men—that spirit which would induce them themselves to make provision for themselves and their families. My very first act in this House showed my sympathy with this kind of thing. My first act, when I became a member in 1878, was to undertake a task similar in its beneficent intention to that which the hon. member has now undertaken—the task of bringing in a Bill, which I had the happiness of passing into law, providing that, in the event of a poor man dying, the proceeds of his life they should be preserved to his wife and children.

HONOURABLE MEMBERS: Hear, hear!

At 7 o'clock, the House, in accordance with Sessional Order, proceeded with Government business.

CRIMINAL CODE BILL.

RESUMPTION OF COMMITTEE.

Clauses 192 to 207, inclusive, put and passed.

The ATTORNEY-GENERAL (Hon. A. Rutledge) said that the punishment provided in the Bill seemed very severe considering the nature of the offence. He moved the omission of the word “life,” with a view to inserting the words “thirteen years.”

Mr. GLASSIEY asked if the penalty of two years for that offence was not too severe? A person who was the worse for liquor might commit such an offence, or another person might commit the offence by accident, without any design at all, and in such cases it seemed to him that the penalty was too severe.

The ATTORNEY-GENERAL: He had known of cases where a man had got a number of little girls around him and then began a series of indecent acts, which could not but have a corrupting influence on the girls, and it was well to retain the maximum penalty to meet cases of that nature. Of course no judge would give more than a week to a man who was guilty of indecent exposure while in a condition of drunkenness.

Mr. GIVENS had not the slightest objection to the penalty of two years for an offence of that kind, as it was a very serious offence. But what was the use of having severe penalties on their statute-book if they were not enforced? About four years ago a man on Charters Towers was convicted of gross indecency on a little girl and sentenced to six months’ imprisonment, but, though it was reported that he had been guilty of like practices on previous occasions, he was let out when he had served half his sentence, because certain influential persons made a move on his behalf.

The ATTORNEY-GENERAL: Were those facts known to the Executive?

Mr. GIVENS: If they were not known to the Executive they ought to be known, because on them rested the burden of administering the law.

The ATTORNEY-GENERAL: He ought not to have been let out.

Mr. GIVENS: It was no use of having penalties like that provided in the clause if they were not enforced by the Executive.

The ATTORNEY-GENERAL: Who was Home Secretary then?

Mr. DAWSON: Sir Horace Tozer.

The ATTORNEY-GENERAL moved the omission of the words “seven to three years,” with a view of inserting the words “sixteen years.”

Mr. GLASSIEY (Bundaberg), after the general experience of the learned Attorney-General he thought it ought to be the best
Mr. DUNSFORD (Charteris Towers) thought they should be careful before they allowed a man to be liable to hard labour for two years for exhibiting what was called an indecent show or performance. That might be held to cover the leg shows which were outside attractions of some of their agricultural shows. What one person might consider a work of art, another who had been reading the Scriptures might consider obscene. Young men got sick in this country, and certain medical men thought it necessary to advertise their business, while Government officials had prevented their advertisements from appearing because they thought they trenched upon the laws. Then books were published with useful information for married persons, and it was possible that the stationers who sold those books for a little profit, and to do a good turn to some possible that the stationers who sold those books for a little profit, and to do a good turn to the public, might not be considered obscene no another would consider a work of art. A lady visiting an art gallery, and seeing a beautiful nude figure said to the person with her, "Is not that very indecent?" and the answer was, "Madam, the indecency lies in the remark." He thought some definition of what was obscene was necessary.

Mr. McDONALD (Flinders) pointed out a case that happened in Brisbane some time ago, where a prosecution was instituted upon a cartoon appearing in the Worker. The court decided that the cartoon was indecent, but eventually that judgment was reversed before a higher court. The hon. gentleman said that some latitude should be allowed the Crown Prosecutor, but in that case anything objectionable was due to an error in the drawing, which might occur in the work of the cleverest artist. The real reason for the prosecution in that case was not the picture, but the cartoon, because the subject of it was the Queensland National Bank, and the Worker Company had been put to considerable expense in defending the case. People might come along and do similar things again, and they should guard against that.

Mr. J. HAMILTON (Cook) recollected a prosecution instituted at Rockhampton against a man for having two nude figures in his shop window, but when it was pointed out that they were cherubs, it was agreed that wings were sufficient clothing for cherubs, and the prosecution was withdrawn.

The ATTORNEY-GENERAL: The case referred to by the hon. member for Flinders was, he thought, brought under the Vagrancy Act. There were a number of cases, especially in mining districts, where small raffles were got up for charitable purposes. Would the sanction of the Crown Law Officer have to be obtained in those cases? Mr. GIVENS said they had the sanction of the Crown Law Officer, and after wards there were the judge and the jury, and surely amongst them they were not likely to do an injustice.

Mr. KERR said there were gambling houses in nearly all the townships in the Western district, and he thought it was time the authorities made no distinction between the parties who carried on the gambling, whether Europeans, Chinese, or any other aliens.

The ATTORNEY-GENERAL: The law did not contemplate any such distinction. The matter referred to by the hon. member was one of administration; it did not touch the question of the law itself.

Mr. KERR: When there was a law against gambling no officer of the Crown ought to be allowed to give instructions to permit breaches of it, as they were informed was the case. But the law was broken in that direction every day. Both in Brisbane and Rockhampton there were places kept open for gambling, and temptations to gamble were thrown in the way of young men.

Mr. J. HAMILTON (Cook) said they had that afternoon thrown out by a large majority a Bill which proposed to legalise the mildest form of gambling there was, and yet in Brisbane there were any amount of places which answered to the description of a "common betting house" contained in the clause. It was hypercritical to allow that state of things to exist, and at the same time to prohibit the most obscene form of gambling. Every hon. member knew that in the principal street in Brisbane there were a dozen places where a man could go in and put his money on a horse race.

The ATTORNEY-GENERAL: The present Bill could not deal with cases of laxity of administration; it could only define the law.

