

that the per capita indebtedness of this State is about double that of Victoria, and exceeds that of any other single State in the Commonwealth. Against that we have a per capita taxation lighter than that of any other State. Surely these facts disclose that the disabilities that we are all charging at the door of Federation are groundless, and disprove the charge. They should cause us to turn to the better management of our own affairs, and to endeavour to correct them here as well as in the Federal sphere. If this were done, it would be found there would be no occasion for a petition to England to secure for us relief from the yoke of Federation, that we could work in harmony with all the States and would secure for Australia the future development it is natural for this country to follow. I do not desire to deal with any portion of the Case, but wish to assist the Minister to the end that the Case may be passed from this House to the Imperial Parliament. I thought, however, it would only be right that I should not allow this occasion to pass without expressing my views with regard to the minority.

On motion by Hon. C. G. Elliott, debate adjourned.

House adjourned at 5.45 p.m.

Legislative Assembly,

Tuesday, 22nd May, 1934.

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The SPEAKER took the Chair at 4.30 p.m. and read prayers.

BILL—CONSTITUTION ACTS AMENDMENT (TEMPORARY).

Standing Orders Suspension.

THE MINISTER FOR POLICE (Hon. H. Millington—Mt. Hawthorn) [4.33]: I move—

That so much of the Standing Orders be suspended as is necessary to permit of the in-

troduction and the passing through all its stages of the Constitution Acts Amendment (Temporary) Bill at this sitting.

HON W. D. JOHNSON (Guildford-Midland) [4.34]: Surely we should have some knowledge of what the Bill contains. It is not customary to ask the House to suspend the Standing Orders without having a knowledge of the subject matter to be discussed. I have no idea of what it is. Surely we should be informed of the nature of the Bill, and its urgency.

THE MINISTER FOR POLICE (Hon. H. Millington—Mt. Hawthorn—in reply) [4.35]: The Title of the Bill discloses that information. Also, if the Standing Orders are suspended and the Bill is introduced, it will become the property of the House.

Hon. W. D. Johnson: This is a most extraordinary procedure, and I enter my protest against it.

Question put.

Mr. SPEAKER: There is a dissentient voice. This being a Bill for an amendment of the Constitution, it requires an absolute majority, and so a division must be taken.

Division taken, all members present, with an exception, assembling to the right of the Speaker.

Mr. SPEAKER: There was only one voice opposed to the motion, and I have now satisfied myself that an absolute majority is voting with the ayes. Therefore, there is no occasion to proceed any farther with the division, and I declare the question carried.

First Reading.

On motions by the Minister for Police, Bill introduced and read a first time.

Second Reading.

THE MINISTER FOR POLICE (Hon. H. Millington—Mt. Hawthorn) [4.38] in moving the second reading said: It is desirable that I should recount the circumstances that have rendered the Bill necessary. When Parliament passed the Lotteries (Control) Act in 1932, Mr. Clydesdale, the present chairman of the Lotteries Commission, was assured by the Government, and also independently, that notwithstanding that he was a member of Parliament, he could accept the position

of chairman of the Commission without incurring any disqualification or penalty. Last year a writ was issued at the instigation of a common informer, claiming a penalty of £200 from Mr. Clydesdale under Section 32 of the Constitution Act of 1899. Following the issue of the writ, and before the case was heard, Parliament passed an Act the intention of which was to remove any disqualification that Mr. Clydesdale had incurred, and so quash the action then pending against him. There is no doubt as to what Parliament intended. However, the common informer proceeded with and won his action, the Chief Justice holding that the Act was not retrospective in its operation so as to prevent the common informer from recovering the penalty. I propose at this stage to read a portion of the finding of the Chief Justice when dealing with the case.

Mr. Latham: I do not think it wise to do that, for that case is still pending.

The Premier: No, the case pending is not affected by this Bill.

Mr. Latham: I know that, and I do not want to see that brought into it.

The MINISTER FOR POLICE: It is necessary to read it in order to explain the purpose of the Bill.

Mr. Ferguson: Has it appeared in the Press?

The MINISTER FOR POLICE: Of course. However, I am not reading it from any Press cutting, but from the finding of the Chief Justice. I am not going to read the whole of that finding, for it will not be necessary. The Chief Justice dealt extensively with the Constitution Act as it affected the position of Mr. Clydesdale prior to the passing of the Act of last year, and he held that the office of a member of the Lotteries Commission was an office of profit under the Crown. Then, having decided that independently of the amending Act that was passed, his reading of the Constitution was that such a post was an office of profit under the Crown. He then dealt with the Act amending the Constitution, and after expressing opinions he proceeded in these words—

That being so the defendant when he sat and voted as a member of the Legislative Council became liable to a penalty under Section 29 of the Act, and there remains only to consider the effect of the Constitution Acts Amendment Act, 1933.

