HON. A. NORTON agreed with the Hon. Mr. Macpherson. There were cases in which a woman, not knowing that the man who made advances to her was a married man, had consented to become his wife, and gone through the marriage service believing that she was actually being made his wife. In course of years, generally after the man's death, she found that she was not his wife, but that another woman was his lawful wife. The children of that marriage were unfortunately placed in a position from which it was impossible to rescue them by a Bill of that kind, for they could not be declared legitimate. In the same way if a woman left her husband and lived with another man by whom she had children, those children would, he believed, be legally the children of her lawful husband, and he did not see how they could deal with such cases in the Bill. He hoped the clause would be passed as it stood.

Clause put and passed.

Clause 7, and schedule, put and passed.

The House resumed; and the CHAIRMAN reported the Bill without amendment.

The report was adopted, and the third reading of the Bill made an Order of the Day for to-morrow.

## CRIMINAL CODE BILL.

### SECOND READING.

* The POSTMASTER-GENERAL: It will be within the recollection of hon. members that in 1898, in fact last November, I introduced this Code for second reading in this House. I then very elaborately explained the contents of the Code. I showed how it originated, and gave its history. I also showed that from 1833 a Criminal Code was thought of in England up to 1878, when it was carefully considered by a committee of judges in the old country, and a Bill founded on the report of that committee was introduced into the House of Commons, but did not become law. From that time up to the present the codification of the criminal law has been very carefully considered by English lawyers as well as by lawyers in other countries, and it has been found not only practicable but advisable that a code should be promulgated which will simplify the law relating to criminals. I do not think it is at all necessary to go through the whole history of this Criminal Code as I did on a former occasion, nor, I am sure, will hon. gentlemen expect me to do so. If hon. gentlemen will refer to page 1,046 of *Hansard* for 1898 they will find that I then dealt with the whole subject very elaborately indeed, and I shall not further refer to that matter on the present occasion. Hon. members will recollect that when the Bill passed its second reading at that time in this House, and we went so far as to introduce it in committee, a unanimous wish was expressed by the House that the Bill should be referred to a Royal Commission of experts. Hon. members agreed that the Code, so far as they could analyse it, was one which should be passed into law, but they required further information of an expert character, in order that they might come to a proper decision. I quite agreed with the resolution that was then arrived at, and, as Minister of Justice, I referred the Bill to a commission of experts, consisting of the Chief Justice and all the other judges of the Supreme Court (except Mr. Justice Cooper, who was absent from the colony), the District Court Judges, the Crown Prosecutors, and the Crown Solicitor. Those gentlemen went into the whole matter very carefully, and elaborately criticised the Code. They

[4 p.m.] held twenty-six sittings, and thoroughly investigated the Code from the first clause to the last; so that it will be seen that the intention of this House was entirely carried out, and I hope the result will be that we shall now be able to pass the Bill in its entirety, as settled by the Commission. I shall take up a little of your time this afternoon to show you the result of the reference to the Commission, and what they thought about the Code. The Commission were asked to consider—

*Firstly.*—The expediency of enacting a Code of Criminal Law for our said colony;

*Secondly.*—The completeness of the said Draft Code having regard to the existing Criminal Law of our said colony;

*Thirdly.*—The changes proposed by the said Draft Code to be made in such existing law;

*Fourthly.*—Any additions, omissions, or alterations which you shall think expedient to be made in the said Draft Code and Draft Bill, or either of them.

Those four propositions gave the Commissioners full power to investigate the Code from one end to the other, in order to see whether it was such as should be recommended to the legislature. As a result of their deliberations they came to this conclusion—

> We have carefully examined the provisions and language of the Draft Code and Draft Bill throughout in detail, and, as a result of this scrutiny, we have made certain amendments in the Drafts, etc.

and they were unanimous in thinking that, "It is expedient to enact a Code of Criminal Law for the colony." Then, as to the completeness of the Code they say—

> Having regard to the existing criminal law of the colony, which consists in part of the unwritten Common Law, in part of statutes of New South Wales and Queensland, and in part of statutes of the United Kingdom which became part of the law of New South Wales in 1828, and have not since been repealed, we are of opinion that the Draft Code comprises all the provisions which in the actual circumstances of the colony it is necessary or desirable to include in a Code of Criminal Law.