Mr. DUNSFORD, referring to the last paragraph of the clause, which said that the section did not apply to any lottery which had obtained the sanction of the Crown Law Officer, asked whether it was intended to prevent the raffling of small articles for charitable purposes? There were a number of cases, especially in mining districts, where small raffles were got up for charitable purposes. Would the sanction of the Crown Law Officer have to be obtained in those cases, and would he be likely to give his sanction?

The ATTORNEY-GENERAL: If the object sought to be raffled could be classed under the designation "work of art," the sanction would be given, but they could not discriminate to a nasty in a Bill of this sort. Some years ago, when he was Attorney-General before, he had to send a caution to a certain person where a proposition was made to raffle several blocks of land; but, as Attorney-General, he would not be
of seamen taking of kanakas to work in the sugar fields.

The ATTORNEY-GENERAL: The first part of the clause did not refer to the age at all, and he agreed with the hon. member that the man who carried off any woman should be punished. With regard to the next part of the clause, the law did not regard a woman under the age of twenty-one years as having the capacity to dispose of her property voluntarily, and they should not allow a woman under that age to be enticed away without the consent of her father, mother, or guardian, by some designing fellow who did not care a brass farthing about the girl, but who wanted her money. If a woman was over twenty-one years of age the man could not be got at under that clause if she chose to go with him. He saw no hardship in the clause at all, and it would prevent a great deal of chicanery and villany. It would go at absolute snares who had no money of their own, accomplished vagabonds, who dressed well and could smirk and captivate a girl.

Mr. GIVENS did not altogether agree with the provision. He noticed that the law made provision for a girl giving consent to the disposal of her person at a much earlier age than twenty-one, and it seemed to him much more important that a girl should be protected against herself in disposing of her person than in disposing of her property.

The ATTORNEY-GENERAL: There may be other persons involved—her friends or relatives.

Mr. GIVENS: Her family might be very seriously involved if she committed an act which would bring disgrace upon them. Then again, he believed it was not unfair to limit the punishment to seven years. He thought the young man should be so severe.

Mr. FISHER: I will accept it.

Mr. FISHER did not think the penalty was severe enough for unlawfully detaining an insane person.

The ATTORNEY-GENERAL: Of course the clause did not refer to taking a person out of an insane asylum. It meant that where a person had an insane relative and kept him on his premises instead of allowing him to be dealt with by the insanity laws, he would be liable to the penalty provided. That sort of thing might lead to many abuses. The law allowed insane persons who were harmless to be kept by their friends under certain conditions, but those cases were very rare.

Mr. FISHER: A person might detain an insane person when he had become sane after getting him out of an asylum. In a case of that sort the penalty was not severe enough.

Clause put and passed.

The ATTORNEY-GENERAL: On clause 355— "Threats"—

Mr. GIVENS pointed out that the penalty under the clause was imprisonment for one year, and that there was no alternative penalty, so that a judge or presiding magistrate would have no option but to sentence a person to imprisonment of some sort, even for a comparatively trivial offence, which would cast a stigma and disgrace on him for ever. He moved the insertion after the word " year" of the words " or to a fine of £50."

The ATTORNEY-GENERAL: Make it £100, and I will accept it.

Mr. GIVENS: Acting on the hon. member's suggestion, he moved that the clause be amended by the addition of the words " or to a fine of £100."

Amendment agreed to; and clause, as amended, put and passed.

On clause 361— "Bigamy"—

Mr. FISHER pointed out that the penalty under the clause was imprisonment for one year, and that there was no alternative penalty, so that a judge or presiding magistrate would have no option but to sentence a person to imprisonment of some sort, even for a comparatively trivial offence, which would cast a stigma and disgrace on him for ever. He moved the insertion after the word " year" of the words " or to a fine of £50."

The ATTORNEY-GENERAL: Make it £100, and I will accept it.

Mr. GIVENS: Acting on the hon. member's suggestion, he moved that the clause be amended by the addition of the words " or to a fine of £100."

Amendment agreed to; and clause, as amended, put and passed.

On clause 365— "Unlawful custody of insane person."

Mr. FISHER: I do not think the penalty was severe enough for unlawfully detaining an insane person.

The ATTORNEY-GENERAL: Of course the clause did not refer to taking a person out of an insane asylum. It meant that where a person had an insane relative and kept him on his premises instead of allowing him to be dealt with by the insanity laws, he would be liable to the penalty provided. That sort of thing might lead to many abuses. The law allowed insane persons who were harmless to be kept by their friends under certain conditions, but those cases were very rare.

Mr. FISHER: A person might detain an insane person when he had become sane after getting him out of an asylum. In a case of that sort the penalty was not severe enough.

Clause put and passed.

On clause 358— "Unlawful custody of insane person."

Mr. FISHER: I do not think the penalty was severe enough for unlawfully detaining an insane person.

The ATTORNEY-GENERAL: Of course the clause did not refer to taking a person out of an insane asylum. It meant that where a person had an insane relative and kept him on his premises instead of allowing him to be dealt with by the insanity laws, he would be liable to the penalty provided. That sort of thing might lead to many abuses. The law allowed insane persons who were harmless to be kept by their friends under certain conditions, but those cases were very rare.

Mr. FISHER: A person might detain an insane person when he had become sane after getting him out of an asylum. In a case of that sort the penalty was not severe enough.

Clause put and passed.
The ATTORNEY-GENERAL thought they had done a very good evening's work, and he was very much obliged to hon. members for the assistance they had given him in carrying the Bill so far. He hoped that they should be able in another night or two to finish off the whole of the Code; and he thought, if they worked as expeditiously as they had done that evening, they would do so. He would like to suggest to the leader of the Opposition and hon. members generally that when they got on a little further and came to the portions of the Code which were not contentious, they should take these matters by chapters.

Mr. DAWSON: Hear, hear!

The ATTORNEY-GENERAL moved that the Chairman leave the chair, report progress, and ask leave to sit again.

Question put and passed.

The House resumed; the Chairman reported progress, and the Committee obtained leave to sit again on Tuesday next.

ADJOURNMENT.