That is as far as we are interested in it. Members know the intention of the measure that was passed by this House and another place, and now we have to consider how it was viewed by the judge when the case went before the court. I will read the judgment in full so that members may realise the view taken by the court, which was certainly not what Parliament intended.

The plaintiff contends that the Act does not operate to bar his claim in this action, and he relies upon two grounds. First, he says the defendant cannot pray in aid the Act because it refers only to a person who, on the 1st December, 1933, was both a member of Parliament and a member of the Lotteries Commission, and he says that, by the operation of Section 38 of the Constitution Acts Amendment Act, 1899, the defendant ceased to be a member of Parliament on the 23rd day of February, 1933, when he accepted an office of profit from the Crown. I do not agree with that contention. Looking at the whole Act, including the preamble, it is my view that the words "who is at present a member of Parliament" must be read as covering a person who was presuming to sit as a member, as the defendant in fact was, on the 1st December, 1933. Any other construction would reduce the Act to a nullity.

The plaintiff next contends that the Act does not affect, or purport to affect, any penalty which had been incurred prior to the 1st December, 1933, the date upon which the Act was assented to, and therefore, does not bar his claim which is for a penalty alleged to have been incurred on the 23rd day of February, 1933. The operative words of Section 2 of the Act are "no disability, disqualification, or penalty shall be incurred," and those words clearly point to the future. For the defendant it was argued that a penalty was not "incurred" until it had become the subject of a judgment in an action brought to recover it, and that accordingly the defendant had not incurred any penalty at the time the Act was passed. In the ordinary sense the words "to incur a penalty" mean "to become liable or subject to a penalty." If that be the sense in which the words are used in Section 2 of the Act, and I think it is, then it is clear that the section deals with the future, and leaves untouched any penalty to which the defendant became liable prior to the 1st December, 1933. The Preamble to the Act confirms this view. We there find it recited that doubts have arisen as to members of Parliament having incurred any disqualifications or penalties under the Constitution Acts Amendment Act, 1899. At that time no judgment had been obtained against any member of Parliament for a penalty under that Act, and it is clear therefore that the word "incurred" was not used in the preamble with the meaning which the defendant seeks to attach to it when used in Section 2.

Incidentally it may be observed that in drafting the preamble, although Section 39 of

the Constitution Acts Amendment Act, 1899 is mentioned, the draftsman does not appear to have had in mind the question of pecuniary penalties under that section, because it speaks only of doubts having arisen as to members of Parliament having incurred penalties by acceptance of the office of a member of the Lotteries Commission, and the acceptance of an office of profit from the Crown by a member of Parliament does not involve such member in a pecuniary penalty. A pecuniary penalty under Section 39 is only incurred when a member, having accepted an office of profit from the Crown, presumes to sit or vote as a member of Parliament.

For these reasons I am of opinion that the Act pleaded by the defendant does not bar the plaintiff's claim, and he is therefore entitled to judgment.

The concluding sentence should be of interest to members. The judge concludes by saying—

In these circumstances it becomes unnecessary to decide a number of other points raised by the plaintiff but as they have been argued at some length I may say that if necessary I should have been prepared to hold that the Act was within the competence of the Legislature, that it was duly passed in manner and form provided by law, and that it was not a Bill which was required to be reserved for the significance of His Majesty's pleasure.

That is an important pronouncement. The judge holds that the Act was within the competence of the Legislature to pass, that it was duly passed in the manner and form provided by law, and that it was not a measure that would require to be reserved for the significance of His Majesty's pleasure. In other words, this House and another place were competent to deal with the Constitution, and to amend it, and the Act has been duly passed.

Mr. Latham: That would only apply to the point raised that the Lieutenant-Governor had not power to assent to the Act.

The MINISTER FOR POLICE: That was the point. The judge says the Act was assented to in the proper manner. He also says that if this had been one of the questions he was called upon to decide, he would have had to declare that the Act was assented to in the proper manner. The question which did arise after the passing of the last Act was whether the House had power to pass such a law, and the judge declared that we had the power, that this Parliament was supreme, and that it had the right to alter the Constitution by amending the law, which in due course was amended. He also said that Parliament

did not do what we considered it had done, and what we intended to do. His Honour said plainly, in respect to the penalty which is incurred for sitting and voting, that the Act had not a retrospective effect, and that the section of the Act dealing with that point applied only to the future. That was his judgment, and upon it he found for the plaintiff. The judgment I have read deals only with the penalty that was inflicted by virtue of the fact that Mr. Clydesdale sat and voted on a given date after he had accepted what the judge termed an office of profit under the Crown. Upon the other questions involved in the amending Bill, such as the disqualification, no pronouncement was made by the Chief Justice. There are, therefore, still doubts as to what was intended, considering His Honour made no pronouncements as to the significance of his ruling. He ruled definitely in one case, and imposed a fine of £200 as the penalty for sitting and voting. The questions dealt with in this Bill have no regard to the penalty, or the action that was taken. Some doubts have been expressed as to whether, the penalty having been incurred, Mr. Clydesdale is now disqualified from holding a seat in another place. That is the matter we have to deal with now. We are not concerned about the action that was taken in respect to the penalty, but we are concerned about removing the disqualification, which we tried to remove last year.

