Queensland

Parliamentary Debates
[Hansard]

Legislative Council

WEDNESDAY, 30 OCTOBER 1912

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LEGISLATIVE COUNCIL.

WEDNESDAY, 30 OCTOBER, 1912.

The PRESIDENT (Hon. Sir Arthur Morgan) took the chair at half-past 3 o'clock.

HARBOUR BOARDS ACT AMENDMENT BILL.

FIRST READING.

This Bill was presented, and, on the motion of the ATTORNEY-GENERAL (Hon. T. O'Sullivan), read a first time. The second reading was made an Order of the Day for to-morrow.

REGISTRATION OF FIRMS ACT AMENDMENT BILL.

RESUMPTION OF COMMITTEE.

Clause 13—"Amendment of section 22"—put and passed.

The Council resumed. The CHAIRMAN reported the Bill with an amendment.

On the motion of the ATTORNEY-GENERAL, the Bill was ordered to be recommitted for the purpose of reconsidering clauses 4 and 12.

RECOMMITTAL.

Clause 4—"Amendment of section 7"—.

The ATTORNEY-GENERAL said he had asked for the recommittal of the clause for the purpose of making two verbal amendments which were required for departmental reasons. He moved the omission in line 5 of the word "fifteenth" with the view of inserting the words "thirty-first." The effect of the amendment would be to provide for the registration of a firm on or before 31st January, instead of on or before 15th January.

Amendment agreed to.

Clause passed, with a similar consequential amendment in line 8.

The ATTORNEY-GENERAL said that clause 12 had been negatived on the previous day. There were two objections made to the clause. One of them was that it required the name of the registered firm to be put up on a number of buildings, if the business were carried on in a number of buildings. It was urged by some hon. member that it would be quite sufficient if it were made obligatory to put up the name of the firm only on the principal place of business. He had therefore had a new clause drafted to meet the views of hon. members, and he accordingly moved the insertion of the following new clause to follow clause 11:—

> "The following provision is added to section eighteen of the principal Act:—
>
> "When the business of a registered firm is carried on in any building or buildings, the registered firm name of such firm shall be kept conspicuously exhibited on or near the main door or principal entrance of the principal place of business of the firm, and any default in so doing shall constitute an offence against this Act, in respect of which the provisions of the last preceding section shall apply."

New clause put and passed.

The Council resumed. The CHAIRMAN reported the Bill with further amendments; and the report was adopted. The third reading was made an Order of the Day for to-morrow.

TRADE COUPONS BILL.

SECOND READING—RESUMPTION OF DEBATE.

HON. E. W. H. FOWLES: This is a Bill dealing with a practice that has grown up in connection with business. The Attorney-General, in moving the second reading, had to travel a long way for instances where coupons worked as a fraud on the public or lowered the quality of the goods offered to the public. I feel sure that this Council would be ready to pass any measure to prevent any business fraud on the public; also any measure that would prevent depreciation in the quality of goods offered to the public; also any measure to prevent employees from being invited to be dishonest. This system, however, does not do any one of these things; and it seems to be one of those cases in which politics may do a great deal by letting things alone. Business, like water, will find its own level; and competition between traders is far better left outside the pale of legislation. Having made inquiries, I find that there are two abuses that have arisen in regard to the issue of coupons. One is the practice of advertising guessing competitions in connection with packets of tea, tobacco, chocolate, and so on. They probably issue 100,000 of all the letters in the combination except one, and probably in one packet you find that letter. That is a fraud on the public which should be suppressed. The practice has reached some dimensions in England and in Victoria, but I doubt whether it has done so here. The other practice is a perfectly innocent and legitimate form of competition—that is, giving coupons which are practically a form of discount for cash purchases. I would be in favour of having all retail purchases paid for by cash, because it would prevent many abuses and very much debt; but the anomaly the Bill brings before us is this: If a person goes to a warehouse and buys linoleum, if his credit is good, it is booked, and at the end of the month when he pays his bill he is allowed 2½ per cent. discount; but if a person purchases linoleum during the month and pays cash, this Bill practically denies him the right to get discount. It practically prevents the giving of discount for cash payments, and would operate against all small purchases. If a person buys an article for 3s. 11d., he does not wait to get the 1d. discount. During the month he might make twenty or thirty such purchases, and the total might amount to £5. What is there in fairness to prevent that person from getting discount on the total amount of his purchases the same as a person paying at the end of the month would get discount without question? The only arguments in favour of stopping discount by means of coupons seem to be those advanced by the Attorney-General when quoting from the report of the Select Committee that sat in Victoria; but those arguments, when put under the microscope, do not seem to have any cogency. The first argument is that it would create a monopoly: but that is not so, because it is open to every trader to adopt the system.

An HONOURABLE MEMBER: It is dishonest.

HON. E. W. H. FOWLES: That has not yet been shown. The only way in which it can be said to be dishonest is by a trader issuing so many million coupons during the year, only 30 per cent. of which would be

redeemed. But if purchasers put the other 70 per cent. on the shelf, and did not trouble about getting them redeemed, that is not dishonesty; and it is not the business of anyone else to complain. The other argument adduced by the Attorney-General from the report of the same Select Committee was that the adoption of coupons all round would raise the price of goods. The very same argument would hold good with regard to granting discount at the end of the month, yet that does not raise prices. It is said that prices would be raised 2½ per cent.; but that is not so. If you get a penny coupon on a cash purchase of 3s. 11d., that means that you are getting the article for 3s. 10d.; and that is lowering the price. And if it is argued that the trader put up the price by 1d. in order to give the coupon, then the price is neither raised nor lowered to the purchaser who receives the coupon. The other argument was that the granting of coupons, and especially missing word competitions, is practically a huge public gamble. But the purchasers do not object; and a person will not buy a packet of tea merely to get a coupon. Why should the conscience of the public be so preternaturally quick and tender on the subject of a penny coupon when there are such things as totalisators, art unions, raffles, and all sorts of healthy and unhealthy gambles in the body politic? There is also this view: The granting of coupons by traders is legitimate fighting business. We might as well say that no one should advertise in a shrewder way than his neighbour, or that no one should sell better goods, because it would attract custom. The granting of coupons means that they are an attraction to customers to deal with the traders who grant coupons; and people are satisfied that they get better value. As a coupon is defined on page 2, traders will be prevented from giving a national cash register ticket, or receipt, or coupon, at the time a purchase is made. The legitimate way in which coupons are given at the present time is to give a ticket bearing the price and the date at the time the purchase is made. I am told that the purchaser keeps these tickets until they total £5, and then presents them to be redeemed. There are hundreds of housewives who hoard up these coupons; and why should they be debarred from getting the same privilege as the person who pays at the end of the month? The hitting at the trader who gives a coupon or cash discount is really hitting at cash transactions; and it is for the benefit of the community that cash transactions should be encouraged as much as possible. One reason, as it appears to me, why the Bill should not hit at giving cash discount is that it will interfere with ordinary trading. If a man likes to offer a 10 per cent. coupon, let him do so, though it may mean his insolvency. Those who get those coupons, when they go to redeem them, may find that the man has disappeared; but that is particularly their own concern. If they like to deal with a trader who gives extravagant coupons, they do so with their eyes open.

