TOWNSVILLE MUNICIPAL LOAN ACT REPEAL BILL.

FIRST READING.

This Bill, received from the Assembly, was read a first time, and its second reading made an Order of the Day for Thursday next.

DISEASES IN STOCK ACT AMENDMENT BILL.

MESSAGE FROM ASSEMBLY.

The PRESIDING CHAIRMAN announced the receipt of a message from the Legislative Assembly, intimating that, having had under consideration the Council's amendment in this Bill, they disagreed to such amendment—

Because it would be impossible to obtain a sufficient number of duly qualified veterinary surgeons to perform the duties of inspectors; and because, as the principal duties of stock inspectors are merely patrol duties, the appointment of veterinary surgeons is unnecessary.

The message was ordered to be taken into consideration in committee on Thursday next.

CRIMINAL CODE BILL.

SECOND READING.

The MINISTER FOR JUSTICE: This Bill has been drafted by the learned Chief Justice, whose labours in the field of legislation are so familiar to us, and whose master hand is to be found on the face of the statute law of Queensland to an extent unsurpassed by that of any other legislator. There is no instance in Australia, so far as I am aware, where so great a work has been attempted as in the elaborate compilation which I have now the honour to lay before the House for the consideration, and I trust approval, of hon. members. To aspire to do what Sir S. W. Griffith has, with consummate skill, actually accomplished, has been often thought of by would-be law reformers, but the task has apparently been too great; the qualifications required to successfully grapple with the difficulties of codification are so seldom found in one individual that it has been the despair of our most distinguished lawyers. The late Chief Justice Higinbotham, of Victoria, whose great work was the consolidation of the Victorian statutes, said that what was wanted in the important work of codification, which, as hon. members are aware, is a very different thing from consolidation, was "the effectiveness of a single mind which should design the scheme, exercise supreme command over the whole work, and be responsible to Parliament for the accuracy of the result." It is in this spirit that I commend the code to the House for acceptance, because we all know that Sir S. W. Griffith has brought to his labours exceptional ability, a rich experience in Bill drafting, a vast store of information gathered in the legislature, at the Bar, as Attorney-General, and as Prime Minister, as well as in his present high and distinguished position as Chief Justice on the Supreme Court bench. This, I submit, completely satisfies Chief Justice Higinbotham's idea of the qualifications required for such an undertaking; and I am sure Queenslanders will always feel a deep debt of gratitude to Sir S. W. Griffith for so unselfishly devoting his splendid talents to this his *magnum opus*. The question whether the reduction of the criminal law of England, written and unwritten, into one code is practicable, is one which has for many years been freely discussed in legal circles. I have here, for the information of hon. gentlemen, if they choose to take the trouble to look through it, the report of the commissioners who undertook the codification of the criminal law in 1880. It is there shown the many attempts made from time to time to codify the criminal law. In 1833, in 1836, and in 1837 three different commissions were issued in England, under which eight reports were made. In 1845 there was a fourth commission with five reports. In the fourth report is a draft of a Bill consolidating the written and unwritten law relating to crimes and punishments. That was the first attempt which brought forth any results, and that Bill was introduced into the House of Lords in 1848 by Lord Brougham, but was not further proceeded with. In 1852 Lord St. Leonards, then Lord Chancellor, took up the subject—not so much of codification as of consolidation—and he elaborated the work to a great extent. But a change of Government having taken place, nothing was done further than that it was taken up by Lord Cranworth in 1853. The result of his labours and those who were associated with him, enabled Mr. Grieves, who was a great consolidating lawyer, to produce the seven criminal consolidation Acts 24 and 25 Vic., chapters 94 to 100; but they made no attempt at codification. They were very important measures, however, and find a place in the statutes as the Criminal Law Consolidation Act. In 1878 a Royal Commission was issued directed to Lord Blackburn, Mr. Justice Barry, Mr. Justice Lush, and that very celebrated criminal lawyer, jurist, and judge, Sir James Fitzjames Stephens, to inquire into and report upon the provisions of a draft code of criminal law which had then lately been prepared in England. They eventually submitted, as an appendix to their report, a draft code settled by them which had been previously submitted to Her Majesty's judges, the chairmen and deputy-chairmen of quarter sessions, recorders, members of the Bar, and others having had practical experience in criminal practice, whose suggestions were largely adopted by the commissioners, and to some extent embodied in their code. I merely mention this to show how very energetic they were in endeavouring to codify the criminal law at that time. They sat daily for many months, and the result of their labours was finally introduced into the House of Commons as a Bill, in 1880, but it did not become law. The report which they submitted with the Bill is interesting as showing the points most salient in their elaborate investigations; and Sir S. W. Griffith admits having freely drawn upon the labours of these distinguished lawyers. He has also examined and given full consideration to the elaborate criticism of this report and code by Sir Alexander Cockburn, then Chief Justice of England, who, in a valuable paper contained in a volume I have here, pointed out what he considered were defects in the code. We thus get the benefit of trenchant criticism, past experience of men who have devoted years to the subject, and then we have the two letters of Sir Samuel Griffith addressed to the Attorney-General, in which we have a careful summing up of the whole situation. With his letter of the 1st June, 1896, he sent the Attorney-General a digest of the statutory criminal law of Queensland, which it is within the competence of the Parliament of Queensland to repeal or amend, together with a table of the statutes which he had collated, and everything connected with the criminal law of Queensland. That was preparatory to his preparing the code now before the House. The perusal of this letter of the 1st June, 1896, and also the letter sent with the code to the Attorney-General on the 29th October, 1897, will give hon. gentlemen the fullest particulars possible in explanation of this very elaborate code; and the fact of these being at the disposal of hon. gentlemen renders a long explanation from me unnecessary. But there are two or three things I would like to point out in connection with the code, and I will try to be as brief as possible. Of course, a first attempt at codification must of necessity be

