARKES answered,—This bill will be introduced in the course of a fortnight or so.

TAMWORTH GAS AND COKE COMPANY'S BILL.

Royal assent to this bill reported.

DUBBO GAS COMPANY'S INCORPORATION BILL.

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

DISTRICT COURTS ACTS AMENDMENT BILL.

Motion (by Mr. J. P. ABBOTT) agreed to, That leave be given to bring in a bill to amend the district courts acts.

SALE AND SUPPLY OF GAS BILL.

Adjourned debate (on motion by Mr. POOLE),—

That Mr. Speaker do now leave the chair and the House resolve itself into a Committee of the Whole to consider the expediency of bringing in a bill to amend the law relating to the sale and supply of gas in the colony of New South Wales, and for other purposes; and to consider an address to the Governor praying that his Excellency will be pleased to recommend, by message, that provision be made for carrying out the objects of the said bill.