The ATTORNEY-GENERAL: We must protect the public.

HON. E. W. H. FOWLES: The third argument against the Bill is, that those who issue the coupons at the present time do not object to the system. If they [4 p.m.] found the system bad, and liable to abuse, we would be sure to hear of it. The only argument that has any special weight in favour of the Bill is, that a deputation of the traders of Brisbane waited on the Secretary for Public Works, and that is the sole reason why I feel bound to support three-fourths of the Bill. But, as far as cash discounts are concerned, I shall feel bound to submit later on an innocent amendment, to protect the rights of those who ought to get their cash discounts.

HON. F. MCDONNELL: It is not often that I find myself voting with the Attorney-General and the Hon. Mr. Barlow, but on this occasion I find myself in that happy position. I was very much surprised at the speech of the hon. member who has just sat down, although I believe he desires to do what is fair. Those who have a practical knowledge of this question can come to no other conclusion than that the hon. member was speaking with very little knowledge of the effect of the coupon system on business. It is certainly about time the matter was dealt with. There is a tendency, not only in Australia, but throughout the world, for the State to legislate for the regulation, not only of labour, but of business, and the way that business should be carried on in the interests of the public and in the interests of the employees. Very little can be said in support of the coupon system, and I may refer to the way in which the system was worked some years ago, when it was very rife in this city. A number of speculative gentlemen from the South came here and established what they called a coupon shop. They took a store in one of the side streets, and they got in a stock of goods of a very shoddy description—electroplated ware and crockery and things of that nature. They then went to storekeepers and sold their books of coupons for a certain price. I think there were about 1,000 coupons in each book. A customer came in and bought something in the shop, and for every shilling's worth of goods purchased she received a coupon. When she had coupons representing a certain amount, she took them to the coupon shop, and got an article which was supposed to be worth a certain amount. In the first place, the article which she got was almost worthless, and, in the next place, according to the evidence given before the Select Committee in Victoria, not more than 30 per cent. of the coupons issued were redeemed. Some of those who got the coupons did not believe in the system, and they simply threw them away. Others saved them up for a time, and then got so disgusted that they gave up the whole thing; while a number of people who had no claim on the coupons at all got possession of them, and made use of them. For instance, the runners from hotels and boarding-houses took country people who went to those hotels or boarding-houses to stores. Those people bought, say, £5 or £6 worth of goods, and were handed a large number of coupons. They did not bother about the coupons, and these runners got them, and they went to the coupon shop and selected some useless article or another. The system amounted simply to blackmailing storekeepers, with little benefit to the purchasing public, because the purchasing public got a very poor article in return for their coupons. The evil grew to such dimensions that the force of competition compelled storekeepers to buy coupons, and it went on until traders began to recognise that some stand was necessary. We have here an association of drapers, of which nearly

every draper in Brisbane is a member. That association was established about nine years ago, and one of the primary objects in establishing the association was to take united action to put down the coupon system. Every member of the association pledged himself that, after a certain date, he would refuse to give any more coupons. The result was that, so far as the drapers were concerned, the giving of coupons was suddenly stopped, and a number of us were left with a large number of coupons on our hands that were not redeemed. These people who were fattening on the storekeepers and on the public hurriedly closed, and cleared out to Sydney. The articles that were handed to the public in return for their coupons were never worth more than one-fourth or one-fifth, and in some cases one-tenth, of their face value. The position, of course, was, that the public thought they were getting something for nothing. The extraordinary part of it was, that when the coupons were given up there was no outcry on the part of the public about it. They recognised that the system was simply a fraud that was being successfully carried on for the benefit of a few interested persons, who had made a large amount of money out of it for years. I am glad to say that the system does not obtain at all here now, so far as the drapers are concerned. The grocers—who are a much more numerous body than the drapers—followed the example of the drapers, and abandoned the system; but gradually a few of those mean-spirited men who will always try to take advantage of their fellows in trade by any little dodge, introduced the coupon system again, under one guise or another. No doubt, there are some people who are always attracted by anything which appears to offer them something in return for nothing. In the grocery business the system has grown until it threatens to assume something like the same proportions that it did some years ago. If coupons are to be given, it means that traders will have to increase the price of their commodities, and the public, so far from deriving any benefit from the coupons, will have to pay more for the goods they purchase. When the system was so generally adopted some years ago, one storekeeper advertised that he would give a coupon for every shilling's worth of goods purchased from him. Then another advertised that he would give two coupons, and so it went on until one actually offered to give six coupons for every shilling's worth of goods. I do not remember the exact cost of the coupons to traders, but I think they cost either 2½ or 5 per cent. on the value of the sales.

Hon. T. C. BEIRNE: They were supposed to cost 5 per cent.

HON. F. McDONNELL: With respect to the cash discount of 2½ per cent. to which the Hon. Mr. Fowles referred, I would like to say that there is no general system of giving such discounts here. I do not know any house in the retail drapery trade which makes it a rule to allow a discount of 2½ per cent. on monthly bills. Of course, wholesale houses allow discount, but there is no general system in connection with the retail trade.

Hon. E. W. H. FOWLES: I was dealing with purchasers for cash during the month.

HON. F. McDONNELL: The hon. member also referred to cash registers. They are just as great a danger as the coupon system. The hon. member stated that a purchaser can collect, say, £5 worth of cash register tickets, and get goods worth a certain amount on presenting them. If we are going to legislate against coupons, I think we should also legislate against the cash register.