The PREMIER (Mr. J. R. Dickson, Balmain): I move that the House do now adjourn. For the information of hon. members I may say that the first business on Tuesday will be the consideration of a notice of motion by the hon. member for Herbert, which is of such a character as to deserve to be dealt with before any other business is proceeded with. After that, the business will be the further consideration of the Criminal Code Bill, which I trust we shall be able to get out of the way on Tuesday.

Question put and passed.

The House adjourned at three minutes past 11 o'clock.

LEGISLATIVE COUNCIL.

TUESDAY, 10 OCTOBER, 1899.

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

PAPER.

The following paper, laid on the table, was ordered to be printed:

Annual report of the Department of Agriculture for the year 1888-1899.

GRAMMAR SCHOOLS.

MOTION WITHDRAWN.

On the following notice of motion being called:

That, in the opinion of this Council, all grammar schools receiving pecuniary aid from the State should be brought under the direct control of a Minister responsible to Parliament.

HON. A. H. BARLOW said: By the permission of the House, after the statement of Ministers made to the deputation, I propose to withdraw this motion, and not to move it.

Motion withdrawn accordingly.

FEDERATION.

ADDRESS TO THE QUEEN.

* The POSTMASTER-GENERAL, moving—

"That this Council agrees to the following Address to the Queen, praying for the establishment of the Commonwealth of Australia, and authorizes the President to sign such Address on behalf of the Legislative Council and present it to His Excellency the Administrator of the Government, for transmission to the Right Honourable the Secretary of State for the Colonies, with a request that the Right Honourable Lord Lamington, K.C.M.G., Governor, may be permitted to personally submit the Address to Her Majesty:

"1. That we approach Your Majesty with the assurance of our devoted loyalty to Your Majesty's Throne and Person.

"2. That on account of the Federal Constitution of the United Kingdom of Great Britain and Ireland, and that Your Majesty will be graciously pleased to take the premises into your Royal consideration, and to cause the said Constitution, of which the accompanying is a certified copy, to be submitted for enactment by the Parliament of the United Kingdom of Great Britain and Ireland, and that Your Majesty will be graciously pleased to cause all other necessary
disposed to sanction a prosecution by the police in the case of any trivial offence such as those referred to by the hon. member.

Mr. JENKINSON: Who are the Law Officers of the Crown?

The ATTORNEY-GENERAL: The Crown Law Officer was defined in the Bill as the Attorney-General or the Solicitor-General. A Clause put and passed. Clause 255 to 256 put and passed.

On clause 256—"Police officer preventing escape from arrest."

Mr. STEWART (Rockhampton North) moved the omission of the words at the end of the clause "until the person sought to be arrested has been called upon to surrender." He knew it was competent for police officers to shoot persons who attempted to escape from arrest. He remembered a case that occurred in New South Wales some years ago where three policemen failed to arrest an individual who had committed some trivial offence, and fired at him and killed him. He did not think that should be permitted. He was willing that any reasonable necessary force should be used to prevent escape, but it was scandalous that the arresting officer should proceed to the extremity of firing at a man attempting to escape, and possibly killing him.

The ATTORNEY-GENERAL: The hon. member did not improve the matter by the amendment he proposed. The clause as it now stood required, before any force was used to prevent escape, that the arresting officer should proceed to the extremity of firing at a man attempting to escape, and if he failed to arrest him, then the constable would be master of the situation, and his experience was that many policemen had not very tender consciences as to the oath they took. He did not include all policemen in this category, because he knew there were some very good, manly, useful in the force. But he contended that this provision would be a temptation on the part of a police officer to fire on a man rather than be under the disadvantage of being accused of allowing a prisoner to escape. It was an inherent right—an instinct in every man to try and escape if he could. It was no crime to try and get away, and he would never blame any man for trying to escape. He hoped the hon. member for Rockhampton North would stick to his amendment, and, if necessary, call for a division.

The SECRETARY FOR PUBLIC LANDS: If the amendment was carried, it would allow a policeman to fire at a man without calling on him to surrender.

Mr. DAWSON: You are quite wrong. Read the next clause and you will see that.

The SECRETARY FOR PUBLIC LANDS: A policeman had the right to use force to prevent an escape, but the clause provided that he was not to use that force until he had summoned the escaping prisoner to surrender. If the amendment was agreed to, he would have the right to use that force whether he called upon the prisoner to surrender or not. The words proposed to be omitted were therefore clearly in mitigation of the power which the rest of the clause conferred.

Mr. STEWART: I will withdraw my amendment and move another, then.

The SECRETARY FOR PUBLIC LANDS: That was another thing. The hon. member showed at once that he had made a mistake, and that, while he was endeavoring to give the prisoner a better chance, he was in reality giving the constable power to use far more force.

Mr. GIVENS: I thought the hon. gentleman's reading of the clause was quite wrong.

The SECRETARY FOR PUBLIC LANDS: It is the Attorney-General's reading also.

Mr. GIVENS: There had been several instances before to-day of even Attorneys-General being mistaken; and they had had instances also of gentlemen with such giant intellects as the Secretary for Lands had, being also mistaken. Under the concluding paragraph of the clause, a constable could not use force which was intended, or was likely, to cause death or grievous bodily harm, until the person sought to be arrested had been called upon to surrender. If the words proposed to be omitted by the hon. member for Rockhampton North were omitted, the clause, while still authorising a constable to use force to prevent the escape of a prisoner, would prevent the exercise of such force as was likely to cause death or grievous bodily harm. Notwithstanding that the Attorney-General and the Secretary for Lands were against him, he...
sented that his reading of the clause was the reasonable and honest interpretation that would be given to it by any intelligent man.

The Attorney-General: On reflection, I think the clause is susceptible of your reading. I read it hastily before.

Mr. Dunford: You have only to read the next clause to see that.

Mr. Givens thanked the hon. gentleman for his admission. He hoped the hon. gentleman would now agree to the amendment.