imperfect, because the two works of consolidation and of minute revision are too large to be accomplished by the legislature together. If the criminal statutes of Queensland were consolidated, codification would be much more simple; but as they have never been consolidated, it has been very much more difficult to codify. However, the elaborate work done by Sir Samuel Griffith in making, first, this digest showing exactly what the statutory criminal law in Queensland is, an then publishing it afterwards in parallel columns showing the present law and also the codification, enables the code to be easily understood. All that can be asked in the first instance is that the code shall be complete and intelligible and shall not reproduce any manifest anomalies. I have gone through it very carefully, and I cannot find any particular anomalies. It has evidently been most carefully drafted. A code of this kind affords all the advantages of the existing law with the additional benefits of, first, supplying a complete and intelligible statement of the law, and, second, amending it in such points as are obviously desirable. These are two points which are very important; and if we take any particular portion of the criminal law, and look down this column and see the extracts from the present criminal law statutes on that particular subject and then see the way in which it is codified, we shall gather at once the difference between the two, and see how much more simple the code is than the present statute law. I have collated certain changes I find have been made in the code, so that hon. gentlemen may see, without the trouble of investigating for themselves, exactly what changes have been made in the laws; and the principal changes are these: 1. There is the abolition of the term "felony" and the substitution of "crime." The term "felony" has no definable meaning, as is explained in the Chief Justice's letter of the 29th October, 1897, page 9, to which I refer hon. gentlemen who may wish to pursue this matter further. He proposes to divide offences other than simple offences into crimes and misdemeanours, and to call the more serious offences "crimes" and the less serious "misdemeanours," and to provide that a crime involves, unless otherwise stated, the consequence of liability to arrest without warrant. In cases where the crime, although deserving heavy punishment, is of such a nature that this consequence ought not to follow, the law is so stated, and conversely, when a misdemeanour or simple offence ought to involve that consequence, it is so stated. The distinction therefore between crimes and misdemeanours is to depend upon the gravity of the offence. That is very simple. 2. Provision is made to meet the case of offences partly committed in Queensland, although begun or completed elsewhere. In the case of a man who abroad procures the commission of an offence in Queensland, the offence is proposed to be his coming into Queensland, which is clearly within the competence of the colonial legislature, although it could not, as a Sovereign State can, punish him for the original act committed beyond its jurisdiction. 3. Abolition of supposed minimum punishment. Practically, there is no minimum. In most cases the minimum term of penal servitude is three years. But there is no minimum for the alternative of imprisonment. I fancy there was an Act passed in England abolishing minimum punishments altogether, but whether there was or not Sir Samuel Griffith proposes to leave it to the judges to give whatever punishment within the maximum seems to be meet under the circumstances of the case. 4. Abolish the term "penal servitude," substituting "imprisonment with hard labour." As a matter of fact under the Prisons Act there is no difference. "Penal servitude" is a term we might very well drop, because imprisonment with hard labour is really the punishment. 5. Section 27—I am quoting from the code—is possibly a change, though it is doubtful if it is anything else but a clear exposition of the present law. 6. Section 37 makes the law as to husband and wife uniform. 7. Offences against public order. Section 54 is perhaps new. 8. Offences against the executive and legislative power. Sections 55, 56, 57, and 59 are possibly new, but are to be found in all modern codes. 9. Public attacks on religious creeds. Section 213 is substituted for the present law as to blasphemy. Which is a very great improvement. 10. Section 218 is supplied from the English Crime Law Amendment Act, which was accidentally omitted in 1891. I am partly responsible for that myself. I introduced the Criminal Law Amendment Act in this House, and through a mistake of the draftsman the clause was left out. 11. Rule as to provocation. Sections 275 and 276 are partly new. The subject is dealt with on page 11 of Sir Samuel Griffith's letter. 12. That is the law of murder. It is proposed to divide murder into two classes. I refer hon. members to sections 309 and 310 of the code. "Wilful murder" where there is an intention to kill; and "murder" where there is an intention to commit a crime involving danger to life; nothing else to be murder. Section 321 is probably new. If hon. gentlemen refer to the letter I have just quoted, page 11, they will see this elaborated. 13. Stealing. The only change here is by way of simplification—stating a general rule which embodies the existing law with the exception of the case of larceny of things found. This it is proposed to put on the same footing as in the case of larceny by a bailee. This is fully explained on page 12 of the letter. Section 412 supplies an obvious defect in the law. 14. Trivial injuries to property are proposed to be put on the same footing as trivial cases of larceny, and made punishable by justices. 15. Intimidation. In section 557 it is proposed to alter the law to bring it into accordance with the law as to trade unions. 16 Conspiracies to obstruct trade. It is proposed by section 568 to alter the law to bring it into conformity with recent English law. I have now gone through all the most important changes, alterations, or modifications, in the present law as set out in the code. There are, of course, others; but they are mainly matters of improved drafting or such minor alterations as would naturally be proposed in any consolidation of the statute law. To give hon. gentlemen one or two instances of how complication and prolixity have been condensed and simplified, I will turn to section 404, where the author in four lines has absorbed two and a-half pages of the digest printed in small type. Section 404 states that "any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment with hard labour for three years." On the opposite side are shown the sections which this has absorbed, covering more than two and a-half pages of the present law printed in small type, and which are here expressed intelligibly and in a manner perfectly satisfactory in four lines. It is in this simplification of the criminal law that I think Sir Samuel Griffith is entitled to all the praise we can bestow on him for having taken so much trouble in codifying the system so completely. And so in numerous other instances throughout the code we have striking contrasts between the short code in one column and the lengthy digest in the other. Section 487, on malicious injuries in general, reduces to eight lines what occupies nearly a page and a-half in