Hon. T. C. BEIRNE: It is another Yankee dodge.

HON. F. McDONNELL: It is another Yankee Doodle dodge, and we do not want any Yankee Doodle dodges here. The cash register is an importation from the United States, and it is sold here at a very high price, and it is just as great a menace to honest trading as are coupons. One trader will give so much per cent., another will give an increased amount, and thus the business will go on. The fact that the great bulk of the storekeepers put their foot down on the coupon system without any legislation, and that there was no outcry by the public, shows that it is not wanted by the public. When it is advertised that people are going to get something for nothing, there is sure to be a rush. I consider that it is a wise move on the part of the Government to bring in this legislation. I understand the bulk of the traders approached the Government and asked for the measure, and I think there can be no opposition to the Bill by any man who has a knowledge of business. I consider it is the worst form of blackmailing; and no person benefits except the people who issue the coupons. The Government deserve credit, in my opinion, for taking precautions to prevent the system growing to any extent. With regard to other forms of coupons, I think the Bill could prevent them also. Mention has been made of missing-word competitions; and we all know that is a form of competition which is not commendable. Some traders might issue coupons in the form of a competition as to who was the most popular member of the Chamber. I know the Hon. Mr. Barlow would get that. (Laughter.) There might also be a competition as to who is the most popular footballer, or something else of that kind. That is another form of coupon that might be dealt with by this measure. Then, again, there is the question of coupons contained in packets of cocoa, bottles of pickles, bottles of schnapps, and other drinks. As far as trading in Brisbane is concerned, though there is firece competition at times, business is conducted on as high a level as in any other place in Australia. The general opinion of strangers who come to Brisbane is that in no part of Australia can you get better value for your money in all businesses. If that is the case, it is a good thing to prevent any of these insidious blackmailing systems from being introduced by impecunious traders, who have not the brains to conduct business on proper lines, but have to resort to these miserable subterfuges. In the interests of the public, this pernicious system should get its death-blow, and its recurrence should be prevented by legislation.

HON. T. C. BEIRNE: I am sorry I was not present when the Attorney-General introduced this Bill, but I must congratulate the hon. member who has just sat down on the full and explicit manner in which he dealt with the criticisims of the Hon. Mr. Fowles. I was very much surprised to hear that hon. member's eloquence on a subject of which, I am afraid, he does not know

very much. I have never given coupons in my business. I believe the system is so pernicious, bad, and dishonest, that I would not give coupons, even if I had to go out of business. I have been connected for many years with the Brisbane Traders' Association, of which I happened to be president nine or ten years ago. At that time the practice of giving coupons was rampant; and the formation of the Traders' Association was brought about chiefly with the object of getting rid of the coupon companies. We did that. Now it appears they are coming here again; and a deputation waited on the Secretary for Public Works with a view to dealing with the question. The Hon. Mr. Fowles says the practice is legitimate. It is not legitimate. The hon. member also said that the Bill is hitting at the customer who pays cash. That is not so, because it has been proved that the customer who pays monthly, or every two or three months, would also ask for coupons, and it was impossible to do business with them unless coupons were allowed. Then there was unfair competition in connection with coupons. Instead of giving one coupon for 6d., some people would give four coupons for 6d.; and I would be inclined not only to do away with coupons, but also with discount, if it were possible.

An HONOURABLE MEMBER: You cannot do that.

HON. T. C. BEIRNE: I think it would be better for the public if both coupons and discount were done away with. There is something to be said in favour of discount, because you know what you are doing when discount is allowed; but in the case of coupons, the customer gets tickets representing £1, and only gets 8s. worth of goods. The Hon. Mr. McDonnell mentioned something about coupons attached to bottles of Wolfe's schnapps, and other articles. They are also introduced with various articles of drapers' goods. A coupon is put in with a dress preserver, or a particular brand of corset, to induce the salesman to push that particular line. I suppose that will come under the Bill too.

Hon. E. W. H. FOWLES: Can you give discount to cash purchasers under this Bill?

HON. T. C. BEIRNE: There is nothing in the Bill that I know of to prevent it. I do not think the Bill makes any mention of discount; but it is given in a good many cases. I have much pleasure in supporting the second reading.

HON. M. JENSEN: The last two speeches are the speeches of practical men. From what those hon. members said, it seems to me that the public—or some of the public—think they are getting something for nothing, whereas they are simply supporting a number of parasites who are living by levying blackmail on business men, and at the same time are increasing the price of the goods they buy. I am much impressed by the remarks made by the Hon. Mr. McDonnell with reference to the cash register tickets. Those remarks have convinced me that the cash register is just as great a danger as the coupon system. I have much pleasure in supporting the Bill. The experience in the Southern States is entitled to a great deal of weight, and I understand that it has been found necessary in Victoria and New South Wales to pass similar legislation.

[4.30 p.m.]

HON. J. DEANE: It appears to me that the coupon system is adopted as a means of giving discount to people who are too poor to be able to run a current account with a storekeeper. Larger purchasers, who have monthly accounts, are sure of their discount at the end of the month. The Hon. Mr. McDonnell said that there is no rule with regard to the giving of a discount of 2½ per cent. for cash at the end of the month, but that practice has prevailed ever since I have been in business. I get a discount every month of 2½ per cent., and in the hardware business they allow a discount of 33 per cent. on pipes and goods of that class.

Hon. F. MCDONNELL: That is traders' discount.

HON. J. DEANE: Of course, it is not possible to allow such a large discount as that unless they charge considerably more for the goods than they are worth. (Laughter.)

Hon. A. G. C. HAWTHORN: You pay the discount in the long run.

HON. J. DEANE: They will not give you such a big discount unless the order is a considerable one. Why should we come here and profess to be legislating in the interests of the working classes, and then pass a Bill which will prevent them getting discount on their purchases?

Hon. T. C. BEIRNE: The working people do not demand coupons.

HON. J. DEANE: They seem to be very anxious to get coupons, and why should we prevent them doing so when the big purchaser gets his monthly discount? In settling my accounts, I sometimes deduct the 2½ per cent., especially if I am paying by cheque. Sometimes my daughter pays accounts for me, and she objects to my deducting the discount, because she regards it as a perquisite. (Laughter.) It is a pity that we should pretend to represent poor people, and then prevent them getting a coupon.

