Act. The term "dealer" means any person who—

(a) Purchases fruit from a grower wholesale for re-sale; or
(b) receives fruit from a grower for sale wholesale on behalf of such grower; or
(c) being a grower, himself sells wholesale in a season not less than 250 cases of fruit produced by him.

It is this definition which the Bill seeks to amend. It is proposed to extend the definition of the term "dealer" to include certain other classes of growers. The Act imposes upon dealers the duty of deducting from payments due to the grower the amount of his contribution to the fund. Under the apple and pear acquisition scheme, the collection of levies due from growers of those fruits is greatly simplified, since the entire crop is in the disposition of the board, which thus becomes the sole dealer. In the case of growers of citrus fruits, however, the matter of collections is rather more difficult.

Prior to the war, it was the practice of many such producers to retail their fruit at roadside stalls along the main highways adjacent to the city. Considerable quantities of fruit were disposed of in this manner; and, indeed, it would be possible for a grower to sell his entire crop in this way. It is proposed to class such grower-retailers as dealers in cases where disposals of fruit by this means amount to 250 bushels or more per year. The second proposal in the Bill relates to manufacturers engaged in processing fruit. At present these manufacturers are not obliged to deduct from the returns due to the grower the amount of his liability to the fund. It is sought by a clause in the amending Bill to bring such manufacturers within the definition of "dealer," thereby requiring them to carry out this duty. The processors have expressed their willingness to co-operate in this way, and if the Bill is accepted, much of the inconvenience which the department is at present experiencing in the collection of moneys due will be obviated.

The only other proposal deals with a grower who sells wholesale in a season not less than 250 cases of fruit produced by himself. It is proposed to substitute the word "bushels" for "cases," so that a grower who sells not less than 250 bushels of fruit will come within the definition of "dealer." It is considered to be more equitable for levies to be paid on a bushelage basis. Those are the proposals embodied in the Bill. They are brought forward for parliamentary approval so that anomalies in respect to the parent Act may be rectified. All the moneys received into the trust fund by way of the levies raised are utilised in the interests of the fruitgrowing industry, and I anticipate that no objection will be raised to the proposals. I move—

That the Bill be now read a second time.

On motion by Hon. W. J. Mann, debate adjourned.

## ADJOURNMENT—SPECIAL.

**THE CHIEF SECRETARY** [7.44]: I move—

That the House at its rising adjourn till Tuesday, the 3rd October.

Question put and passed.

*House adjourned at 7.15 p.m.*

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# Legislative Assembly.

*Wednesday, 20th September, 1944.*

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

## QUESTIONS (6).

### RAILWAY EMPLOYEES.

*As to Shortage of Housing Accommodation.*

Mr. HOLMAN asked the Minister for Railways:

(1) Is he aware of the shortage of houses and departmental cottages that are available to railway employees?

(2) Is he aware that this shortage is causing family hardships to employees stationed in country districts and to employees who are transferred from one centre to another?

(3) Is it a fact that some employees have found it necessary to refuse promotion because of the shortage of housing accommodation and because such promotion would entail the keeping of two homes?

(4) Has the department taken any steps to alleviate the present position? If so, what steps have been taken?

(5) Has any provision been made to include the building of departmental cottages or homes as a post-war measure? If so, what provision has been made?

The MINISTER replied:

(1) Yes.

(2) Yes.

(3) Employees have advanced this as a reason for declining to accept promotion and transfers.

(4) The position has been continually under review, but limitations of manpower and material have precluded any programme being undertaken.

(5) A recommendation has been made for the provision of 100 houses in the post-war scheme.

### WHOLE MILK.

*As to Distribution.*

Mrs. CARDELL-OLIVER asked the Minister for Agriculture:

Will he give consideration to the enforcement of, either by regulation or by statute, the power to direct the distribution of whole milk?

The MINISTER replied:

Yes. Consideration is being given to the matter, which cannot be dealt with by regulation.

### COMMONWEALTH HOUSING SCHEME.

(a) *As to District Allocations.*

Mr. WATTS asked the Premier:

(1) To what places in Western Australia have the houses to be erected under the war-time housing proposals been allocated?

(2) Prior to the allocation being arranged were inquiries made of local authorities in centres not included in the present allocation, as to housing needs?