The Premier: And which we intended to remove.

The MINISTER FOR POLICE: We had the best advice that could be obtained.

Mr. Sleeman: Apparently that was not too good.

The MINISTER FOR POLICE: The best advice we had did not satisfy the Chief Justice when the case came before him. It was intended to make the Act retrospective, and words were used which, we were assured by the legal authorities, provided for its being retrospective, but the judge held that the section dealing with that point dealt only with the future. I need not go into all that. I am not criticising what the judge has done. It is not my business to take exception to his judgment. For the time being we have to accept it. May I say that, in respect to the fine imposed, the Bill before the House in no way interferes with it. On this occasion we have endeavoured to state in plain language what we propose to do, language

that will satisfy everyone. I cannot think of a more straightforward sentence or less ambiguous language than that contained in the first clause, which seeks to remove every disqualification from Mr. Clydesdale. Members will agree that the clause absolutely removes any possibility of disqualification. With reference to the justice in the case, I think the House was satisfied almost to a man on the last occasion when the Government brought down the Bill it did, that its object was to remove any disqualification from Mr. Clydesdale. We were seeking to validate the act of the previous Government, and an appointment that was made in all good faith. Mr. Clydesdale was assured and satisfied that he would incur no disqualification or penalty by accepting the office. It was held by competent legal authorities—I know they do differ—that this was not an office of profit under the Crown, and that any emolument he received by holding his commission would not come either from the Government or the Crown. He, therefore, accepted the position in all good faith. For any mistake that was made the responsibility must rest upon the Government who were responsible for it. When, after thorough examination, a gentleman has accepted a position, he is justified in assuming that he is legally entitled to accept it. That is what occurred in this case. When it came to a question of the legality of the position being challenged, the Government were naturally anxious to see that Mr. Clydesdale incurred no penalty or disqualification, and endeavoured to validate the act of the previous Government. The whole question was entirely removed from any party sphere. The legal points, which may be very interesting to some people, were discarded, and this House and another place sought to do justice to the individual concerned. It was for that reason the amending Act was passed. We are now seeking to do no more than was done upon that occasion, when we sought by the usual legal formalities to preserve Mr. Clydesdale from any disqualification or penalty. We failed to satisfy the court which dealt with the matter. Although we failed on that occasion, and a penalty has been imposed, the necessity for justice being done still remains. We still have the same obligation we had last year, to endeavour to remove the disability which has been imposed. Just as we were entitled last year to endeavour to rectify

the mistake that had been made, and to see that no penalty was inflicted upon the gentleman who accepted the position in all good faith, so are we justified to-day in endeavouring to do what we sought to do before, but apparently failed to do. We have a straightforward job to carry out. We go straight to the point and state exactly what we want. The only objection that may be raised is that we are attempting to interfere with a decision already given by the court. We are not doing that. Members will see from the Bill that we are not doing so. A case is still before the court, is the subject of an appeal, and may be the subject of a further appeal. That is in no way being interfered with, for a special clause in the Bill takes it away from that case. We are now considering how we can make retrospective that which we endeavoured to make retrospective last year, and to provide that any disqualification which has been incurred may be removed by this Bill. We desire to make it very clear that Parliament wishes such disqualification to be removed entirely.

Mr. Sampson: Does your advice on this occasion come from the same source as on the previous occasion?

The MINISTER FOR POLICE: We have done our best. We have consulted more than one authority. The language used in this case should satisfy everyone. I cannot think of language that would be plainer or more direct. The Bill deals with a specific case.

Mr. Sampson: It is embarrassing to have a succession of Bills on the matter.