Hon. T. C. BEIRNE: They might lose it.

HON. J. DEANE: I do not take them to be as soft as that, and I do not think they are so soft as to take goods which are worth only 10 per cent. of what they are said to be worth, as the hon. member informed us.

Hon. T. C. BEIRNE: I did not say that. You misunderstood me. I was speaking of the goods obtained in exchange for the coupons.

HON. J. DEANE: I may have misunderstood the hon. member, but I certainly understood him to say that the purchaser had such a scanty knowledge of the value of his purchases that he sometimes did not get more than 10 per cent. of the value for his money.

HON. T. C. BEIRNE: May I be allowed to explain what I did say? I was not speaking of the storekeeper, but of the coupon shop, which redeems the coupons. I said that it did not give more than about 8s. in the £1 of the face value of the coupons.

HON. J. DEANE: I am certainly not in favour of discontinuing the issuing of coupons. We must give people credit for the possession of intelligence and common sense, and by proposing to pass such a

measure as this we are practically saying that they have neither intelligence nor common sense. I think the general run of people are quite capable of deciding where they get the best value for their money. I am sorry that legislation of this character is occupying so much of our time nowadays. It may be popular to be always protecting the public by these little measures. We must have inspectors to see that food is good, and in many other ways we do not give people credit for having any sense at all. I am very sorry that legislation like this has become so popular, and I hope we will go steady and look into this Bill and others like it, and see whether they are really as good as they are made out to be.

HON. B. FAHEY: I am inclined to think that if my hon. friend who has just resumed his seat were a younger man, and adopted another line in life, he might enter politics in another place with success, because he has just made a very excellent electioneering speech, although I know that was not his intention. The hon. member is usually very logical, but, if the advice he has just been giving were taken, no laws at all would be passed to protect society. The hon. member's contention amounts to this—that everybody should be allowed to do just as he likes, and that where abuses creep in they should not be redressed or prevented. That was really the logic of the hon. gentleman's argument. Touching the Bill, I have never seen a coupon in my life. The first time I received enlightenment on the subject of coupons was yesterday afternoon, when I was on my way to this House, and that explanation has been very intelligently elaborated upon this afternoon by two members who are largely identified with the trade of this city. If I had any doubts previously as to which side of this question I should take, the speeches of those hon. members left absolutely no doubt in my mind. I think that this Trade Coupons Bill should be supported. In my estimation the coupon system is dishonest, and I cannot find any words to utter in its favour. In my humble opinion, it is not a square deal between the vendor and the purchaser of the coupon. The general public fancy that they are getting an excellent advantage in buying a coupon; but, from what has been said this afternoon, for everyone who reaps a little benefit three or four others suffer, and they are cajoled into paying more than a fair price for the commodities they buy in the hope that they will be among the lucky ones. In twelve cases out of twenty they are not amongst the lucky ones; but we know right well that "Hope springs eternal in the human breast," and they venture again and again in the vain hope that they will have good luck. The spirit of gambling is inherent in every one of us, and for that reason these people are continually incurring the danger of the gambling spirit; and any element in trade that will encourage and foster the growth of that spirit should be put down by the Legislature. We attempt to put it down on the racecourse, and many people who would not go on to a racecourse would feel very much insulted if they were told that they were gamblers, or that they have that element in their composition, and yet they find an outlet for it in various other directions. Sometimes a man draws a very big cheque, which he gives to a broker to invest in a mine for him. He does not imagine that that is gambling, although he will never, perhaps, see his money again, nor any profits from the mine. That is one form of gambling, and I consider that anything which introduces a dishonest element into trade should be prevented. I quite realise that questionable practices enter into every department of trade, but it does not follow that those practices are countenanced or practised by all those who are engaged in trade. In this instance there is a certain percentage of people in trade, according to what we have heard this afternoon, who make it a practice to take an undue advantage, by dishonest practices, of those who are carrying on trade in this city and throughout the country on legitimate lines; and, from the exposition which has been given to us by two hon. members this afternoon of the perniciousness of those practices, I do not think there are many hon. members in this Chamber who will have any hesitation in supporting this Bill. I shall certainly do so.

Question—That the Bill be now read a second time—put and passed.

COMMITTEE.

Clause 1—"Short title"—put and passed.

On clause 2—"Interpretation"—

HON. E. W. H. FOWLES moved the omission, in lines 16 to 20, in the definition of "trade coupons," of the words—

> "or which entitles the holder thereof, or person producing the same, or any number or combination of the same, to demand and receive from the said trader any goods."

It seemed that the opinion of the hon. members was against the coupon system, and especially against the abuse of the system. Personally, he was in favour of 90 per cent. of the Bill, but the other 10 per cent. should be removed, in order to make the Bill a perfect measure. If those words were removed, cash discount could still be given by a trader, the ticket being redeemable at his shop only, in cash or goods at the end of the month, at the option of the purchaser. That would prevent any abuses.

The ATTORNEY-GENERAL said that he could not accept the amendment. The object of the hon. member was to allow national cash registers to give coupons which could be collected at the end of the month, and then redeemed. In his opinion, that form of coupon was as bad as the other. The hon. member referred to this legislation as preventing cash discount from being allowed; but that would not be the effect. What the Bill struck at was the accumulation of coupons during any particular time. If a trader liked to give a discount at the time when goods were purchased, he would be at liberty to do so.

HON. A. G. C. HAWTHORN: It would be a pity to do anything to alter the Bill so that there might be any evasion. If the words proposed to be omitted were struck out, it might open the door to a good deal of evasion. The definition was practically the same as in the Victorian Acts, which had been in force eleven years, and had worked with very good effect. He listened with considerable interest to the speeches made by the Hon. Mr. McDonnell and the Hon. Mr. Beirne upon the second reading.

Both those hon. members were practical men, with years of experience, and they were both in favour of the Bill.

Amendment put and negatived.

Clause put and passed.

On clause 3—"Trade coupons abolished"—

HON. E. W. H. FOWLES said he wished to add a new subclause, as follows:—

> "Nothing in this Act shall abridge or prejudice or remove the right of any trader from offering, advertising, or giving discount for cash sales, either in cash deducted from the price at the time of purchase, or in cash or goods given by the trader at the option of the purchaser at any later date."

