Legislative Council,

Tuesday, 5th October, 1926.

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

ASSENT TO BILLS.

Message from the Governor received and read notifying assent to the undermentioned Bills:—

1, Agricultural Bank Act Amendment.

2, Supply (No. 2), £831,000.

3, Trust Funds Investment Act Amendment.

4, Wyalcatchem Rates Validation.

MOTION—INDUSTRIAL ARBITRATION ACT.

To disallow Apprenticeship Regulations.

Debate resumed from the 22nd September on the following motion by Hon. J. Nicholson:—

That the Apprenticeship Regulations made (under and in pursuance of the Industrial Arbitration Act, 1912-25) and published in the "Government Gazette" of the 20th August, 1926, and laid on the Table on the 24th August, 1926, be and the same are hereby disallowed.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [4.36]: In connection with the motion for the disallowance of these regulations, something has happened which has been a new experience to me in the House. Formerly, when a motion for disallowance of regulations or any motion affecting administration has been moved, the practice has been to await the reply of the representative of the Government to the speech of the mover before proceeding with the discussion; and that for a very good reason. If the debate were continued while the mouth of the only member who has a full knowledge of the facts was closed, it would be a discussion based on the presentation of only one side of the case. I do not think, however, that the position will be in any way affected by the procedure adopted, a procedure which, though not contrary to the Standing Orders, is not to be commended. I feel sure that the object of the speakers was not to influence the House, but to raise objections which could be dealt with in my reply, and I am certain that those who have shown an inclination to take the side of Mr. Nicholson will suspend their judgment until they have heard the case for the defence. Judging from the tone of the debate as far as the discussion has proceeded, there seems to be a misapprehension as to the powers of the Arbitration Court under the Act, altogether apart from the making of regulations dealing with apprenticeship. There appears to be an impression that the court can be checked or thwarted or hindered in the performance of its functions by some outside authority. Undoubtedly the court can be delayed and put to a great deal of trouble and inconvenience, and can be made to do much unnecessary work, if the regulations which it has framed are disallowed by Parliament or rejected by the Executive Council. But the court cannot be shorn of its powers in the slightest degree except by an amendment of the Arbitration Act, which amendment could be made only by both Houses of the Legislature. I would remind hon. members that the Act gives the court power, quite apart from the apprenticeship aspect, to deal with industrial disputes. An industrial dispute means a dispute in relation to industrial matters. Industrial disputes are defined, inter alia, as matters which relate to—

1, Persons who may take or become apprentices. 2, The number of apprentices that may be taken by any one employer. 3, The mode of binding apprentices. 4, The terms and conditions of apprenticeship. 5, The registration of apprentices. 6, The examination of apprentices and the appointment of examiners. 7, The rights, duties and liabilities of the parties to any agreement for apprenticeship. 8, The assigning or turning-over of apprentices. 9, The dissolution of apprenticeship. 10, Any claim or dispute in

any agreement of apprenticeship or relating to an alleged breach of such agreement, notwithstanding that any party thereto may have determined or have purported to determine the agreement.

Further, there are references to the age of workers, the mode, terms and conditions of employment, the employment of old or young persons in any industry, or the dismissal of, or refusal to employ, any person therein. In pursuance of these powers the Arbitration Court has for many years embodied in its awards numerous provisions governing the employment of apprentices.

Hon. J. Cornell: Those matters were always open to argument before the court.

The CHIEF SECRETARY: Hitherto each award has set forth in full the conditions dealing comprehensively with apprenticeship, and many of the clauses have been used so often that they have become stereotyped. To avoid the necessity of all these repetitions and the consequent expense of printing, it was deemed desirable to make general regulations which would have effect on every award made by the court, subject to any modification or addition the court might deem necessary when making any particular award. A clause was drafted to meet the apprenticeship conditions in the various awards thereafter made by the court. The clause reads as follows:—

Apprentices.—(a) The provisions of the Industrial Arbitration Act, 1912-25, relating to apprentices, and the regulations made in pursuance thereof for the time being in force, are hereby embodied in, and form part of this award, subject to the following modifications:—

Then is set forth any desired modification or alteration in the apprenticeship regulations that may be deemed necessary by the court. Next comes a paragraph lettered (b), being the wage clause for apprentices, and a paragraph lettered (c) setting forth the proportions of apprentices. This clause was drawn in the course of the timber yard employees' case, and was mentioned by the President of the Arbitration Court during a conference. In all later awards, therefore, instead of setting forth a series of clauses dealing with apprentices, the court substituted the clause which I have just read, and the parties to the reference submitted for the consideration of the court any modification that was deemed desirable, or any addition to the regulations as printed. It will be seen that the apprenticeship regulations are not like the laws of the Medes and Persians, but can be departed from with the consent of the parties or by the determination of the court. It follows—and this point has not been recognised by the critics of the regulations—that it is within the power of the court to make in any award provisions as to apprentices embodying practically every paragraph in the apprenticeship regulations now being discussed. I say "practically every paragraph," because so far as can be called to mind the only provision that went outside the general provisions which the court had power under the Act to embody in an award is the provision dealing with the apprenticing of young people to an industrial union of workers or an industrial union of employers. And this provision was inserted so as to meet any possible case that might arise in future. I shall deal with this at a later stage. Since, therefore, these regulations are within the power of the court to make in any particular award, the Legislature, in criticising them, has taken the responsibility of criticising the awards of the court. This, of course, Parliament is perfectly entitled to do, but in my opinion it should hesitate before it shoulders such a responsibility. The proposed disallowance of the regulations, if accomplished, can only result in an increase of the work of the court. It cannot block the court from what it wishes to do, so long as its actions are strictly in accordance with statute law. The regulations, as gazetted, are deemed to be what the court considers should be placed in awards, subject to any modification or addition to meet the requirements of any particular case. It is unlikely the court will be influenced in the slightest degree in its action by criticisms in Parliament, no matter how well intentioned those criticisms may be. It may be of interest to members if I deal with the manner in which the regulations were compiled. When the Act imposed on the court the necessity for framing regulations for the building trade, it was decided, for the reasons I have already given, that it would be very convenient to embody a general system of apprenticeship regulations, which could be printed and issued for public information and for the purpose of enabling employers and workers to gain a knowledge of their different responsibilities under the Act. Accordingly, the regulations were drafted and considered by the members of the court. After this consideration they were printed and sent to all parties interested. In addition to that, a notification was sent out to all unions and to all associations of employers to meet and

discuss the regulations in full with the members of the court.

Hon. E. H. Harris: To all registered unions?

The CHIEF SECRETARY: To all unions, I am told. That should be "registered unions," of course.

Hon. J. Nicholson: An invitation was sent.

The CHIEF SECRETARY: Yes, for them to attend. Apart from that, notice was also given to the public at large by an advertisement in the "West Australian." Those notices were published on the 30th and the 31st March, 1926, and the conference was held on the 17th May and subsequent dates, both in court and in chambers. At that conference there was a very large attendance of all the parties interested. Mr. Barker acted generally on behalf of the workers, and Mr. Andrews on behalf of the employers. There was also a separate representative of many others. Both Mr. Barker and Mr. Andrews submitted a schedule of proposed alterations to the regulations, apparently arrived at as the result of a consultation with their respective principals. All their suggestions were given due consideration by members of the court and, where deemed advisable, adopted and embodied in the regulations. I have here a copy of Mr. Andrews' suggestions as to modifications, and a typewritten transcript of the notes of the conference in relation thereto. The extraordinary thing about Mr. Andrews' suggestions on behalf of the employers was that his main objections to the regulations affected those parts of the Act that had been embodied in the regulations. He apparently overlooked the fact that the Legislature had already placed its seal upon those, and that the court was powerless to alter them even if it wished to do so. Apart from those objections, which were necessarily futile, Mr. Andrews showed but little opposition; and it is to be presumed he acted with the full confidence of his principals. It is also to be presumed that those principals, who were the direct employers or representatives of the employers, should be in a better position to judge in a matter of this kind, more likely to know where the shoe pinched, than anyone else in the community not similarly interested. The copy of Mr. Andrews' submission is headed, "Notice of proposed amendments to draft apprenticeship regulations as decided at a meeting held at the office of the Western Australian Employers' Federation, Tuesday, 11th May, 1926, at 2.30 p.m." It will be seen from those words that all the regulations were gone through, clause by clause, by the employers. Most of the regulations are shown to have been agreed to as drafted. I may say the suggestions were treated by the court and by everyone present at the conference as matters for friendly discussion, not for hostile criticism. I will now proceed to deal separately with Mr. Nicholson's objections and criticisms. Mr. Nicholson began by making a feature of the necessity for the discipline of apprentices. The members of the Arbitration Court and the representatives at the conference ought, surely, to have been as much alive to the necessity for a proper spirit of discipline in relation to apprentices, as well as to a fitting recognition of the relative rights and duties of apprentices and employers, as any other persons in the community. Mr. Nicholson states that in existing awards and agreements certain terms have been expressed upon which lads have been apprenticed, and although the lads were apprenticed under certain awards and it was done with the approval of the court, it is now proposed to vary those. In that regard he quoted the first regulation and also the second. It is significant that Mr. Andrews, as representing the employers, marked both those clauses as agreed to at the meeting held by the Employers' Federation. The Employers' Federation sees nothing wrong with them, but Mr. Nicholson does, and says they should be excised. In dealing with Clause 1, to which Mr. Nicholson so strongly objected, let me point out that the schedule he referred to is a list of the trades and callings in respect of which awards and agreements already exist. In case an award is issued in reference to some other calling not included in the list, the court, in pursuance of its general policy of uniformity in regulations, naturally desires to have any of these fresh callings, as they may from time to time come to be dealt with by the court—they wish them also to be governed by similar regulations, subject to any necessary modifications to meet the peculiar circumstances of the case. Mr. Nicholson raised only one question that would cause a real and legitimate grievance had there been any grounds for his conclusions: that is, the question of the regulations having a retrospective effect. It is rather difficult to understand how Mr. Nicholson takes this view. The court, even

