CRIMINAL CODE BILL.

Committee.

Clause 1 put and passed.

On clause 2—"Establishment of Code—"

The ATTORNEY-GENERAL (Hon. A. Rutledge, Maranoa) moved that after the word "hundred," on the 8th line, the words "and one" be inserted. That only meant deferring the commencement of the operations of the Code until the 1st January, 1901. The Bill provided for the making of certain general rules by the judges, and the time was too short between now and the end of the year in which to carefully prepare those rules. It was therefore desirable to give a longer time for this work.

Amendment agreed to.

Clause, as amended, put and passed.

On clause 7—"Offender may be prosecuted under the Code or other statute—"

Mr. LEARY (Balito) asked the Attorney-General what was meant by the words "or other statute"? Did it mean future legislation?

The ATTORNEY-GENERAL explained that probably the House would pass statutes on various occasions which would contain provisions with regard to penalties for the infringement of those statutes, and it was impossible to take into consideration, in this Code, the effects of further legislation. The object of the clause was that no person should be punished except under this Code or under some statute hereafter to be passed.

Clause put and passed.

Mr. DUNSFORD (Charter Towers) asked the Attorney-General if it would still remain in the power of a judge to punish a person summarily for contempt of court, the contempt having taken place in his court. Would the law in that respect be the same as it was to-day? They had sometimes heard of cases where judges, perhaps in a fit of anger on account of something a person had said—

Mr. JACKSON: Biliousness!

Mr. DUNSFORD: Yes. In cases like that persons had sometimes been sentenced for contempt of court, and he thought it placed the judge in a very false position.

The ATTORNEY-GENERAL: It had always been the rule that a judge must have power to restrain and punish those acts which were known and understood by everybody as contempt of court, and the section proposed to leave the law in that respect just as it was at present. He did not know that any abuse was likely to take place under this section any more than had taken place under the existing law—this was really the existing law—but if at any time any judge should be found so far abusing the authority the law reposed in him in regard to contempt of court no doubt Parliament would take summary steps for preventing a repetition of the abuse.

Clause put and passed.

On clause 8—"Contempt of court—"

Mr. DUNSFORD: If the Attorney-General believed that the second reading was moved this night week, when he had drawn attention to the several features of the Code, and he did not think it was fair that hon. members should leave the whole thing till its progress through committee before finding out whether there was anything in it which they wanted to amend. If any hon. member omitted something which might be in the schedule, and liked to draw his attention to it afterwards, he should not have the slightest objection to re-committing the Bill for the purpose of having that particular matter thoroughly discussed.

Mr. DAWSON (Charter Towers) believed it would be within the Standing Orders to take the 758 clause in one motion; but, at the same time, it would be a rather large order. He did not think the Attorney-General wished to rush through any particular clause to which members had an objection, but he might very well give members a little more time so that they might indicate in what direction they intended to move amendments. He would remind the hon. gentleman that it had been the practice for some years to circulate amongst members its intended propose; but here the
Attorney-General was asking them to take 700 clauses in one session, and that those who objected to any particular clause or any particular line in one of the clauses should do it by verbal amendment. He did not think that was a fair thing. Of course, he did not presume to dispute the wisdom of the legal gentlemen who drafted the Bill; yet it was possible for them to have made a mistake. He had taken the Bill to a legal gentleman whom he looked upon as one of the most eminent men at the bar in Queensland, and asked him to go carefully through it, and make marginal notes of what he thought were defects. That gentleman had had the Bill for a week, and it had not been returned to him. If an eminent legal man required over a week to go through it, how much more time would an ordinary layman need? There were so many questions involved that a great deal of time and attention required to be devoted to it before giving a pronounced opinion. He did not think there was any need for undue haste, but was of the opinion that the Attorney-General might very well adjourn the 1st schedule until members had had a little more time to look into it and indicate in plain terms in what direction amendments would be made.

The ATTORNEY-GENERAL did not wish to unduly hasten anything; but, as he pointed out the other night, if the Code was to be passed into law this session, it must be pushed on with as much speed as possible. Members would not be adopting a dangerous course in following the suggestion he had made, because the gigantic measure known as the Merchant Shipping Act, 1894, which contained over 700 clauses, was passed through committees in the House of Commons in four minutes. Why? Because the House had committed the Bill to a committee of men supposed to be more competent to deal with it than the House held itself to be. The House said, "We must take it on trust. If these men are not competent to deal with it, we are not." As he had pointed out, the Code contained, for the most part, definitions and declarations of the common law, and he could not accept the dictum of any legal gentleman, however eminent he might be, as in the least degree binding on the conclusions of the Royal Commission that had dealt with the subject so ably. Even there were other questions that hon. members were as competent to deal with as the Commission, such, for instance as the amount of punishment to be awarded. He was quite willing that hon. members should have an opportunity of discussing anything which was necessitated by the facts of the law, instead of moving the schedule as a whole, and clause by clause, it was taken chapter by chapter.

HONOURABLE MEMBERS: Hear, hear! The CHAIRMAN: The Standing Orders placed in my hands are the Standing Orders which should guide us, and where they are silent we should consult the procedure of the House of Commons. There is no case that I can find where anything of the kind has been done, and if it is to be done, it must come as an instruction direct from the Committee.

Mr. LEARY: I think it was done in the case of the Standing Orders themselves. We took them in chapters.

The HOMESecretary: We did it under the old Standing Orders, which were different and allowed.

Mr. LEARY: I think they are silent on the point.

Mr. FISHER (Gympie): thought that if the Attorney-General attempted to put the Bill through in the way he suggested he would find it would take a longer time than if he proceeded in the usual way.

The Home Secretary: Is that a threat?
large Bill which had been passed by the House of Commons in four minutes. He always believed hon. members on the other side objected to panic legislation, and the Constitution provided a second Chamber to prevent hasty legislation. The Code was the second schedule to the Bill, and he was satisfied they had a right to deal with every clause of that Code.

The ATTORNEY-GENERAL: But the Standing Orders do not allow it.

Mr. LESINA was satisfied that the Standing Orders would allow them to take the Code clause by clause. The Constitution under which they were to live required the second schedule to the Legislation Enabling Bill, and although it had been passed without amendment, and which had passed the Constitution, it was solely because the Premier had told them that any amendment would wreck the Bill. He maintained that they had the right to alter every clause in the Code.

The HOME SECRETARY: No one has disputed that.

Mr. LESINA understood an attempt was being made to alter the Bill by chapter, but he maintained they had a right to deal with it clause by clause.

Mr. GIVENS (Cowra) had an objection to dealing with the Code in the wholesale manner suggested by the Attorney-General, because, although they might affect no great improvements in the Bill, it would be an objectionable precedent to establish. Further than that, it would be a usurpation of the rights and privileges of hon. members, because the Bill proposed to make amendments in the existing law, and those amendments had been effected practically by the commission of judges. If they passed the Code merely on the suggestion of the judges, they would be giving up their own rights as legislators, and transferring those rights to a commission of judges. That would not be in accordance with the dignity of Parliament. He did not claim to be an authority on the Standing Orders, but it appeared to him that every hon. member had a right to move any amendment he chose in any line or clause as they went along, and he believed, from the ruling just given, that that was also the opinion of the Chairman. That being so, it would facilitate matters very much if they proceeded with the Bill in the usual way. He was very much like to see the Code passed, because it would not only make the law more easily understood, but it would be much easier to see what was in the future if they had it in a codified form than if it remained in its present unsatisfactory and uncertain condition. At the same time, he was not prepared, in order to get the Code passed, to hand over their rights and privileges to the judges, no matter how learned in the law or how worthy they might be. That House, in connection with the Upper House, was the duly properly constituted body to effect legislation, and he did not think they should give up any of their privileges to a committee of judges or anybody else.

The ATTORNEY-GENERAL: If that was the hon. member's difficulty, he would indicate, as to the view, what were the amendments in the law as recommended by the Commission and adopted by the Government. All the rest was the existing law, stated in language which had received the most careful scrutiny. But how they were to go through the schedule, taking it clause by clause he could not see. The Chairman had declined to allow him to put it chapter by chapter. He did not want to rush hon. members, or to ask them to do anything they considered improper, but he did want to see the Bill carried within the short time allotted to the House that session.

Mr. KISTON: Why should the Code be presented to the House in the form of a schedule at all?

The ATTORNEY-GENERAL: Because the 1st part of the Bill did not contain the statute law; it was an enactment of certain things contained in the Code itself. The Code stood by itself, but was, of course, open to the fullest discussion.

Mr. DAWSON thought the Attorney-General had mistaken the Chairman's meaning when he said he would be unable, under the Standing Orders, to put the Code chapter by chapter. The Standing Order was not clear, and it was a matter entirely in the discretion of the Chairman. According to the practice of the Chamber schedules were generally taken item by item. That was done in the case of the Customs Duties Bill in 1896. If it was the pleasure of the Committee, instead of taking the 708 clauses on one motion, they could take the Code by chapters. In his experience there had been only one single occasion where a schedule containing a number of clauses had been put on one motion. That exception was the Commonwealth Bill, which was attached as a schedule to the Enabling Bill. What he wished to say was that as the Code was a very intricate document, and one that would require a great deal of consideration, a reasonable time ought to be given to enable hon. members to indicate in what direction they wished to move amendments, and those amendments ought to be printed and circulated amongst members before they were moved, so that they might be in a position to make up their minds as to whether they would support or oppose them. He objected absolutely to important amendments being moved straight away, when the least knowledge hon. members had of them was when they were read out by the mover. He believed the best way to get over the difficulty that had been raised was to take the Code in chapters, with a distinct understanding that if anything had been overlooked in passing the Code in chapters, the Attorney-General would at a later stage agree to its recommittal.

The ATTORNEY-GENERAL said he would be very glad to adopt the suggestion if the Chairman was willing to modify his construction of the Standing Order, or if it came as an instruction from the Committee.

The CHAIRMAN: I have given my construction of the Standing Order, but if it is the wish of the Committee that this schedule should be taken chapter by chapter, the Committee takes the responsibility for that wish. I now put it to the Committee whether they wish the schedule to be taken in that way.

Mr. STEWART: No.

Mr. BELL thought the Chairman was adopting a rather unusual course in removing the responsibility from himself and placing it on the shoulders of the Committee.

Mr. STEWART (Rockhampton North) thought it was evident to the Government now the very peculiar position in which they had placed themselves in connection with this Code. According to the Attorney-General and the Premier the session was expected to end about Christmas. They had about three months to consider one of the largest and most important measures that had ever been brought before the Chamber. If this was not an attempt at hasty legislation he did not know what it was. The whole criminal law was before them, and it was their duty to consider the Code clause by clause. He did not question the capacity of the gentlemen who formed the Royal Commission to deal with the Code, but the responsibility for the law of the country rested, not with the Commission, but with Parliament. He supposed that the hon. gentleman at the head of the Government
imagined that he was going to get the Committee to vote for the measure piecemeal; but he con-
tended that if any measure that had ever been brought before the Parliament of this colony required to be digested by clause by clause it was the one now before the Committee. He knew perfectly well when the Government proposed to bring in that measure that there was not the slightest chance of its passing during the present session.

The ATTORNEY-GENERAL: Why not?