the digest; and so on. I could give numerous other instances, but I think those two will be sufficient to show that the object of the codification is simplification of language, at the same time being careful that the offences set out in the most elaborate manner under the old system of drafting Acts of Parliament are dealt with in such a way as to be quite sufficient for the purpose. Hon. gentlemen who wish to study the matter further will find every explanation fully set out in the covering letters of the learned Chief Justice, and in the blue-book I laid on the table last year showing the digest of the present law in parallel columns, each article of the code being placed opposite to the analogous provisions of the statute law, so that it may be seen at a glance what provisions of the code are new, what provisions of the existing law are suggested to be proper for omission, and what alterations of the law or groupings of offences are submitted for consideration. In the words of Sir Samuel Griffith, hon. members, whether they think the enactment of a code desirable, and, if desirable, feasible or not, will agree in the conclusion that either a codification of the criminal law or a consolidation of the statutory criminal law with amendments is very necessary, and further, that it is not desirable that penal provisions should be interspersed as at present in an almost casual manner throughout the statute-book. I have already referred as an illustration to the very great work done by Chief Justice Higinbotham in consolidation. He was many years working at it and he consolidated 450 Acts of Parliament into 107 Bills. He was assisted in that work by two draftsmen, and he did it entirely in his leisure time, with the most marvellous result that when the Minister for Justice introduced those 107 Bills *en bloc* in the Legislative Council of Victoria, he made a very short speech—very much shorter than I have made—and said that the work had been done by men who really understood what they were doing and asked the House to take it upon trust. And they did take it on trust, and passed those 107 Bills; and they became law and the Chief Justice was thanked publicly by both Houses for the great work he had done. I venture to say that my position here to-day is something of the same kind. You have now, if you are willing, to take this upon trust. The Bill is very short; it only contains eight or nine clauses which breathe the code into life, and that is the only way I can expect hon. members to take it. If this code becomes law it can very easily be amended, supposing any defects are found; at the same time I think we may trust Sir Samuel Griffith, who has given so much labour to this work, to have been careful enough to see that very few if any mistakes have been made. I, therefore, have much pleasure in moving that this Bill to establish a code of criminal law be now read a second time.