(3) If inquiries were not made will he give the reason?

The PREMIER replied:

(1) Under the Commonwealth War Housing Scheme the number of houses to be erected in each State is allocated quarterly. So far the State Government has been advised of two quarters' allocations. The first quarter's was 75 and the second quarter's 90. These allocations have been apportioned as follows:—

Metropolitan area, 110.
Collie, 15.
Boyup Brook, Bunbury, Merredin and Northam, each 10.

As further allocations are approved by the Commonwealth Government, other country centres will be included.

(2) Yes. A survey was made of the housing requirements through the help of all the principal local authorities throughout Western Australia, and the allocation of houses outside the metropolitan area has been based on this survey. The information showing the result of the survey was supplied by the local authorities concerned.

(3) Answered by No. (2).

(b) *As to Provision for Provincial Towns.*

Mr. DONEY asked the Premier:

(1) Does he contemplate the erection of houses under the Commonwealth and State war housing arrangements in centres other than those already announced in the Press at various times?

(2) If not, by what means are the urgent housing needs of provincial towns to be met?

The PREMIER replied:

(1) Yes.

(2) Answered by No. (1).

## VERMIN.

*As to Deputation's Request.*

Mr. TELFER asked the Minister for Agriculture:

Has he anything to report, in reply to a recent deputation, as to emu and other vermin pests in the Northam wheat-belt?

The MINISTER replied:

Cabinet has approved of a bonus to be paid on heads of emus and also of the furnishing of ammunition in some circumstances. A public statement will be made in the course of a few days.

## BUS SERVICE.

*As to Deviation of Maylands Route.*

Mr. GRAHAM asked the Minister for Railways:

(1) Does he approve of the present route of the Kathleen avenue (Maylands) bus service which follows a tram line for the greater part of the journey?

(2) Is he prepared to take steps to provide a separate service or deviate the above service in order to cater for East Perth people without transport facilities, as represented to him in March last?

(3) Does he not consider the time for such action to be opportune in view of the recently announced decision to release manpower from the Services for transport and other requirements, and the intention of the Commonwealth Government to make available surplus army motor vehicles with first offer to Commonwealth and State instrumentalities as intimated in "The West Australian" on the 16th instant?

The MINISTER replied:

(1) Yes.

(2) No. A separate service cannot be provided as extreme difficulty is presented in maintaining existing services. The deviation suggested cannot be justified as the present trolleybus service caters for the majority of the East Perth people.

(3) No information is available as to type and size of motor vehicles or if any could be used for buses, and no advice received of any release of manpower for street transport systems.

## ACOUSTICS IN ASSEMBLY CHAMBER.

Mrs. CARDELL-OLIVER: On a question of procedure, I would like to point out that it is impossible for members in this part of the Chamber to hear anything that is said by the first three Ministers on the Treasury bench in answer to questions, or even when those Ministers are debating. It may be because there is something wrong with the acoustic properties of the Chamber; we do not know. All I know is that it is impossible for us to hear those Ministers, and I would like to hear what they have to say. When they sat over on this side, we could hear—

Mr. SPEAKER: Order! The hon. member is not allowed to make a speech.

Mrs. CARDELL-OLIVER: I do not want to make a speech. All I want to know is whether anything can be done.

## BILLS (2)—FIRST READING.

1, Mortgagees' Rights Restriction Act Amendment.

Introduced by the Minister for Lands.

2, Natives (Citizenship Rights).

Introduced by the Minister for the North-West.

## LEAVE OF ABSENCE.

On motion by Mr. Wilson, leave of absence for two weeks granted to Hon. A. H. Panton (Leederville) on the ground of ill-health.

## BILL—TESTATOR'S FAMILY MAINTENANCE ACT AMENDMENT.

Read a third time and transmitted to the Council.

## PAPERS—AGRICULTURAL BANK.

*As to Case of Craig Holden Whitwell.*

**MR. WATTS** (Katanning) [4.39]: I move—

That all papers in connection with Craig Holden Whitwell of Hines Hill, farmer, be laid on the Table of the House for 21 days.