The Secretary for Public Lands: The result of the amendment would be that under no circumstances could a policeman, in order to prevent a prisoner from escaping, use any force which was likely to cause death or grievous bodily harm. If a policeman caught a man red-handed in endeavouring to commit murder, surely, for the safety of society, he ought to be allowed to capture that man, and prevent his escaping and possibly carrying out other murders. If a man had committed murder and knew that he would be hanged for it if he was captured, was it not part of his business to use any possible violence himself in order to get away, and in that case a policeman ought to have the power to catch that man, at the same time giving him the option of submitting himself to the law?

Mr. Dawson quite agreed with what had been pointed out by the Secretary for Lands. A policeman might disturb a man attempting to unlawfully enter premises, or he might believe as was about to commit murder, and want to arrest him. But, while admitting that, they had a think of the tremendous power they would be putting in the hands of a policeman if they gave into the power to draw his revolver and shoot an escaping prisoner.

The Secretary for Public Lands: He has always had that power.

Mr. Dawson: That was no argument why we should continue to have it for all time.

The Secretary for Public Lands: Has it been abused?

Mr. Stewart: Yes.

Mr. Dawson: The clause referred more particularly to offences for which a person might be arrested without warrant; but he was speaking of more serious charges in which it had been laid down by the judges that it was necessary for the police to proceed by warrant. The Attorney-General, when he left the Chamber that evening, might be arrested by the policeman at the street corner for being drunk and disorderly, and if the hon. gentleman insisted arrest and ran away, the policeman would have a perfect right under that clause to draw his revolver and shoot the hon. gentleman.

The Attorney-General: No.

Mr. Dawson: Yes. The clause referred particularly to offences for which a person might be arrested without warrant—the principal of which were trivial offences which were tried in the police courts, but in the more serious offences they proceeded by warrant, unless the policeman happened to catch a man in the act of attempting to commit one of those serious offences. The retention of that provision empowered a policeman to shoot a man who might tell him to go and catch the Gatton murderers or explain the hodoxy. He certainly thought that the wisdom of the clause was to operate in a bad way in some cases by allowing criminals of a bad tendency to escape, it was giving too much power to the ordinary policeman.

The Secretary for Public Lands: The clause merely gave the right to a policeman to use such force as might be necessary. In the case which the hon. gentleman quoted no judge would ever rule that the force was reasonably necessary.

Mr. Stewart was sorry the hon. gentleman in charge of the Bill could not see his way to accept the amendment he had moved. He must say that he felt very strongly on the subject. His attention was drawn to it by a case that happened in New South Wales, where a couple of policemen vainly attempted to arrest an individual who had been drunk and disorderly; he ran away, and one of the constables fired at him and killed him. The policemen were afterwards tried for killing the man, and were actually acquitted without a stain on their characters, and they were probably in the New South Wales Police Force at the present moment. Those men committed murder, and that was what this clause allowed them to do. The Secretary for Lands had pointed to a murderer being caught red-handed by a policeman and trying to escape. That might happen, but they had never heard of such a case up to date, and if a policeman caught a murderer red-handed and the man pointed a weapon against him, he would be quite justified in using a weapon in self-defence. But that section gave members of the Police Force power to shoot a man who tried to escape when being arrested, no matter what the crime might be. Did they not give the foulest criminals the chance of defending themselves? Supposing 100 witnesses saw the murder, they did not take the law into their own hands and lynch him—stringing him up to the nearest tree. He was arrested, served with the charge, brought before a judge and jury, tried, and if found guilty he was sentenced. But for the simple offence of trying to escape the policeman was to be the judge, jury, and executioner all in one. He protested against any such provision being incorporated in their statute-book, and he was going to press the matter to a division. He had registered a vow when he read the story about those two New South Wales policemen, that if he ever had the opportunity he should endeavour to alter the law. He had the opportunity now, and he intended to take it, and see if that horrible enactment could not be expunged from their statute-book.

The Attorney-General: He was quite sure that the hon. member was actuated by no other desire than that which he conceived to be right, but it was a maxim that "hard cases made bad law." If they legislated for extreme or exceptional cases they would always make a mess of it. The best plan was to legislate for ordinary cases, such as happened within the common experience of mankind. The very fact that the policemen who committed the barbarous deed to which the hon. member referred were placed on their trial, showed that the New South Wales law was the same as it was here, and that it did not justify the action of those men. They could not help a jury acquitting an accused man. Juries did take the bit between their teeth over and over again. Mr. was the pity that those men were acquitted, but it was not uncommon for murderers to be acquitted.

The cases of prisoners trying to escape and reasonable force being used to effect their release were very common, but the case of a constable shooting a man was most uncommon. There were cases where prisoners did try to escape, and the use of strong measures was necessary; but if the constable, in the case of a man charged with a trivial offence trying to escape, used firearms, the constable would not only be liable to dismissal, but be tried for murder if he killed the man. They must trust juries. They had to treat them every day of their lives in deciding upon the facts of a criminal case. They acquitted criminals every day, but that was no reason why they should alter the law of trial by jury. He was sorry he
Mr. W. HAMILTON (St. Kilda) was in sympathy with the amendment, because he held that the clause placed too much power in the hands of a police officer. A policeman could, under that clause, go out and shoot a man, and then say that the man was trying to escape, and there would be no one to contradict him, because there were two witnesses. He remembered the case referred to by the hon. member for Rockhampton North, which occurred at Broken Hill.

The ATTORNEY-GENERAL: Take the case of the Kelly gang.

Mr. W. HAMILTON: Never mind the Kelly gang; they were outlawed. But the man referred to by the hon. member for Rockhampton North was not outlawed. He (Mr. Hamilton) knew the family well. The man was named Considine, and he was a man whom he did not think would run away to New South Wales to try to take single-handed, as he was a pretty rough customer. The policeman could not arrest him, and he shot the man, without calling upon him to surrender. And though the policeman was afterwards tried for the offence he was acquitted. He held that the power to shoot a man should not be put into the hands of a policeman or anybody else, and would vote for the amendment.