if it had wished, could not make those regulations retrospective to any greater extent than the Act allows. As Mr. Nicholson well knows, such a class of regulation, a regulation inconsistent with the Act, would have no force in law; it would be as if it were non-existent, and there would be no necessity for its suppression by the Legislature. The Act, itself, however, in some instances creates a retrospective effect in relation to apprentices. For instance, it provides by Section 127 Subsection (8) that if any employer is employing any apprentice under an unregistered agreement, he shall forthwith register such agreement; and the service shall not be deemed to have been commenced by the apprentice until the registration. Also, Section 127 Subsection (4) provides that every agreement, except as therein provided, shall be subject to the provisions of an industrial agreement or award for the time being in force relating to the industry to which the agreement relates; thereby altering the terms of the original agreement to correspond with the terms fixed in any future award or agreement. Apparently, too, in criticising this portion of the regulations, Mr. Nicholson failed to realise that, under the Arbitration Act, awards and agreements made continuous for an indefinite period perhaps go on for many years. Consequently, to be of any use the regulations, while not interfering with the conditions of apprenticeship in any existing agreement, except as provided in the Act, must necessarily be attached to existing awards and agreements in order that fresh apprenticeships under those old awards may be subject to the regulations. Hence the necessity for providing by regulation that the apprenticeship regulations shall apply to all awards of the court and industrial agreements. It should be easy to recognise that if this were not done, those new apprenticeships might continue to be made under the old and incomplete system. As a matter of fact the Act itself, by Section 126, Subsection (3), expressly provides that every agreement shall contain certain provisions in relation to technical instruction and examination of apprentices, which necessarily applies to all existing awards in respect of apprenticeship. This matter was dealt with at the conference to which I have already referred. I will read the discussion that took place at the conference dealing with this particular aspect, that is the retrospectivity of the Act and regulations. I might also read the law in regard to retrospective legislation. This is from a leading case—

> It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction.

This is subject, of course, to the other general rule stated in another leading case as follows:—

> We must look at the general scope and purview of the statute and at the remedies sought to be applied and consider what was the former state of the law and what it was the Legislature contemplated.

The position was stated quite clearly at the conference to Mr. Andrews, as is shown by the following extract from the minutes—

> Mr. Andrews: As regards current agreements and awards, that could only be done by an application to the court.
>
> The President: You mean so far as the regulations apply to current agreements and awards? I do not think there will be any difficulty there. These regulations are intended for the future.
>
> Mr. Andrews: As long as the point is understood.
>
> The President: Except of course so far as the Act mentions it. The Act speaks about the registration of those who are already apprentices. So far as the regulations go, except in so far as the Act directs, the alteration to current awards or agreements, I do not think there will be any difficulty on that score.
>
> Mr. Somerville: Your point is that there are at present in existence awards and agreements that permit of the employment of juniors as distinct from apprentices.
>
> Mr. Andrews: Yes.
>
> Mr. Somerville: And you want to be clear that these regulations will not interfere with those existing awards?
>
> Mr. Andrews: That is the point I want to make.
>
> The President: There is a clause dealing with existing awards—9 (j), page 3. If existing awards make provision for junior workers, then they will be considered to be an exempt class under Clause 3.
>
> Mr. Andrews: I have a note on my draft copy of my regulations that this clause must be read in conjunction with clause 9 (j). I have some comment to offer on that clause later.

It will be seen from what occurred at the conference that it was understood that the words after "effect" in the clause would be struck out subject to any necessary re-drafting. This was overlooked in the final revision of the proofs; it was entirely an oversight as will be seen from the conference minutes and it is a matter that can easily be set right. All the words after "effect" should have been struck out. The report of

the conference shows clearly the attitude of the members of the court on this point, and inadvertence prevented their intention being carried out. This much, however, must be noted and repeated, that the court, even if it so desired, could not possibly alter existing agreements of apprenticeship except where it was authorised so to do by the Act. Thus the words left in by inadvertence are, legally speaking, mere surplusage.

Hon. G. W. Miles: You propose to delete those words?

The CHIEF SECRETARY: They must come out; they have no right there at all. Mr. Nicholson sees inconsistency between regulations 1 and 2; he says that Regulation 1 refers to the skilled industries mentioned in the schedule, and that Regulation 2 prescribes the area within which the regulation shall have operation subject to the right of the court to extend the area. There is no inconsistency whatever. Two different matters entirely are dealt with, and the clauses are much clearer as they are than would be the case if they were joined together. Mr. Nicholson says that the regulations, in the first place, are restricted to the metropolitan area with power vested in the court to enlarge their scope. A majority of awards and agreements are confined to the metropolitan area. On the other hand, awards and agreements extend beyond this area, and surely in such circumstances it is only proper that the country apprentice should also be catered for in the district in which he is receiving his training. To mention a few of the industries now operating outside the metropolitan area, take the engineers, carpenters, bakers, shop assistants, clothing trades—all those unions have registered agreements in country districts, and an extension of the area would give to the apprentices, say, in Kalgoorlie, Northam, Bunbury and Geraldton, better facilities than exist at the present time.

Hon. H. Stewart: Narrogin, Katanning and so on, wherever there is an electric light plant.

The CHIEF SECRETARY: They will give to the apprentice the same protection that he will have in the metropolitan area. Mr. Nicholson then complains of the right of the court to extend the skilled industries by adding others. In view of the general powers of the court already referred to, he takes up an untenable stand. If an industry not included in the schedule came before the court for the making of an award, the court without regulations, could embody in that award practically everything contained in the regulations, and anything else coming within its general jurisdiction under the heading of industrial matters to which I have already referred. If the Act places no restriction of this kind on the court, why on earth should the regulations do so? Mr. Nicholson takes exception to Regulation 3, which reads—

> No minor shall, after the date of these regulations, be employed or engaged in any of the industries, crafts, occupations, or callings to which these regulations apply, except subject to the conditions of apprenticeship or probationership herein contained: provided that the court may exempt from the provisions of this regulation any class or classes of minors employed or engaged in any of such industries, crafts, occupations or callings whose employment is not, in the opinion of the court, of such a nature as will permit or require them to become skilled craftsmen.

Mr. Andrews' memo on the clause is as follows:—

> This is objected to on the ground that existing awards and agreements provide for the employment of juniors, not necessarily apprenticed.

That was the only ground of objection the employers took, and it has already been dealt with. There is no hardship involved in this regulation. It is merely repeating what the court has been doing for a considerable time past. As each reference for award comes before the court, the question of apprenticeship labour, and junior labour, is dealt with and whenever it is deemed necessary, provision is made in the award for the employment of juniors. That has been done not only recently but for a considerable time past. It has already been decided not only here, but in the courts of the Eastern States, where similar legislation exists, that when an award prescribes rates for adults and apprentices only, and some person, no matter what his age, is employed in that industry doing work of an adult, he is liable under the Act for committing a breach of the award. That is the law as it stands to-day in Western Australia. No addition has been made to it under the regulations, but attention has been drawn to the rights and obligations of employers and workers for the information of all concerned. If Mr. Nicholson had closely followed the operation of our industrial laws, he would have been aware that a breach of an award was being committed, not only now, but had

been committed for years past where a youth is employed and not paid adult wages, when the award makes provision simply for adults and registered apprentices. This may seem unfair, but at any rate it has been the law for many years in Western Australia. Let me now deal with the present court to show that it is not despotic. Junior labour is extensively employed in different trades, and the court shows by the regulations and also by its recent actions that it is guided by discretion. In order to demonstrate how this regulation would operate I may refer to the latest award of the court, namely, that of the Metropolitan Timber Workers' Union, which, in its claim, insisted upon the restriction of boys. But the court in its wisdom determined that boys must be employed at a work which in the opinion of the court, was not of such a character as to permit of apprenticeship conditions. That was the decision of the court. Portion of Clause 4 is considered objectionable by Mr. Nicholson. This clause was agreed to by the employers through Mr. Andrews. No objection whatever was raised to it. I might add that the court already has the power to deal with the matter to which Mr. Nicholson referred, without the help of this clause in any way. I might here remark in passing, to save further reference to it, that the regulations are intended to be as far as possible a complete code for public and general information, and with that object in view they have been copied from portions of the Act itself. Mr. Nicholson condemns Clause 8. This clause was agreed to by the employers. It has reference, not to apprentices themselves, but to adult members of an advisory apprenticeship committee consisting of an equal number of employers and employees with an independent chairman, and is framed with one object only: To protect them from possible victimisation. Such a provision is already in existence in the legislation obtaining in several States, where the employers and the employees join together and establish the board to deal with apprentices in their several industries. Those boards were established as well to take an interest in the advancement of the young people who are to be the future heads and workers in our industries.