Mr. STEWART: How, in the name of common sense, were they going to pass like that a number of other Bills which the hon. gentle-
man had foreshadowed in the Speech from the Throne this session? Were they going to force them through, six abreast? Were they going to do the whole work of the country—which usually takes six months—in three months? Were they going to work double time, or scamp legislation? He would not consent to anything of the kind. He would not consent to the Code being taken chapter by chapter; he would insist upon it being taken clause by clause, because the lives and liberties of the people of the country were at stake in that measure. As to the Commission having consisted of judges and lawyers, he did not think that lawyers were always the best men to deal with the length of sentences, or the kind of sentences that should be awarded offenders, for they generally looked upon criminals as sort of wild beasts to be hunted down. He was glad to see that the kind. He would not consent to the Code being taken chapter by chapter; he would insist upon it being taken clause by clause, because the lives and liberties of the people of the country were at stake in that measure. As to the Commission having consisted of judges and lawyers, he did not think that lawyers were always the best men to deal with the length of sentences, or the kind of sentences that should be awarded offenders, for they generally looked upon criminals as sort of wild beasts to be hunted down. He was glad to see that

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chapter was merely a subdivision of the schedule. The Chairman having, according to rule, put the question, "that the schedule stand part of the Bill," it was then open to any member to move amendments on every line of the schedule. That was as clear as possible and was confirmed by the new Standing Order 271, dated 12th September, 1893. He could see a good deal in what the Attorney-General had said about taking these Bills on trust, but hon. members must remember that they had fallen victims in the past by taking things on trust. The Attorney-General must know that the matter was of some importance, especially when in the absence of many legal minds from the House, and he therefore, he ventured, would help his cause if he pursued the ordinary procedure—that is, that the question should be that the 1st schedule stand as the 1st schedule of the Bill.

The ATTORNEY-GENERAL thought that Standing Order 72 met the case. That order, he said, created the precedent to override the Standing Orders, and that would over- come the difficulty. The Prime Minister had a right, according to the Standing Orders, to move any amendment he wished. But it was thought that they would not have sufficient opportunity, in following this course, to indicate what their particular amendments were—that they might overlook something.

Mr. BELL: Why not omit the words "first schedule," and then deal with the schedule chapter by chapter; that would overcome the difficulty of bringing the section in the schedule and the clause in the Bill as a whole, leaving it open to any member to move any amendment they wished. But it was thought that they would not have sufficient opportunity, in following this course, to indicate what their particular amendments were—that they might overlook something.

The best way out of the difficulty was that the original question should be allowed to stand, and that the schedule should be proceeded with chapter by chapter.

Mr. KIDSTON: Why not omit the words "first schedule," and then deal with the schedule chapter by chapter; that would overcome the difficulty of bringing the section in the schedule and the clause in the Bill as a whole, leaving it open to any member to move any amendment they wished. But it was thought that they would not have sufficient opportunity, in following this course, to indicate what their particular amendments were—that they might overlook something.

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The best way out of the difficulty was that the original question should be allowed to stand, and that the schedule should be proceeded with chapter by chapter.

Mr. McDONALD (Fyinders) asked the Chairman's ruling as to whether that would be in order? He would like to find out where they were, as he thought every hon. member knew exactly where they were.

Mr. FISHER (Gympie) asked the Chair- man's ruling as to whether that would be in order? He would like to find out where they were, as he thought every hon. member knew exactly where they were.

Mr. McDONALD: When a Bill has been committed to a Committee of the whole House, the preamble, if any, should be postponed until after the clauses and schedules of the Bill have been considered. It had simply been a matter of practice to put the schedule in toto, and the Committee had an inherent right to regulate its own procedure as long as that procedure did not in any way offend against the express provisions of the Standing Orders. He challenged any hon. member to point out anything in the Standing Orders which forbade the splitting up of a schedule into parts and dealing with those parts separately.

Mr. FISHER: The Standing Orders did not get up to accept the challenge thrown down by the hon.
Mr. TURLEY: I am not in accord with those who objected.

The CHAIRMAN: I think my previous ruling has been misunderstood. I ruled that the schedule should be treated exactly the same as a clause. By Standing Order 296 I put it as a question. It may be, as hon. members have pointed out, that there is no definition as to how we should treat a schedule specially; but I may call attention that, according to "May," we have to treat a schedule exactly the same as a clause. My mode of procedure is this—I put the question, "That schedule 1 stand part of the Bill," and so on to the end of the schedule. That does not deprive any hon. member of moving any amendment he likes, as long as it is relevant to the subject-matter of the Bill.

MR. HARDACRE: It was laid down on page 462 of "May," that—

Schedules to a Bill are considered, as a rule, after new clauses are disposed of, and they are treated in the same manner as clauses.

The Attorney-General had then moved a motion, and considered it chapter by chapter, we can get on with the schedule.

MR. GIVENS: Do you rule that the motion can be put?

The CHAIRMAN: It can be put.

MR. BELL: Why not adhere to the original proposal of the Attorney-General?

The ATTORNEY-GENERAL: Because I want to oblige hon. members.

The CHAIRMAN: I will put the question again—That schedule 1 be considered chapter by chapter.

MR. MCDONALD: If you rule that that can be put, I shall move as an amendment "that the schedule be considered clause by clause."

The CHAIRMAN: I can consider the question as it has come to me.

MR. KIDSTON (Asquith): asked the Chairman whether he had not given the Committee to understand that such a motion was at variance with the Standing Orders, and if so, was it in order to put the motion?

The CHAIRMAN: It is in order to put the motion.

MR. KIDSTON: If it is at variance with the Standing Orders?

The CHAIRMAN: It is not at variance with the Standing Orders.

MR. KIDSTON: He had understood the Chairman to state that the reason for putting the motion was because the Standing Orders necessitated the putting of schedule 1 in one motion. The Attorney-General had then moved a motion which, according to the Chairman, would practically override the Standing Orders; but if it was overriding the Standing Orders, was it in order to put the motion?

The CHAIRMAN: There is no infringement of the Standing Orders in putting this motion.

MR. KIDSTON: What was the reason for the motion if it was not a violation of the Standing Orders?

The CHAIRMAN: This is a motion to get the sense of the Committee with reference to the way

gentleman, but to express his pleasure that the hon. gentleman had seen the advisability of not putting the schedule in globo. This was perhaps the most important document that had ever come before that Assembly, and it was desirable that people should know the meaning of the various clauses, he thought they should be discussed by hon. members as much as possible for the education of the people who would have to live under the Code. If that were done it would give the hon. gentleman a name he would well deserve for teaching not only one class but the whole community the laws under which they lived.

Mr. HARDACRE (Leichhardt) having just looked at the Standing Orders, had come to the same conclusion as the Attorney-General. He had also looked through "May," and had found that they were both absolutely silent as to whether a schedule should be taken in globo or as a clause by clause. It had been the custom to pass schedules in globo because, as a rule, they generally consisted of figures or tables; but when they came to a large schedule like this, it was reasonable that they should take it by clause, if they had been an ordinary part of a Bill. "May," at page 462, said—

Schedules to a Bill are considered, as a rule, after new clauses are disposed of, and they are treated in the same manner as clauses.

Then Standing Order 128 said—

Questions which arise in Committee of the Whole House shall be decided by a vote of a majority of the members present, not including the Chairman. Therefore this was a question on which the Standing Orders said nothing at all, and as the Committee was not doing anything against the Standing Orders, it had the right, under Standing Order 128, to decide what it should do as far as this particular question was concerned.

Mr. BELL intended to respond, as far as he could, to the challenge that had been thrown out by the Attorney-General. He had been in accord with the hon. gentleman's previous position—that the schedule should be moved en bloc. But he challenged the contention of the hon. gentleman under Standing Order 296, which said—

A clause or schedule, proposed to be added in Committee, shall be read a first time without any question put. The hon. gentleman's original position—when he moved the schedule as a whole—was the proper procedure, so that the House might make amendments to it as it went along; and if that was not carried, then the only thing which would have been to have gone to the House and got an instruction that the schedule be taken in some other way.

Mr. TURLEY (Brisbane South) argued that under the Standing Orders and "May" clause added to a Bill was exactly the same as a schedule, and a schedule exactly the same as a clause. It was the same with a schedule. Consequently the question must be put from the Chair. "That schedule 1 be schedule 1 of the Bill." The Chairman was perfectly right in his contention that the other motion would be out of order, and it seemed to him that the position taken up by the hon. member for Toowoomba was the only procedure which could be followed—that the motion be put, and any hon. member who had an amendment could move an amendment in even the first clause, and then in the whole of the schedule. The amendments had to be considered first, and if any of them were carried, then the substance of the whole of the schedule would be "That the schedule be the schedule of the Bill."

The ATTORNEY-GENERAL: The other side objected to that course.
The ATTORNEY-GENERAL said that if they took the schedule clause by clause, and he had to give an explanation of every clause, they could not expect the Bill to pass that session.

Mr. TURLEY asked whether the motion and the amendment now before the House were in order.

The CHAIRMAN: If the hon. member had been in the Chamber all the time he would have heard me state more than once that they are both in order.

Mr. TURLEY: He might be charged with being a stickler for the Standing Orders, but he would move that the Chairman's ruling be disagreed to. He was of opinion that they should abide by their Standing Orders, and the Committee ought not to be permitted to put them aside at any time they chose to suit their own convenience. Or if that was thought advisable a new Standing Order should be passed to that effect.

Question—That the Chairman's ruling be disagreed to—stated.

Mr. MCDONALD (Flinders): The original question before the Committee was that schedule 1 stand part of the Bill. Now that had been wiped out altogether. A motion had been made that the schedule be taken clause by clause. It would establish "chapter by chapter" with the view of inserting the words "clause by clause." It would establish a very dangerous precedent to follow the practice now proposed. Any Government, in order to rush through important legislation, would merely have to bring in that legislation in the form of a Bill, and insist that it should be taken chapter for chapter, or, perhaps, as one whole. He decided to object to that sort of thing. The Code proposed to make some important changes in the criminal law, and it would be impossible to subject those alterations to close scrutiny unless they considered the Code clause by clause. He had no desire to block the passage of the Bill, but three or four sittings might reasonably and profitably be devoted to the consideration of such an important measure. He decided objected to a Bill taking such important changes in the whole of the criminal law of the colony being rushed through in one lump, and without adequate discussion.

Question—That the words proposed to be omitted stand part of the question—stated.

Mr. BELL said there was nothing in the proposition of the Attorney-General to prevent the fullest discussion of the schedule. If, as he understood, hon. members opposite had their amendments ready there was nothing to prevent them who had the earliest amendment getting up and moving it. He saw no reason for departing from the usual practice, and he would enter his protest against any proposal to decide their procedure for their own convenience on the spur of the moment.

Mr. FISHER thought the proposition to consider the schedule chapter by chapter would lead to nothing but confusion. It was possible that 100 amendments might be moved, and some hon. members unfamiliar with the procedure might lose their chance of moving them.

Mr. HIGGS hoped the Attorney-General would accept the amendment of the hon. member for Cairns. As the hon. member for Gippsland had said, to take the schedule chapter by chapter would lead to no end of confusion. Suppose they had reached clause 200, and a member who had intended to move an amendment in clause 100 happened to be out of the Chamber at the time clause 100 was called, he would be unable to move it at all.

The ATTORNEY-GENERAL: At that rate it would take about twelve months to get through the 708 clauses.

Mr. HIGGS: The schedule should be taken chapter by chapter, and there was nothing to prevent them who had the earliest amendment getting up and moving it. He saw no reason for departing from the usual practice, and he would enter his protest against any proposal to decide their procedure for their own convenience on the spur of the moment.

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The question was still, in what way was the original question to be dealt with—whether they should take it chapter by chapter, or clause by clause. Mr. Fisher thought the proposition to consider the schedule chapter by chapter would lead to nothing but confusion. It was possible that 100 amendments might be moved, and some hon. members unfamiliar with the procedure might lose their chance of moving them.

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Mr. McDONALD: The original question before the Committee was that schedule 1 stand part of the Bill. Now that had been wiped out altogether. A motion had been made that the schedule be taken clause by clause. It would establish "chapter by chapter" with the view of inserting the words "clause by clause." It would establish a very dangerous precedent to follow the practice now proposed. Any Government, in order to rush through important legislation, would merely have to bring in that legislation in the form of a Bill, and insist that it should be taken chapter for chapter, or, perhaps, as one whole. He decided to object to that sort of thing. The Code proposed to make some important changes in the criminal law, and it would be impossible to subject those alterations to close scrutiny unless they considered the Code clause by clause. He had no desire to block the passage of the Bill, but three or four sittings might reasonably and profitably be devoted to the consideration of such an important measure. He decided objected to a Bill taking such important changes in the whole of the criminal law of the colony being rushed through in one lump, and without adequate discussion.