The MINISTER FOR POLICE: If the Bill passes, there will not be any doubt as to the intention of Parliament, nor should there be any doubt as to the interpretation. I do not think any member of the House is prepared to guarantee what will be the view taken by the courts if this measure is passed. The best that can be done is to accept the legal advice given by the Crown Law Department and supported by opinions from outside. It is the unanimous opinion of the legal gentlemen who have been consulted that the Bill meets the case, and I do not think we can do better than that. No layman would attempt to draft a Bill which could be guaranteed to be acceptable to the courts of law. However, every possible precaution has been taken to make the language of the measure straightforward and

explicit, and such as deals with an explicit case. The Bill is actually as plain a direction as can be given, drawn by the best legal authorities available in Western Australia. Thus the Government are endeavouring to place the provision absolutely beyond doubt. It is not necessary for me to elaborate on the provisions of the Bill. One clause sets out definitely that there shall be no disqualification, and I believe that the language used ensures the desired retrospective effect. In order to make it plain that there is no desire to interfere with the case actually before the courts, a case which will have to be decided by the courts, Clause 3 exempts that case from the operation of the Bill. The obligation which we considered to be ours last year is ours this year. Whilst not taking away anything that has been gained in the Supreme Court by way of penalty, we are justified, as the Parliament of Western Australia, in declaring that the gentleman who accepted the position on the Lotteries Commission in all good faith shall not suffer disqualification as a member of Parliament, and, further, that until the end of this year, when the Bill will terminate, he shall not suffer either any penalty or any disqualification. The Bill, I repeat, deals with a specific case, so that it does not establish any general principle. It is to be agreed to as an act of justice, and I believe that it will be so agreed to by this Chamber and also by another place. The wording of the protective clause should, I consider, be satisfactory to both Houses; and the wording of the exempting clause I hold to be as clear and as specific as it can be made. I move—

That the Bill be now read a second time.

MR. LATHAM (York) [5.5]: I offer no objection to the Bill. When legislation of this nature was before the House previously, I stated the attitude I proposed to adopt; and I see no reason to alter that attitude. The Government of which I was a member appointed to the position of member of the Lotteries Commission two members of Parliament. This was done in good faith, the Government having no knowledge that there was any statutory bar against either member of Parliament occupying the position. In the circumstances I regard it as my duty, anyhow, to protect those two members against any action which might be brought against them. I hope that the Bill

does not do anything to interfere with the decision of the courts in a case which is still sub judice.

The Minister for Justice: Oh no!

MR. LATHAM: I want that point made perfectly clear, because the Minister for Police introduced into his speech references to a judgment given by his Honour the Chief Justice. It makes me fear that possibly there is in the Bill something more than I at present see.

The Minister for Justice: No.

MR. LATHAM: I do not want to know anything about what the Chief Justice said. The Bill provides that the case now pending may proceed. So long as that clause remains, I am perfectly satisfied; but I will not be a party to any step which will take away from the courts their power to deliver judgment or will deprive litigants of their rights. A careful perusal of the Bill shows that its only intention is to protect a gentleman who is a member of another place. To that I have no objection whatever. Last session Parliament passed a Bill with the intention of protecting him. Therefore we have already agreed to the principle of this Bill. There seems to be no reason why the House should alter its decision, the composition of the Chamber not having been altered since the last measure was passed. Therefore I hope that the present Bill will be enacted. There is, however, another gentleman interested in legislation of this nature, and that is the ex-member for Perth (Mr. H. W. Mann). I am not quite sure what his position may be.

The Minister for Works: Action has to be taken within three months.

MR. LATHAM: Then that gentleman is perfectly protected.

The Minister for Justice: He is all right.

MR. LATHAM: I think hon. members will agree that if there is any doubt as to the position of the ex-member for Perth, protection should also be extended to him.

The Minister for Justice: There is no danger.

MR. PATRICK: Might he not be liable to refund his salary?

The Minister for Justice: No.

MR. LATHAM: I wish to forget all about the decision of the court, as the case is still sub judice. However, the amount to which the common informer is entitled is protected by the Bill. I hope that it will not be possible for a common informer at a later stage to take action similar to that which has

already been taken. That aspect should receive consideration. It is no use to pass legislation protecting a man who has in all good faith accepted an appointment offered him by the Government, if a common informer can come along and make use of the Constitution Act to bring a legal action. I hope the Minister for Police will give consideration to that phase. There are one or two minor matters I wish to discuss in the Committee stage. Meantime I support the second reading of the Bill.

MR. SLEEMAN (Fremantle) [5.11]: It seems to me that the time has arrived when we should change our legal adviser. The present situation does not reflect too well upon the people responsible for the drafting of the Bills that comes here. Two years ago, when the Act authorising lotteries was passed, we were assured by the Crown Law Department and by King's Counsel that there was nothing to prevent a member of Parliament from accepting a seat on the Lotteries Commission.

The Premier: That may still be right.

MR. SLEEMAN: We have to accept the judgment of the Supreme Court as it stands. It seems to me a question whether we should change our legal adviser.

The Premier: Or change the judge who has given a decision against the opinion of our legal adviser.

MR. SLEEMAN: We cannot very well change the judge unless both Houses of Parliament pass a resolution to that effect.

MR. SPEAKER: Order! We had better not discuss the judge.