Mr. DUNSFORD pointed out that according to the following clause, if a person who was not a police officer was proceeding to lawfully arrest another person, and the person sought to be arrested endeavoured to escape, the person trying to make the arrest was not authorised to use force which is intended or is likely to cause death or grievous bodily harm. A civilian who was in a house, which is calculated to encourage them rather than to induce them to surrender, and they were instructed to fire, and to fire with effect. Of course it was quite possible that if the Criminal Code passed that document would have to be withdrawn.

The ATTORNEY-GENERAL: I should think so.

Mr. McDONALD: Still the clause under discussion would arm the police with great authority, and it was really legislating for extremes and not for ordinary cases. He did not think it was wise to put that extraordinary power into the hands of the police, as it might lead to the taking of life where there was no sufficient cause. A policeman was just as likely to get excited and lose his head as anybody else, and if he was armed with a revoler and knew he had the power to shoot, it was quite probable that the revoler would be the thing he would use. He knew of one case, and had mentioned it in the House, where a policeman deliberately took up a piece of wood and hit a man who was chained to a log on the side of the head, because he was using bad language. Half-an-hour later the policeman thought the case was serious and used a bucket of water over his head to bring him to.

The ATTORNEY-GENERAL: If I had been Attorney-General I should have prosecuted the constable.

Mr. McDONALD: He had brought the matter up in the House, and he had not heard that the man had even been charged with the police force. He had affidavits in his possession of several people who saw the occurrence. If the hon. member for Rockhampton North was that the clause gave too general a power. No one would object to a policeman using all necessary force to prevent the escape of a dangerous criminal who used such force in trying to escape as would endanger the policeman's life. It was in the public interest that a policeman should protect himself in such a case in carrying out a public duty. What was complained of was that the clause as it stood gave the power to shoot, it was quite probable that the revoler would be the thing he would use. He knew of one case, and had mentioned it in the House, where a policeman deliberately took up a piece of wood and hit a man who was chained to a log on the side of the head, because he was using bad language. Half-an-hour later the policeman thought the case was serious and used a bucket of water over his head to bring him to.

The ATTORNEY-GENERAL: The objection taken by the hon. member for Rockhampton North was that the clause gave too general a power. No one would object to a policeman using all necessary force to prevent the escape of a dangerous criminal who used such force in trying to escape as would endanger the policeman's life. It was in the public interest that a policeman should protect himself in such a case. Perhaps it might meet the views of hon. members to make the last paragraph of the clause read in this way—

But this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm except in cases where the person sought to be arrested is reasonably suspected of having committed an offence punishable with death or imprisonment for life under this Code, nor until the person sought to be arrested has been called upon to surrender.

That would limit the power to cases in which the person sought to be arrested would be liable to death or imprisonment for life, and it would prevent such a thing as the Broken Hill tragedy referred to. If hon. members would not accept that he would move the insertion of the necessary words to give effect to it, but if they would not accept it he would have to press the clause as it stood.

Mr. STEWART: I will accept that.

HONOURABLE MEMBERS: Hear, hear!
Amendment (Mr. Stewart's), by leave, withdrawn.

The ATTORNEY-GENERAL moved the insertion after the word "harm" of the words—

Except in cases where the person sought to be arrested was reasonably suspected of having committed an offence punishable with death or imprisonment for life under this Code, nor

Amendment agreed to; and clause, as amended, put and passed.

Clause 257, inserted.

On clause 258—"Preventing escape or rescue after arrest"—

Mr. STEWART thought the same alteration ought to be made in clause 258 as had been made in clause 256.

The ATTORNEY-GENERAL said there was a difference between the case of a man who was sought to be arrested and that of a man who was attempting to escape after having been arrested. A man actually in the hands of the police might use violent means to get away. He might try to shoot the policeman, in which case it would hardly be fair to forbid the policeman to use any means to prevent his escape which might cause him grievous bodily harm. He contended that he had met bon members very fairly in the matter, and he did not feel disposed to go any further in that direction.

Clauses put and passed.

On clause 259—"Suppression of riot by person acting under lawful orders"—

Mr. GIVENS said he proposed to amend that clause by adding the following:

"...who were not rioting in any real sense of the term. Yet the clause empowered policemen, and might be a political riot and of a very harmful nature, yet the clause empowered policemen, and..."

The ATTORNEY-GENERAL said, as the clause stood, there was no limit to the force which might be used for the quelling of a riot by a person acting under lawful orders. A riot might be a political riot and of a very harmless nature, yet the clause empowered policemen, and others acting under lawful orders, to shoot persons who were not rioting in any real sense of the term. He hoped the Attorney-General would accept the amendment.

The ATTORNEY-GENERAL: Of course a riot might be a simple matter, or it might be a very serious matter.

Supposing a number of riotous persons met together armed with revolvers or bludgeons or other lethal weapons, it would be very hard to say that the persons called upon to assist in the suppression of that riot should not have the power to use equal force.

Mr. GIVENS: That would be more than a riot. It would be an outrage.

The ATTORNEY-GENERAL: It was hard to draw the line. A number of persons meeting together might create a disturbance which would assume aggravated proportions, but which would still be a riot, and he thought it would be putting too much power into the hands of the rioters—particularly at night time when it would be difficult to identify them—who might be armed with bludgeons and firearms. It would be putting too much power into the hands of those rioters to enjoin that the persons engaged in suppressing the riot should be confined to merely laying their hands upon the rioters and stripping them to the belt. Such a thing would be ridiculous, and he could not accept the amendment.

Amendment put and negatived.

Mr. LESINA, referring to clause 264—"Suppression of riot by person acting without order in case of emergency"—said that under the clause any person, whether subject to military law or not, who thought that serious mischief would arise from a riot—any panic-stricken person who thought that a disturbance created by half-a-dozen men threatened to destroy his little shop—might draw his revolver and shoot people. The clause said he might use such force as he considered necessary, and of course that would be in proportion to the danger he apprehended. He thought that was too great a power to leave in the hands of any person.

The ATTORNEY GENERAL thought that the same argument applied to this as to the previous clause. The tendency on the part of the average citizen was not to rush into a quarrel where he was likely to get hurt, but to owe the power given to magistrates to act in special constables. Any person acting under the clause would only take such steps as he considered necessary on reasonable grounds; and he could be punished for having suppressed what he considered a riot by means, which to a man of the average intelligence, were shown to be disproportionate, the same as if he had committed an assault.