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Mr. STEWART: The CHAIRMAN: One recommittal will do for the lot.

Mr. HIGGS: How many recommittals are we likely to have?

The ATTORNEY-GENERAL: I have agreed to recommit the Bill if there are any bond fide omissions.

Mr. HIGGS: How many recommittals are we likely to have?

The ATTORNEY-GENERAL: One recommittal will do for the lot.
question came along, the original question could be put at any time until the second question had been decided.

The CHAIRMAN: Yes, in such a case as the one before the Committee. If the schedule is dealt with in the way proposed, I shall afterwards put the question: "That the schedule stand part of the Bill," but in the meantime that question will be in abeyance.

Mr. McDONALD: With all due respect to the Chairman, he thought that was really an extraordinary statement. They could not lose sight of the original question; they might add or omit words, but they could not lose the original question. Whatever amendments might be made in the schedule, there must still be before the Committee the question that schedule 1 stand part of the Bill.

Mr. HARDACRE was surprised at the hon. member for Flinders getting mixed up in that way. The procedure they had followed was perfectly correct. The first proposal was that "schedule 1 stand part of the Bill," and the second proposals were only details as to how amendments might be made in a proposed original question. Whatever amendments might distinctly provide in the Standing Orders that they should take the schedule, whether chapter by chapter, or clause by clause, and it was distinctly provided in the Standing Orders that amendments might be made in a proposed amendment. The contention of the hon. member for Brisbane South was that the Chairman was under those motions, but he (Mr. Hardacre) held that there was no Standing Order which would prevent them ordering their own procedure for their own convenience. Over and over again the Committee when dealing with lengthy clauses had taken them in sections.

Mr. BELL: When was that done?

Mr. HARDACRE: He could not say when, but he had distinctly in his mind that they had separated lengthy clauses for their own convenience. If he remembered rightly, it was done in the case of the Fencing Act of 1894. Every consultative body had an inherent right to order its own procedure with regard to matters within its jurisdiction, and they would also find that their own Standing Orders gave them the right. It was not only the unwritten law, but the written law also. Standing Order 198 said—

All questions arising in Committee of the Whole House should be decided by the votes of the majority of the members present.

The Committee therefore had a right to decide what their procedure should be; and then another Standing Order said that in all cases not specifically provided for recourse should be had to the Standing Rules and Orders of the House of Commons. "May" laid it down distinctly that they could deal with schedules exactly as they could deal with clauses; and he stated with regard to clauses that they could be divided up and the different sections treated as separate clauses. He contended that the Chairman was absolutely correct, and it was incumbent upon any member who disputed his ruling to point out the specific clause of the Standing Orders that was being violated.

The TREASURER (Hon. R. Philip, Townsville) could give three distinct cases where the Committee dealt with Bills in the way now proposed. When the present Standing Orders went through the House, the schedules were put at a time. When the Constitution Bill for North Queensland went through, a number of clauses were taken together; and on the Mining Bill of last year he had split up certain clauses as being the most expeditious way of dealing with them. If they were to go through 700 clauses by clause they would not finish by this time next year. It certainly would facilitate matters if the schedule were divided into chapters. The Bill had been well debated by the judges, and they were unanimously of opinion that it was a good measure. He did not think the House could improve very much on the measure if they sat at it for twelve months.

Mr. McDONALD (Flinders): The hon. member for Leichhardt took exception to the stand he took on the two questions before the Committee.

The CHAIRMAN: I wish to remind the hon. member that the question now before the Committee is that the Chairman's ruling be disagreed to.

Mr. McDONALD: That was what he was coming to. The hon. member in referring to his remarks said that was merely an amendment upon an amendment, thereby admitting that there must be an original question—the same conclusion that he himself had come to. He still contended that the original question was before the Committee, and of the amendment being put as an original motion it should be put as an amendment on the original motion. Standing Order 83 said—

A question having been proposed, may be amended by omitting certain words only, by omitting certain words in order to insert or add other words, or by inserting or adding words.

The fact that the Chairman put the motion from the Chairman's ruling violated the Standing Orders. The Chairman's ruling violated the Standing Orders, and the Chair put the question. That was what he was contending for when the hon. member for Leichhardt practically stated that his statement was ridiculous. The hon. member also said the Committee could make its own rules and regulations. If that was so, he wanted to know what was the use of the Standing Orders? Under such circumstances whatever Government was in power could alter or override all their Standing Orders.

The ATTORNEY-GENERAL: Supposing there is no Standing Order?

Mr. McDONALD: But he contended that there was a Standing Order. The Chairman himself pointed out that his position as Chairman was such when a question was proposed he was compelled to put it to the Committee, and he had put it in the ordinary way "that the schedule do stand part of the Bill." He did not know whether the Chair violated the Standing Orders, and he asked the Chair for an explanation of it. But he failed to understand exactly where they were at present.

Mr. DAWSON asked if the amendments had been seconded?

Mr. LEAHY read Order 153, which says a motion or an amendment made in committee need not be seconded.

Mr. DAWSON: The term "House" was used for convenience, and, if section 84 did not govern Committees, how could hon. members say that section 85 governed the proceedings in committee?

The CHAIRMAN: I would ask the hon. member to keep to the question before the Committee—that is, that the Chairman's ruling be disagreed to. I must ask the hon. member to confine his remarks to that question.

Mr. DAWSON: He was not speaking to the question before the Committee; he was merely asking a question, and he believed that was permissible. Speaking to the motion proposed by the hon. member for Brisbane South, he viewed the matter in the same light as the hon. member for Leichhardt. The Chairman's ruling violated the Standing Orders, and he agreed with the hon. member for Leichhardt that when a member moved that the Chairman's ruling be disagreed
with he should point out the particular Standing Order violated by the ruling, and contended again that no Standing Order said that a schedule shall be taken as one motion, or anything to the effect that it shall not be taken as twenty motions. It was merely a matter for the good sense and wisdom of the Committee, who were the absolute judges of the most convenient procedure. Unless the hon. member for Brisbane South could point out any violation of any Standing Order by the Chairman's ruling, he could not support the motion.

Mr. TURLEY (Brisbane South) understood when the Chairman made a ruling, that there was a finitude of time in which the Committee were to dispose of the Bill, and it had been moved by way of amendment, "That the schedule be taken chapter by chapter," after which there was a further amendment, "That the schedule be considered clause by clause." The amendment, "That the schedule be taken chapter by chapter," was out of order, because it had no connection with the original motion, "That the schedule be the schedule of the Bill," and the Chairman's ruling was challenged. Then it was objected that the procedure was not in accordance with the Standing Orders to adopt that course, and the Chairman's ruling was challenged. Then there was a lull, and somebody moved as an amendment on what he thought was his original motion, "That the schedule stand part of the Bill," because it was not in accordance with the usage of the present day. Then the question arose as to whether there was a motion by him before the Committee, that the schedule stand part of the Bill, or not. If there was a motion by him before the Committee, he offered to withdraw it, and if that could not be allowed he was prepared to let it be amended so that the schedule might be considered chapter by chapter. The question was whether it would not be in accordance with the Standing Orders to adopt that course, and the Chairman's ruling was challenged. Then it was objected that the procedure was not in accordance with the Standing Orders to adopt that course, and the Chairman's ruling was challenged. Then there was a lull, and somebody moved as an amendment on what he thought was his original motion, "That the schedule be taken chapter by chapter," and the hon. member for Brisbane South, after ascertaining the Chairman's ruling, moved that the ruling be disagreed to. Why not allow the difficulty to be solved by the application of a little common sense? Why not regard the Chair in the manner he had indicated?

Mr. HARDACRE (Leichhardt) thought they would have got to a solution of the difficulty, only for the absolutely absurd regularity in the way the Chairman put the question. The original motion was, "That the schedule be the schedule of the Bill," and, it had been moved by way of amendment, "That the schedule be taken chapter by chapter," instead of the schedule being taken as a whole. It had frequently happened that subsections of a Bill had been held over for subsequent discussion, and the same could be done with a schedule. With regard to the Committee having the right to suspend the Standing Orders, Mr. Hardacre said that he was prepared to let it be amended so that the schedule might be considered chapter by chapter.

Mr. LEAHY (Bulolo) The Committee seemed to have got into a tangle, and the best thing they could do was to get out of it as quickly as possible. After listening to the discussion on the point of order he was inclined to agree with the hon. member for Flinders, but he thought they could get out of the difficulty. It seemed to him that there were two motions before the Committee even before the motion of the hon. member for Brisbane South was proposed. The second was not in the nature of an amendment, but more in the nature of a point of order, though it was not put in that particular form. The original question was that the 1st schedule be the 1st schedule of the Bill. Then a point of order arose, and the Chairman expressed his willingness to take the question of the Committee and be guided by it as to whether the schedule should be taken chapter by chapter or clause by clause, or how it should be taken. Of course when the Chairman gave his ruling it would be competent for any member of the Committee to say that he was not satisfied with that ruling, and move that it be disagreed to. If the Chairman would tell the Committee what conclusion he had arrived at after hearing the opinions expressed by hon. members, Mr. Hardacre thought that would get over the difficulty. The second motion was put in order because there could not be two substantive motions before the Committee unless one of them was a motion that the Chairman's ruling be disagreed to. He thought it was time the common sense of the Chamber should assert itself and that they should get on with the business.
was in accordance with the Standing Orders, and such being the case he would support the ruling. Standing Order 256 said—

The Chairman shall put a question on each clause of the Bill—that the clause as read stand part of the Bill.

No. 257 said—

Such question being proposed, amendments may be proposed to the clause—

1. To delete words.
2. To add words in order to add or insert other words instead thereof.
3. To add or insert words.

And such amendments shall be dealt with as in the House itself.

Clause 256 distinctly stated that a clause or schedule proposed to be added in committee should be read by the Chairman, who should then put the question that the clause or schedule stand part of the Bill; and the clause or schedule might thereupon be amended or otherwise dealt with as in every other case. He believed the Standing Orders in this House compared favourably with the Standing Orders in use in any of the Parliaments of Australia, and he hoped members would adhere to them. He believed the business of the House would not be delayed if the Standing Orders were strictly obeyed.

The ATTORNEY-GENERAL: We can make amendments as we go along.

Mr. MCDONALD (Flinders): There was another little point, or, rather, question. That was: "What was to become of the motion if it was carried? Was it going to be embodied in the schedule? Were they going to carry the motion that the Chairman's ruling be disagreed to? Was it going to be embodied in the schedule? Were they going to carry the motion that the Chairman's ruling be disagreed to?"

The ATTORNEY-GENERAL: From the Chairman as to whether it was carried. Was it going to be embodied in the schedule? Were they going to carry the motion that the Chairman's ruling be disagreed to? Was it going to be embodied in the schedule?

Mr. GIVENS: The motion that schedule 1 stand part of the Bill, and that was carried, it would prevent him from moving anything after that.

Mr. DACVSON thought the hon. member for Leichhardt, had been at loggerheads all the evening, he was afraid that they might turn out to be as greatly mistaken again, and he wanted a definite statement of the position from the Chairman, who was the only person in a position to give an authoritative opinion. As the Chairman had ruled that the amendments were moved, the proper course was for the Committee to divide upon the motion of the hon. member for South Brisbane that the Chairman's ruling be disagreed to.