MR. SLEEMAN: In the circumstances the Chief Justice, or any judge, is on the box seat. We do not put a man on the box seat unless we consider him worth putting there. We have to accept his judgments, right or wrong. Bill Sikes can say the judge who sent him inside was wrong; but it is no use his saying that, as once the decision has been given, in he goes.

The Premier: But he has his right of appeal.

MR. SLEEMAN: In this case the appeal has taken place, and that is where I fear trouble may come in.

The Premier: The matter has not been finalised.

MR. SLEEMAN: We all know that we have to abide by the decisions of the courts. If we do not choose to abide by the decision

of a judge, we can go to the Full Court, and eventually to the High Court or the Privy Council; but we have to accept the ultimate decision. Parliament has already had two or three goes at this particular business, and the persons responsible for drafting the earlier measures should be asked a question or two.

The Premier: It may be the judge's interpretation that is wrong.

MR. SLEEMAN: I shall not quarrel with the judge's interpretation, because one can appeal from that. However, in the first place, one King's Counsel says one thing, and then another King's Counsel says something else. Thereupon a third lawyer is asked which of the two King's Counsel is right.

MR. LATHAM: And he disagrees with both of them.

MR. SLEEMAN: That third lawyer is the judge. He is a lawyer who has been raised from the ranks of the legal profession to a judgeship. There is no doubt, however, that one lawyer says one thing and another says another thing and the third, the judge, is supposed to be one of the pick of the profession as regards interpretation of laws.

MR. SAMPSON: Your life appears to have been saddened by lawyers.

MR. SLEEMAN: I am not quite clear as to what the Bill does. If its effect will be to upset a decision of the law courts, I am not prepared to vote for it.

The Premier: I assure you that that is not so.

MR. SLEEMAN: I cannot discuss the clauses, but the Bill contains the words "subject to the determination of any pending appeal." The judgment which has already been given says that the defendant in the case is liable to a fine of £200 and the loss of his seat. The Bill is opposed to that. If the defendant's appeal is dismissed, he will still be liable to a penalty of £200 and the loss of his seat.

The Minister for Justice: No.

The Premier: If the appeal is dismissed?

MR. SLEEMAN: If the appeal is dismissed, then the defendant is liable to a fine of £200, and the forfeiture of his seat in Parliament.

The Premier: No.

MR. SLEEMAN: But he forfeits his seat.

The Premier: That is not so.

Mr. SLEEMAN: Then that is where I was wrong. Much as I would like to protect Mr. Clydesdale, I do not like this. I realise that he has been placed in a false position, owing to lawyers disagreeing, and he should never have been placed in such a predicament. For that reason, I am prepared to protect him to the end of this year but no longer. Personally I do not think he should be on the Lotteries Commission, but he was pushed into it.

Mr. Latham: There was not too much pushing about it.

The Premier: If the appeal goes against the decision by which Mr. Clydesdale was fined £200, he is still liable to that fine, but this Bill will not affect the position in the way you have indicated.

Mr. SLEEMAN: In those circumstances, I am prepared to support the second reading of the Bill. At the same time, I protest against the way in which Bills have been placed before Parliament. This is not the only occasion on which a Bill has been before us in a shocking condition. Parliament is constantly being asked to pass legislation to rectify mistakes, and the time has arrived when we should secure the services of some really good Parliamentary draftsman. Some of the mistakes in legislation have been obvious.

Mr. Latham: So obvious that we did not notice them.

Mr. SLEEMAN: As so many mistakes have been made in the drafting of Bills, we should secure the services of a first-class draftsman, so that we may be confident that Bills placed before us are drafted properly.

The Premier: But first-class lawyers disagree.

Mr. SLEEMAN: When Bills come before us, they should be drafted in such a way that we should not be required to rectify half a dozen errors, and then the Legislative Council have an opportunity to rectify additional errors. We can sympathise with laymen who are liable to miss one of these errors, and we should have Bills placed before us that are drafted satisfactorily.

MR. NEEDHAM (Perth) [5.15]: When the original legislation dealing with lotteries control was introduced, I opposed it. Later, when a Bill was presented to amend the Act to validate the position of a cer-

tain member or members of Parliament, I again addressed myself to the second reading and announced my opposition to it. The Bill now before us is another measure within that category, the object of it being to amend the Constitution. I opposed the suspension of the Standing Orders when the Minister moved his motion because I do not believe in hurrying through an amendment to the Constitution. I regard it as too important a matter. When we decide that the Constitution requires alteration, it should not be done by way of the suspension of the Standing Orders to facilitate the consideration of the legislation. For that reason I opposed the move by the Minister in that direction. If I am to be consistent in my attitude, I must oppose the second reading of the Bill, and I intend to do so. The Bill purports to validate the position of a member of another place. While I have the highest regard for that gentleman in every way, I cannot bring myself to support a measure that, to my mind, tinkers unnecessarily with the Constitution. Again, I do not think it is right for Parliament to be asked to deal with an amendment of this description when the whole question is before the courts and is, therefore, sub judice. It is generally recognised that when matters are before the courts for decision, the public should remain silent regarding them. I realise that the member of Parliament in question is in an awkward position and that the Government of the day were responsible for placing him there. Nevertheless, I do not think it right for Parliament to be asked to alter the Constitution to validate his position, particularly when the issue is still before the courts. I oppose the second reading of the Bill.