This would meet all the interests of the legitimate trader who was prepared to sacrifice 2½ per cent. to get custom, and would leave no door open for abuse in connection with coupon shops.

The ATTORNEY-GENERAL: It seemed to him that this was a most dangerous amendment. It would have the effect of undoing everything which the Bill was intended to do. The Committee had just refused to accept an amendment to enable coupons to be given in connection with the national cash register; and it was sought by this amendment directly to legalise the system. It would establish the coupon system, not in the general way in which it was carried on in the past, but in a way which would be sufficient to open the door to evasion.

HON. M. JENSEN considered that the amendment would be destructive of the Bill. There was no limit to the time at which the trader might give goods; and the goods might be anything.

HON. B. FAHEY looked upon the amendment as a good deal more insidious than the one already rejected by the Committee. In his opinion, anything that would have a tendency to circumvent the good intention of the Bill should be resisted.

Amendment put and negatived.

Clause put and passed.

On clause 4—"Trade coupons issued prior to Act"—

The ATTORNEY-GENERAL: On the second reading, the Hon. Mr. Hawthorn pointed out that it would be an improvement to the Bill if the method of recovering the value of the coupons from the coupon company were made to include proceedings by way of summary action before justices. He therefore moved the addition of the following words after the word "coupons" in line 25—

> "on complaint in a summary way, or by action in any court of competent jurisdiction."

Amendment agreed to.

Clause, as amended, put and passed.

Clause 5—"Penalties, how recoverable"—put and passed.

The Council resumed. The CHAIRMAN reported the Bill with an amendment; and the report was adopted. The third reading was made an Order of the Day for to-morrow.

CRIMINAL CODE AMENDMENT BILL.

SECOND READING.

The ATTORNEY-GENERAL said: This Bill is based very largely on the English Criminal Appeal Act of 1907, and the New South Wales Criminal Appeal Act of 1912. It is proposed to pass this Bill as an amendment of the Criminal Code and not as a separate Act, as it was passed in England and New South Wales. The Criminal Code contains the only provisions that we have in the nature of a criminal appeal which are open to a prisoner at the present time. There is another method of appeal—namely, by writ of error, but that is practically obsolete. I do not remember any case in Queensland in which that method has been resorted to, though the remedy is still retained on our statute-book. If hon. members will refer to section 668 of the Criminal Code, they will find the methods of appeal of which I have just spoken. They will see, first, that an accused person may have a point of law reserved. The reservation must be at the request of the prisoner's counsel before the verdict is given. If there is any mistake on the part of the jury, that is not open to review. The request must be made on a point of law before the verdict is given, so that if counsel, through ignorance or forgetfulness, takes the wrong point or waits until after the verdict, the right of the accused person to have the point of law reserved is gone. There is also a power in the same section for the judge to reserve a point of law on his own account, either before or after judgment; but in that case it is not a matter of right for the prisoner but a matter for the discretion of the judge. Section 649 of the Code provides for arrest of judgment. The section enables a convicted person to move at any time before sentence for judgment to be arrested on the ground that the indictment does not disclose any offence. Hon. members will notice the way in which the ground for moving is restricted—that the indictment does not disclose any offence. The effect of that is to make that method of appeal practically useless. I do not remember any case in Queensland in which a prisoner has taken advantage of that section. The only other method of appeal open to a prisoner in this State is, as I have said, by writ of error, and that has never been availed of so far as I know. It will therefore be seen that the only available right of appeal which a prisoner has is upon a point of law, and then only if his counsel takes the point properly and at the right time, and he has no remedy if any mistake is made by the jury, if it was open to the jury, on the evidence before them, to come to the conclusion they did. I might point out, by way of contrast, that the right of appeal in civil cases has never been restricted in any such way. Either party in a civil action can appeal on a question of law, on a question of fact, or on a question of mixed law and fact. The points need not be taken before the verdict; they need not be taken till after the trial. The notice of appeal can be given in accordance with the rules of the Supreme Court. If £300 is involved, the litigant has the right to go to the High Court, and, if £500 is involved, he has the right to take the case to the Privy Council. But in a matter involving life and liberty, an accused person can only appeal on a question of law and under certain conditions. He cannot take his appeal further than the Supreme Court as a matter of right. It is quite true that the Privy Council or the High Court may give leave to appeal in a criminal case, but leave is only given under exceptional circumstances, and it is not a matter of right.

[5 p.m.]

According to our law, and according to the English law before the Criminal Appeal Act was passed in 1907, some right of appeal was recognised, but with the restrictions which I have indicated. What I might call the full right of appeal has been recognised in England by the Act of 1907; but prior to that year for more than fifty years the question of the right of appeal in criminal cases was a matter of controversy, and nearly thirty Bills were introduced into the Imperial Parliament, the first as far back as 1844, and the last in 1906 by Lord Loreburn, who was then Lord Chancellor. In 1892, a council of judges, to whom the subject was referred, reported favourably: but we know that legal reform is always difficult to obtain, and, notwithstanding the strong volume of public opinion in favour of an alteration of the law, and notwithstanding the strong feeling in the minds of a large body of legal men, including some of the leaders in the profession, nothing was effected by way of legislation until the Act of 1907 was passed. In the meantime public opinion in England was stirred up from time to time by cases of men who were convicted and who turned out to be innocent. There were several of such cases, but I will only refer to three of the most noted. It is a remarkable fact that the innocence of the prisoners in those cases was discovered by accidental circumstances arising after the conviction; and one can hardly read an account of the cases without experiencing a very uneasy feeling that what happened in those cases probably happened in other cases without any accidental circumstances arising after the conviction to call attention to the case. The first case I wish to refer to is that of a man named William Habron, which is referred to in a work entitled. "Criminal Appeal and Evidence," by N. W. Sibley. Habron was convicted at the Manchester Autumn Assizes in 1876, before Lindley, J. (now Lord Lindley), for the murder of Police Constable Cock. Habron had been proceeded against for disorderly conduct and drunkenness by the constable, and after the summonses were served, Habron and his brother were heard to say that "if the 'Bobby' caused them any trouble they would shoot him." The constable while on duty that night was shot, and the prisoner and his brother were found in close proximity. An alibi was attempted to be set up by William Habron, but utterly failed. After a long trial, he was convicted and sentenced to death. Sibley says—

> "Much dissatisfaction was expressed with the verdict, and a large number of people signed a petition for a reprieve. That was supported by the assize jury, which had recommended Habron to mercy on account of his youth. An investigation was ordered by the Home Office, and the case was narrowly examined, but it was not till forty-eight hours before the time fixed for the execution that the Home Secretary was able to make up his mind to respite Habron, and a telegram to that effect was sent down to the gaol."