Mr. LEAHY: The Committee to decide what course it would pursue. Seeing all the great authorities, including the hon. member for Leichhardt, had been at loggerheads all the evening, he was afraid that they might turn out to be as greatly mistaken again, and he wanted a definite statement of the position from the Chairman, who was the only person in a position to give an authoritative opinion. As the Chairman had ruled that the amendments were moved, the proper course was for the Committee to divide upon the motion of the hon. member for South Brisbane that the Chairman's ruling be disagreed to.

The TREASURER: But the Attorney-General has withdrawn his amendment.

Mr. GIVENS wanted an explanation on that point before he would withdraw his amendment, because he wanted the schedule discussed clause by clause. It would greatly facilitate business if that course was followed. Seeing all the great authorities, including the hon. member for Leichhardt, had been at loggerheads all the evening, he was afraid that they might turn out to be as greatly mistaken again, and he wanted a definite statement of the position from the Chairman, who was the only person in a position to give an authoritative opinion. As the Chairman had ruled that the amendments were moved, the proper course was for the Committee to divide upon the motion of the hon. member for South Brisbane that the Chairman's ruling be disagreed to.

Mr. LEAHY: The Chairman qualified by saying he would be guided by the opinion of the Committee.

The CHAIRMAN: The hon. member for Bulloo is mistaken in thinking that I have withdrawn my ruling.

Mr. LEAHY: I understood you to say that you would be guided by the opinion of the Committee.

Mr. GIVENS: The only way to get out of the difficulty was to divide upon the motion of the hon. member for South Brisbane. If the Standing Orders did not make provision for such a case, the sooner they took steps to get a definite expression of opinion on the point the quicker they would get on with business.

Mr. DAWSION thought the member for Flinders had pointed out the course which should be adopted—that the Chairman put the motion that schedule 1 stand part of the Bill, to which members would then be able to move "that all the words after that" he omitted, with a view of inserting that chapter 1 of the schedule be chapter 1 of the schedule to the Bill or any other words that they liked. If the motion was carried—"That chapter 1 of the schedule be chapter 1 of the schedule," it would go into the Bill, and then they could proceed to deal with all the other chapters in turn till they came to the end of the schedule. But in order to do that they would have to accept the suggestion of the hon. member for Bulloo, who should withdraw the various motions and amendments as well as the motion that the Chairman's ruling be disagreed with, and come back to the original question.
three hours, and almost everyone in the Committee had come to the conclusion that they had got into a tangle. A very sensible way out of the difficulty had been suggested—that the motion that the Chairman’s ruling be disagreed to be withdrawn, as well as the amendment of the Attorney-General and the amendment of the honorable member for Cairns—and that they should start afresh. He understood that the question then would be—“That schedule 1 be schedule 1 of the Bill.” It would then be quite competent for the Attorney-General to move that the schedule be taken in chapters, or for the honorable member for Cairns to move that it be taken clause by clause. By withdrawing his amendment now he did not forfeit his right to move it at a later stage. When the way was clear again it would be for the Chairman to rule whether it could be taken chapter by chapter or clause by clause. Then any honorable member could move that his ruling be disagreed to.

Mr. McDONALD: That is not the ruling at all.

Mr. DAWSON: He understood the Chairman had decided that the Standing Orders meant that the schedule must be taken as one. He presumed that when he put the question again, he would put the whole 276 clauses as one question. Then it would be competent for any honorable member to question that ruling or amend it.

Mr. BELL: The Chairman’s ruling was that the schedule should be taken not chapter by chapter but seriatim.

Mr. DAWSON: Supposing he did, it was quite competent for any honorable member to move that it be disagreed to. Matters had got very much involved. The present position was that the honorable member for Brisbane South and the Attorney-General were willing to withdraw their motions, and that the only one standing in the way was the honorable member for Cairns.

Mr. McDONALD did not think there was any necessity for the Chairman to give a ruling at all, or if he did it was competent for any honorable member to move that it be disagreed to.

Mr. HIGGS was inclined to support the honorable member for Cairns in his decision to adhere to his amendment. The Chairman had given a ruling that both the motion and the amendment were involved and he had to see what difference it would make in the position if all the motions before the Committee were withdrawn. Most of them had made up their minds, and they might as well at once go to a division on the motion of the honorable member for Brisbane South, and afterwards on that of the honorable member for Cairns. Mr. HARDacre hoped they would not go to a division at all, but that the honorable member for Cairns would withdraw his amendment and let them get back to the original question. They would then get the Chairman’s ruling, upon which any honorable member could move an amendment.

Mr. TURLEY: With the permission of the Committee I will withdraw my motion. Motion withdrawn accordingly.

Question—That the words proposed to be omitted stand part of the question—put.

Mr. McDONALD: What are the words proposed to be omitted?

The CHAIRMAN: The words “chapter by chapter,” with the view of inserting the words “clause by clause.”

Mr. McDONALD said he understood the honorable member for Cairns had withdrawn his amendment, and that that was the reason why the honorable member for Brisbane South had withdrawn his motion.

Mr. GIVENS: The honorable member for Flinders had never had any information from him that he had withdrawn his motion, and until some way could be shown out of the difficulty they were in he did not intend to withdraw it. He distinctly declined to give up what he claimed to be the privilege of discussing the schedule clause by clause, and nobody had shown him how he could reserve that privilege if he withdrew the motion.

Mr. HARDacre: The honorable member would have the same chance of moving it again when they got back to the starting-point. If the Attorney-General or the Chairman could show him any way to get out of the tangle, without any honorable member forfeiting his right to have the schedule discussed clause by clause, he should be only too happy to facilitate the settlement of the question.

The ATTORNEY-GENERAL: The honorable member for Brisbane South had withdrawn his amendment. If the honorable member for Cairns would withdraw his amendment, then he (the Attorney-General) would withdraw his motion, and they would be exactly as they were—nothing would have been done with the schedule. Then he would get up and state that it was his intention to ask that the schedule be taken chapter by chapter, and would ask for the ruling of the Chairman as to whether it was competent for him to do that. If the Chairman ruled that it was not competent for him to deal with the schedule in that way, then it would be competent for any honorable member to move that his ruling be disagreed to. If the Chairman ruled that it was within his competency to take the schedule in that way, then it would be competent for any honorable member to move that his ruling be disagreed to. When they had got a decision on that—assuming the Chairman would withdraw the schedule as he proposed—and a motion on that that his ruling be disagreed to was negatived, then he could take it chapter by chapter, and it would be competent for any honorable member to move that it be taken clause by clause.

An HONOURABLE MEMBER: Let us start afresh.

The ATTORNEY-GENERAL: They could not start afresh if the honorable member for Cairns would not withdraw his amendment; the honorable member was putting a block in the way.

Mr. GIVENS failed to see why he should be spoken to in those menacing tones.

The ATTORNEY-GENERAL: You invited me to show you a way out of the difficulty.

Mr. GIVENS: He had asked for that information very courteously, and he was just getting up to ask the permission of the Committee to withdraw his amendment when the honorable gentleman spoke to him in that dictatorial tone.

The ATTORNEY-GENERAL: I did not intend to be dictatorial.

Mr. GIVENS: He accepted the honorable gentleman’s assurance, and, in deference to the wish of the Committee, and with a view to facilitate business, he asked leave to withdraw his amendment. But he did so on the distinct understanding that he would have an opportunity of moving a similar motion by-and-by, and fighting for the privilege of getting the Code dealt with clause by clause.

The CHAIRMAN: Is it the pleasure of the Committee that the amendment be withdrawn?

Mr. HIGGS: Before that question was answered, would the Attorney-General reply to the honorable member for Cairns, and say whether he would have an opportunity of moving his amendment at a later stage?

Mr. GIVENS: What he wanted from the Attorney-General was an assurance that by withdrawing his amendment he did not forfeit his right to fight for the schedule being dealt with clause by clause.

The ATTORNEY-GENERAL: Hear, hear!
The CHAIRMAN: I think it is just as well that hon. members should clearly understand the position. If the motion and amendment are withdrawn, and I adhere to the ruling I gave in the first instance, we shall have to fall back upon our Standing Orders.

Mr. Leary: Yes; but we shall not have two substantive motions before the Committee.

The CHAIRMAN: I take it that the Attorney-General will move that the schedule be taken chapter by chapter, and that the hon. member for Cairns will then move his amendment, so that most likely we shall be where we were. Is it the pleasure of the Committee that the amendment be withdrawn?

Mr. Higgs: Before that question was answered he thought they might as well know exactly where they were.

The CHAIRMAN: I think we had better get an answer to my question.

Mr. Higgs: He objected to the amendment being withdrawn, because hon. members seemed to be desirous now, not of deciding the question being withdrawn, because hon. members seemed to the withdrawal of the amendment, as members for Cairns will then move his amendment.

The ATTORNEY-GENERAL: I won't do that. I am going to move nothing. I am going to ask whether it is competent for me to propose a certain motion. Then we shall get a decision on the question, and we can agree or disagree to it. If it is decided that I can propose the motion, then I shall move my resolution, and the hon. member for Cairns can move his amendment.

Mr. Higgs: That was just the fault he found with the proposal. Hon. members appeared to be anxious to make the hon. member for Fortitude Valley put a clause, or proposition, without the proposer formally moving it, and the Attorney-General had allowed a practice to spring up of the Chair accepting the amendment of the hon. member for Cairns. He presumed the Chairman was not going to withdraw the ruling he had already given, and, if that was so, then in ten minutes' time they would be in the same position as they were at the present moment.

Mr. Lepsina hoped the hon. member for Fortitude Valley would not object any further to the withdrawal of the amendment, as members on that side would be blinded outside for want of what the House was in the dark with which the Government had endeavoured to ram that Bill down their throats.

Mr. Fisher assured the hon. member for Fortitude Valley that they would not lose their rights if the amendment were withdrawn. He was fighting on the same side as the hon. member, and if he thought there was the slightest chance of losing their privileges he should object to the withdrawal of the amendment. The Attorney-General had stated that he would ask for permission to take the schedule clause by clause —

The ATTORNEY-GENERAL: No; he proposed to ask the Chairman if it was permissible for him to take the schedule chapter by chapter. That would open up the whole question whether they should split it up into chapters or clauses, or whether they must take it in globus. That was the question he wanted to get decided.

Mr. Fisher was glad to hear the remarks of the Attorney-General. The condition the hon. member for Cairns made was that the motion should be withdrawn, and he asked that the schedule should be submitted clause by clause.

The ATTORNEY-GENERAL: No; he only wants his rights preserved.

Mr. Fisher thought if they left the matter to the Chairman's ruling they would be safe.

Mr. Higgs: I decline to withdraw my objection.

Mr. Dawson: Then they might as well proceed to discuss the point raised by the hon. member for Brisbane South, Mr. Turley. There was no object in the hon. member for Brisbane South withdrawing his motion unless the motions moved prior to his were also withdrawn. If he understood matters correctly, the original proposition was that the schedule stand part of the Bill. Then there was an amendment by the Attorney-General.

The CHAIRMAN: The proposition was that the schedule should be considered chapter by chapter.

Mr. Dawson: That was exactly the point. He had pointed out at the time that the proposition put from the Chair was, "That schedule stand part of the Bill," and that had not been withdrawn since. He had also pointed out that when put from the Chair the proposer had actually formally proposed it. Without the original proposition being disposed of, another proposition had come from the proposer, the Attorney-General, "That the schedule be taken chapter by chapter," and they were in that position that they had two motions before them from the same proposer at one time. On top of that the hon. member for Cairns moved an amendment on the second motion of the Attorney-General, while amendment the hon. member for Fortitude Valley, Mr. Higgs, point blank refused to allow him to withdraw. If Mr. Higgs had waived his objection they would have got over the difficulty and been able to start afresh and get through a lot of business in half an hour. But that hon. member was not prepared to do so; for what reason he did not know. What he wanted to know was this: seeing that it was only competent for the Attorney-General to move one motion, and that the amendment of the hon. member for Cairns was on the motion which the Attorney-General was not competent to move, was that amendment in order or not?