The CHAIRMAN (Mr. Grimes, Oxoey): There seems to be an impression that clause 264 is before the Committee. I put the amendment on clause 263, and it was negatived, but I have not yet put the clause.

Clause 263 put and passed.

Clauses 264 to 267, inclusive, put and passed.

On clause 268—"Provision"—

* The ATTORNEY-GENERAL: As he had promised to explain all the new provisions of the Bill, he might state that this was a new provision as regards provocation. The same result was virtually attained by the existing law, but it was presented herein such a form as to make the operation of the law more certain. As he had pointed out on the second reading, it was unlawful for a man to strike another, even though he got provocation; but in cases where a man committed an assault under provocation, the magistrate or judge might inflict a light or nominal penalty. The provision now under discussion made it lawful for a man to retaliate, when attacked, providing he did not use any stronger measures in retaliation than would occur to any ordinary man under the circumstances. He thought the provision was a good one.

Mr. LESINA differed from the Attorney-General. This was an introducing a principle which the law in nearly all countries tried to suppress. It was taking the man the judge of actions towards himself, and it also made him the executioner.

The ATTORNEY-GENERAL: Supposing a man spat in your face?

Mr. LESINA: That would be provocation. But the clause covered other things besides that. In the course of industrial disputes between master and servant one man called another a "scab" or a "blackleg," would that be sufficient provocation?

The ATTORNEY-GENERAL: That does not touch this clause at all.

Mr. LESINA contended that it did. The judges who composed the Commission differed about this matter themselves, and it was wise that the matter should be settled. If during an industrial dispute one man took the place of another, and the term "scab" or "blackleg" was used to the man who took the employment, would that be sufficient provocation for an assault? He believed the clause was introduced to justify provocation in the case of one man calling another such opprobrious terms.

The ATTORNEY-GENERAL: * The clause was taken from the Code framed by eminent judges in England. It was not introduced to deal with industrial disputes.

Mr. LESINA: Had he the assurance of the Attorney-General that if a man took the job of another in a time of industrial disputes between
masters and servants, and he was called a ‘scab’ or a ‘blackleg,’ that that would be sufficient justification for a man to commit an assault? It had been held sufficiently provocative to cause a breach of the peace.

The ATTORNEY-GENERAL: The insult must be of such a nature as would cause provocation to an ordinary person. Such a term as ‘scab’ or ‘blackleg’ would mean nothing to an ordinary citizen, although it might be regarded as opprobrious by some men.

Mr. KERN: The hon. gentleman was talking about the relations of master to servant.

The ATTORNEY-GENERAL: Quite so, but they must consider the effect such epithets would have on an ordinary man. He assured his members that the clause had not been introduced to deal with industrial disputes; it had been taken from the Code prepared by eminent judges, and was of general application.

Mr. LESINA: Would calling a man an opprobrious epithet, which would deprive him of self-control, justify him in committing an assault? The words ‘scab,’ ‘blackleg,’ or ‘We’ were particularly opprobrious out West; they were quite sufficient to rouse a man to the highest pitch of excitement, and, if they were held to justify any one man punishing another, there would be fights all over the country.

The ATTORNEY-GENERAL: If a man was walking down the street with a friend or a relative who was in his charge and the term ‘scab’ or ‘blackleg’ was used, that would not be sufficient provocation to justify retaliation. If, for example, a man were to cast a foul epithet upon the memory of your dead mother, you would be justified in knocking that man down, without hesitation. This clause would say that under the circumstances there was sufficient provocation to prevent him being prosecuted for assault.

The SECRETARY FOR PUBLIC LANDS: If it seemed to him that they were endeavouring to bring the law into conformity with public feeling. If an hon. member was grossly insulted—if a man spat in his face—he would be justified in knocking him down, and the law would not punish him for that action. If a man did not resent such an insult, he would not think anything of it.

Mr. BROWNIE: Clause 269 put and passed.

The ATTORNEY-GENERAL: The clause does not apply to the original assailant.

Mr. HIGGS: Certainly it did if the other assaulted him—when such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe on reasonable grounds that it is necessary for his preservation from death or grievous bodily harm to take reasonable self-defence he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

Mr. BROWNIE: Go on to the next paragraph.

Mr. HIGGS: The clause does not apply to the original assailant.

The ATTORNEY-GENERAL: The protection does not extend to the case in which the person using force which causes death or grievous bodily harm first began the assault with intent to kill or to do grievous bodily harm to some person.

But then who was to decide that the man who first used the force intended to kill?

The ATTORNEY-GENERAL: You must judge of a man’s intentions by his acts—there is no other way.

Mr. HIGGS: Supposing he intended to kill the hon. gentleman, and, as a preliminary, spat in the hon. gentleman’s face, and the hon. gentleman responded by striking him as hard as ever he could on the nose. And supposing that he had a revolver concealed about his person, and he thereupon shot and killed the hon. gentleman according to this clause, he was not responsible for the hon. gentleman’s death.

The ATTORNEY-GENERAL: That is not the meaning of the clause.

The SECRETARY FOR PUBLIC LANDS: If your life was in danger you might be justified.

Mr. HIGGS: But he was the man who decided whether he had a reasonable apprehension—not the jury.

The SECRETARY FOR PUBLIC LANDS: The jury will decide afterwards whether that was a just apprehension or not.

Mr. HIGGS: No. The jury would have to decide whether he believed he had reasonable grounds, but whether he believed he had reasonable grounds—two totally different things. There was a very wholesome spirit in all British communities—that the aggressor should get very little sympathy. As a rule, the man who assaulted another was believed to be well treated if he got a blow in return; and he did not think they should go further and allow an angry man—for very likely he was angry when he commenced the assault—to decide that the person who responded to his assault intended to kill him. The clause might very well be omitted, or, if not omitted, they should strike out that part which allowed the jury to decide only that a man believed he had reasonable grounds.