The method by which the man's innocence was subsequently established was that a prisoner named Charles Peace, under sentence of death for the murder of another man, confessed three years afterwards that he was the man who committed the murder. Though Peace's story was not believed at first, because it was thought he was trying to get a reprieve for himself, the matter was investigated. Habron's innocence was established, and he was compensated by the Government for the mistake. It was evident that if Charles Peace had not confessed, Habron would have remained under the stigma of having committed the murder, and would have had to suffer whatever part of the sentence the authorities might have allowed him to undergo. Perhaps the most notorious case was that of Mr. Adolph Beck, which is referred to in Sibley, at page 301. That arose in this way—

> "In 1877, a man who called himself John Smith was convicted at the Old Bailey for frauds on women of loose character, whereby he had obtained from them articles of jewellery or money. His methods were to introduce himself as a nobleman of wealth, with an establishment in St. John's Wood, and offer the position of mistress to his victim. He would then suggest that she would require a new outfit, write out an order on some well-known tradesman, at whose shop she was to purchase what was required, and give her a cheque on a non-existent bank. He would then, on some pretext, borrow some article of jewellery or money, with which he then decamped. The name under which he perpetrated these frauds was Lord Willoughby. John Smith was sentenced to five years' penal servitude; he continued in prison till April, 1881, when he was released on license."

That matter passed out of the recollection of most people, until something happened towards the end of the year 1894 which created an interest in John Smith's proceedings of thirteen years before.

> "Towards the end of 1894 the police began to receive complaints from women, mostly of loose character, that they had been defrauded by a man who gave himself out as Lord Wilton, or Lord Winton de Willoughby, with an establishment in St. John's Wood. His methods were precisely similar to those which had been deposed to in the Smith case. The description given by these women of the man who had defrauded them varied considerably, but the cheques appeared to be all in the same handwriting."

One of these women happened to meet Beck in Victoria street, and charged him with having robbed her. He indignantly protested, but she insisted; and they went along the street until they met a policeman. She pressed the charge, and Beck was taken into custody. Then a remarkable thing happened. A number of the women who had been victimised by John Smith identified Beck as the man who had victimised them. What seemed to make the case almost hopeless against Beck was, that one Spurrell, an ex-police constable, who had arrested Smith in 1877, swore positively that Beck was Smith, and was confirmed by another officer who had been concerned in the Smith case. Under the circumstances, it is not wonderful to learn that Beck was committed for trial on all the charges brought against him. The case was tried before Sir Forrest Fulton, at the Old Bailey, in March, 1896, when Beck was convicted, and sentenced to seven years' penal servitude. The remarkable thing about Beck's case was that he served the term of imprisonment to which he was sentenced: and after he came out he got into trouble again.

In July, 1901, he was released on license. In April, 1904, he was again arrested on a charge similar to those on which he had been previously convicted. He was tried again, and again convicted: and as he could not deny the fact that in 1896 he had been convicted, he was treated as having pleaded guilty to a charge averring a previous conviction. The judge, however, was not satisfied. He felt misgivings, and in the meantime the arrest of the ex-convict Smith, on similar charges, led to further inquiries, and the subsequent release and pardon of Beck in respect of the 1896 and 1904 convictions. If it had not been for the accident that Smith, the real perpetrator of the crimes, was continuing to carry on the same crimes while Beck was under lock and key, possibly Beck would have undergone the second sentence. This case has been used as a strong argument in favour of a court of criminal appeal, for the reason that the judge in the first trial refused evidence tendered in connection with the handwriting of the man Smith. The prosecution relied on the fact that Beck was the man formerly convicted as Smith. Beck said he was not, and some evidence as to documents alleged to be in his handwriting was proved. If there had been a criminal court of appeal the judge's decision could have been reviewed, and that gross miscarriage of justice would not have taken place. Later on, he got compensation to the extent of £5,000. Then there was the case of George Edalji, who was tried on a charge of feloniously wounding a horse on the night of August 17th, 1903. The case was one entirely of circumstantial evidence, and the man was convicted. While he was in prison a similar outrage was committed. It was found to have been committed by a man named Harry Green. The excuse he gave was, that it was his own horse. It led to the matter being thoroughly investigated, and the innocence of George Edalji was established. Those are three of the most noted cases in recent years of men having been convicted who turned out subsequently to be innocent. Those cases are cited as showing the possibility of an innocent man being convicted, and the necessity for a court of criminal appeal to review decisions in criminal cases. On that point, I may also refer to a remark of Lord Loreburn, the late Lord Chancellor, when introducing the Bill to the House of Lords, in 1907. He said—

> "Apart from the antecedent probability of error, there is the acknowledged fact that error exists. We are constantly investigating in this House and in the court of appeal cases in which juries have gone wrong on questions of fact; and we are often unable to agree with the views of judges on points of law and directions of law upon the question of fact. If men are liable to go wrong in their judgments in civil cases, why are they not under similar liability in criminal cases?"

I might also refer to some remarks by Sir Henry James, Attorney-General of Great Britain in 1883, when he introduced the Criminal Appeal Bill—

> "It had already been the duty of his right hon. and learned friend, the Secretary of State for the Home Department, during the three years he had been in office, to set at liberty twelve different persons convicted of the gravest crimes; and that had been done, either because their innocence had been fully established, or because their guilt was so exceedingly doubtful that he dare not keep them in custody. In every one of these cases facts, long concealed, had come almost miraculously to light. Death-bed confessions of the real criminals, or the statements of perjured witnesses, had proved the error of the original convictions."

So far as the necessity for legislation of this kind is concerned, I think the information given in the cases I have quoted, and the opinions of men like the Attorney-General of Great Britain in 1883, and Lord Chancellor Loreburn in 1907, make a very strong case for this legislation; and the wonder is that it was not put on the English statute-book long before the Act was passed. I will now proceed to deal with the provisions of the Bill. It first repeals some sections of the Criminal Code, which are recast and inserted in this Bill. The Bill also contains certain definitions, which are largely based on the New South Wales Act. Clause 4 provides for the establishment of a court of criminal appeal. It says that the Supreme Court shall be the court of criminal appeal, and that the court shall be constituted by such three or more judges as are designated by the general rules.