I do not propose to make any extensive remarks on the motion, for I have already had some opportunity of informing the Minister for Lands of my reasons for asking that the papers be tabled. I understand they were placed on the Table of the House a year or so ago, but unfortunately the

opportunity was not then necessarily taken by me to examine them. I desire to have the information that appears on the file in order that I may, if desirable, make representations to the Minister for Lands in regard to certain matters.

**THE MINISTER FOR LANDS:** I have no objection to the motion, and have the papers with me ready to lay on the Table of the House.

Question put and passed; the motion agreed to.

## BILL—PERSONAL COVENANT LIABILITY LIMITATION.

*Second Reading.*

**MR. WATTS** (Katanning) [4.42] in moving the second reading said: It is with a certain amount of satisfaction that I ask the House to agree to the second reading of this measure which I now present for its consideration. I think there are a great many misapprehensions in regard to the meaning of the words "personal covenant" in a mortgage. There is a misapprehension, or a belief, in some quarters, that it is a special clause in the mortgage document which could be deleted entirely from that document without in the least affecting the security of the undertakings for repayment that are contained in an ordinary mortgage. I think, however, that I am quite correct in saying that is not so. The personal covenant amounts only to this: That there is in every mortgage a promise to repay the amount which is advanced, together with interest due from time to time at the rate prescribed, and for better securing of that repayment, in the time and manner prescribed, the security which is offered for the mortgage is pledged. So, as it could never be a practical proposition for a mortgage to contain no promise whatever to repay—that would be to destroy the whole essence of the contract entered into it—it becomes necessary to consider whether there should be any restrictions on the right of action of the mortgagee in respect to the covenant to repay either before or after the realisation of the security.

In my view, there are many advantages to be gained from some measure of restriction on the right to sue on the personal covenant or, in other words, to take proceedings for the recovery of the money in default of the land realising the amount owing. There are times when it suits the mortgagee to proceed upon the personal covenant in a court of law by the issue of a writ rather than to attempt to realise the security which has been given to him. The question arises: Is it desirable that a mortgagee should be obliged to give more consideration to the value of the asset which is pledged as security for his advance or more consideration to the personal element, the personal assets of the borrower other than the land pledged?

The Minister for Justice: In most instances the personal equation is a greater security.

Mr. WATTS: I am inclined to question that statement very much indeed. I venture to suggest that not in one case out of 10 does a mortgagee advance money greater than a reasonable proportion of the value of the land which is pledged as security—unless the advance is increased, as sometimes happens in the Agricultural Bank, by circumstances almost entirely out of its control, or alternatively is increased by substantial arrears of interest. I venture to say that if the asset to be pledged is, in the mortgagee's opinion, worth £2,000, he is not going to advance more than £1,500 upon it, and that point of view, I think, is borne out by the section of the Commonwealth Bank Act providing for a mortgage bank which stipulates 70 per cent. of the value of the security which is pledged, and that value is determined by the mortgagee and not by the mortgagor. It is determined by the lender and not by the borrower. While there may be a few rare cases where what is called by the Minister for Justice the personal equation is taken into consideration by the mortgagee—the lender—I suggest that that is not done in the ordinary way of business, but that it is done because he has some personal reason for a special belief in the ability of the mortgagor notwithstanding that the security offered is an insufficient guarantee for the money he advances.

The Premier: In the event of a Court order being obtained does he not have to take out a distress warrant?

Mr. WATTS: The circumstances are that it is first of all necessary under this Bill that the mortgagee should realise his security before in any circumstances being able to obtain an order for the issue of a writ upon

the personal covenant. I do not think it at all reasonable that he should take security for the land which is offered to him for the money he advances and without attempting—in the event of default—to realise that security, proceed on the personal covenant by way of action at law for the recovery of money, leaving the security untouched. At times some extraordinary occurrences take place. I have known of instances where farms have been abandoned. At the time of abandonment, the house upon the property was in good and habitable order. The fences were suitable for the keeping in of small and great stock. The other improvements were in a good state of repair. The clearing was not overgrown and generally speaking the property at the time would have had a particularly easily ascertainable value. Then for some reason or other—financial difficulties, crop failures or something of the kind—the property had to be abandoned by the mortgagor, the borrower. There has then been no effort to make any realisation of the property or at least no realisation has been made of the property. The fencing wire has been removed from the fences, the roof taken off the house and the clearing has become overgrown.