The ATTORNEY-GENERAL: The clause was a corollary of the preceding one. Scouring men were bawling epithets; and one man in his anger struck the other. If the man who was struck took out a revolver and fired at the first man, and seemed about to continue firing, the man who in the first instance committed the assault would be justified in using the same kind of force to repel the provoked assault as he would have used if it had been unprovoked. A man was not to respond to an assault—and an assault might be of a very trivial nature—by a murderous attack. The man who had provoked the assault might use means of self-defence proportionate to the violence and deadliness of the attack made upon him in reply to his original assault. That was all that the clause provided. There was no protection extended to the first assailant, if his assault was of such a character as was likely to cause death or grievous bodily harm, and the other retaliated in like manner, and the original assailant then used a deadly weapon to protect himself. There was no harm in the clause, which was a part of the English law. It might seem hard to leave it to the jury to decide how far the defence of provocation might be carried under certain circumstances; and it was not wise to leave anything in a hazy condition. This was one of the cases where they should prefer to rely upon the judgment of the Commission, who had carefully considered the effect of every clause in relation...
to other clauses, rather than upon the opinion of any hon. member, however carefully he might have scrutinised the Bill.

Mr. HIGGS was sorry the hon. gentleman had not dwelt upon the point he had raised about the jury deciding—not that the man had reasonable grounds for what he did—but that the man believed he had reasonable grounds.

The ATTORNEY-GENERAL: Where is the believing?— induces him to believe, on reasonable grounds—that is to say, the inducement to believe was on reasonable grounds. The jury will have to decide whether the inducement was such as to warrant him in believing.

Mr. HIGGS: He did not for a moment pretend that he was in a position to decide the matter in a legal way, but he saw that the report of the Commission stated that "Mr. Justice Read, Mr. Justice Power, and Judge Mansfield, do not concur in the important change in the law proposed by sections 276 and 277 of the Draft Code."

The ATTORNEY-GENERAL: We have not come to those quacks. Under our present laws any man might have a diploma, but he was not licensed to kill; he was not licensed to treat persons in an incompetent manner. If he did, he might be made responsible, either in a civil action for damages, or he might be criminally liable for manslaughter. The law recognised no distinction between a doctor and any other person in this respect. Unfortunately there were too many of the quack class. He had no sympathy with them, and he should be glad to see a law passed by which the public would be protected against impostors of that sort. If a quack performed an operation, it was capable of proof whether he performed it with reasonable care and skill, so that the public had ample protection.

 Clause put and passed.

Chases 283 to 288 put and passed.

At eighteen minutes to 10 o'clock, Mr. KERR called attention to the state of the Committee. Question formed.

Clauses 289 to 297 put and passed.

On clause 298—"Written threats to murder"—The ATTORNEY-GENERAL said he did not see why a boy under sixteen years should be whipped in a case of that sort any more than a grown man. He therefore moved the omission of the words "and if a male under sixteen years is also liable to a whipping." Amendments agreed to; and clause, as amended, put and passed.

On clause 309—"Conspiring to murder"—Mr. LESINA: This clause provided that any person who conspired with any other person to kill any person, whether such person was in Queensland or elsewhere, was liable to imprisonment with hard labour for fourteen years. He wished to know whether this clause would apply to those persons in Queensland who intended to go to the Transvaal and, if possible, kill Paul Kruger.

The ATTORNEY-GENERAL: Don't joke.

Mr. LESINA: They would be conspiring to kill persons out of Queensland. Were they exemples?

The ATTORNEY-GENERAL: Ask me something serious.

Mr. LESINA: He objected to the killing of any person at any time or in any place, or for any purpose or reason. Suppose the King of Abyssinia, or any person exercising the authority he wielded in that country, were guilty of the most atrocious crimes against humanity, and one or two persons here conspired to kill him, would they be punishable?

The ATTORNEY-GENERAL: We do not allow men to kill other people because they think the world would be well rid of them.

Mr. LESINA: Unless the thing was done in legal fashion—unless it was brutality done in legal form.

Clause put and passed.

On clause 310—"Acting with intent to kill"—The ATTORNEY-GENERAL: When introducing the Bill he had drawn attention to this clause as a new provision in the law, and he
thought it was a humane provision. At present if a man committed suicide, and previous to his death some person assisted him to do away with himself, that person, by assisting him—by providing him with facilities, counselling him to do the act of committing suicide—was deemed to be guilty as an accessory before the fact, and was liable to the same punishment as a man who killed.

Mr. DUNSFORD: Supposed he was a medical man, and advised the man to kill himself.

The ATTORNEY-GENERAL: Under the present law that medical man would be hanged if the jury found him guilty. That was the present law, but the clause was on more modern humanitarian lines. It declared that the man who assisted a suicide in the way described was not liable to the same punishment as a man who killed.

Mr. LESINA: It was a question whether in the present state of their information it was not desirable to include another matter in the clause. He had seen that, recently in France, a person was charged with the crime of murder by hypnotism, and recently a newspaper reported a case in which a woman, to avoid a contract for the purchase of a piano, hypnotised the agent for the firm into purchasing the piano. Originally there was a clause in the Code dealing with this matter: "Any person, who by influence on the mind of another person, causes any disorder or disease which results in the death of that other person is deemed to have killed him." It had been recognised by the eminent judge who drafted the Code that provision should be made against undue mental influence of that kind. Hypnotism was now included in the educational curriculum in France, Germany, and other Continental countries. It was a very powerful force, and they should be able to deal with it, if only one case of the kind cropped up in the century. It would be very hard to prove, and probably that was the reason for the omission of the provision originally drafted. When scientific knowledge had been gathered more largely on the subject, he thought they would be able to sheet home charges against persons guilty of that dreadful influence.

The ATTORNEY-GENERAL: The clause was drafted, the hon. gentleman had stated, but the Commission were unanimous in the excision of it. Although there were authentic cases where hypnotic influence had been the means of urging an innocent person to commit a crime, or to be the instrument of a crime, they knew so little about the nature of the subject generally that it was undesirable to introduce it into the Code until they had more light. It would be so difficult to get at the truth that it might tempt some persons to set up the defence of hypnotic influence, and it might be very hard to break that defence down. He thought the Commission were justified in leaving that provision out.