HON. W. D. JOHNSON (Guildford-Midland) [5.21]: Retrospective legislation is never palatable and when it applies to the Constitution, it becomes a matter of grave concern. The Bill is necessary because of the incapacity of the legal advisers of the Government, and the incapacity of Parliament to discover the weakness of the advice given.

The Premier: Or possibly the incapacity of the judges.

Hon. W. D. JOHNSON: I do not think it is within our province to question the

capacity of our judges. Established custom leads us to respect their position.

The Premier: The judges' decisions will be questioned, right up to the highest tribunal in Australia.

Hon. W. D. JOHNSON: We have that right, and I take it that right will be exercised. The Bill not only provides for the present appeal to continue, but gives the right to proceed to the Privy Council, if necessary.

The Premier: No.

Hon. W. D. JOHNSON: We have that right. We are not bound to accept the decision, in the first place, of a judge of the Supreme Court, nor yet the decision of the Full Court, or the High Court of Australia. We still retain the right of appeal until ultimately we are convinced by the highest authority under the Constitution that the advice given to the Crown in connection with the drafting of the legislation under review was faulty. We are not justified in saying that a judge was wrong. His decision can be tested. However, the judge has declared that the drafting of the legislation was wrong and for the time being we have to recognise that position and merely say that we regret the legislation was not more carefully drafted, and that Parliament did more adequately consider the legislation and so word the clauses that they would provide for what Parliament set out to do. In common with the member for Fremantle (Mr. Sleeman), I do not regard it as very reassuring to members of Parliament, who are responsible for the legislation they pass, to find that so many mistakes are made in the drafting of Bills.

The Premier: How many mistakes have there been?

Hon. W. D. JOHNSON: There have been quite a number. Some have been small mistakes, but nevertheless they are mistakes.

The Minister for Justice: But they have not been important.

The Premier: We should be chary in reflecting upon the Parliamentary Draftsman.

Hon. W. D. JOHNSON: It seems to me very peculiar. Prior to the last year or two, I cannot remember so many mistakes ever having occurred in the drafting of Bills. It may be that the legislation arising out of the depression has been unique, and required, in the drafting, greater knowledge and capacity than was formerly involved in such work.

The Premier: You know it is the usual experience year in, year out.

Hon. W. D. JOHNSON: It is wrong to say that it is usual. To my mind, it is exceptional, and certainly very uncommon. Nevertheless we find that Acts of Parliament are now being interpreted to mean something other than in accordance with the intentions of Parliament.

The Minister for Justice: You must remember that Bills are often considerably amended before they go through Parliament.

Hon. W. D. JOHNSON: That is so.

The Minister for Justice: And they are amended in Parliamentary language, not in legal phraseology.

Hon. W. D. JOHNSON: That is quite true, and in my experience I consider the laws most likely to be amended, debated and criticised are those associated with gambling and the liquor trade. On every occasion it is wonderful to contemplate the knowledge that is displayed by members of Parliament in those two subjects.

The Premier: And you might have added legislation regarding trotting, too.

Mr. Latham: And the Dog Act.

The Premier: I remember the member for Guildford-Midland took a very prominent part in the legislation affecting trotting.

Hon. W. D. JOHNSON: It is true that I am an authority on trotting, and—

Mr. SPEAKER: Order! I think the hon. member is getting well away from the Bill.

Hon. W. D. JOHNSON: In view of the wonderful knowledge members always display regarding legislation affecting the liquor trade and gambling and the number of amendments that are submitted when relative Bills are introduced, it is quite possible that the amendments moved are liable to alter the draftsmanship as originally embodied in the legislation; but that did not apply in this instance.

The Minister for Justice: Yes, it did. This Bill was amended in the Legislative Council at a minute's notice.

Mr. Patrick: And that was where the mistake came in.

Hon. W. D. JOHNSON: I remember the member for Nedlands (Hon. N. Keenan) differing in regard to the original Bill, which included a clause exempting members of the Lotteries Commission from the section of the Constitution dealing with the holding of offices of profit under the Crown. The member for Nedlands expressed the opinion that.

the clause was superfluous, and, as a result of the ensuing debate, the Minister in charge of the Bill agreed to delete the clause. The Minister for Justice mentioned that the legislation was amended in the Legislative Council, but I was not aware of that. If that was the position, and the clause, as drafted by the Parliamentary draftsman, was amended in another place, thereby causing the trouble, then we can hardly hold the Parliamentary Draftsman responsible for what has happened. I would be sorry to blame that officer for something that Parliament had done.