Then the mortgagor—the borrower—who left the premises in comparatively good order—premises that would have been capable, had they been disposed of, of realising an amount sufficient to cover the mortgage—later on finds himself with some funds which he has earned over a period of years and which he may have gained by changing his occupation altogether. Then he is sued for the whole of the amount of the debt. Whereas he had handed over the property in the order in which it was when he secured the mortgage, he thus finds himself in the enviable position—if one desires to be ironical—or unenviable position—if one regards it otherwise—of having to pay the full amount of the debt, and the money he expended on the property has gone for nothing because the mortgagee was unable to get or, at any rate, had not derived the advantage from the security that he was entitled to at the time of realisation. That has happened on a good many occasions in Western Australia. There have been instances within my personal knowledge where it has actually happened. After having left the property without any means whatever, a man has, by some fortuitous circumstance or by some arduous effort, had the good fortune to accumulate some money only to find he is sued for the whole amount of his indebtedness.

Thus such a man has not only, in some instances, worked hard to improve a property and incurred a certain amount of expenditure over and above that entailed in effecting those improvements, but has been sued and had judgment given against him for the full amount of the debt under the mortgage, plus an accumulation of interest over a period of years. Even supposing there is a limited number of cases in which that has happened, there are a great many more cases in which it could, and probably will, happen in the future history of this country. I say quite frankly that I am not one of those who believe that a debtor should be allowed deliberately to defraud his creditors. I have no desire to subscribe to proposals which seem to me to lead in that direction. On the other hand, it is vital to protect a debtor, who has tried and has been reasonably efficient, from his creditors if, due to circumstances outside his control, he has been unable to meet his obligations. Circumstances of that kind, I am prepared to admit, arise in all walks of life. They have, however, risen far more frequently, in proportion to the numbers engaged, in the rural industry.

That there has been a great number of such cases is instanced by the legislation that Parliament has passed, such as the Farmers' Debts Adjustment Act, the Industries Assistance Act and other measures which appear on the statute-book. It seems reasonable that we should bring into force effective legislation which will prevent, so far as is practicable, the fraudulent debtor from defrauding his creditor, while at the same time offering reasonable protection to the honest debtor who has been unable to meet his obligations while yet not allowing such a state of affairs to arise as I have endeavoured to outline. I do not want it to be thought that there is no other place than this House where matters such as this have received consideration. I know it has received attention in a great many places in the British Dominions. The one that has been brought to my attention most recently is in the Province of Saskatchewan in the Dominion of Canada. There under the

Limitation of Certain Civil Rights Act, which was passed in 1939, the right to sue upon the personal covenant in respect of mortgages or in respect of contracts of sale of land in regard to the unpaid balance of the price of that land, has been prohibited. Section 2 of the Act provides that no action shall lie on any such covenant for payment contained in an agreement for sale or mortgage. It is true that that has application to mortgages that are dated after the passing of the Act. In my view that would be a desirable reform to achieve in Western Australia, but it does not take into consideration past transactions and difficulties that are involved in them.

To say straight out that no action on personal covenant shall lie in respect of any mortgage, past or future, would seem to be at this stage, hastening rather too quickly. It is necessary, as I see it, to accept some compromise between the actual bar to proceeding on personal covenant and the present situation under which can arise a set of circumstances such as I have referred to. It is with that intention that I have produced the Bill, which I now submit to the House. The Bill provides that no action shall lie upon personal covenant unless an order has been obtained by the mortgagee from a magistrate of a local court if the debt is less than £2,000 or from a judge of the Supreme Court if the debt is over that sum. It may be objected that to take a figure of £2,000 to be dealt with by a local court or resident magistrate is to go too far, and that the amount to be dealt with by a magistrate should be less than the sum I have mentioned, and that all other amounts should be dealt with by a judge of the Supreme Court. I have drawn upon the National Security Regulations—I think it was Statutory Rule 65—in this regard, where a magistrate of a local court is equipped with authority to vary contracts and relieve from obligation where inability to carry out the contract or to pay the obligation has been caused by circumstances attributable to the war, the magistrate there being limited to amounts up to £2,000. It seems to me that if it is satisfactory for an obligation of that kind to be dealt with under the National Security Regulations by a magistrate in the local court, it is not unreasonable to ask in the Bill that a magistrate shall be allowed to deal with matters involving an amount u to a similar figure.

