HON. A. NORTON agreed with the H. of C.
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 chil-
dren 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 a woman left her husband and lived with
another man by whom she had children, those
children would be, believed, 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 schedules, 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
1828, 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 1828 a
Criminal Code was thought of in England up to
1873, 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 consideration of the criminal
law has been very carefully considered by English
lawyers as well as by lawyers in other countries,
and it is only right, I think, that we should not
hesitate to adopt, as far as is practicable, the
same language as to conform to the idea that.
I do not think that any body of commissioners
are called to the Full Court, which occasionally
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
are not set at a considerable time, and during
that time a prisoner, whose offence may be a
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 Com-
mission were asked to consider—
Firstly.—The expediency of enacting a Code of Criminal
Law for our said colony;
Secondly.—The completeness of the said Criminal 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 through
detail, and, as a result of this scrutiny, we have
made certain amendments in the Draft, 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 Victoria, and in part of treaties of the United
Kingdom which became part of the law of New South
Wales in 1828, and have not since been repealed, we use
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, the attention of the
Commission has been given to the special
attention of the legislature to the provisions dealing
with obstructing the legislature, and either in whole
or in part. The Code they say—
Clause 7, and schedules, 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.
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 rapes should no longer be a capital offence. Sir Samuel Griffith and Mr. Justice Chubb do not occur 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 this 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 not commonly imposed by the Executive Council. With regard 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 the definitions contained throughout the Code. The greater offences are called crimes, and the lesser offences misdemeanours, which is a more 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 be extended to cases in which an offence is begun in Queensland and completed elsewhere, or of crimes committed and completed in Queensland; and in that respect they alter the Code. Then, as regards punishments. The Draft Code proposes the maximum punishment 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 unnecessary. In most of our penal statutes we have had 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. Jamison and Gill, were in favour of the proposed change, while Mr. Justice Real, Mr. Justice Power, and Judge Manders, were against it. If 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 the circumstances of the colony, and therefore the Commissioners properly propose to omit them. The 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 has no power to make laws in respect of those matters. Queensland is the first colony to bring up a criminal code of this kind; whether it is taken up by the other colonies will be determined by them themselves. Throughout the colony, and therefore the Draft Code, as proposed by the Royal Commission, is for Queensland to have a code of criminal law which will enable all 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 congratulations. If accepted, it will enable 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 few words about the Bill. In the first place, I must congratulate the Government on the careful and judicious speech that has been delivered upon this measure. I have already, in this House, declared my appreciation of the great and patriotic work in which the Government is engaged. This 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 gentlemen 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 upon his careful and judicious speech.

Hon. C. F. Marks: I am exceedingly pleased to hear from one member that the punishment of death for rape is to be done away with. I am quite satisfied that on many occasions this great wrong has been done in that respect. But I think punishment by imprisonment for life is an unuitable one. I do not think any person who is convicted of such a crime should be charged with such an individual. He should be simply hanged, and that is the punishment he is likely to receive. That is a law which is of the highest value, and I believe in it as admirably compiled. I know that my opinion on that point is not of great value; but I believe that is the opinion held by almost every able lawyer in the 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 commital of the Bill made an Order of the Day for to-morrow.

ABORIGINES 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 any house or premises in his occupation or under his control."