I do not think that any body of commissioners carefully considering a matter of this kind could come to a more emphatic conclusion than that. Then as to changes proposed to be made by the Code in the existing law, they invite the special attention of the legislature to the provisions dealing with obstruction of the legislature, aiding suicide, formal errors, and stealing by agents. Later on I will show the House how those matters have been dealt with in the Bill. The matters which are alluded to in the report I shall briefly touch upon now, because they will show exactly what the Commission have done. With reference to "grievous bodily harm," the Commission "propose to define this term in such language as to conform to the idea that would be conveyed to the ordinary lay mind by its use—that is, it is to be taken to mean any bodily harm of such a nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health. At present the meaning of the term has by judicial decisions been so extended as to include any injury which causes serious interference with health or comfort, although only temporary." Then as to the conditional suspension of punishment, they "propose to extend the system of conditional suspension of punishment, now allowed in the case of certain first offenders only, to all cases, and either in whole or in part." Hon. gentlemen know that the provisions of the First Offenders Probation Act are right so far as they go; but there are certain cases to which that Act does not apply, as, for instance, to cases where there are appeals to the Full Court, which occasionally does not sit for a considerable time, and during that time a prisoner, whose offence may be a

very light one, is incarcerated in gaol. The provision proposed by the Commission will enable a judge to grant the prisoner bail on his own recognisances or on sureties, in order to wait the judgment of the court. Then with regard to the punishment for rape, "a majority of the Commission propose that rape should no longer be a capital offence. Sir Samuel Griffith and Mr. Justice Chubb do not concur in this recommendation, being of opinion that the circumstances of some parts of the colony do not yet warrant the change." This is a matter that has long engaged the attention of lawyers in this colony and other places. In South Australia, Western Australia, New Zealand, Tasmania, and Great Britain the death penalty is not inflicted for rape, and it is the opinion of the majority of the Commission, which is confirmed by the Government, that under the circumstances we should bring our law into line with that of Great Britain and other places in that respect. A good many arguments may be advanced in connection with this matter, but I shall not attempt to discuss them on the present occasion. With regard to robbery under arms with wounding, the Commission "propose that the death penalty should no longer be inflicted for robbery and attempted robbery under arms accompanied by wounding when the death of the wounded person does not ensue." At present that offence is visited with the death penalty, but the penalty is generally remitted by the Executive Council. With respect to felony, as I explained in moving the second reading of the Bill on a former occasion, the Commission came to the conclusion that this term, which has ceased to have a definite or useful meaning, should be abolished, and they propose to divide indictable offences into two classes—crimes and misdemeanours—and that classification runs throughout the Code. The graver offences are called crimes, and the lesser offences misdemeanours, which is a mere matter of simplification. With regard to another matter which I also mentioned on the second reading, that is as to offences partially committed in Queensland, the Commissioners say they think it desirable that the criminal law should extend to cases in which an offence is begun in Queensland and completed elsewhere, or begun elsewhere and completed in Queensland; and in that respect they alter the Code. Then, as regards punishments. The Draft Code as drawn mentions maximum punishments only. This, they say, is a change in form rather than in substance from the existing statute law in which, with very few exceptions, the mention of a minimum is illusory. In most of our penal statutes we have the words that an offender shall be subject either to the maximum or to the minimum punishment. That has led to a great deal of injustice, and it is thought better that the maximum punishment only should be stated, and that it shall rest with the judge, in his discretion, to inflict such punishment as the case demands. It is also proposed to discontinue the use of the words "penal servitude." With regard to "provocation," the Commission were not unanimous in respect to the important change in the law proposed in the Draft Code. A majority of the Commissioners, consisting of Sir Samuel Griffith, Mr. Justice Chubb, Mr. Justice Paul, the Attorney-General, Judges Miller and Noel, and Messrs. Jamieson and Gill, were in favour of the proposed change, while Mr. Justice Real, Mr. Justice Power, and Judge Mansfield did not concur. The Government have decided to accept the recommendation of the majority. As to the crime of murder, the changes proposed in the Draft Code with respect to the definition of murder and the division of murder into two classes—wilful murder when death is intended to be caused, and murder when that result is not intended—was considered to be desirable and not open to any reasonable objection. Then the act of causing the death of an unborn child in the act of birth is made a crime as proposed in the Draft Code. Some formal changes are proposed in the law with regard to stealing and injuries to property, which the Commissioners think may safely be adopted. There are certain matters omitted from the Draft Code which I thoroughly agree with, as the offences specified are hardly likely to occur here, although they are the law in England. They are not in accordance with the circumstances of the colony, and therefore the Commissioners properly propose to omit them. They also suggest, without making any formal recommendation, the omission of the clauses in the Draft Code relating to maintenance and champerty, defacing coin, and game; and the Government considered it would be better to omit those offences, as they were not in accordance with modern ideas. The Commissioners finally say—