The Minister for Lands: Is there misprint in the measure regarding the ap plication to Crown instrumentalities?

Mr. WATTS: Yes. It is proposed tha the Bill, if it becomes an Act, shall bin the Crown or any person or incorporate body representing the Crown or any instru mentality of the Government of the Stat The reason for that is that the Crown, o course, has a large number of rural mort gages and it would be almost grotesque i the legislation were to provide for certai instrumentalities, whereas the mortgagee of the State were to be allowed to procee without any intervention on the part o such legal authority. It is also provide that the measure shall apply to all mort gages whether given or executed before o after the commencement of the Act fo the reason I have stated that it is neces sary to deal with mortgages of all thos types unless we are going to say straight out that the personal covenant shall b wiped out entirely as, in effect, has bee done in Saskatchewan. But I am satisfie to refer all these problems to a properly constituted judicial tribunal; I am satis fied that such a tribunal should inquire into the circumstances of the case and determine whether or not the mortgagee should be entitled to take proceedings by way of the issue of a writ under the per sonal covenant for repayment.

When we reach this stage, it become necessary to consider what circumstance should enable the court to grant or refus an order which is asked for. If one says that the court shall inquire into all the items such as, for example, those laid down in the Mortgagees' Rights Restriction Act then we shall be entering into a zone which is not desirable. It is the duty of the mortgagee to attempt, at the earliest possible moment after the default has been made and the decision to proceed has been arrived at, to realise the security and make that attempt by the best methods available to him. If he does that after default has been made and it is found impossible for the security to realise the amount outstanding, that will be the time to consider what other aspects the court should look into. It seems, then, that the mortgagee should not be entitled to obtain an order unless he can show that default has arisen through

the inefficiency or mismanagement of the mortgagor.

I said at the beginning of my remarks I was firmly of the opinion that in the vast majority of cases the loan that is made is assessed on the value of the property, and that an advance is rarely made which is more than 70 per cent. of the then assessed value of the property. If the assessed value, which is usually that of the mortgagee and not of the mortgagor, is found in the end not to realise the amount outstanding at the time of default, then the loss, in my view, should not fall entirely on the mortgagor.

The Premier: In the case of Workers' homes we accept the title to the land as security for an £800 house.

Mr. WATTS: This Bill does not deal with land for workers' homes because the measure for the time being is confined to rural industry, which term is defined in the Bill. The definition of "rural industry" is taken from the Rural Relief Fund Act of 1935 and is identical or almost identical with the definition contained in that Act. As I was saying, the mortgagor and the mortgagee were at least equally responsible for the value placed on the land. In fact, I would go further and say that in the vast majority of cases the value is that of the mortgagee, and he is the person to accept the responsibility. I admit that these valuations in regard to such instrumentalities as the Agricultural Bank are not always on that basis. I admit there have been times when the debt has run away from the value of the property for some reason or other. That point has been discussed here many times. But we know that the Agricultural Bank already possesses authority to write down the amount of the liability to the value of the property including any likely appreciation in value at the time of the valuation. That is to be found in Section 65 of the Agricultural Bank Act. So it is a reasonable assumption, I submit, that even the Agricultural Bank now has no mortgages where the principal sum is greater than the bank's valuation of the property plus any appreciation in value which in its opinion was likely to take place at the time the valuation was made.

The Minister for Lands interjected.

Mr. WATTS: I am dealing with the matter on the broad basis; it is impossible to go into minor details on a question of this sort. It seems to me, however, that if one reviews the history of the Agricultural Bank, there is not the great distinction between the Agricultural Bank and any other type of mortgagee that might appear to have existed at first sight. Nor do I think it is a frequent thing for the Agricultural Bank to take proceedings under the personal covenant when a property is abandoned. I understand that, as a general rule, when a property is abandoned, the debt is abandoned, unless it is possible to find someone to take it over in whole or in part.

The Minister for Lands: I cannot recall many cases where prosecution has taken place against legitimate farmers.