Hon. A. G. C. HAWTHORN: Practically the Full Court.

The ATTORNEY-GENERAL: That is so. Clause 5 is a re-enactment of section 668 of the Criminal Code, and contains the power of reservation on points of law to which I have already referred. That power is not retained in New South Wales or in England. The right of appeal given by the Act is considered sufficient there; and I have some doubt whether it is necessary to retain the power to reserve points of law here if the Bill is passed. However, I have consulted the Crown Prosecutor (Mr. Kingsbury) on the matter, and he thinks it is advisable to retain the power. The appeal from arrest of judgment provided in clause 6 is a re-enactment of section 672 of the Code, which it is considered advisable to retain. I do not think myself that it is of much value. I think all appeals in criminal matters in future will be brought under this Bill if it becomes law. The right of appeal is given by clause 7. This is an important clause, and is not a re-enactment of anything we have in the law at present. If this is passed, I think other methods of appeal will become obsolete. This is practically the English section. It gives an absolute right of appeal by the prisoner against his conviction on any ground involving a question of law. At present the right of appeal on a question of law is a restricted one. It also gives a right of appeal on any ground which involves a question of fact alone, or question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal. That practically gives the right of appeal against the verdict of a jury. That is a right of appeal which can only be exercised on one of two conditions. One is that the leave of the court of appeal must be obtained; the other is that the certificate of the judge at the court of trial must be obtained. A convicted person may also appeal against the sentence passed on him, but he can only do so with the leave of the court. That is a right which has not

hitherto existed in the English law. Clause 9 deals with what the court may do on the hearing of the appeal. It can allow an appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, [5.30 p.m.] or that it cannot be supported, having regard to the evidence, or if it is of opinion that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground there was a miscarriage of justice. The provision with regard to setting aside the verdict of the jury caused some alarm in the minds of some lawyers in England. They thought it would practically enable the court of appeal to usurp the functions of a jury; but that view was combatted by other lawyers of just as high standing, and the actual working of the Act has shown that, as administered, it has not had the effect of impairing the efficiency of juries in any way or lessened the sense of responsibility on the part of juries. If the court of appeal thinks that the verdict of the jury was wrong, or that the judgment of the court of trial was wrong, it can allow the appeal. Then there are some useful provisions for preventing a prisoner getting the benefit of a technicality. That is one of the misfortunes of the law as it stands at present—that a prisoner who is clearly guilty on the evidence may, by taking advantage of some technicality, obtain an acquittal, although the evidence may prove beyond the shadow of a doubt that he was guilty of some offence, if not of the offence for which he was convicted. The proviso dealing with that matter reads—

> "Provided that the court may, notwithstanding that it is of the opinion that the point or points raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

The court has also the power on an appeal to alter the sentence and make it longer, if necessary. That is a very useful power, because it will be a check on needless appeals. If some such provision were not inserted, a prisoner would probably say, "I may as well take my chance of an appeal. I cannot be any worse off, and I may be better." If the court of appeal thinks that the sentence should be lengthened, they can lengthen it. Clause 9 deals with the powers of the court in special cases. The clause gives the court power to confirm sentences—to lengthen them in some cases, if necessary. The object is to prevent the prisoner who ought to be convicted taking advantage of technicalities which do not go to the substance of the offence at all. If the conviction is right in substance, but there has been some irregularity, a prisoner may be able to get off now, and very often we find scoundrels, who ought to be in gaol, turned loose on society in that way. This clause will give the court of appeal a very wide discretion in the way of not letting a prisoner out, if the court thinks he is substantially guilty, and he is only relying on a technicality. Clause 10 is a very important clause. It gives power to the court of appeal to grant a new trial. That clause is not in the English Act, but is taken from the New South Wales Act. The absence of such a provision in the English Act has been strongly commented on by the judges. A man was convicted of stealing property belonging to A, when, as a matter of fact, it belonged to A's wife. The prisoner appealed, and the court of appeal felt that it could not treat that as an irregularity. The court said the man had been convicted of stealing the property of one person, when it was really the property of another person; and the Lord Chief Justice deplored the absence of a clause giving power to the court to grant a new trial. If that power had existed, that man would have been sent back for a new trial; but, as it was, the court had to quash the conviction and allow the appeal. Clause 11 deals with the revesting and restitution of property on conviction. The law at present is that, on conviction for theft, the stolen property reverts to the owner. The reversion to the owner is to be held over pending the appeal. That seems to me a necessary alteration in the law, because there may be a dispute as to the ownership of the property involved in the question at issue. Clause 12 deals with the time for appealing. That is a very important alteration in the law. It will have the effect of assimilating the procedure as to appeals with the procedure in appeals in civil cases. The prisoner must appeal within ten days of the date of conviction, and the sentence is held over until the expiration of that time. In the case of a conviction involving the death penalty, the time cannot be extended, because it is thought advisable, in capital cases, that the matter should be dealt with promptly, and punishment, if it is to follow at all, should follow with as little delay as possible. Clause 14 deals with the supplemental powers of the court, and they were very wide indeed. The court will be able to sift thoroughly all the circumstances connected with a case. It may call evidence, if it should think fit; it can admit the depositions taken in the court below; it can receive fresh evidence, if tendered, including evidence from the appellant; it can refer matters involving the prolonged examination of documents or scientific or local investigation, to a commission; and it can get the assistance of an assessor with special expert knowledge where it appears to the court that expert knowledge is required. Clause 15 gives power to the Crown Law Office to assign to an appellant solicitor or counsel, if it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid for himself. That is practically an application of the principle of the Poor Prisoners' Defence Act. Clause 16 is rather important. It gives an appellant the right to be present, if he desires, at the hearing of his appeal, unless merely a question of law is involved.

Hon. A. G. C. HAWTHORN: How will that assist the court?