The CHAIRMAN: The hon. member is mistaken when he makes the statement that the Attorney-General has moved two motions. He has done so. My duty, according to the Standing Orders, was merely to call the schedules before the Committee. The Attorney-General then moved that "the schedule be considered chapter by chapter." On that there was an amendment moved that "chapter by chapter.

The thing is perfectly in order, and if hon. members will allow it to go to division, it will come out clearly.

Mr. Dawson: Did he understand the Chairman to rule that the Chairman of Committees was the proposer of the motion?

The CHAIRMAN: I bring the schedule before the Committee by mentioning it, and then a motion has been moved by the Attorney-General that the schedule be considered chapter by chapter, and upon that the amendment of the hon. member for Cairns was moved. Then the motion now is "that the words proposed to be omitted stand part of the clause.

Mr. Dawson: Some member of the Committee moved a proposition, and the Chairman's duty was to put it to the Committee. He was not the proposer of that question.

Mr. Anstead: The Attorney-General in this case moved the question.

Mr. Givens: If he did he withdrew it.
Mr. DAWSON: He could not withdraw it. That was exactly what he wanted to point out. For the sake of convenience they had allowed a practice to spring up of not calling upon the member in charge of a Bill to read the clause he proposed. The Chairman did that; he put the question, and it was understood that in so doing he was acting for the mover. That was the present position. When the Chairman moved that "Schedule 1 stand part of the Bill," it meant to hon. members that the Attorney-General had moved that as a formal proposal. Subsequently the Attorney-General moved another and before the Committee by one hon. member—-a state of affairs which he was not competent to put. He wished to know whether that was in order.

The CHAIRMAN: That was exactly what he wanted to point out. For the sake of convenience they had allowed a practice to spring up of not calling upon the member in charge of a Bill to read the clause he proposed. The Chairman did that; he put the question, and it was understood that in so doing he was acting for the mover. That was the present position. When the Chairman moved that "Schedule 1 stand part of the Bill," it meant to hon. members that the Attorney-General had moved that as a formal proposal. Subsequently the Attorney-General moved another and before the Committee by one hon. member—-a state of affairs which he was not competent to put. He wished to know whether that was in order.

The ATTORNEY-GENERAL: Following the Standing Order the Chairman put the question, "that the schedule stand part of the Bill," and it was quite competent for him (the Attorney-General) to move the amendment he had moved—that was, that the schedule be taken chapter by chapter. The hon. member for Cairns moved another amendment—that the schedule be taken clause by clause—and he was quite right in so doing. The Chairman ruled that it was quite competent for the hon. member for Cairns and himself to move these amendments, and the hon. member for South Melbourne moved that the Chairman's ruling be disregarded. If the hon. member for Cairns was not allowed to withdraw his amendment, then he took it that his ruling (the Attorney-General's) was competent. He replied to the objection he was in order, and if any hon. member disputed the Chairman's ruling, they could take a division at once. If they got that foundation to work on, they could go on with all the rest of the business. Mr. McDOUGAL assured him that he had no desire to appear unduly obstinate, but he could not withdraw from the position he had taken up, because, as hon. members had said, there was no Standing Order bearing on the case. He saw considerable danger in any amendment that the schedule be taken chapter by chapter, because at some later stage the Ministry would wish to bring in a Bill in the form of a schedule, and rush it through in the same manner. That he was anxious to avoid, and he was perfectly right in standing by the Chairman's ruling, so he objected to the withdrawal of the amendment of the hon. member for Cairns.

Mr. HARDACRE argued that by allowing the amendment to be withdrawn, hon. members would lose nothing, but would gain in the end, especially as the same amendment could be moved over again, but if they went to a division on the Chairman's ruling, they would lose that right.

The CHAIRMAN: The question is—"That the words proposed to be omitted stand part of the question." Mr. DAWSON (Port Adelaide): If he was not mistaken, he had asked for a ruling as to whether the second motion of the Attorney-General and the amendment of the hon. member for Cairns were in order.

The CHAIRMAN: I have already given my ruling on that. I simply put the schedule before the Committee, naming it as schedule 1 of the Bill. Upon that the Attorney-General moved a motion, and I may say that my action is thoroughly in accordance with the Standing Orders. Upon the original motion the Attorney-General moved a direct motion that the schedule be considered chapter by chapter. I put that motion, which was not an amendment, but a substantive motion. Upon that the hon. member for Cairns moved an amendment, that the words "chapter by chapter" be omitted with the view of inserting "clause by clause." The question now is that the words to be omitted stand part of the question, and if hon. members will vote on it at once, they will find that the whole thing will come out perfectly straight.

Mr. DAWSON: He for one did not think it would come out straight. He rose now, particularly to ask whether the Chairman, as Chairman, was the proposer of the original proposition, that the 1st schedule stand part of the Bill? If the Chairman was not the proposer of the motion who was the proposer? And if there was no proposer was that question before the Committee?

The CHAIRMAN: I am not the proposer of the motion. The Standing Orders provide for that.

Mr. HARDACRE: Clause 296.

Mr. DAWSON: Was it competent for any question to be considered by the Committee if it was not proposed?

The CHAIRMAN: The question is put but not proposed.

Mr. DAWSON: It must be proposed by some member of the Committee. Standing Order No. 296 was an instruction to the Chairman, when he received a proposition from an hon. member it was his bounden duty, as Chairman, to put that question before the Committee. His attention had also been directed to No. 161, which provided that "whenever the question should be observed in Committee as in the House." What was the rule of the House? A member rose in his place and made a proposition, and when that was seconded, the proposition was put from the chair by Mr. Speaker. The only difference between the two was that in Committee it was not necessary to have a seconder.

The CHAIRMAN: It is not necessary to have a proposer.

Mr. DAWSON: Were they to understand that the Chairman, of his own motion, could propose something to the Committee? Under what Standing Order had he the power to do that? Could a solitary instance be quoted from the history of parliamentary procedure in any of the British dominions? Mr. Hardacre had been the proposer of the question to be taken into consideration by the Committee. He did not think so, and he intended to force the matter to a division.

The PREMIER: The hon. gentleman seemed to be oblivious of the fact that since 1892 there had been fresh Standing Orders. He sympathised with all the hon. gentleman said referring to the time before 1892 when it was customary for the mover of a Bill to rise at every clause and propose that clause so-and-so stand part of the Bill; but it had been wholly altered since 1892, and now it devolved upon the Chairman to call out the clause with the marginal note and put it to the Committee without the proposer of the Bill interfering in any way unless he had occasion to introduce an amendment or call attention to some particular feature of the Bill. And that, of course, applied to the schedules as well. Standing Order 296 expressly said—The Chairman shall put a question on each clause of the Bill, "That the clause, as read, stand part of the Bill."

And the mover of the Bill took no part whatever unless he had to defend the clause or explain its
provisions. This was further proved by May's Parliamentary practice, where it was laid down—

The Chairman proceeds to read the number of each clause, which is then brought under the consideration of the Committee, and to call on the members who have given notice of amendments.

Then it says—

If no amendment be offered to any part of a clause, the Chairman at once puts the question, "That this clause stand part of the BILL."

So it was a misconception that the same practice existed now as existed in former years. Therefore, the Chairman was perfectly right in saying that he submitted a clause or schedule to the Committee without any action of the member or hon. member in charge of the Bill.

Mr. Dawson pointed out that the practice the Premier had referred to was not discontinued in 1892. It was discontinued for the first time in 1894. What he had pointed out was that the practice had been allowed to grow up, for the sake of convenience and saving time, for the Chairman not to insist on the proposer formally moving his proposition, but for the Chairman to put the question.

Mr. Givens (Cairns) rose to a point of order. He took it that the Chairman had already ruled that the motion and amendment were in order, and that it was competent for any member who disputed his ruling to move a definite motion to that effect; but all the members who had spoken for a considerable time had not been discussing either the motion or the amendment. His point of order was that hon. members, in order to put themselves in order, should have questioned the Chairman's ruling by a definite motion.

Mr. Dawson was surprised at the hon. member for Cairns offering any objection to him replying to the charge

The Chairman: I do not think the hon. member for Charters Towers is quite in order in following this line of discussion. The question is—That the words proposed to be omitted stand part of the question.

Mr. Dawson: Was the question before the Committee exactly the same as when the Premier rose to address the House? He did not know that there had been any alteration, and he should like to know why he should be called to order and the Premier not.

The Premier: I was replying to you.

Mr. Dawson: And I was replying to the Premier.

The Chairman: The hon. member for Cairns having risen to a point of order, I had to take it up.

Mr. Dawson: The House had never departed from the strict Standing Order that there must be a proposer to a resolution.

The Chairman: I call the hon. member to order. He is not discussing the question before the Committee.

Mr. Dawson: Why did the Chairman not call the Premier to order?

The Chairman: My attention has been called to it on a point of order, and I rule that the hon. member is out of order in following the line of discussion he is doing.

Mr. Dawson: He should like to point out that the Chairman's attention was not called to the Premier being out of order.

The Premier: If I transgressed I should be called to order.

Mr. Dawson: The hon. gentleman happens to be a respectable gentleman, and it was not necessary to call him to order; but an ordinary Labour ragamuffin could be called to order at any time. He was entirely against the proposal before the Committee, and was very sorry that a number of hon. members had got somewhat worn out and worn and refolded to their bodies, because he should have liked to have had a full vote.

They might be establishing a precedent which was very dangerous, and more particularly to those who happened to be in the minority in this Chamber.

Mr. Fisher recollected when the alteration in regard to putting the question [11 p.m.] had been made. The hon. member for Maryborough was then in the Chair, and he (Mr. Fisher) called his attention to the innovation, and the answer the Chairman made—he could not find it in Hansard—

The Chairman: I must call the hon. member's attention to the question before the Committee. "That the words proposed to be omitted stand part of the question."

Mr. Fisher: The then Chairman had stated that though the practice was not in accordance with their Standing Orders, it was in accordance with practice of the House of Commons.

Mr. Turley: Some time ago he had obtained the permission of the Committee to withdraw his motion that the Chairman's ruling be disagreed to, but he knew of nothing to prevent his moving that motion again. As the Chairman had said that the Committee should take the responsibility of saying whether they would abide by the Standing Orders, he did not, and he therefore moved that the Chairman's ruling be disagreed to.

The Chairman: I cannot put that question as other business has intervened since my ruling was given. I therefore decline to put the motion.

Mr. McDonald asked the ruling of the Chairman as to whether the two motions before the Committee were in order. They would have no quibbling about it now. They had got into a hole, and they would have to get out of it the best way they could.

The Chairman: The question is: "That the words proposed to be omitted stand part of the question."

Mr. McDonald asked for a distinct ruling, and that was the first time since he had been a member of the House that the Chairman had been so discourteous that he was not prepared to give a ruling.

Honourable Members: Order!

Mr. McDonald: There were two distinct questions before the Committee. No House of Assembly could have two questions before it at one time, and if the Chairman did not understand his duties he was not fit for the position.

The Chairman: Order! I have ruled on this question three or four times during the evening, and I decline to repeat my ruling.

Mr. Turley: There was nothing in the Standing Orders which said that the Chairman could simply brush aside a motion that his ruling be disagreed to, and he now moved, if he was in order, that the Chairman's ruling be disagreed to.

The Attorney-General wished that, under the circumstances, the Chairman would give an answer to the hon. member for Flinders. The hon. member for Brisbane South had withdrawn his motion that the Chairman's ruling be disagreed to on the understanding that the amendment he had moved and the amendment moved by the hon. member for Cairns would both be withdrawn, and that they would begin de novo. He should be very sorry if the hon. member was deprived of his right by the refusal of the hon. member for Fortitude Valley to allow the withdrawal of the amendment of the hon. member for Cairns. If the Chairman would answer the hon. member for Flinders, the hon. member for Brisbane South could then move his motion.