Hon. H. Stewart: In which States is that in operation?

The CHIEF SECRETARY: Occasionally at conferences of such a board there may be bitter differences of opinion, and it is considered only right that employees should be protected from possible victimisation following upon actions they may take in the discharge of their duty.

Hon. J. Nicholson: An employee is not an apprentice in the ordinary sense.

The CHIEF SECRETARY: This provision is for the protection of members of an advisory committee against victimisation.

Hon. J. Nicholson: But why include that in apprenticeship regulations?

The CHIEF SECRETARY: It is very necessary to make such a provision because the committees and boards are appointed in connection with the administration of the apprenticeship provisions. Workers are appointed to such boards and they may at times take up an attitude that would create a good deal of resentment among the employers and possibly lead to victimisation.

Hon. J. Cornell: If an employer were despicable enough to adopt such an attitude, he could get rid of a worker in other ways.

The CHIEF SECRETARY: The fact remains that the employers raised no objection except that they required the employee to prove the cause of his dismissal instead of placing the onus on the employer, an onus which is already cast upon the employer by the Act. I ask Mr. Nicholson to read Section 132 of the Act, which deals with alleged victimisation. Mr. Nicholson found fault with Clause 9. This, with the first subclause, was agreed to by the employers but at the conference the following proposals were advanced:—The transfer should be effected if all parties to the apprenticeship agreed; the court was to decide whether the words "temporary or permanently" should be struck out. The court, however, considered the clause was better as it stood. Subclause (j) has already been dealt with elsewhere. It contains certain words which, as I have already explained, were allowed to remain in the regulation owing to an inadvertence. Mr. Nicholson regarded Clauses 17 and 23 as representing an unnecessary hindrance to an ordinary simple transaction. Both those clauses were agreed to by the employers. The wording has been taken from agreements that have been in operation in this State for the past 14 years; they have also appeared in practically all awards made during that period. Mr. Nicholson took exception to Clause 11, which dealt with employees apprenticed by industrial unions or associations. The employers objected to this

clause on the same grounds as those advanced against Clause 10. They claimed that it had reference to the building trade. As I have already pointed out, this is practically the only portion of the regulations that cannot be inserted in new awards. This provision was inserted in order to meet a possible contingent state of affairs. If a party of unions of workers or of employers were allowed to take apprentices, there seems to be no good reason why provision should not be made for them so that the rights of apprentices may be conserved. If a union registered under the Industrial Arbitration Act entered into business by taking on contracts for work, it would be undertaking objects not in keeping with the purpose of its registration and incorporation. The Arbitration Court cannot prevent that being done, for it has no jurisdiction in such matters. The only method of prevention would be for somebody to apply in the Supreme Court for an injunction to restrain the union or association from expending funds in that direction. The court, however, could not take such action of its own motion. In the event, therefore, of anything of this kind happening—if, for instance, the printers' union took on job printing, or the carpenters' union took on building construction—the difficulty of enforcing the claims would be enormous.

Hon. J. E. Dodd: Would not the unions become employers by so doing?

The CHIEF SECRETARY: Certainly.

Hon. J. E. Dodd: Then, I cannot see how they could become registered!

The CHIEF SECRETARY: It is the duty of the court to protect apprentices and consequently, should an association of employers or of workers embark upon enterprises such as those I have indicated, the court, in order to protect apprentices, makes the necessary provision in Regulations 10 and 11. That does not legalise the action of a union should it do things that are ultra vires.

Hon. J. Cornell: It will go a long way towards doing it.

The CHIEF SECRETARY: It merely gives a measure of protection to apprentices.

Hon. J. Cornell: It recognised a legal entity.

The CHIEF SECRETARY: The regulations would apply in cases where numbers of unions such as those dealing with plastering, bricklaying and so forth, might be engaged in sub-contracting. I believe 75 per cent. of that class of work in the metropolitan area is done in that way.

Hon. E. H. Harris: By the unions or by individuals?

The CHIEF SECRETARY: By members of unions.

Hon. E. H. Harris: This refers to unions, not to members as a body.

The CHIEF SECRETARY: I ask the hon. member to read it very carefully. There may be men engaged in different trades, and trade unions, who take on contracts, as subcontractors. They engage in piece work. Such men or unions could, between them, take on an apprentice. In that event the regulations referred to would enable the apprentice to be indentured to those unions. Surely such unions could be trusted to protect the interests of such an apprentice.

Hon. E. H. Harris: Which member of the union would be liable in those circumstances.

The CHIEF SECRETARY: If an apprentice were indentured to a union in those circumstances, there would be no possibility of applying the provisions of the Act in such cases.

Hon. J. Cornell: In my opinion you are digging a grave for the apprentices.

Hon. E. H. Gray: It is a very desirable provision.

Hon. J. Cornell: Everything is desirable according to the hon. member!

The CHIEF SECRETARY: At the conference the employers objected to the following portions of the clause:—

> "Receive during the period of his apprenticeship such technical training and general instruction and training as may be prescribed or as may be directed" And as regards the apprentice that he "shall conscientiously and regularly accept such technical, trade, and general instruction and training as may be prescribed or directed as aforesaid, in addition to the teaching that may be provided by his employer."

The employers were opposed to that regulation, for what reason I do not know. Their objection seemed to be frivolous. Why should not apprentices receive instruction that may be provided? Why should not apprentices bind themselves on their part to accept such instruction? Clause 14 was criticised by Mr. Nicholson, but all the employers' requisitions on this one were made except in regard to the conditions that the Act itself required to be included in every agreement dealing with apprenticeships. Of course, as everyone knows, the court cannot go outside the Act. Clause 15, to which Mr.

Nicholson raised objection, was agreed to by the employers. Clause 25 was also agreed to by the employers except that they required inserted after "case" in the first line, the words "on the application of any party or on information otherwise obtained." It was thought more advisable by the court to leave the clause open. Clause 18, which was bombarded by Mr. Nicholson, was agreed to by the employers. Against Clause 20, Mr. Nicholson also spoke strongly. In that case the employers showed opposition to it as it was originally drafted. I would point out, however, that the regulation simply contains the exact wording of Section 127, Subsection 7, of the Act itself. That subsection reads—

No apprentice employed under a registered agreement shall be discharged by the employer for alleged misconduct until the registration of agreement of apprenticeship has been cancelled by the order of the court on the application of the employer.

Hon. Sir William Lathlain: Why have the regulation if that already appears in the Act?

The CHIEF SECRETARY: For the information of all concerned. I have already explained that. It was pointed out at the conference that the Act placed a heavy burden upon the employers in that they would be obliged to pay wages to an apprentice who misconducted himself, until the agreement of apprenticeship was cancelled by the court. In an endeavour to ameliorate that condition of affairs, the court, by this regulation, has attempted to soften the harshness of the Act as against the employers. The alteration, as it affects the section, is altogether in favour of the employer. The court has added a proviso to the regulations in order to soften the action of the section in its application to the employer.

Hon. J. J. Holmes: Can the court amend a section of the Act?

The CHIEF SECRETARY: The court added a proviso.

Hon. J. J. Holmes: To soften the application of an Act we passed?

The CHIEF SECRETARY: That arose in the administration of these provisions under the Arbitration Act.

Hon. V. Hamersley: It will be almost necessary to bring down a repealing measure.

The CHIEF SECRETARY: The proviso read as follows:—

Provided, however, that an apprentice may be suspended for misconduct by the employer, but in any such case the employer shall forthwith make an application for cancellation of the agreement of apprenticeship, and in the event of the court refusing same the wages of the apprentice shall be paid as from the date of such suspension, and, in the event of the application for cancellation being granted, such order may take effect from the date when the apprentice was suspended.

The court felt that it should go as far as it possibly could to prevent what appeared to be an unfairness to the employer, and it inserted this proviso. But apparently its action is viewed with eyes of dark suspicion by some hon. members of this House.

Hon. E. H. Harris: Have any other sections been softened a little? You might read a few of them.