The ATTORNEY-GENERAL: I think it will assist the court—that is the very point I am coming to. Fresh evidence may be called, and some circumstance detrimental to the prisoner may come out, which, if he were present, he could explain at once. I think it is a sound rule that, wherever oral evidence can be given against a prisoner, the prisoner should be present to hear the evidence. An appellant who has not got counsel, or is not able to employ counsel, and who does not trust his powers of argument in the court, is to have the right to present his case and his argument to the court in writing, if he so desires. I think that is a

very useful provision, and it is one which may be availed of by men who have had no practice in speaking. My learned friends may regret to learn that no costs are to be allowed on either side on an appeal. As a general rule, there are no costs allowed in criminal cases, and it is probably a good rule that no costs are to be allowed on either side. If the Crown go on against a man and get a conviction, they will not be entitled to get any costs against him. Costs may be allowed, however, to counsel assigned to an appellant who has not sufficient means to enable him to obtain legal assistance.

Hon. E. W. H. FOWLES: Will that leave the costs in the hands of the Crown?

The ATTORNEY-GENERAL: We are following the English legislation and the New South Wales legislation here. I think it is best to provide definitely that there shall be no costs. Then there are provisions as to the admission of the appellant to bail and custody when attending the court of appeal. If an appellant is not admitted to bail, the court will have power to treat him in the manner directed by the regulations made under the law relating to prisons. If the court does not care to do that, it can admit him to bail. The time during which an appellant, pending the determination of his appeal, is liberated on bail or recognisances, and the time during which, if in custody, he is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence. So that, if he likes to waste time by appealing and getting out on bail, his sentence will start from the time he surrenders himself again into custody. The duties of the registrar are laid down in clause 20. Broadly speaking, his duty is to facilitate appeals in every way. He has to furnish the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands them, and to officers of court, superintendents of prisons, and such other officers or persons as he thinks fit; and the superintendent of every prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application. Then there is provision for taking shorthand notes of the proceedings at every trial of any person on indictment. There is also provision that, if an appeal goes to the High Court, the court of criminal appeal may, on the application of the Crown, at any time before the release of the appellant, direct that execution of the order quashing the appellant's conviction be stayed for such time (not exceeding seven days) as the court thinks fit. If there were no such power as that, and the court of criminal appeal decided in favour of the prisoner, he would get out of custody, and I do not know of any case where a prisoner who once got out of custody by virtue of the decision of a court, ever got back into custody again. It is thought advisable, if the matter is of sufficient importance to justify a man appealing to the High Court, that the court of criminal appeal should be empowered to take whatever steps are necessary to ensure the prisoner being found when he is wanted if the High Court disagree with the court of criminal appeal. Clause 25 is a very important one. Hon. members will see from it that the pardoning power of the Crown is not interfered with in any way by this measure. It is thought advisable to retain

that power. Certain objections have been made to this legislation. It has been urged that it will diminish the sense of responsibility on the part of juries. On that point I would refer hon. members to an article "The Weekly Notes" published in New South Wales for July, 1911, from which I may be permitted to make the following quotation:—

> "The power thus given to the court was undoubtedly capable of a wide interpretation, and if so interpreted it might well have justified the fears expressed. But it cannot be too emphatically stated that it has not been so interpreted. The words 'unreasonable or cannot be supported having regard to the evidence' have not been defined, but there are abundant decisions which show the measure of respect the court entertains for the verdict of juries based upon evidence properly left to them. The court, quite early in its history, laid it down that it was no good for an appellant to allege merely that the verdict was 'against the weight of the evidence' in the sense that on the evidence being carefully scrutinised and weighed in the balance by the court, the scale might possibly be made to go down in the appellant's favour. Nay, more; it was held not to be sufficient in itself that the court, after reading the evidence for the prosecution, thought it revealed a story somewhat difficult to believe (*R.* v. *McNair*, 25 T.L.R. 228), or a very weak case (*R.* v. *Newson*, 2 Cr. App. R. 44; *R.* v. *Simpson*, 2 Cr. App. R. 128), or thought on reading the whole case that it raised questions of considerable difficulty (*R.* v. *Crook*, 4 Cr. App. R. 60). And perhaps the utmost limit capable of being desired by the most ardent admirer of the system of trial by jury was reached when the court laid it down that, though the members constituting the court might feel some doubt whether, had they constituted the jury, they would have returned the same verdict, or thought that the jury might properly have found the other way, yet the court would not on that ground alone interfere with the conviction, since the jury were pre-eminently the judges of the questions of fact to be determined upon the evidence properly laid before them, and it was not intended by the Criminal Appeal Act, nor within the proper functions of a court composed of judges, that the findings of the jury should be disturbed unless the verdict was altogether unreasonable or incapable of support, nor was it intended that the court should practically re-try the case: *R.* v. *Simpson* and *R.* v. *Crook* (*supra*); *R.* v. *Martin* (1 Cr. App. R. 52); *R.* v. *Ellwood* (1 Cr. App. R. 182); *R.* v. *Pope* (2 Cr. App. R. 22); *R.* v. *Jackson* (4 Cr. App. R. 93); *R.* v. *Graham* (74 J.P. 246); *R.* v. *Richman* (4 Cr. App. R. 233, 246); *R.* v. *Henderson* (5 Cr. App. R. 97, 98)."

The quotation shows that the action of juries has not been affected in any way by the court of criminal appeal. Taking everything into consideration, I think the Bill should be supported on humanitarian grounds. It is a horrible idea to think that an innocent man may be convicted with no hope of the matter being set right unless some accidental circumstances, over which he has no control, turns up, such as turned up in the cases I have

quoted. There is a consensus of opinion in England that the operation of the Act has been beneficial, and that the disadvantages anticipated have not arisen, and I think that in England nobody would suggest the repeal of the Act establishing a court of criminal appeal. I see no reason to doubt that the measure, if passed into law here, will have an equally beneficial operation, and that it will be really in the interests of the administration of justice in every way. I move that the Bill be now read a second time.

HONOURABLE MEMBERS: Hear, hear!

HON. A. G. C. HAWTHORN: I beg to move the adjournment of the debate.

Question put and passed. The resumption of the debate was made an Order of the Day for Tuesday next.

PAPERS.

The following papers, laid on the table, were ordered to be printed:—

Report upon the Government Central Sugar Mills.

Report by Government Analyst for 1911-12.

SPECIAL ADJOURNMENT.

HON. A. H. BARLOW: There is no occasion to meet to-morrow, and I therefore move that the Council, at its rising, adjourn until Tuesday next.

Question put and passed,

The Council adjourned at thirteen minutes to 6 o'clock.