Mr. Hardacre: If the Attorney-General would consent to move that the schedule be taken clause by clause, he believed everybody
Mr. HARDACRE: They were only refusing to withdraw their amendments because they were afraid they would not have the right to discuss particular clauses.

Mr. FISHER, assured the Attorney-General that he never expressed any intention of discussing every clause, but he would be very glad to get the assent of the hon. gentleman in elucidating some of the clauses. If the hon. gentleman only acceded to their request, the Bill would go through in a very short time.

Mr. TURLAY: I have moved a motion, but it has not yet been put from the Chair.

Mr. McDONALD: The ATTORNEY-GENERAL: But an hon. member said that he wanted to discuss every clause. He said that he wanted to discuss every clause, but he would be very glad to get the assent of the hon. gentleman in discussing every clause, but he would be very glad to get the assistance of the hon. gentleman in elucidating some of the clauses. If the hon. gentleman only acceded to their request, the Bill would go through in a very short time.

Mr. TURLAY: Then I shall move that your ruling be disagreed to.

Mr. McDONALD: The ATTORNEY-GENERAL wanted a distinct ruling as to the point he had raised—namely, was it in order to have two questions before the Committee at the same time?

The CHAIRMAN: I have all the evening noted that there were not two questions before the Committee. I put the question that the schedule stand part of the Bill. That was not a motion proposed by me; it is merely the motion of the Committee. I put the motion that the Attorney-General to move the motion that he has done, and for the Committee to discuss it and take a vote.

The CHAIRMAN: Then I shall move that your ruling be disagreed to.

Mr. McDONALD: The ATTORNEY-GENERAL: The hon. member did not move the motion immediately after the ruling was given. The hon. Gentleman has been at discussion since, and I do not think that it is competent for him to move it after this lapse of time. However, I do not wish to prevent the hon. member taking up the same position that he was in before, and I again suggest that it is competent for the Attorney-General to move the motion that he has done, and for the Committee to discuss it and take a vote.

Mr. TURLAY: The motion he has moved had been put from the Chair, and he would like to know whether it had been accepted as a motion.

The CHAIRMAN: What motion is that?

Mr. TURLAY: That your ruling be disagreed to.

The CHAIRMAN: Which ruling?

Mr. TURLAY: The ruling that the amendment, and the amendment on the question.

The CHAIRMAN: I have not given a ruling that the Attorney-General's motion is an amendment on the question.

The ATTORNEY-GENERAL: The hon. member challenges your ruling as to whether either the motion or the amendment is in order.

The CHAIRMAN: I have ruled that it is competent for the Committee to deal with both the motion and amendment.

The ATTORNEY-GENERAL: Themotion that he has done, and for the Committee to discuss it and take a vote.

Mr. TURLAY: Then I move that your ruling be disagreed to.

Mr. HARDACRE agreed with the hon. member for Flanders that there were two distinct and separate questions before the Committee, but contended that there should be, and that the motion of the Attorney-General, though framed in such a way as to make it a distinct substantive motion, was really an amendment on the question put by the Chairman that schedule stand part of the Bill. He should be compelled to vote against the Chairman's ruling, because he thought there were two distinct questions before the Committee.

Mr. McDONALD: The TREASURER: They had spent about four hours to-night in useless discussion. What they wanted to find out was how the schedule should be put—whether in one question, or chapter by chapter, or clause by clause. He thought it would have been better if that matter had been decided before the Chairman put the question that schedule stand part of the Bill, but he was of opinion that it was still competent for the Committee to discuss the question, and establish a precedent. The only way to do that was first to take a vote on the motion of the hon. member for Brisbane South, and find out what was the will of the Committee.

Mr. KIDSTON: (Rockhampton) thought they should clearly understand what they were doing if they voted for or against the motion of the hon. member for Brisbane South. If they supported the motion that the present ruling of the Chairman be disagreed to, then they should be assenting to the Attorney-General could not move the motion [11.30 p.m.] he had submitted to the Committee.

They would then have to take the schedule en bloc. So that the question now before them really settled the whole matter before the Committee, and it was just as well for members to understand that clearly.

Mr.麦克丁·唐纳德: They would have to point out that although they would then have to take the schedule as a whole, it did not prevent them debating every line and word of it.

The ATTORNEY-GENERAL: No one ever suggested otherwise.

Mr. TURLAY: He only wanted to show that course could have been followed from the first. He would not like the Committee to
be under the impression that if the Chairman's ruling was disagreed with it would prevent anybody from discussing the schedule in detail. They would simply be in the same position as if they had accepted the original motion.

HONOURABLE MEMBERS: We understand that.

Mr. McDonnell: There were a number of young members who might not understand it, and he therefore wished to make it clear. He took that opportunity of saying that he should on the first available occasion when the Speaker was in the chair, move a motion similar to that which had been moved in Committee, in order to force the House to give an expression of opinion upon whether two questions could be before the House at one time.

Mr. Leahy: (Woolo): Before he cast his vote he would like to know the question was exactly the same as when the hon. member for Brisbane South put it. He agreed that the Chairman's ruling be disagreed to. If the motion proposed by the Attorney-General was in the shape of a distinct proposition he should vote for the amendment of the hon. member for Brisbane South, but if it was in the shape of an amendment he would vote against it. In giving his vote he would be guided by what the Chairman said.

The Chairman: I think it is hardly necessary for me to state again what I have said so often—that I consider the motion of the Attorney-General a distinct proposition.

Mr. McDonnell: There are two motions before us at the same time.

The Chairman: I do not admit that. I hold that the calling on of the schedule and putting the question that it stand part of the Bill is not a substantive motion. The question now is that the Chairman's ruling be disagreed to.

Question put; and the Committee divided:—

AYES 14.


NOES 26.


Resolved in the negative.

Question stated—that the words proposed to be omitted stand part of the question.

The Attorney-General: The committee, and if one of these amendments was carried what was the House going to do with it?

Question—that the words proposed to be omitted stand part of the question—put and negative.

Question—that the schedule be considered clause by clause—put and passed.

Mr. McDonnell asked what was the question before the House?

The Chairman: The question is that clause 1 of the schedule stand part of the Bill.

Mr. McDonnell: In order to state that the question—that schedule 1 be carried what was the House going to do with it?

The Attorney-General: It could have been taken clause by clause—put and passed.

Mr. DAWSON: It could, if the Standing Orders made provision for an appeal to the Speaker. The debate to-night had taught them that there should be, under the Standing Orders, the right to appeal to Mr. Speaker, who could settle the question in about five minutes. If the Attorney-General wanted to get his Bill through it would be just as well for him to consider members on both sides, and indicate how far he was prepared to go with the Bill to-night.

The Attorney-General: I am prepared to do a reasonable amount of work.

Mr. DAWSON: Would the hon. gentleman indicate to the Committee the number of clauses he wanted to get through?

The Attorney-General: He regretted having to introduce personal matters, but he had received a telegram within the last two hours informing him of the probable death, very shortly, of his aged father. He might have to go to Sydney within the next few days, and he would like to be able to put the Bill forward to some reasonable extent.

Mr. DAWSON: What do you call "a reasonable extent"?

The Attorney-General: They ought not to talk about adjourning until they had got through 100 clauses at least.

Mr. McDonnell (Charters Towers): pointed out that clause 18 of the schedule was the one on which
Mr. DUNSFORD (Charteris Towrie) also thought it would be advisable to adjourn after clause 17. The 18th clause related to the kinds of punishments that might be inflicted, and a number of hon. members complained of imprisonment in irons, solitary confinement, whipping, and the death penalty. Though he had marked seventy clauses which he would like to see amended, he would be willing to go on the broad principle and see whether the Committee agreed to the forms of punishment enumerated in clause 18 or not. He would like to see a good attendance of members when those punishments were taken into consideration.

The ATTORNEY-GENERAL said the hon. member might do that; but what [12 p.m.] guarantee was there as to what other members would do? The hon. member could not bind hon. members on either side of the House.

Clause 1 of the schedule put and passed.

Clauses 2 to 17 of the schedule, inclusive, put and passed.

On clause 18 of the schedule—"Kinds of punishment."—Mr. LESINA moved the omission of the word "death," in line 33. He had on the second reading fully explained his reasons for moving this amendment.

The ATTORNEY-GENERAL could not accept the amendment. No doubt there was a tendency on the part of civilized men of fine notions to inflict the death penalty only in extreme cases; but the Government had gone as far as it could in the direction of reducing the number of cases in which the death penalty was imposed. The case of treason was one, but it was very seldom indeed that a man was executed for that crime. At the same time, it was a very salutary provision to retain because it was a stain on the Code. He agreed to the forms of punishment enumerated in clause 18.

The 18th clause related to the kinds of punishments which he would like to see amended, he would be willing to go on the broad principle and see whether the Committee agreed to the forms of punishment enumerated in clause 18 or not. There were very few cases in which it was inflicted, but the Attorney-General had been a member of a Government the head of which had refused to allow the iron to be taken off one of the "Hopeful" prisoners named Schofield, even when he was dying. Since then some strike prisoners who had been arrested at Augusthella had been put in irons before they were tried, and had suffered fearful torture, and it was not the desire of anyone that criminals should suffer unnecessary torture. The day had gone by when prisoners were actually tortured.

The SECRETARY FOR PUBLIC LANDS entirely agreed with what had been said about torturing prisoners, but he was not quite clear as to what was meant by "imprisonment in irons." He supposed it meant fettering them in some way. Would it be possible to secure violent prisoners in any other way? If a really dangerous prisoner might not be put in irons it would be necessary to immure him in some place where he could not breathe the air of heaven. He wanted some light on the question as to under what circumstances iron were used. If it was simply for the purpose of torture, he would prefer to see the punishment struck out.

Mr. DUNSFORD: The hon. gentleman would turn to clause 654 he would see the class of crimes for which punishment in irons might be inflicted, and that it was open to a judge to order a man to be kept in irons for the first three years of his term of imprisonment. But as hardly any of the offences mentioned in that clause would justify a judge in inflicting such a punishment, it would be just as well to wipe it out. As it stood it was a stain on the Code.

Mr. HABRIDGE: The question was not one of restraining violent prisoners, but infliction in irons in a matter of punishment.

Question.—That the words proposed to be omitted stand part of the clause—put and negatived.

Mr. GIVENS moved that the words "solitary confinement," in line 65, be omitted. There was no more dangerous form of torture for any prisoner, not even excepting irons or whipping or death, or more calculated to produce a sense of insecurity than this. And it was often inflicted, without a fair trial, for breaches of discipline inside the prison walls. It was much more likely to brutalise criminals than to reform them.

The ATTORNEY-GENERAL: He could not accept the amendment. Solitary confinement did not mean putting a man in a black hole. It was only applied to refractory prisoners of the worst type, who were utterly unmanageable to discipline. It really meant putting a man into a cell by himself, and was limited to one month at any one time. There were some criminals who might be housed the [12.30 a.m.] worse for having a term of isolation from their fellows, and time for reflection on the error of their ways, and he did not think that form of punishment would brutalise them.

Mr. GIVENS knew by unfortunate experience what solitary confinement meant, for he had been in gaol, and though he was not sentenced to solitary confinement, he suffered that punishment
for two months, being only allowed out for one hour each morning to walk round the prison yard, without speaking to any of his fellow prisoners. A prisoner undergoing that sentence could not read, because he was required to pick oakum, and was given only one book a week, which he had to put outside the door of his cell every morning in front of the warder. But there was a still more brutal form of solitary confinement, in which the prisoner was not allowed out at all or to see the light of day. Society would be the loser by perpetuating such a system of punishment, because instead of tending to reform criminals, it tended to nurse in them the bitterest and most hateful feelings.