Clause put and passed.

On clause 313—"Killing unborn child"—

Mr. LESINA thought this was entirely a new crime, and the Attorney-General might give them some information about it.

The ATTORNEY-GENERAL: It was not entirely new. Hon. members would find a reference to it in the memorandum from the Chief Justice accompanying the Digest of the Code, and the greater part of it was an offence at common law at the present time. The clause as it now stood was included in the recommendation of the judges who in England framed a code in 1880.

Clause put and passed.

 Clausule 314 put and passed.

On clause 315—"Disabling in order to commit indictable offence"—

Mr. DUNSFORD said he should like to see the punishment of whipping left out.

The ATTORNEY-GENERAL said that was the gagging clause, and he proposed to keep it in.

Clause put and passed.

On clause 317—"Acts intended to cause grievous bodily harm or prevent apprehension"—

The ATTORNEY-GENERAL said the clause contained a whipping provision, and he proposed to amend it by omitting the words "and if under the age of sixteen years" and if under the age of sixteen years is also liable to a whipping.

Mr. HARDACRE suggested that solitary confinement should also be omitted. To young persons under sixteen solitary confinement was a much worse punishment than to grown-up people.

The ATTORNEY-GENERAL said the persons who committed the crimes mentioned in the clause, which included murder without intention to murder, were not deserving of much sympathy, and he hoped that if the hon. member intended to raise the question of solitary confinement he would do it on some other clause.

Amendment agreed to; clause, as amended, put and passed.

Clauses 318 to 320, inclusive, put and passed.

On clause 321—"Attempting to injure by explosive substances"—

The ATTORNEY-GENERAL moved the omission of the words "and with or without whipping."

Mr. GIVENS asked if the hon. gentleman would withdraw his amendment in order to enable him to move one in an earlier part of the clause. It was his intention to move the omission of all the words after "fourteen years," namely, "with or without solitary confinement, and with or without whipping."

The ATTORNEY-GENERAL said the placing of dynamite where it was likely to explode and kill or maim a person was a very serious offence, and he would rather omit the words in some other clause. And the hon. member must remember they were knocking out whipping, which was previously a form of punishment which might be inflicted.

Amendment agreed to; and clause, as amended, put and passed.

On clause 322—"Maliciously administering poison with intent to harm"—

Mr. GIVENS said the last clause provided: penalty of fourteen years, and clause, as amended, put and passed.

On clause 323—"Wounding and similar acts"—

Mr. LESINA: Under this clause any person who unlawfully and with intent to injure or annoy any person, cause any poison or other...
noxious thing to be administered to that person who was guilty of a misdemeanour, and was only liable to imprisonment for three years. Could the ATTORNEY-GENERAL give any information as to what induces the Commission to make that the punishment? The ATTORNEY-GENERAL: Unlawfully wounding an offence from which the element of intent was absent, and the unlawful causing of poison or any other noxious thing to be administered to or taken by any person, was an offence from which the desire to take life was absent. It was an offence that might be committed by way of a joke—such as giving a person some mixture containing a certain amount of poison—but not anything like strychnine—simply with intent to injure or annoy, and could not be placed in the same category as the crime of administering poison with the object of causing death.

Clause put and passed.

The ATTORNEY-GENERAL said this was an offence for which he did not think the punishment provided in the clause was sufficient. The captain of a ship who knowingly took men to sea in a vessel which, to his own knowledge, was unseaworthy, and thereby endangered the lives of his crew, was deserving of very much greater punishment than imprisonment for three years. He therefore proposed to substitute the word "fourteen" for the word "three." That would extend the term of imprisonment with hard labour for two months.

Mr. LESINA thought such a serious offence as mentioned in this clause ought not to be punished by a fine of £100 alone. Imprisonment ought also to be imposed, if only for twelve months.

The ATTORNEY-GENERAL said clause 335 dealt with that. This clause was a very stringent one. It made the engineer, or engineers, responsible for anything done by any other person in connection with the machinery. It was punishment to an engineer for not being always at his post.

Mr. FISHER hoped the hon. member for Clermont would not press his argument. Anyone who knew anything about engineering, would know that engineers were bound to make the notice of an engineer, and he might be charged wrongly.

Mr. JENKINSON: If he did not pay the fine, he would have to go to prison in any case.

Clause, as amended, put and passed.

Clauses 334 to 335 put and passed.

On clause 336—"Sending or taking unseaworthy ships to sea"—

The ATTORNEY-GENERAL moved that clause 336 be amended in this manner:—"if three years of imprisonment with hard labour for one year, while under clause 335, for the same offence, he was liable, on summary conviction, to a fine of £50, or in default to imprisonment with hard labour for two months? There seemed no provision to prevent magistrates dealing with even the most trivial assault as if it was a most serious offence.

The ATTORNEY-GENERAL: A man might be charged with unlawfully wounding, or with an assault occasioning actual bodily harm. The jury might come to the conclusion that those grave charges had not been made out, but that an assault had been proved, and there must be some provision under which the judge could inflict some punishment. If the jury brought in a verdict of common assault the judge could inflict imprisonment for one year, while if it was only a trivial case it could be dealt with before justices in the ordinary way.

Clause put and passed.

Clauses 335 to 350, inclusive, put and passed.

On clause 351—"Abduction"—

Mr. STEWART: The first part of the clause provided that any person who, with intent to marry, took away a woman and detained her against her will was guilty of an offence. That was quite right. But the second part of the clause provided that if a man took, or enticed away, or detained, a woman under the age of twenty-one years who had money, or who was an heiress or a prospective heiress—she might give her own consent, but unless she had the consent of her father or mother, or her guardian—the person taking her away committed a crime. He thought the age in that case should be reduced to eighteen years. Surely women had sufficient sense at the age of eighteen to decide, and if a woman above that age gave her consent that would amount to legal interference? The whole thing should depend entirely upon her giving her consent. The fact that