The HON. A. C. GREGORY: I do not care to express an opinion on the code now before us, as the codification of the law is not within my particular province; but as the code has been under the careful consideration of the learned Chief Justice, who has compiled it, for a good deal over twelve months, if we pass it into law it cannot be described as hasty legislation. We must all wish to see our laws codified and consolidated so that any man, turning to them, can find what he wants and understand it when found. At present our criminal law is scattered over a great number of Acts, some derived from the old country, some from the other colonies, and some of our own, and the difficulty of finding what one wants, except to an experienced lawyer, is very great indeed. I should like to see the Bill become law in its present form, and if any of its details are found not to work harmoniously, or any oversight requires to be remedied—for we can hardly hope to find absolute perfection in so large a measure—it can easily be rectified afterwards. As the sole work of one eminent lawyer it is much more likely to be a complete measure than if the work had been undertaken by a Royal Commission, unless guided by one ruling spirit, and is certainly much more likely to be consistent throughout than one drawn up by a number of persons appointed as a Royal Commission for the purpose. I do not wish to speak at any length on the subject; and as I understand there are some hon. members not now present who wish to say something on the second reading, I move that the debate be now adjourned.

The HON. A. NORTON: Before the question is put I should like to say one word, because I do not quite understand what the Minister for Justice proposes to do—whether he wishes to get the Bill through during this session or merely to take the second reading and let it stand over. I do not pretend to express an opinion on the code. On the face of it the code bears evidence that it is the work of years. Looking at it I am reminded of Goldsmith's schoolboys listening with awe to the learned schoolmaster—

> And still they gazed, and still the wonder grew,
> How one small head could carry all he knew.

That is how I feel with respect to it. It is a matter of wonder to me how a gentleman whose time is so much occupied with special work, should find time to accomplish so much outside that work as our Chief Justice has done. I am only speaking now because I wish to express a word of admiration of the labour and the assiduity of the Chief Justice. Recently I was in New South Wales, and a friend took me to see a handsome mausoleum which some eccentric gentleman had built for the final reception of his earthly remains. Sir Samuel Griffith has chosen a different course, and a wiser one, and one which we must all admire. In this code he is building a monument in which will be enshrined a very important part of his life's work for the admiration of coming generations. The fact of his having done this great work ought to make all of us, who know anything of the life he has led, and his anxiety to do well everything he undertakes, feel proud that we have amongst us a gentleman who has done so much for the colony in which he lives.

Question—That the debate be now adjourned—put and passed; and the resumption of the debate made an Order of the Day for Thursday next.

REVISED STANDING RULES AND ORDERS.

RESUMPTION OF COMMITTEE.

On postponed rule 24—"Suspension of Standing Orders"—

The HON. A. C. GREGORY said that when the rule was last under consideration it was arranged to take counsel's opinion as to the legality as to a larger quorum being required for the purpose than one-third of the members of the House exclusive of the President. As that opinion had not yet been received, he did not propose to deal with the matter to-day further than to draw attention to the fact that in another part of the Constitution Act a much larger quorum was mentioned. The suspension of the Standing Orders was a special case, for unless a larger quorum was required for that purpose than in other cases it would be open to any seven members to suspend the Standing Orders and pass any measure, however obnoxious it might be to the actual majority of the House. He would ask, what was the use of having