The CHIEF SECRETARY: Clause 26, as Mr. Nicholson stated, is most important. It refers to the necessity for attendance at a technical school. This is a new departure, but a reference to the Arbitration Court examiners' reports shows that a large percentage of apprentices in all trades have lacked the theoretical knowledge requisite to them as journeymen. Industrial unions for a long time have been as it were knocking at the door of the authorities requesting provision for technical instruction mainly as a result of employers not having provided the necessary facility. The Government in order to meet the situation are making provision in as many trades as possible, considering the strain on the finances in other directions. As the clause was first drafted, the technical school was mentioned and Mr. Andrews requested that the word "Government" be added, which was done. Mr. Andrews also requested that "vocational class or classes of instruction" should be struck out. That was not done as it was held to be contrary to the spirit of Section 126, Subsection 3 of the Act, which reads:—

It shall be provided in every agreement of apprenticeship—(a) That technical instruction of the apprentice, when available, shall be at the employer's expense, and shall be in the employer's time, except in places when such instruction is given after the ordinary working hours; (b) That in the event of any apprentice, in the opinion of the examiners, not progressing satisfactorily, increased time for technical instruction shall be allowed at the employer's expense to enable such apprentice to reach the necessary standard.

The provisions of this clause were obtained after very full consideration by the court of Section 126 and of the stipulations in previous awards dealing with the same matter. Most of the clause was agreed to by the employers, and as for the balance, I do not

think there is anything in it to cause such exception as has been taken by Mr. Nicholson. It may be mentioned that the greater portion of the clause is taken from the provisions of existing awards and in particular the engineers' award, which had been made some months prior to the passing of the Arbitration Act. Mr. Nicholson's remarks on Clause 30 have already been answered by my reply on Clause 26. To Clause 31, Subclause 1, relating to the failure of apprentices to pass any of the examinations, Mr. Nicholson strongly objects. This was agreed to by Mr. Andrews, with the exception of the provision for the rates of wages, which shall be such amount as the court may determine. The fact of the matter is that without the regulation the employer would probably have to pay the apprentice, if he continued in his employment, the full adult wages. Subclause 2 is taken from an existing award. Clause 32, referring to the absence of an apprentice from work for any cause other than sickness, is not satisfactory to Mr. Nicholson, but it was agreed to by the employers. If it were not included the employer would be compelled to pay in the circumstances referred to by Mr. Holmes when he interjected. Mr. Nicholson is opposed to Clause 35 and argues that "journeyman" should include "manager" and "foreman." This clause was taken from an existing award. In effect it has been for some time a stereotyped form in awards without having created any difficulty so far as can be ascertained. Mr. Nicholson raised the point that if a new business was started there would be no means to ascertain the number of apprentices to journeymen. It seems strange that although that clause has appeared in awards and agreements for a long time, the question has never been raised. When it is raised the court will deal with it as a matter of interpretation. To me it seems to be an excellent clause. Suppose a small business man starts a venture and, before he becomes an established entity, he fails financially. If before he is properly established he is allowed to take an apprentice, what protection has the boy against the employer? Surely the community have a right to call upon the employer to show reasonable commercial status before he is allowed to undertake a responsibility of that kind.

Hon. J. Nicholson: If a concern like McKay's harvester firm started business here, how would it get on?

The CHIEF SECRETARY: All awards in the past have contained a similar provision.

Hon. J. Cornell: That could be softened a little with great advantage.

The CHIEF SECRETARY: Clause 36 relates to an industrial inspector. Mr. Nicholson is very antagonistic to it on the ground of the possible inquisitorial nature of the inspection. This provision was endorsed by the legislature in 1912, it became law and is now contained in Section 104 of the Act. Subsection 3 of which gives an industrial inspector, who of course is an officer of the Government service, as full power as do the regulations. The provision reads—

> In the discharge of his duties under this Act an industrial inspector may require any employer or worker to produce for his examination any wages books, overtime books or other books which he shall deem it necessary to examine, and may put any questions to any employer or worker and may exercise all such powers of entry and examination as are conferred on him by any of the aforesaid Acts.

Hon. J. Cornell: That provision needs no regulation to emphasise it.

The CHIEF SECRETARY: It was introduced into the regulation for the information of the parties concerned.

Hon. J. Cornell: And then amended later on.

The CHIEF SECRETARY: On the one side we have the contention that the regulations are not consistent with the Act, and on the other side it is contended that we have imported matters into the regulations from the Act itself.

Hon. J. Cornell: You have taken a course liable to amend the Act.

The CHIEF SECRETARY: The only objection I can see to it is that it might involve an increase in the vote of the Government Printer. Next I come to the criticisms of Mr. Harris. He is hostile to an apprenticeship to an industrial union of workers or an industrial union of employers. That question has already been dealt with in my remarks on Mr. Nicholson's comments.

Hon. J. J. Holmes: Who would accept the liability there?

The CHIEF SECRETARY: The industrial union.

Hon. J. Cornell: How could the union accept the responsibility when their funds could not be touched?

The CHIEF SECRETARY: Mr. Harris finds fault with Regulation 28 in regard to adding to the term of apprenticeship. This

clause was agreed to by Mr. Andrews on behalf of the employers.

Hon. E. H. Harris: Did the employees agree in any of the instances you have quoted?

The CHIEF SECRETARY: Many demands were made by the representatives of the employees and were turned down by the court.

Hon. J. E. Dodd: The trouble generally is that the people most concerned, the apprentices, are not in attendance at these conferences.

The CHIEF SECRETARY: There is every opportunity for them to attend. An advertisement was inserted in two issues of the "West Australian" announcing the conference and inviting all interested to attend.

Hon. J. Cornell: You would not expect a poor unsophisticated apprentice to attend.

The CHIEF SECRETARY: Anyone interested could attend. Mr. Harris took exception to Clause 26 (m) dealing with examiners' fees. The fees have been raised slightly on the representation of all parties at the conference. Surely that should be agreeable to Mr. Harris.

Hon. E. H. Harris: Only those who were present.

The CHIEF SECRETARY: They why were not the others present? They were not sufficiently interested. Mr. Harris's next complaint bears on Clause 26 (n) which relates to the drawing up of syllabi. This is another of the important clauses in the regulations. Hitherto there has been no system in the preparation of syllabi, and experience has shown the absolute necessity for such a provision. Among the visiting scientists recently was Dr. Fenner, who is the Director of Education of Apprentices in South Australia. He was most complimentary in his references to these regulations and was unstinted in his praise of them. The members of the court had a conference with him on this question of syllabi, and too much importance cannot be placed upon it.

Hon. E. H. Harris: I never objected to the syllabis. I said it was no good giving them one immediately before the examinations. You have not answered my point.

The CHIEF SECRETARY: It would be impossible for me to reply to all the points raised during a discussion extending over two hours. I am, however, answering the most vital points which have cropped up. Mr. Harris seems to be anxious that the employers should get copies of the syllabus.

Hon. E. H. Harris: I say any interested party.

The CHIEF SECRETARY: There is no reason why the employers should not have copies of the syllabus, as well as the unions concerned. The probability is they will be printed and circulated for general information. Mr. Harris also discussed the question of sick pay for apprentices. I have the employers' note here in reference to that matter. It is—

27a and 27b to be governed by awards and agreements.

As already explained, all parties have a right to such modifications of an award or agreement. The regulation is considered reasonable, but the representatives of the workers desired the court to go very much further.

Hon. E. H Harris: It is in conflict with the awards that the court delivers.

The CHIEF SECRETARY: It is also a considerable modification in favour of the employers, on the old common law provision, that unless provided to the contrary in the indentures, the apprentice had to be paid for all time lost through sickness whether for a month or six months of the year. This is a very serious modification of such a provision. Mr. Harris' next exception is to Regulation 39, which states that the court may by its award alter or extend the provisions of the regulations. This is simply a statement of the law as it is. The court may put into its awards anything the Act permits it to do. The regulations can give it no more power than that. I have repeated that statement many times. Mr. Harris objects to the Commissioner of Railways receiving special consideration. The fact of the matter is that for many years the Commissioner of Railways has had a good system of apprenticeship, governed by departmental regulations, and these have to a large extent been embodied in the regulations framed by the court. There was no necessity for the court to be asked to include any other Government department and consequently it did not do so. Mr. Cornell states his conclusion is that, in the opinion of those responsible for drafting these regulations, the employers are burglars and bushrangers. I think, after such a statement, further comment is totally unnecessary.

Hon. J. Cornell: If the employers agreed to these regulations, I withdraw the imputation.

The CHIEF SECRETARY: I have admitted that with respect to one of the clauses, through pure inadvertence, words have been left in which it was understood should be deleted. Apart from that, what do we find? We find that nearly all the clauses to which Mr. Nicholson objected, were either agreed to by the representatives of the employers or employees, or were taken bodily from the Act, or are in conformity with the Act, or are such as have often been included in awards or agreements, and can still be included in awards of the court if the court so desires, apart from any fate that may befall these particular regulations. In view of these facts, how can the House justify the disallowance of these regulations? It must be remembered that it is an extreme step to take. Parliament has the right to do what Mr. Nicholson desires. It would have the right to remove a judge from the Supreme Court bench, but even the suggestion of such action would reveal a deplorable state of affairs. No House has commented more strongly on the danger of political interference with the Arbitration Act than has the Legislative Council, when that interference amounted only to the fixing of the working week. And yet here a serious attempt is made to check the administration of the Arbitration Court without, as I have already indicated, a shadow of justification.