Mr. WATTS: The use of the term "legitimate farmers" needs consideration.

The Minister for Lands: I am referring to a man who gets his living from the land.

Mr. WATTS: I am referring to the proceedings subsequent to abandonment. That is why I cannot agree with the Minister when he refers to "legitimate farmers," because a person who has abandoned a property ceases to be a legitimate farmer.

The Minister for Lands: I mean final abandonment.

Mr. WATTS: In those circumstances there have been cases where proceedings have been taken under the personal covenant against the farmer and after a lapse of considerable time; in one case after 2½ years judgment was obtained, with the result that the man was obliged to call a meeting of his creditors. I am prepared to say that rarely do those circumstances arise, but even in the rare cases in which they do, I submit it is reasonable that they should be subject to legislation of this sort.

Mr. Berry: This does not apply solely to the Agricultural Bank?

Mr. WATTS: No, to all mortgages whether past or future. It is essential in my view that this should be so, because it would be grotesque that one section of the community should be excluded and one section included. If we allowed that state of affairs to come into being, a most undesirable position would be created. To resume the question of the authority of the court, the judge or magistrate has to determine that the mortgagee has used his rights, powers and privileges to the best possible advantage. If the judge or magistrate is satisfied of that and also that the default has been caused or contributed to by any

reprehensible conduct on the part of the borrower, he will be entitled to make an order. He may make that order in respect of the whole sum outstanding or any part of it. It is possible for the magistrate to say, "There is a sum of £1,000 outstanding. Of that £500 has been rendered unrecoverable because of your mismanagement. The other £500 is recoverable, and therefore I will make an order for that amount, but not for the portion which was rendered unrecoverable through no fault of the mortgagor." That is why the Bill provides that the judge or magistrate may grant relief on terms or conditions or in respect of only portion of the amount, but he will not be able to grant any relief at all unless he is satisfied he can answer some part of the first question and the second question itself in the affirmative, namely, that he is satisfied there has been mismanagement which is attributable to the borrower and that the mortgagee has used reasonable efforts to realise the security to the best possible advantage.

There is a clause that requires the lender, before he commences proceedings before a judge or magistrate, for the recovery of his money to use the best means available to realise the security. The Bill then goes on to provide that there shall be no appeal from the decision of the judge or magistrate and that no costs shall be awarded to either party to the application. There will be no expenses payable by one party to the other, and the judge will not be competent to make an order for costs against either party. It is also provided that the Act shall have effect notwithstanding any agreement to the contrary. The desire is to prevent what is known as contracting out; that is to say, by a clause in the mortgage itself or by a document signed apart from the mortgage but subsequent to the passing of the Act, the mortgagor is persuaded and therefore agrees to deprive himself of the benefits of the Act and will not take advantage of it. No agreement of that sort will be valid. I have not included in the Bill any clause providing for the making of regulations. It seems more desirable that the regulations governing the approach to the judge or magistrate should be made in the measure itself. In consequence, there will be found provisions with regard to the summons which is to be issued and served on the mortgagor, and there are provisions that are usually made by regulation for the procedure to be followed with regard to service when the parties concerned cannot be found, and there are forms in the schedules to be used by the parties with regard to the application for the summons and the order to be made by the judge or magistrate.

It is also provided that the parties may be represented by solicitor or counsel, or may be represented by themselves personally, and may call witnesses; and all those forms, instead of being made regulations or rules of court, are made by the Bill itself. The only provision that I have suggested should be in the hands of the judge is as the fees to be paid. These should be fixed in the same way as ordinary court fees are fixed. The Bill says they shall be fixed by the Governor; but I think it will be found that the procedure to be followed will be that the judge or judges will deal with the fixation of the fees that are to be paid for applications of this character. It is unnecessary for me to stress more than one or two points. One is that the guarantor will be included in the relief which is provided by this Bill, if there be a guarantee. Sometimes the obligation of the mortgagor—the borrower—is secured not only by the land but also by a guarantee of some third party. If that be so, the guarantor can be included as a party to the proceedings, and if the mortgagor gets relief wholly or in part then to that extent the guarantor will get relief also.