The Minister for Justice: I did not say that the Council's amendment was responsible for all this trouble, but I know the legislation was amended in that House.

Hon. W. D. JOHNSON: In those circumstances, we cannot hold the Parliamentary Draftsman responsible. If we tinker with legal advice and draftsmanship, we should do it most carefully. I thought it was the custom for members to confer with the Parliamentary Draftsman regarding amendments they intended to move, particularly on matters of importance. No one likes retrospective legislation, particularly when it applies to an amendment to the Constitution. I did not like the original legislation, and I dislike Parliament being associated with lotteries or gambling. However, Parliament took action along those lines but did so in a weak manner, and in a way that did not enable our desires to be conveyed effectively to the courts. Evidently our language has been a bit loose. Having done that, we must accept the responsibility. Much as we dislike legislation of this kind, we are bound to pass it. True, provision is made in Clause 3 that the existing appeal shall go on, but the clause further provides that no action shall be commenced with the object of compelling the member to forfeit his seat. I take it that no action has been started in that direction.

The Premier: That is so.

Hon. W. D. JOHNSON: The clause contains the following provision:—

subject, however, to the determination of any pending appeal or to any right of further appeal of either party to such action, but this Act shall apply and operate as a bar to all other actions or proceedings (if any), under the said section thirty-nine which may have been commenced and are pending at the commencement of this Act.

I take it that is purely a safeguard to ensure that we shall make no further blunders. Pro-

ceedings may be pending, although we may have no knowledge of them, and the measure will prevent such proceedings being continued. I have one regret. I accept my share of the responsibility and consider myself just as much to blame as are members of the Government or other members. Parliament agreed to the measure. My regret, however, is that when the trouble arose, the member did not resign from the commission. Public opinion is opposed to Parliament in this matter, and once we were proved to be wrong, the wrong should have been righted by the member's resigning from the commission. To pass a law providing that he shall not be injured as a member of Parliament is quite right, but he would have been better advised and the action of the Government would have been better understood if, immediately the point was raised, the Government had realised the wrong and had asked Mr. Clydesdale to stand down. I hope that when we have passed this Bill, he will not continue in the position.

MR. McDONALD (West Perth) [5.32]: Members will naturally approach a Bill of this kind with hesitation and reluctance, because any interference with the Constitution in the interests of an individual is something we desire to avoid, if possible. Parliament, however, has already adopted a certain course. Last year we passed a measure having for its object the removal of the disqualification which may have been imposed upon a member of another place, and it seems to me that the only consistent attitude we can now adopt is to pass this Bill, the intention of which is to do something which, by reason of faulty language, we failed to do under the previous measure. There are two points about the Bill that I consider fundamental, and I think members will agree that they form the basis on which the House is likely to support the Bill. The first point is that the Bill does not seek in any way to affect existing litigation. As I understand that litigation, it was an action for penalties in which the plaintiff has so far succeeded. I understand that the litigation did not aim at seeking any decree that the seat had become vacated or was liable to become vacated. That may be a matter for decision by another authority. The action related to penalties only, and the position of the plaintiff is safeguarded.

The Premier: That stands. This Bill does not affect that decision at all.

Mr. Raphael: A pity it did not, all the same.

Mr. McDONALD: We are not seeking to interfere with any litigation taken or any litigation pending. The second point is that this House is seeking to honour the assurance given to the member when he accepted the office. We have already passed a measure with the object of honouring that assurance, and I think we would not be consistent if we failed to continue the necessary legislation to provide that the penalty of disqualification, which we sought to avoid previously, will be avoided in future. For those reasons it seems to me that the Bill is one which the House should support, and I propose to vote for the second reading.

Question put.

Mr. SPEAKER: There being a dissentient voice, the House will divide.

Division resulted as follows:—

Ayes	33
Noes	1

Majority for	32
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AYES.

Mr. Brockman	Mr. Nulsen
Mr. Collier	Mr. Patrick
Mr. Cross	Mr. Raphael
Mr. Cunningham	Mr. Sampson
Mr. Doney	Mr. Sleeman
Mr. Ferguson	Mr. F. C. L. Smith
Mr. Hawke	Mr. J. H. Smith
Mr. Heguez	Mr. Stubbs
Miss Holman	Mr. Thorn
Mr. Johnson	Mr. Tonkin
Mr. Kenneally	Mr. Troy
Mr. Lambert	Mr. Warner
Mr. Latham	Mr. Welsh
Mr. McCallum	Mr. Willcock
Mr. McDonald	Mr. Wise
Mr. Millington	Mr. Wilson
Mr. Moloney	

(Teller.)