Hon. J. Cornell: I think it needs a little gentle guiding at times.

The CHIEF SECRETARY: The fact that this House has the power of disallowance should lead it to exercise that power with the greatest caution. The Executive Council is similarly situated. It can send back regulations to the Arbitration Court and say, "We do not approve of them. They go too far, or they do not go far enough." Is there any Government that could possibly be formed in Western Australia, whether from the Liberal Party, or the Country Party, or the United Party, that would dare to take such a responsibility? Nor would there be any need for them to take the responsibility. If the Arbitration Court, in framing regulations, exceeded the powers given to it by the Act, the law courts would be called upon to step in and settle the difficulty.

Hon. J. Cornell: There is no appeal from the Arbitration Court to any other court.

The CHIEF SECRETARY: There would be an appeal in a matter of this kind, if the Arbitration Court dared to exercise powers not given to it under the Act.

Hon. E. H. Harris: Do you not think some of the final sentences should be altered a bit?

The CHIEF SECRETARY: In a matter of this particular kind I contend that the law courts, and not our legislative or governmental bodies, are the proper tribunals to determine such a question. Mr. Nicholson has made out no case for the disallowance of these regulations. It would require a powerful case to warrant any interference with the Arbitration Court. The point should not be overlooked that the only effect the disallowance of the regulations could have would be to provide more work for the clerical staff of the court, inasmuch as it would be necessary to embody the provisions contained in these regulations in every award of the court relating to apprentices. I trust I have given sufficient reasons why this motion should be rejected, and I am prepared to leave the matter to the good sense of the House.

On motion by Hon. J. Nicholson, debate adjourned.

BILLS (7)—FIRST READING.

1, Traffic Act Amendment

2, Inspection of Scaffolding Act Amendment.

3, Broome Loan Validation.

4, Reserves.

5, State Insurance.

6, Metropolitan Market.

7, Weights and Measures Act Amendment.

Received from the Assembly.

BILL—MARRIED WOMEN'S PROTECTION ACT AMENDMENT.

Read a third time and passed.

BILL—GUARDIANSHIP OF INFANTS.

Second Reading.

Debate resumed from the 23rd September.

HON. J. NICHOLSON (Metropolitan) [6.1]: Whilst I feel sure that hon. members will congratulate Mr. Potter on his introduction of the Bill, and whilst I recognise the

importance of the measure, I find myself regretfully unable to accept its provisions in their entirety. The law of guardianship is one in which Western Australia was backward for many years. Not until 1920, when we passed an amending measure, did we bring our guardianship law partly up to date. As Mr. Potter pointed out, in introducing the Bill, he is supported by an important precedent in the Old Country, which has adopted a law somewhat similar to this one. Indeed, the Bill is largely a copy of the Imperial Act. Therefore Mr. Potter is justified in asking the House to accept the Bill. I wish, however, to place before hon. members certain views in order that they may determine the position for themselves. To Mr. Potter I suggest that it would be wise to hasten slowly in this matter. I make that suggestion notwithstanding the fact that I am at all times ready and willing to give support to measures which will ameliorate our conditions not only as regards the law of guardianship but in other respects as well. I have heartily supported Bills of a character such as this, but I have seriously weighed the effect of their provisions. I feel that in the interests of the community generally it would be better to delete some clauses of this Bill, particularly Clauses 4, 5 and 6. We should see the exact effect of the law that was passed in England last year, and then determine whether this country ought to adopt a similar measure. The position is that by passing this Bill we should be repealing, in a large degree, our existing law relating to guardianship, and should be introducing something that is distinctly new. When hon. members realise what the Bill actually means, they will agree that it is something new to their conception of the relationship which should exist between, say, a father and a child or a mother and a child. The Bill proposes to give to a wife and mother the same right of appointing a guardian for a child as the father now possesses.

Hon. E. H. Gray: Quite right, too.

Hon. J. NICHOLSON: At the first blush one would be inclined to share that view, but there are other considerations. From time immemorial it has been recognised that the father has an undoubted right to the guardianship of the child.

Hon. G. Potter: But remember that in this amending Bill there is provision for approval by a properly constituted court.

Hon. J. NICHOLSON: But under the Bill the mother has an absolute right to appoint.

Hon. G. Potter: There is a guard against any indiscretion.

Hon. J. NICHOLSON: Indiscretion is a totally different thing.

Hon. G. Potter: You are anticipating indiscretion.

Hon. J. NICHOLSON: The Bill gives the mother an absolute right to appoint.

Hon. G. Potter: She should have it, too.

Hon. J. NICHOLSON: Under Clause 6 the father of an infant may by deed or will appoint any person to be guardian of the infant after his death, and similarly the mother may appoint any person to be the infant's guardian after her death. What would be the result of passing such a law here? Possibly there would be introduced into the family circle some person in no way related to the child, although a good friend of the mother; and that person, so introduced, would have a voice in the control, management and upbringing of the child—duties which necessarily devolve upon the father. I ask Mr. Potter whether he himself, if predeceased by his wife, would wish to see some other person, in no way related to him, appointed to act as guardian of his child. Would he like to see such a person step in to act as guardian jointly with himself?

Hon. G. Potter: You are conflicting the viewpoint of the father with that of the mother.

Hon. J. NICHOLSON: I do not think so. If the positon I have described were to arise, I think the hon. member would speedily rebel against it.

Hon. E. H. Gray: Subclause 3 of Clause 6 gives the father the right to object.

Hon. J. NICHOLSON: Subclause 3 of Clause 6 reads—

> Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting.

I care not whether that provision is in the Bill or not, because I contend that the 1920 measure makes ample provision in this respect. Subsection 2 of Section 3 of that Act provides—

> The mother of any infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court after her death, if it be shown to the satisfaction of

the court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make such other order in respect of the guardianship as the court shall think right.

Subsection 3 of the same Section reads—

In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order or orders regarding the matters in difference as it shall think proper.

Again, Section 5 of the 1920 Act provides—

The court may, upon the application of the mother of any infant (who may apply without a next friend), make such order as it may think fit regarding the custody of such infant, and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes as well of the mother as of the father; and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act; and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs, as it may think just.

Thus the law as it stands at present gives to the mother the power to nominate any person whom she may think fit, to act as guardian after the death of the father. If the mother is alive and the father is not doing his duty towards the children, then under the last section which I have read the mother may apply to the court and ask for its intervention regarding the custody of the child.

Hon. G. Potter: A painful proceeding for the mother.

Hon. J. NICHOLSON: Yes, but even under this Bill there is no step which could be accomplished without the parties appearing before the court. Mr. Potter certainly pointed out that women feel great diffidence in approaching the court with regard to any of these matters. I agree that the atmosphere of a court is not the kind that women enjoy. They go there most reluctantly, and if this Bill would save them from doing so I would be the first to support the provision in question. Unfortunately, however, these matters have to be inquired into by the courts, and to that end the presence of the parties is necessary. Even Clause 4, upon which Mr. Potter dwelt, is a provision which would not be effective unless the mother removed herself from the home. I doubt very much whether that is a desirable procedure, and therefore I suggest to the hon. member that it would be wise to hasten slowly in the matter. Let us see what the effect of the law in England is going to be. If we see that it is beneficial, then by all means let the hon. member call upon me to support the provision in question.

Hon. G. Potter: Is there any synchronisation of conditions, geographically or otherwise?

Hon. J. NICHOLSON: There is geographically, and probably also as far as the parties are temperamentally concerned. I can see little distinction.

Hon. G. Potter: I can see none whatever.

Sitting suspended from 6.15 to 7.30 p.m.

Hon. J. NICHOLSON: Before tea some allusion was made to the fact that it was difficult for a woman to face the ordeal of an examination in court on these matters. But, as I then remarked, there is no application that can be made, except through the channel of the court. The court is the deciding authority. And even under the Bill presented by Mr. Potter, it would still be necessary to make application to the court in respect of Clauses 4, 5 and 6. Reference was made to Clause 6, and it was suggested that where the mother or the father objected to the guardian appointed by the one or the other, that would overcome the great difficulty. As a matter of fact, there is still the necessity for making application to the court. Clause 6 gives power, first to the father by deed or will to appoint any person to be guardian; and, further, gives power to the mother by deed of will to appoint some person to be guardian of the infant. The provision goes on to state that any guardian so appointed shall act jointly with the mother or the father, as the case may be, so long as the mother or the father remains alive, unless the mother or the father objects to the guardian so acting. It might be thought that was sufficient protection; but Subclause 4 of Clause 6 provides that if an objection should be made, it is still necessary for an application to be made to the court. So by passing the Bill we do not escape that necessity. One can easily see what the position would be. Suppose the wife, before she dies, not realising exactly the position, and thinking she was doing the very best for her children, appoint some friend as guardian, overlooking the fact that the father is the proper and natural

guardian of the children. If the father be a fit and proper person, he will naturally resent the interposition of some stranger in the guardianship of his children. So, instead of leaving behind her, as she intended, a satisfactory position, the wife, by appointing a guardian may beget a very much harsher feeling than otherwise would exist.