> We submit the Draft Code and Draft Bill with amendments, and, subject to the difference of opinion on the two matters above referred to, recommend the Draft Code and Draft Bill as worthy of acceptance by Parliament, with or without such other of the amendments in the Draft Code which we have recommended without formally making them, or have suggested without any recommendation, as Parliament in its wisdom may think advisable.

Hon. gentlemen will see from what I have read that the Code has been very carefully considered by the Royal Commission of experts who have so exhaustively gone into it, and I think that under those circumstances we may very well adopt the results of their labours. If hon. gentlemen would like me to go through the whole Code, and point out every case where an alteration has been made, I shall, of course, be very glad to do so; otherwise I do not propose to take up the time of the Council in that way. There can be no doubt the adoption of the Code will be of very great value to this colony, and I have no doubt it will be taken up by the other colonies when it passes here. It cannot be adopted by the Federal Parliament, because the Federal Parliament, though it will have power to deal with the service and execution of criminal process throughout the colonies, has nothing to do with the alteration of the criminal law of the several States. That is the province of the States themselves. Queensland is the first colony to bring up a criminal code of this kind; whether it is taken up by the other colonies, as I imagine it will be, or not, of course makes no difference to us. I am convinced it will be a very valuable thing for Queensland to have a code of criminal law which will enable judges, crown prosecutors, and everybody engaged in the administration of the law to see at a glance what the law is, and to administer it with convenience and intelligence. The present state of the criminal law is simply disgraceful. It is scattered through hundreds of statutes, and can only be discovered by professional experts after lengthy investigations. To all others it is virtually a sealed book. Here we have a code which is as complete as any code on earth. We hear a good deal about the Italian Code; that it is the best in existence. I will guarantee, so far as my investigations go, that this Code is as complete and as satisfactory as any Code could possibly be; and certainly the amount of attention that has been given by those who have gone into the subject is worthy of our admiration and our thanks. If passed, it will brush aside all the unnecessary Acts which now encumber the statute-book, and it will give us a Code of Criminal Law which will enable all concerned to administer it in such a way as will

conduce to the well-being of the community. I have very great pleasure in moving that the Bill be now read a second time.

HONOURABLE MEMBERS: Hear, hear!

HON. P. MACPHERSON: As the only member of the legal profession present other than the Postmaster-General, I desire to say a very few words about the Bill. In the first place, I must congratulate the hon. gentleman upon his careful and lucid speech. I have already, in this House, declared my appreciation of the great and patriotic work involved in the Bill, which is a monument of the learning and skill of its author. Since this Bill was before the House it has been under the criticism of a special Commission composed of the best criminal lawyers in the country, and it has emerged triumphantly from the ordeal. I think, therefore, we may accept it without demur, giving at the same time our cordial thanks to those members of the Commission who have devoted so much of their time and attention to the inquiry. I do not propose to examine any of the provisions of the Code. To do so would be simply to weary the Council, and I shall content myself by saying that I heartily support the second reading.