Mr. W. Hamilton Gregory had also had a little experience in gaol, and he was not ashamed of the solution of the case which he had suffered. Solitary confinement in Queensland meant that a man was locked up, and never saw the light of day or any human being except the warder who brought him 1 lb. of bread and one quart of water every twenty-four hours. The punishment of solitary confinement was bad enough, but why a man by starving him? When a prisoner was under separate treatment he got half of what was called "No. 1"—namely, half of 3 oz. of meat three times a week. He quite agreed that solitary confinement was a brutal and degrading form of punishment, and a disgrace to civilisation at this the end of the 19th century.

The Attorney-General: Hon. members were confusing solitary confinement under the Code with solitary confinement for breach of prison discipline. The latter could at any time be remedied by Parliament, and it certainly was not essential that solitary confinement should be accompanied by half-starving a man or shutting out the light of day. With that feature of it he did not agree, and must be of a very brutal and violent type to merit it. He would point out that a man upon whom solitary confinement could be inflicted was one who was sentenced to imprisonment for a term not exceeding two years.

Mr. Dawson: The punishment which a man by starving him? When a prisoner was subjected to the living torture of solitary confinement. That was a system which should not be permitted in a colony like this. What was the use of members being sent to Parliament to pass laws for offences against property and the person, if they had not the power to influence the regulations under which sentences imposed

The Attorney-General: The Attorney-General was misleading the Committee when he said that solitary confinement only inflicted where the term of imprisonment was under two years.

The Attorney-General: I admit that there are exceptions.

Mr. Dawson: There were thirty-eight crimes where life and solitary confinement were combined, and there were sixteen clauses containing thirty-four crimes for which flogging and solitary confinement could be inflicted. The clause before them only covered cases not otherwise expressly provided for.

Mr. Dawson regretted that the Attorney-General could not see his way to accept the amendment. That if under separate treatment he got half of what was called "No. 1"—namely, half of 3 oz. of meat three times a week. He quite agreed that solitary confinement was a brutal and degrading form of punishment, and a disgrace to civilisation at this the end of the 19th century.
in the police courts were carried out. To his mind, the prison regulations were more important than the statutes. The judges should be deprived of the power of adding to penal servitude the additional torture and piti-leaguer horror of solitary confinement. He trusted the good sense of the Committee would permit this amendment to be carried.

Mr. ANNEAR: The hon. member for Charters Towers had made a charge against a justice of the peace who resided at Charters Towers—Mr. Casey—by saying that it had been proved in court that he had been the means of the hon. member for Cairns being discharged from a certain mine. He (Mr. Anear) was present in the court during the hearing of the trial, and he heard Mr. Casey swear that he had never induced the manager of any mine or anyone else to do anything of the kind. Mr. Casey was a gentle-
man of seventy years of age and weighed 8 stone, whereas the hon. member for Cairns was a young man weighing 13 stone. The hon. member had no reason to be proud of his conduct towards a worthy citizen like Mr. Casey.

Mr. GIVENS (Cairns) had no wish to import personalities into the discussion, and it had been argued for the hon. member for Maryborough to do so. He wished to say that not only was it proved fully in the court from the evidence of Mr. Casey himself that he had been discharged from the mine, in which he had been a share-holder for years, at the instigation of Mr. Casey, but it was also proved by the evidence of Mr. Plant, the chairman of directors. It was also proved that Mr. Casey had objectcd to him as an agitator, but, although an Irishman himself, he had objected to the manager having too many Irishmen working in the claim. That was the sort of renegade who was held up by the hon. member for Maryborough as a worthy citizen. As to the insinuation that he had means to do Mr. Casey grievous bodily harm on account of his youth and strength, if he had interfered with anything of the kind he would not have used a horseshoe.

Mr. LEISNA contended that solitary confine-
ment was an insanity-producing system, which tended to make men nurse feelings of revenge against society; and that being so, it would be much better for it to be done away with altogether. There were still left any provision out of the Code that power would still be left. He would ask the hon. gentleman whether he could not do so, because the object of prison discipline should be to punish for crime, and not to inflict torture; and solitary confinement was simply torture. Moreover, a prisoner sentenced to imprisonment with hard labour really suffered solitary confinement as severe as anyone could desire, for under the prison law he was kept in his cell for twenty-three hours out of the twenty-four. He would not argue the question any further, but would press it to a division.

Mr. J. HAMILTON (Rockhampton) thought the expert information they had received was as much punishment as would serve any good purpose. There was still some confusion in the minds of some hon. members in regard to solitary confinement and separate treatment, which appeared to be quite distinct. Mr. Townley, who was generally considered a humane man, stated in one of his annual reports that he was strongly in favour of strict separation of offenders between the ages of twenty-one and twenty-five, and that the results elsewhere had proved very satisfactory.

Mr. KIDSTON (Rockhampton): It was true that some criminals were already debased; but the question was whether continued severe solitary confinement made them better or worse. Prison discipline provided for a death sentence; but that was a matter which was not dealt with by the Criminal Code, and it was surely the Attorney-General would admit that the power of imprisoning a cell alone for twenty-three hours out of the twenty-four for a whole month at a time was as much punishment as would serve any good purpose! Even if they struck the objectionable provision out of the Code that power would still be left.

Mr. HARDACRE (Leichhardt): Hon. members should recognise the very generous way in which the Attorney-General had met them, but he would ask the hon. gentleman whether he could not see his way to drop solitary confinement altogether. There were still left any
number of severe punishments, and solitary confinement was so rarely inflicted that it did not appeal to the imagination in preventing offences.

Mr. STEWART (Rockhampton North): The conclusion he had arrived at after listening to the debate was that they were not fit to sit in judgment upon the Code, for, with few exceptions, they did not know what solitary confinement was. The Attorney-General knew nothing about prison discipline, and it would have been a good thing if each member of the House had had the same experience as the one, member for Cairns, they could all speak from experience on this subject. So far as they could judge by the experience of centuries the effect of solitary confinement was so rarely inflicted that it did not really do what they were doing. If they were voting for solitary confinement as defined in the Century Dictionary, he could not vote for it, whatever compromise was made.

Mr. GIVENS, as the mover of the amendment, argued that under certain circumstances no punishment was more natural or more fitting than solitary confinement in the case of persons who persisted in quarrelling with society. The ATTORNEY-GENERAL said that as the hon. member for Cairns had [230 a.m.] been willing to bring the debate to a close three-quarters of an hour ago, he hoped, now that the matter had been fairly threshed out, they would go to a division.

Mr. HAMILTON entered his protest against the amendment; he thought that there was something radically wrong about the present system, and as doctors experimented with their patients who persisted in quarrelling with society, they all desired the passage of the Bill. The ATTORNEY-GENERAL: He did not feel inclined to move the Chairman out of the chair until the clause under discussion had been disposed of.

Mr. DAWSOII: He was entirely in accord with the amendment; but if he could be shown a single instance where the use of the lash had proved a deterrent from crime he might be induced to change his opinion.

Mr. ANNEAR: The hon. member was very inconsistent. Not two hours ago he had applauded and justified the flogging of an old man by a young man in a public street, and now he expressed himself as being strongly opposed to flogging as a punishment for serious crime.

Mr. DAWSON: He had never justified the flogging of an old man by a young man. He had pointed out why the hon. member for Cairns found a lodging in the Rockhampton Creek Gaol for two months, but he had never attempted any justification of the attack on the old man. He would point out to the Attorney-General that if the Criminal Code retained the power by which a judge could order a whipping it would necessarily empower the gaol officials to give prisoners a whipping without trial.

Mr. J. HAMILTON agreed that gaol officials should not be allowed to sentence anyone to the punishment of flogging for offences committed in gaol; but for certain offences against women it certainly ought not to be abolished.

Mr. LESINA pointed out that in Switzerland capital punishment and flogging, and yet the Swiss were the most law-abiding people in Europe. No hon. member could say conscientiously that hanging and flogging were deterrents against crime, and he trusted that the Committee would think twice before including whipping in this clause.

Mr. KIDSTON (Rockhampton) argued that the real deterrent to crime was not the [4:30 a.m.] severity of punishment, but the certainty of detection and punishment. Why could not this country do without flogging as other countries, where crime was no greater than it was here, had done? He urged that they should adjourn, as the Committee was not in a proper state to properly discuss such an important matter.

Mr. GIVENS (Gympie) contended that it was time to adjourn, as members felt very strongly on the matter. They all desired the passage of the Bill; but he objected to flogging, as it was merely a class punishment. Solitary confinement was not so physically brutalising as [5 a.m.] flogging, and the records showed that when the punishments were more barbarous crimes were not so prevalent.

Mr. RYLAND (Gympie) also appealed for an adjournment, considering the hour and the state
of the Committee. He did not believe in the lash, as it brutalised human beings, and should be abolished. It was not generally used on the cultured villain, but was reserved for the poorer classes.

Mr. W. HAMILTON (Gregory) argued that flogging should be abolished here, as it had been done away with in the English navy, as it was absolutely inhuman and brutalising.

[5.30 a.m.] He described a flogging at St. Helena, and said that he was not fit for any human being to witness.

Mr. FISHER (Olympia) said it was high time there was some investigation into the flogging operations in prisons in this colony, especially at St. Helena, and he entered his protest against the inclusion of whipping in the clause.

At 5.35 a.m. Mr. GRIMES resumed the chair.

Mr. LESINA (Clarence) again contended that flogging should be altogether eliminated from the Bill. He affirmed that no arguments had been used to justify flogging any more than burning or boiling, as was inflicted a few centuries ago.

Mr. KIDSTON again urged that, considering the importance of the question, the clause be postponed, and that the Attorney-General should not try and force it through at that hour.

Mr. STORY (Balonne): No man had a greater horror of flogging than himself, but it had been the means of doing away with certain offences, to a great extent, in many countries. The sufferings of criminals had been talked a great deal about, but nothing had been said about the sufferings of the unfortunate victims.

Mr. HARDACRE (Leichhardt) admitted that in some cases offenders deserved flogging. He thought the proposition of the hon. member for Rockhampton a reasonable one, and he advised the Attorney-General to accept it.

Mr. STEPHENSON (Epworth) pointed out that, although prominent members of the Labour party had assured the Attorney-General that if he consented to take the schedule clause by clause and not in blocks, they would render him every help to proceed rapidly with the Bill, immediately the Minister gave way to them, they turned against him by discussing two or three lines for six or seven hours. He agreed with the hon. member for Flinders that while nothing had been said about the sufferings of the victims of serious crimes, the sufferings of the criminals had been dilated on at great length.

Mr. DUNSFORD quoted from an article in the Westminster Review for 1880 to show that flogging, in spite of its being punishable by flogging, was on the increase in Great Britain.

Mr. HARDACRE urged that the debate should be adjourned, and the clause be abolished, and denied that the Bill should be abolished, and denied that:

[6.30 a.m.] division taken in a full Committee.

Mr. KERR said he felt so strongly on the subject that he was prepared, with others who were known to him, to remain there if they had to remain all day.

The HOMt SECRETARY said every hon. member had made up his mind how he was going to vote on the question, and to ask that the debate be continued in order that the Government supporters might be convinced by the arguments on the other side be perfect rubbish. Nor did he suppose anything that might be said on the Government side would alter the opinion of any hon. member opposite.

The SECRETARY FOR PUBLIC LANDS urged that it was necessary to retain the use of the lash for certain offences against women and children, and said that to men degraded enough to commit such outrages ordinary imprisonment had no terror.

Mr. GIVENS restated his arguments why the lash should be abolished, and denied that the lash had a deterrent effect over with regard to garroting and outrages on young children.

Mr. KIDSTON protested against being kept there until that unreasonable hour of the morning by reason of Ministers stonewalling their own Bill. He contended that no justification had been shown from the Attorney-General attempting to maintain the position that these barbarous punishments acted as deterrents.