Hon. G. Potter: Do you suggest it would be undesirable for the father to appoint a guardian?

Hon. J. NICHOLSON: I am not suggesting that it is undesirable for either party. What I say is the guardian should not act in that capacity until after the death of the father; for the responsibility of maintaining the children devolves on the father, not on the guardian appointed by the mother, who although most desirable in other respects might be a stranger to the father.

Hon. G. Potter: Why should not the father of the child maintain it?

Hon. J. NICHOLSON: If the father has the responsibility of maintaining the child, surely he should have the guardianship of that child.

Hon. E. H. Gray: Do you not think a feminine guardian would be of great assistance to the father?

Hon. J. NICHOLSON: It would in large measure depend on the temperament of the good lady apppointed by the wife as guardian. I do not think the hon. member would welcome as guardian of his children one with whom he might disagree.

Hon. E. H. Gray: My wife would not be likely to appoint such a person as guardian.

Hon. J. NICHOLSON: In the ordinary case what the wife or the husband, if happily mated, would do would be to stick to the proper course of appointing as guardian the one who was left behind. The difficulty would arise in cases where, perhaps unwittingly, a stranger would be appointed as guardian. If the father were left, and if he objected, then the guardian appointed by the wife would have the right to apply to the court. If the father's objection were made paramount, there might be something to say for the clause, but as the clause stands I certainly could not give to it my adherence. I know if I were left in such a position I should feel very much hurt if called upon to share the guardianship of my children with some person a perfect stranger to me. For that reason, therefore, I could not endorse that clause until I have seen how the Act works in the Old Land. There are other clauses to which I have objection. Mr. Potter, when moving the second reading, dwelt at length on Clause 4, explaining that it was designed to relieve the necessity for a woman having to go to the court, first to separate herself from her husband, before she made an application to the court. Subclause 3 of Clause 4 provides that no order under that clause can be made, whether for custody or for maintenance, and no liability shall accrue, while the mother resides with the father, and that any such order shall cease to have effect if for three months after it is made the mother of the infant continues to reside with the father. Whilst the clause is designed to make it possible for a woman residing with her husband to apply to the court for the custody of her children, still unless she removes herself from the house within three months from the making of the order the whole of the order shall go by the board. What is the value of such a clause? There may be cases where it would be justified, cases in which perhaps the husband is indulging too freely in drink, forgetting his obligations and duties to his children, and in which perhaps the wife is a hard-working reliable woman. In such a case no doubt there is much to be said for the clause.

Hon. G. Potter: It is just such a case that the clause is supposed to cover.

Hon. J. NICHOLSON: But is the clause going to be of direct benefit? Is it not much better that the woman should remove herself from the household and then make her application, as she can do under the existing law, and ask for the custody of her children? That seems to me to be a reasonable and proper course to follow. What sort of cat and dog existence would those three months be between a man and a woman where the wife had made application to the court and during which period they would be living together?

Hon. G. Potter: She would have some subsistence guaranteed to her.

Hon. J. NICHOLSON: I do not think that it would be much good. The subsistence would be immaterial in cases such as those the hon. member desires to alleviate. Whilst I make that objection I realise that the hon. member was actuated by the highest motives in desiring to meet those cases to which I have referred. At the same time I would be sorry to think that such cases as those are the general experience.

Hon. G. Potter: I pointed out they were in the minority.

Hon. J. NICHOLSON: I am glad to realise the hon. member appreciates that fact. At the same time, seeing that they are in the minority, I appeal to the hon. member to realise that in the interests of the majority of people such a law as that proposed would not be productive of good, but would probably injure the married state.

Hon. G. Potter: But it is only the wrongdoer that fears the law.

Hon. J. NICHOLSON: If he is not carrying out his obligations as a father should do, the sooner the relationship between the man and the woman is terminated, the better will it be for both.

Hon. G. Potter: Then you must amend another Act.

Hon. J. NICHOLSON: It is better that these things should be brought to an end rather than that the result should be a life of misery. Under Clause 5 to which I also object, it is proposed to re-enact part of Section 2 of the existing law, with the addition in Subclause 2 of certain rights to the mother. I claim there is no need for introducing this amendment, but in respect of other clauses there are good points. To Clauses 2 and 3 I intend to give my support. Clause 7 is taken from Subsection 3 of Section 3 of the existing Act, and is therefore not required if the existing law is to stand. The other clauses are worthy of adoption. There is much to commend them, particularly Clause 12, which gives the court wider powers than it has at present. Clause 12 is merely a re-enactment of what, I believe, has been in force in England since 1891 and there is much to recommend its acceptance. It provides that where a parent has abandoned or deserted his child or allowed the child to be brought up by another person at that person's expense, or by the State Children Department, for such a length of time and in such circumstances as to satisfy the Supreme Court that the parent was unmindful of his duties, the court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the court that he is a fit person to have the custody of the child. We realise that there are cases where the father of a child, having neglected his obligation, has left the child to be maintained perhaps by a grandmother or some other relative. The child has become endeared to that relative and is regarded more affectionately by its adopting parent than by the father who, by seeking to assert his legal right, has tried to make the situation as painful as possible for those who may have become the child's real parents. Therefore it is wise that the court should have the power it is proposed to give it. I will support the second reading but will certainly move in Committee to strike out those clauses which in my opinion should not find a place in the Bill.

HON. SIR EDWARD WITTENOOM (North) [7.54]: Members are under an obligation to Mr. Nicholson for having dealt with this Bill so thoroughly, so clearly and I may add, so convincingly. Yesterday I took the trouble to come here and spend a little time in studying the Bill and comparing it with the parent Act of 1920. When I first saw it I thought it was one of these altruistic Bills that was going to do a lot of good, a Bill to deal with the wicked person; but after studying it carefully and comparing it with the Act I came to the conclusion that it was a serious interference between, I was going to say man and wife, but perhaps I should say the father on the one side, and the mother and the child on the other. Mr. Nicholson has gone into the details so thoroughly that it would be only repetition on my part to deal with the subject at any great length, but I cannot resist emphasising one or two points. The principal one to which I think exception should be taken is Clause 6, Subclause 2 of which reads—

> The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

Anyone reading that carefully will see that it presupposes at once that the husband and wife are not on good terms.

Hon. E. H. Gray: Not necessarily.

Hon. Sir EDWARD WITTENOOM: Even supposing they are on good terms, and as Mr. Nicholson has pointed out, she appoints whom she considers a desirable person, that desirable person may be absolutely hostile to the husband, and may be a man-hater or a disappointed lady, disappointed perhaps in marriage, though at the same time she may be a capable person to whom no exception would be taken by the court. I think it is a dangerous innovation and I

cannot give it my support. I may refer to one matter Mr. Nicholson has omitted, the responsibility of a guardian. Let me quote the powers given to a "guardian" by the Act:—

> Every guardian under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of an infant as any guardian appointed by will or otherwise now has.

It will be seen that this person has powers over moneys or anything to which a child may be entitled, and it is a fact that the father has hitherto been legally obliged to maintain the child and to bring it up. The appointment of the guardian, however desirable it may be, is a matter that requires the most careful consideration of members. I listened with a great deal of attention to the impassioned address delivered by Mr. Potter, and he almost convinced me of the necessity for the Bill. In spite of that, however, I cannot see my way to vote for the second reading.

On motion by Hon. E. H. Gray debate adjourned.

BILLS (2)—RETURNED FROM THE COUNCIL.

1, Shipping Ordinance Amendment.

2, Co-Operative and Provident Societies Act Amendment.

Without amendment.

BILL—COAL MINES REGULATION ACT AMENDMENT.

Second Reading.

Debate resumed from the 23rd September.

HON. J. NICHOLSON (Metropolitan) [8.3]: I do not intend to say more than a few words concerning the Bill. I wish to express that measure of concurrence that some hon. members have extended to the Bill. It certainly indicates the reaching of a stage that one can appreciate very sincerely in connection with the industrial life of the State. We find here recorded what is apparently the solution of difficulties between the employers and the employees. I am sure that must be welcomed by every hon. member. Those who have spoken to the Bill have supported the second reading and I intend to do likewise. In common with some other members, I find difficulty in realising that it is the function of Parliament to fix the hours of labour, as is proposed in the Bill.

Hon. E. H. Gray: Yet you would disallow apprenticeship regulations framed by the Arbitration Court!

Hon. J. NICHOLSON: I do not know that that has anything to do with the Bill.

Mr. PRESIDENT: Order! That is not the subject before the Chair now.