No.

Mr. Needham
(Teller.)

Question thus passed.

Bill read a second time.

In Committee.

Mr. Sleeman in the Chair; the Minister for Police in charge of the Bill.

Clause 1—agreed to.

Clause 2—No disqualification incurred by acceptance of the office of a member of the Lotteries Commission:

Mr. LATHAM: The title refers to the gentleman in question as the chairman of the Lotteries Commission, but Subclause 1 of Clause 2 refers to his acceptance of the office of a member of the Lotteries Commission.

The Minister for Justice: He is a member as well as chairman of the commission.

Mr. LATHAM: We ought to be consistent and amend either the title or the subclause.

The MINISTER FOR POLICE: I do not think we had better alter it now, but if it is necessary to do so we can make the alteration in another place. Our desire is to identify the person named.

Mr. Latham: But you have already identified him by stating his name. What I suggest is, I think, the right thing to do.

The MINISTER FOR POLICE: I will have the point inquired into, but for the time being we had better pass the clause as it is. The Bill is the work of the Parliamentary Draftsman, and he consulted no fewer than three King's Counsel on the question, and they all were agreed.

Mr. Latham: Will you tell us who those three were?

The MINISTER FOR POLICE: It shows that we made every endeavour to fortify the opinion of the Parliamentary Draftsman, and we did so, having in mind the contentious nature of this legislation.

Mr. LATHAM: I would not have risen but for the Minister's intimation to the Chamber that the Bill is the product of the Parliamentary Draftsman alone.

The Minister for Police: That is his draft.

Mr. LATHAM: But he has consulted three King's Counsel?

The Minister for Police: He has been confirmed by them.

Mr. LATHAM: He asked them to look over the Bill and see that it was correct?

The Minister for Police: Yes.

Mr. LATHAM: If the Bill has been referred to three King's Counsel, the probabilities are that the complication will be worse than ever. I hope the Government will not bring down a third Bill for this purpose. The previous Government introduced a measure of this nature, which was lost as the result of disagreement between the Houses. The measure was introduced

a second time, and so amended in another place as to be nothing like the Bill originally introduced. Now we have this Bill. We ought to be very careful that we are not making another mistake.

Mr. Raphael: Mr. Hughes has been consulted on this Bill.

Mr. LATHAM: If that gentleman has agreed to it, everybody should be satisfied. I accept the Minister's statement that he will refer the words to which I have drawn attention to the Parliamentary Draftsman, pointing out that it is just as well not to confound the courts when a case is before them. The body of the Bill refers expressly to the Hon. A. M. Clydesdale, but in the title that gentleman is referred to as "chairman."

Clause put and passed.

Clause 3—Saving any existing judgment under Section 39 of the Constitution Acts Amendment Act, 1889, but barring other actions:

Mr. McDONALD: I understand from the Minister that no such actions as are referred to in the last part of the clause are pending now.

The Minister for Justice: Not to our knowledge.

Mr. McDONALD: I presume the idea is to provide a bar against any action which might be commenced between now and the time when the Bill goes into effect.

The Minister for Police: That is so.

Mr. McDONALD: Then I see no objection to the clause.

Clause put and passed.

Clause 4, Title—agreed to.

Bill reported without amendment, and the report adopted.

Third Reading.

THE MINISTER FOR POLICE (Hon. H. Millington—Mt. Hawthorn) [5.50]: I move—

That the Bill be now read a third time.

Mr. SPEAKER: I have counted the House, and am satisfied that there is an absolute majority of members present.

Question put and passed.

Bill read a third time, and transmitted to the Council.

ADJOURNMENT—SPECIAL.

THE PREMIER (Hon. P. Collier—Boulder) [5.51:] I move—

That the House at its rising adjourn until Thursday next, at 4.30 p.m.

Question put and passed.

House adjourned at 5.52 p.m.

Legislative Council,

Wednesday, 23rd May, 1934.

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The DEPUTY PRESIDENT took the Chair at 4.30 p.m., and read prayers.

SWEARING-IN OF MEMBERS.

Hon. C. B. Williams (South), Hon. E. H. H. Hall (Central) and Hon. G. Fraser (West) took and subscribed the oath and signed the roll.

QUESTION—ROYAL VISIT.

School Children's Display.

Hon. A. THOMSON asked the Chief Secretary: In view of the school teachers' refusal to assist in preparing the children of the State for a massed drill exhibition, such as was given during the Centenary celebrations, and which was considered undoubtedly the finest and most important event of the whole of those celebrations, will the Government give serious consideration to employing an independent instructor so that our children may not be debarred from seeing and hearing the Duke of Gloucester whilst here, and also enable our distinguished guest to have an opportunity of seeing and speaking to the future citizens of the State and the Empire?