At 8 a.m. the Chairman vacated the chair, and resumed it at 9:30.

Question stated.

The PREMIER (Hon. J. R. Dickson, Balmain) said that it was now incumbent on the leader of the Opposition to make some progress with the Bill, so as to make up for lost time.

The CHAIRMAN: Although the Premier's remarks are not in accordance with the Standing Orders, I have not interrupted the hon. gentleman, because I regarded his statement as a Ministerial one in order to get over a difficulty. I shall allow the leader of the Opposition to reply, but I trust hon. members will not pursue the matter further.

Mr. McDIarmid (Flinders) maintained that neither the Premier nor the leader of the Opposition had any more privilege than any other member of the Committee. He thought the Chairman should have been asked to rule the Premier out of order. If the Premier was out of order, the Chairman should call any one of them to order. The licence the Premier had given was unjust, unkind, and not at all generous. He absolutely denied the statement that he had exhibited any want of judgment, or that there had been insubordination in the ranks of his party. It was not the members of his party who kept the Committee up so late.

Members on the Government side: Oh, oh!

Mr. DAWSON (Charters Towers): The statement the Chairman had made had saved him a lot of trouble. In the early part of the proceedings he was not allowed to reply to the Premier, notwithstanding the fact that he, Mr. Dawson, was the leader of that side of the House. The Premier had no more authority than any other member of the Committee. If either the Premier or himself, or any other member of the Committee was out of order, the Chairman should call any one of them to order. The licence the Premier had given was unjust, unkind, and not at all generous. He absolutely denied the statement that he had exhibited any want of judgment, or that there had been insubordination in the ranks of his party. It was not the members of his party who kept the Committee up so late.
took place then it would not express the
feeling of the House on the question.
Clause 18 was one of the most important in the
Bill, and as the hon. gentleman had refused to
adjourn when they reached that stage, they were
sitting now. There was no question of deliberate
obstruction, but hon. members on his side of the
House were entirely opposed to this clause 18
as it stood. He absolutely denied the statement of
the Premier that they had obstructed. He
wished it to be thoroughly understood that the
debate had been a legitimate one all through,
and the reason why it had been protracted was
owing to the stubbornness of the Attorney-
General in not postponing clause 18.
Mr. KIDSTON quite understood the question.

The CHAIRMAN: I must now insist on hon.
members speaking to the question.
Mr. KIDSTON: This was most unfair. The
Premier was allowed to make a charge, and hon.
members were not allowed to reply.

The CHAIRMAN: I again call the attention of
the hon. member to the fact that he is digressing from the
question.

Mr. KIDSTON: Those who opposed flogging
did so because they believed it was opposed to the
best interests of society, and they desired the
House to vote on the question in a collected
frame of mind, and when there was a good attend-
ance present.

The CHAIRMAN: I again ask the hon. mem-
ber to confine himself to the question.
Mr. KIDSTON quite understood the question,
desired to come to it. When he showed the
Attorney-General that there was no desire to
postpone clause 18, it became perfectly clear that
there was no desire to obstruct generally, was that not a reasonable
thing to point to? He thought it grossly unfair to make the accostation that had been made.

Mr. BROWNE argued that flogging was a
disgrace to humanity and Christianity. There
was no doubt that the lash had a
[10 a.m.] most brutalising effect both upon
the sufferer and spectator, and its application in years gone by for trivial offences
in the navy was a shocking disgrace. He did not believe a man who had suffered the lash was ever
the same man again, and the men who admin-
istered the lash were, as a rule, greater criminals than those who suffered the punishment.

Mr. FORSYTH contended that whipping was
too good for some crimes. Suppose some brute
ravished the sixteen-year-old daughter of some
member and ruined her for life, was any punish-
ment too severe for such a brutalised wretch?
He thoroughly approved of the abolition
of the death penalties. It was illegitimate and unfair to appeal to sen-
Sibility to retain the lash for offences
which it was intended that the lash should be retained in cases
of wounding with intent to maim, or child-
stealing, or the technical offence of robbery with
violence, arson, and so on. There was no doubt
that in those more serious cases whipping had a
deterrent effect.

Mr. GIVENS objected to the use of the lash in any case, and, according to the Code, it could be applied not only to hardened criminals but
to first offenders, who were generally comparatively
young people who, if they were not criminals at the
time, would, after having undergone the
degradation, tend to become so. If the hon.
gentleman could show him one case in which an
offender who was highly connected and had in-
fluential friends had been punished with the lash he would cease his opposition at once. It seemed
to be entirely reserved for those in the lower
crimes of life, and had a most degrading effect.

The SECRETARY FOR PUBLIC LANDS:
No one could possibly feel anything
[10 a.m.] but horror at the spectacle of
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the sufferer and spectator, and its application in years gone by for trivial offences
in the navy was a shocking disgrace. He did not believe a man who had suffered the lash was ever
the same man again, and the men who admin-
istered the lash were, as a rule, greater criminals than those who suffered the punishment.

Mr. STEWART: He was pleading
for flogging in such cases, but for such cases as
attempted arson and child stealing. In the case
mentioned by the hon. member for Carpentaria,
he would punish the offender by castration.
If the most atrocious crime mentioned by the hon.
member could be punished without whipping, why should any offence be punished in that way?

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that in those more serious cases whipping had a
deterrent effect.

Mr. STEWART: He would not pursue that
line of argument any further.
I again ask the attention of the hon. member to
the fact that he is digressing. The Attorney-General clung

The CHAIRMAN: I again, for the third
time, call the attention of the hon. member to
his digression, and call upon him to desist.

Mr. STEWART: He would not pursue that
line of argument any further.
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Criminal Code Bill. [28 September.] Criminal Code Bill. 203

but flogging was brutal and barbarous. And there should be some definition of the kind of instrument of torture to be used.

The ATTORNEY-GENERAL: Clause 656 provides that the court was required to give directions as to the kind of whip to be used. He had no objection to define the word "whip"; but he could not agree to an amendment that would make whipping a farce. He did not approve of a whip that would cut a man to pieces.

Mr. HIGGS (Fortitude Valley) suggested that the hon. gentleman should postpone the clause until the word "whip" was defined.

Mr. KIDSTON pointed out that the reduction of punishment by the abolishment of the lash in the army and navy and the abolition of the death penalty for minor offences, had not been accompanied by an increase in crime; and that convinced him that severe punishments were not a deterrent of crime. In fact, the Criminal Code had broken down.

Mr. PLUNKETT believed that it might complete the chapter by taking the next three sections. There was nothing contentious in them.

Mr. DAWSON (Charter's Towers). As the most contentious portion of the Bill had been passed, he would ask whether it was desirable to go further with clause 15 at the present sitting.

Mr. PLUNKETT: Clause as amended, put and passed.

On clause 15—

Mr. LESINA. moved the omission of the words "whipping" proposed to be omitted stand part of the clause—put; and the Committee divided:—

Resolved in the affirmative.

Mr. HIGGS. The word "whipping" was defined.

Mr. KIDSTON objected to the words "whipping" proposed to be omitted stand part of the clause.

Mr. McKENZIE called attention to the state of the House.

Mr. HIGGS: He agreed with his hon. colleagues in their opposition to whipping, with one exception—namely, outrages on young females. With that exception, the infliction of punishment had to be taken into consideration, and he thought severe punishments were the case with the male. Why should it not be applied to the female?

Mr. GIVENS was glad that the Attorney-General intended to go with the Nºs. Dickson, Rutledge, Philp, Dalrymple, Foxton, Murray, Bell, Smith, O. Thor, Fowkes, Gilian, Pinney, Stephenson, Higgs, Farrer, Curtis, Plunkett, J. O. Orich, Barcichomass, Campbell, Armstrong, O'Connell, Sheehy, Story, Bridges, Hood, Sewell, Mackintosh, Tooth, J. Hamilton, T. B. Cribb, and Moore.

Mr. HIGGS: Mr. Dawson, Kidston, Dunford, Kerr, McDonnell, McDonald, Jackson, Turkey, Browne, Givens, Ryland, Fisher, W. Hamilton, Lesina, and Stewart.

Mr. HIGGS: He would ask whether it was desirable to go further with clause 15 at the present sitting.

Mr. HIGGS (Fortitude Valley) called attention to the state of the House.

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necessary that a person should be a first offender to obtain relief under the Offenders Probation Act.

The ATTORNEY-GENERAL: The hon. member was perfectly correct in his designation of the Act referred to, but clause 657 of the Code provided that conditional suspension of punishment should be applicable to "a person who has not been previously convicted in Queensland or elsewhere," etc., so that, although it was not called the "first" Offenders Probation Act, it really applied to first offenders.

Mr. DAWSON maintained that it was not a matter of first offence at all, but that if a person was sentenced to imprisonment for a period not exceeding three months, and the punishment was suspended under the Offenders Probation Act, he could obtain relief for a second offence under that Act. He supported the amendment because the idea of imprisonment was not to torture criminals, but to protect society from the effects of their criminal instincts. The clause provided that the poor man with criminal propensities was sent to gaol while a wealthy man escaped imprisonment by the payment of a fine, although he had been the ruin of a jndge.

The clause could not possibly apply to all classes of offences, as he believed it did, he was not going to vote for the amendment, as a rich man would have no advantage over a poor man. If, on the other hand, it would enable a wealthy man to escape by the payment of a fine while a poor man would have to go to gaol, he would vote for the amendment.

The ATTORNEY-GENERAL explained that the clause applied to all the offences which were mentioned in the Code in respect of which any judicial authority had the right to impose imprisonment.

Mr. BROWNE: Do you mean that a justice of the peace has judicial authority?

The ATTORNEY-GENERAL: Yes; he has power to send a man to gaol for six months.

Mr. DAWSON: The clause could not possibly apply to the ordinary "drunk," or the man who destroyed a policeman’s uniform, because it was an absolute contradiction of the Justices Act. The very penalty in the shape of a fine that was provided in the clause showed that it was not intended to cover any offence that it was competent for a justice of the peace to try, because the police court bench could not impose a penalty of £500.

The ATTORNEY-GENERAL: The clause stated that the Act should apply in the constitution of the Code, except when it was otherwise expressly provided. He would refer to clause 506, which dealt with the forgery of sea-men’s tickets, or documents under the Shops and Factories Act—the punishment for which was imprisonment with hard labour for one year or a fine of £200. Offences under that clause were thus expressly excluded from the operations of clause 19, which provided that in all cases which were not expressly excluded from its operations a fine could be imposed up to £500.

Mr. DAWSON: Mr. DAWSON and Mr. GIVENS referred to the sentences imposed upon prisoners for breaches of prison discipline, and decreated a system which allowed a man’s sentence to be increased in that way.

The ATTORNEY-GENERAL said he would do what he could to assist in effecting improvements with respect to the Prisons Act and its administration.

Clause put and passed.

The ATTORNEY-GENERAL referred to the sentences imposed upon prisoners for breaches of prison discipline, and decreated a system which allowed a man’s sentence to be increased in that way.

The ATTORNEY-GENERAL: The House adjourned at ten minutes to 3 o'clock.

LEGISLATIVE COUNCIL.
TUESDAY, 3 OCTOBER, 1859.

The President took the chair at half-past 3 o'clock.

APPROPRIATION BILL, No. 2.

The PRESIDENT announced the receipt of a message from the Administrator of the Government intimating that the Royal assent had been given to this Bill by His Excellency the Governor on the 28th September last.

RESULT OF THE REFERENDUM VOTE.

The PRESIDENT announced the receipt of a message from His Excellency the Administrator of the Government, forwarding the result of the referendum vote taken under the provisions of the Australasian Federation Enabling Act, [Vide page 205, proceedings of the Legislative Assembly.]

PRESENTATION OF ADDRESS IN REPLY.

The PRESIDENT: I have to report that the Address in Reply to His Excellency the Governor’s Speech, as agreed to by this Council