Hon. J. NICHOLSON: In the Coal Mines Regulation Act of 1902, Subsection (1) of Section 6 deals with the hours of labour and reads as follows:—

> No person shall be employed below ground in any mine for more than eight consecutive hours at any time, or for more than 48 hours in any week, except in cases of emergency.

It is proposed to include a clause in the Bill that will deal with the hours of labour in somewhat different wording. I think Mr. Holmes was right when he reminded us of the fact that the Coal Mines Regulation Act, 1902, was passed soon after the first industrial legislation came into force in Western Australia. As a matter of fact, while the first Arbitration Act was passed in that year, industrial arbitration did not function properly for a good many years after that.

Hon. J. Ewing: The Act was dealt with in the same year as the Coal Mines Regulation Act.

Hon. J. NICHOLSON: There was an Act prior to that in 1900.

Hon. J. Ewing: No, in 1895.

Hon. J. NICHOLSON: It was in 1900. We know that that Act did not effectively function until some years later. No doubt when Section 6 was agreed to in the 1902 Act, it was not realised at the time that it was the duty of the Arbitration Court to determine the hours of labour and that it was certainly not the duty of Parliament.

Hon. J. Ewing: They did it, though.

Hon. J. J. Holmes: Does not the 1902 Act refer to 48 hours a week, whereas the Bill refers to seven hours a day?

Hon. J. NICHOLSON: Yes, the two provisions are entirely different. The clause in the Bill which seeks to repeal Subsection (1) of Section 6, also contains the following proposed new subsection:—

> No person shall be or be employed below ground in a mine for the purpose of his work for more than seven hours during any consecutive 24 hours.

Hon. E. H. Gray: That is a distinct improvement.

Hon. J. J. Holmes: My interpretation of that is a week of 35 hours, worked on five days of seven hours each.

Hon. J. NICHOLSON: Possibly that is correct.

Hon. J. J. Holmes: That is what we are asked to commit the State to.

Hon. J. NICHOLSON: It is the duty of the Arbitration Court, not of Parliament, to determine the hours of labour.

Hon. E. H. Gray: That is a fairy tale.

Hon. J. NICHOLSON: I suggest the deletion of that clause in its entirety, or, if hon. members prefer it, the substitution of a clause reading as follows:—

> No person shall be or be employed below ground in any mine for the purpose of his work for a longer number of hours during each day than may be provided for in any award made by the Court of Industrial Arbitration, or as may be provided in any agreement made or registered in accordance with the provisions of the Industrial Arbitration Act, 1925.

Hon. J. Ewing: Well, those hours are seven per day.

Hon. J. NICHOLSON: That would give the parties an opportunity of going to the court.

Hon. J. Cornell: They have that opportunity now.

Hon. J. Ewing: And all that has been done; it is all finished.

Hon. J. NICHOLSON: It is not for us to fix by legislation the number of hours to be worked.

Hon. E. H. Gray: Not even at the request of both parties?

Hon. J. NICHOLSON: No, because the Arbitration Court was appointed for the purpose of settling industrial disputes. Parliament, on the other hand, was established for the purpose of passing legislation. We have not had the opportunity of listening to the views that may have been expressed by those interested on either side.

The Honorary Minister: But you have the evidence.

Hon. J. NICHOLSON: That has nothing to do with us; we are not examining evidence here. If it is desired to embody something in an Act, let it be something that we can give effect to.

Hon. J. Cornell: What you suggest is pure piety.

Hon. J. NICHOLSON: If we pass the Bill in the form suggested, the result will be the establishing of a precedent, following upon which we could not refuse to pass a similar Bill relating to any other industry.

Hon. J. Ewing: The precedent was established in 1902.

Hon. J. NICHOLSON: As I have endeavoured to point out to Mr. Ewing, that was before members of Parliament fully realised what were the functions of the Arbitration Court.

Hon. J. J. Holmes: And that was a provision fought against by Mr. Ewing in 1925.

Hon. E. H. Gray: He has advanced since then.

Hon. J. NICHOLSON: Mr. Ewing actually fought against the insertion of such a clause in last year's measure.

Hon. J. Ewing: The precedent was established in 1902, and that is why I support this provision.

Hon. J. NICHOLSON: The mere fact that a mistake was made in 1902 does not justify the House in repeating a similar mistake. If it is desired to embody something in the existing legislation, let it be something that will enable the purposes of the Act to have the endorsement of Parliament, leaving the court to determine the question of hours.

Hon. J. Ewing: The question of hours has already been determined and registered with the court.

Hon. J. NICHOLSON: Then there should be no objection to omitting the provision altogether. The suggested clause I mentioned was put forward as an alternative, not that it is absolutely necessary. The parties concerned with any industrial dispute have the right to go before the court now, without the inclusion of any such provision in the Bill. Subject to the remarks I have made, I support the second reading of the Bill.

On motion by Hon. G. A. Kempton, debate adjourned.

BILL—NAVIGATION ACT AMENDMENT.

In Committee.

Resumed from the 23rd September. Hon. J. Cornell in the Chair; the Honorary Minister in charge of the Bill.

The CHAIRMAN: Progress was reported on Cause 4.

Clauses 4 to 8—agreed to.

Clause 9—Amendment of Section 44:

Hon. Sir EDWARD WITTENOOM: The word "upon" proposed to be inserted already appears in the original Act and is superfluous here.

The HONORARY MINISTER: I move an amendment—

That in line 4 the word "upon" be struck out.

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

Clauses 10 and 11—agreed to.

Clause 12—Insertion of new section after Section 55:

Hon. G. W. MILES: I move an amendment—

That the following subclauses be added:—"(7) Provided that the Chief Harbour Master may, within one year after the commencement of this section, grant, without examination, a marine motor engine-driver's certificate of competency to any person of good repute who produces satisfactory evidence that he has been in charge of and driven a marine motor engine for at least one year within a period of five years. (8) Provided also that this section shall not apply in the case of any ship used north of the twenty-seventh parallel of south latitude, and not elsewhere."

The HONORARY MINISTER: The first portion of the amendment is reasonable because there is no idea of penalising anybody, but I cannot reconcile the second portion, because the hon. member, after safeguarding certain individuals, wishes to exempt the North.

Hon. G. W. MILES: In the North are people who run auxiliary boats and use them perhaps only once a month. I do not wish it to be contended that the man in charge of the engine is a marine motor engine driver and must not do any work beyond attending to the engine.

The Honorary Minister: I appreciate the object of the amendment.

Hon. E. H. HARRIS: One of the objects of the measure is to provide for the issue of a new certificate—a marine motor engine driver's certificate. Mr. Miles's amendment provides that a man who does not sit for an examination may obtain a certificate free of charge. I suggest that the schedule to the Act should be amended by providing for the issue of a marine motor engine driver's certificate at a fee of £1. Perhaps the hon. member would withdraw his amendment in favour of one on the following lines:—

Provided that on payment of the prescribed fee and on proof that the applicant is a person of good repute and on the production of satisfactory testimonials that he has been in charge of and driven a marine motor engine for not less than one year within a period of five years prior to the passing of this Act, the Chief Harbour Master may grant, without examination, a motor engine-driver's certificate of competency.

Under my proposal the applicant would have the experience, would have driven a motor engine and would come within the scope of the measure by paying the prescribed fee and by being subject to the cancellation of his certificate if he did anything wrong. This would better cover the position than Mr. Miles's amendment. The schedule should also be amended accordingly.

Hon. G. W. MILES: I think Mr. Harris's suggestion meets the case, and I will withdraw my amendment as it relates to paragraph (7).

The CHAIRMAN: I suggest that Mr. Miles should withdraw the whole of his amendment, and that Mr. Harris's amendment be moved with the addition of paragraph (8) of the original amendment.

Hon. A. BURVILL: If the amendment be withdrawn, will the substituted amendment provide that anyone who has had a certificate when the Act was passed be able to obtain a certificate of service?

Hon. E. H. HARRIS: A marine motor engine-driver's certificate of competency may be granted by the Chief Harbour Master without examination, if my suggestion is adopted.

Amendment by leave withdrawn.

Hon. E. H. HARRIS: I move an amendment—

That subclauses be added as follows:—(7) Provided that, on payment of the prescribed fee, and on proof that the applicant is a person of good repute, and on production of satisfactory testimonials that he has been in charge of and driven a marine motor engine for not less than one year within a period of five years prior to the passing of this Act, the Chief Harbour Master may grant without examination a marine motor engine driver's certificate of competency. (8) Provided also that this section shall not apply in the case of any ship used north of the 27th parallel of south latitude and not elsewhere.

Hon. H. J. YELLAND: I do not like the phrase "prior to the passing of this Act."

Hon. E. H. Harris: It is taken from the Inspection of Machinery Act.

Hon. H. J. YELLAND: Mr. Miles desires to provide for certain conditions in the North, but I am afraid that this amendment will lead to his desires being frustrated.

Hon. J. Nicholson: You mean that a man could not get his certificate unless five years prior to the passing of the Act he had been in charge of a marine motor engine.

Hon. E. H. Harris: This will not apply to the North.