HON. J. T. SMITH: I do not think it would be a good thing to allow the second reading to pass without expressing an opinion as to the admirable manner in which the Code has been drafted by its author, and examined and amended by the Royal Commission of experts. When the Bill was last before the Council it was determined to refer it to a Royal Commission, and we have now before us the result of the labours of that body, comprising a number of men of the greatest legal ability in the colony. They seem to have gone through the Bill with great care, and in my opinion nothing could be more satisfactory and complete and more conducive to the proper administration of justice. As has been said, our present criminal law is scattered over hundreds of statutes. Every provision of it can now be found with the greatest economy of time. It has always been my desire that our laws should be codified in this manner, where whatever is wanted can be found at once and seen at a glance. I cannot but express my strong admiration for the manner in which this Code has been compiled, and for those who have taken part in its compilation. It is an honour to Queensland that it possesses such men. To the learned gentleman who prepared the Draft Code the congratulations of this Council and of the community generally are due. Having known that gentleman for many years, and acted with him in many matters, I can bear testimony to the high qualifications he has brought to bear in compiling this Code, and I am very pleased indeed to be present at a meeting of the Council where it is being initiated. I have much pleasure in supporting the second reading of the Bill.

HON. C. F. MARKS: I am exceedingly pleased to hear from our leader that the punishment of death for rape is to be done away with. I am quite satisfied that on many occasions, if not on almost all occasions, a great wrong has been done in that respect. But I think punishment by imprisonment for life is an unsuitable one. I do not see why the country should be charged with such an individual. He should be either flogged periodically or mutilated so that he could no longer commit the offence. That, I suppose, would be considered barbarous, although the Bible teaches us that "an eye for an eye and a tooth for a tooth" is the proper punishment for crime.

HON. B. D. MOREHEAD: Was not that upset by a later dispensation?

HON. C. F. MARKS: The matter is one worth taking into consideration. I would only further remark that clause 313 seems rather rough on my profession. It provides that—

> Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment with hard labour for life.

I do not quite understand the connection of the words "if the child had been born alive and had then died." But I may state that it is sometimes necessary to kill a child in order to save the mother's life. The child might possibly have been born alive, and the mother's death would have ensued. In a case of that kind you would give a doctor imprisonment with hard labour for life. Where is the justification or the safeguard for the unfortunate
[4·30 p.m.] doctor who may be in that predicament? I should like to hear something more from the Postmaster-General on that provision.

HON. B. D. MOREHEAD: I only mean to say a very words with regard to the second reading of this Bill, because we shall have an opportunity of discussing the clauses in detail later on. It appears to me that this Criminal Code Bill partakes more of the old Mosaic law than of the Christian law. It is much more like the old system of an eye for an eye and a tooth for a tooth than the Christian law, in the savage way in which it proposes that most brutalising and demoralising punishment of flogging, which I hold, no matter what may be the deterrent effects of the punishment, is most intensely degrading and debasing to the unfortunate man who is subjected to it. You had better take away that man and destroy him at once than to send him out into the world branded with the lash. That punishment I will endeavour to get altered when we go into committee. I have not the least doubt that the Bill is most admirably compiled, for the source from which it has come is a sufficient guarantee for that. It is a wonderful piece of work; but I think there are a great many matters in regard to punishments for certain offences which may be just as well and as ably discussed by laymen as by lawyers. A lawyer looks at punishment from one aspect, and a layman probably looks at it from another aspect. I do not say that this Bill could have been compiled by a layman. As I have said, I believe it is admirably compiled. I know that my opinion on that point is not of very great value; but I believe that that is the opinion held by almost every able lawyer in this colony. Still, when the time comes, I will raise my voice against the punishment of flogging being inflicted for any offence whatever, because I believe it is a demoralising and brutalising punishment, and that it effects no good purpose.

Question—That the Bill be now read a second time—put and passed; and the committal of the Bill made an Order of the Day for to-morrow.

## ABORIGINALS PROTECTION AND RESTRICTION OF THE SALE OF OPIUM BILL.

RESUMPTION OF COMMITTEE.

Question stated—That the following new clause be inserted to follow clause 9—"That clause 14 of the principal Act be amended by the omission of the following words: 'or suffers or permits an aboriginal or female half-caste to be in or upon any house or premises in his occupation or under his control.'"

HON. W. FORREST: As hon. members would perceive the Hon. Mr. Webber was not present that afternoon. The hon. gentleman had been called away by an urgent telegram, and had