The HONORARY MINISTER: Mr. Harris's amendment is preferable to Mr. Miles'. I must say, however, it is a pity the rules of the House have not been observed, and that Mr. Harris's amendment was not placed on the Notice Paper so that I might have had an opportunity of consulting with departmental officers regarding it. I am prepared to accept it.

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

Clause 13—agreed to.

Clause 14—Citation of principal Act and amendments:

Hon. E. H. HARRIS: The schedule deals with fees for certificates of competency. We are providing for the issue of certificates for marine motor engine drivers. I, therefore, suggest we should add to the schedule the words "for a marine motor engine driver's certificate, one pound."

The CHAIRMAN: As there is no clause in the Bill amending the schedule, I suggest that the Honorary Minister might report progress, and that Mr. Harris should put his amendment on the Notice Paper, when inquiries can be made concerning it.

Hon. E. H. HARRIS: It has been suggested to me that this Chamber could not carry my amendment, that such an amendment must originate in another place. If that is so, the amendment had better not be moved.

The CHAIRMAN: If it is placed on the Notice Paper, there will be an opportunity to consider it.

Progress reported.

BILL—JUSTICES ACT AMENDMENT.

Second Reading.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [8.48] in moving the second reading said: This Bill proposes to serve three purposes. First, it will bring all appointments of justices under the Justices Act. Secondly, it will give the Crown the same power as the individual has for the cancellation of a bond of bail should the necessity arise. Thirdly, it will remove a defect in the original Act which operates unfairly in claims for maintenance. I shall now explain the general principles of the Bill and the purview of some of its clauses. A few years ago there was an extension of the old system of appointing justices, and mayors became justices by virtue of their office. Later, chairmen of road boards had a similar distinction conferred upon them through an amendment of the Road Districts Act. Provision was made in the Justices Act for mayors to be brought in under that statute, but no provision has been made in that direction for chairmen of road boards. This measure will bring both classes into line. One effect will be that the chairman of a road board, like a mayor, may be prohibited by the Governor from sitting as a justice of the peace. Of course it is not likely that any steps will be taken in that direction unless they are fully warranted. In any case, mayors are subject to such a provision, and there is no reason whatever why chairmen of road boards should be exempt. Again, there is at present no system by which the names of these ex officio justices can be added to the justices' list. A good deal of trouble has arisen in consequence of that defect. Documents are frequently sent to the Crown Law Department for the purpose of ascertaining whether those who have signed or witnessed them are justices of the peace, the names not appearing on the justices' list. Inquiries have to be set afoot and investigations made through the Public Works Department, and sometimes it is found that although the person signing or witnessing was at one time an ex officio justice of the peace, he has ceased to be so through no longer holding his position as head of the local authority. The Bill provides that before such appointments become operative, the names of the persons must be entered upon the usual roll of justices. Mayors and chairmen of road boards who wish to exercise the functions of justices of the peace must also take the oath and of office. That is not necessary under the existing system. Clause 4 makes a very desirable amendment of the parent Act. Section 94 of that Act provides that where recognisances have been entered into, sureties, if they become suspicious as to actions of their principal, may apprehend him and bring him before justices of the peace, with the object, of course, of having their liability removed. Strange to say, however, there is no provision for similar action by the Crown when a person

fails in a condition of his recognisances. The effect of the amendment will be to give power to resident magistrates to act on the application of the police or the Crown Law Department. Clause 6 is regarded as the most important provison of the Bill. Section 155 of the Act prescribes the procedure to be followed when default is made by persons having to pay periodical amounts. The point arose in a case in which the Full Court decided that it would be necessary to take action in connection with each individual payment. Instead of suing for a lump sum when there was a repeated default in periodical payments, the plaintiff would, under that decision of the Full Court, have to sue in respect of every default. If there were half a dozen defaults, the plaintiff would have to institute half a dozen prosecutions. In many cases that procedure would be found impracticable, especially where the defendant lived perhaps a hundred miles away in the bush.

Hon. E. H. Harris: Is there any reason for the insertion of that provision in the original Act?

The CHIEF SECRETARY: This Bill proposes to amend the Justices Act. By a private Bill which recently passed another place and has been introduced here, the defect is remedied so far as women are concerned; but this Bill will extend the principle to other cases where periodical payments are in default. I move—

That the Bill be now read a second time.

HON. SIR EDWARD WITTENOOM (North) [8.56]: I would like a little explanation from the Chief Secretary. Clause 6 proposes to repeal Section 154a of the principal Act and to substitute another section. Now, Section 154a of the principal Act deals with the manner in which costs are recoverable. I think the reference should be to the amendment Act of 1919. Section 11 of the Act of 1919 refers to enforcement of recognisances, but there is nothing about that in the original Act. The same remarks apply to Clause 7. I cannot make head or tail of the Bill. Clause 7 proposes to amend Section 155 of the principal Act. Now, Section 155 refers to execution, and execution can have nothing to do with recognisances. I could not follow the Minister's explanation of the Bill.

HON. E. H. HARRIS (North-East) [8.57]: There is only one clause of the Bill on which I desire explanation, the clause referring to chairmen of road boards who shall by virtue of their office become justices of the peace. The Road Districts Act provides for temporary appointments to fill the office of chairman of road boards, and lays down that all the powers vested in the chairman are to be vested in the person temporarily appointed in his stead. Would the office of justice of the peace be conferred upon the temporary chairman? I have known of instances where a temporary chairman has acted for seven or eight months, owing to illness of the chairman. In such a case would both the chairman and the temporary chairman be vested with the powers of a justice of the peace, or would the powers be taken from the chairman who temporarily vacated his office?

THE CHIEF SECRETARY (Hon. J. M. Drew—Central—in reply) [8.58]: I was not able to follow Sir Edward Wittenoom, who I think stated that there was no provision in the original Act for enforcement of recognisances.

Hon. Sir Edward Wittenoom: I said there was no reference in the sections which are mentioned in the clauses of the Bill.

The CHIEF SECRETARY: Probably I made a mistake. I intended to refer to Section 154a, and seemingly I omitted the "a" from my notes. Section 154a provides—

(1) When a person bound by a recognisance under this Act fails in a condition of the recognisance, complaint thereof may be made and proceedings issued and taken in manner provided in this Act in case complaint is made in respect of any matter, and on the hearing an order may be made forfeiting the recognisance and adjudging the payment by the person liable of the amount thereof. (2) The provisions of this section shall be without prejudice to any other method of enforcement.

As to the point raised by Mr. Harris, the person duly appointed chairman of a road board, and not a person acting temporarily as chairman, would be eligible for appointment as justice of the peace.

Hon. E. H. Harris: But the Road Districts Act says the temporary chairman shall have all the powers of chairman conferred upon him when appointed to take the office temporarily.

The CHIEF SECRETARY: He would not have the powers of a justice of the peace. In any case, under this Bill his powers would not become operative until his name had been placed on the justices list; so whatever defects there may be in past legislation will be remedied by this measure.

Hon. Sir EDWARD WITTENOOM: I rise for further information or explanation.

The PRESIDENT: I think the hon. member is speaking under Standing Order No. 386, which allows a member to be heard a second time in explanation.

Hon. Sir EDWARD WITTENOOM: Clause 7 of the Bill says that Section 155 of the principal Act is hereby amended by the addition of Subsection 2 (a). I have before me the principal Act, and I find that Section 155 deals with execution. How can the Minister reconcile that?

The CHIEF SECRETARY: Would it not be better if this matter were considered in Committee? I have not had time to go through the original Act and make a comparison. If the Bill were in Committee it would be taken clause by clause, and I could then handle the matter properly. I have a full explanation of every clause in the Bill, but at this stage I certainly cannot refer to sections of the Act at a moment's notice.

Question put and passed.

Bill read a second time.

ADJOURNMENT—ROYAL SHOW.

THE CHIEF SECRETARY: I move—

That the House at its rising adjourn until 4.30 p.m. on Thursday the 7th October.

Question put and passed.

House adjourned at 9.4 p.m.

Legislative Assembly,

Tuesday, 5th October, 1926.

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

QUESTION—AUDITOR-GENERAL'S REPORT.

Mr. C. P. WANSBROUGH (for Mr. E. B. Johnston) asked the Premier: When will the Auditor General's report be laid upon the Table of the House?

The PREMIER replied: I am informed by the Auditor General that he hopes to make it available during the first week in November.

GOVERNMENT BUSINESS, PRECEDENCE.

THE PREMIER (Hon. P. Collier—Boulder) [4.35]: I move—

That on Wednesday, 13th October, and each alternative Wednesday thereafter, Government business shall take precedence of all motions and Orders of the Day.

I do not think the motion requires any justification.

Mr. Thomson: But why bring it forward so soon?

The PREMIER: It is about the middle of the session and, as a rule, at that period we reduce private members' days to one per fortnight. I really think I would be justified in cutting them out altogether this session, but I desire to offer every opportunity to hon. members to bring forward their private business. The fact remains that on private members' day during the session so far we