There is also a provision defining what a mortgage is, in order that there may be no doubt that equitable mortgages, by deposit of title deeds and other documents, which may not in common parlance come under the term "mortgage," but which have the same effect of giving security for the money advanced, are included; and, as I mentioned to the Premier in response to his interjection, the measure proposes at this stage only to follow the lines of the Rural Relief Fund Act and to confine itself to the rural industry as defined by that Act. In this Bill "rural land" is land used for rural industry. I submit there is ample justification for a measure of this kind. To my way of thinking, it is progressive and necessary. It is by no means revolutionary. As I have said, the question involved in this Bill has received consideration in other parts of the

British Empire, and I drew the attention of the House to one notable example in the Province of Saskatchewan in the Dominion of Canada. If the Civil Rights Limitation Act of that Province were perused, as members can easily peruse it—it is to be found in the Parliamentary Library—it would be discovered that a great many other limitations have been placed upon civil rights, such as mortgages, assignments of life policies and many other securities. There is not a revolutionary Government in that Province. It is a Government which I believe has done reasonably well in the management of the affairs of the Province, and it found it necessary as long ago as 1939 to alter the law respecting personal covenants in mortgages.

In my opinion, the time has come when we in Western Australia should also give consideration to an alteration of our present law. I do not think it is reasonable that a mortgagor can be pursued by his mortgagee over a very lengthy period, even after the security has been realised, and at any time and at any place where he happens to have some asset in his possession that he has obtained by honest means and has held for a long period of years. He should not find himself deprived of that asset to settle a debt which might have been incurred by the failure or unreasonable attitude of the mortgagee in regard to the realisation of the security which he took, upon which he almost certainly placed his own value, and which in the circumstances he did not realise to advantage and accordingly was left with an outstanding debt. That is the purport of the inquiry which it is proposed should be made by the judge. The Bill may have the effect of reducing to some extent the amount which in future will be advanced upon rural land; the percentage of value may be to some extent reduced. That will not altogether be a disadvantage. There are times when I think over this matter and arrive at the conclusion that one of our chief difficulties has been caused by the fact that advances made on rural land have been too high. We know that in the past some mortgagees, particularly competitive financial institutions, have persuaded owners of rural land to accept a greater advance than was applied for.

Mr. Cross: That was their bad judgment.

Mr. WATTS: If this House saw fit to appoint a Select Committee, or if the Government appointed a Royal Commission to inquire into this question, I could produce a bank manager who would admit that he induced at least two farmers in the days when he was employed—he has now retired—to take a considerable sum in excess of the advance they asked for in 1928; and both those farmers, to my certain knowledge, have been dispossessed of their properties by the institution.

The Minister for Lands: What do you think about debts owing to unsecured firms? Do you think this Bill will improve their position?

Mr. WATTS: I cannot arrive at that conclusion, because it does not make an asset where there is none, nor does it transfer the asset from one person to another. That is a possibility which the Minister might elaborate.

The Minister for Lands: I would like to know what you think of it.

Mr. WATTS: It has not occurred to me at this stage as likely to happen. I do not know that it would be undesirable should it happen. There are many unsecured creditors. They have done a great deal for the retention of men upon the land, for the continuance of the agricultural industry, and for the resuscitation of farmers who have been in the financial doldrums—a great deal more than has been done by some financial institutions which are actually concerned in this measure.

The Minister for Lands: I would not disagree with that.

Mr. WATTS: And the unsecured creditor, moreover, without offering any criticism at this stage, is the person who has borne the burden and heat of the day and the losses that have been incurred as between creditors, other than the Industries Assistance Board and similar institutions.

The Minister for Lands: I am not prepared to argue that point, but there is the case of making good to the unsecured creditor, especially in the case of Crown debts that are owing.

Mr. WATTS: If the Minister is able to establish that point of view, I shall still say that I am not seriously perturbed by it, because I consider no harm would be done if the position of the unsecured creditor was made a trifle better than it is. I do

not contemplate this Bill extending over all mortgages in a very short time. I am prepared to admit, as I have already admitted, that there are not a very great number of cases where this kind of proceeding is taken, and I cannot for the life of me see that there will be a substantial increase in the number because of the passage of this measure. I am out to prevent hardship taking place in cases where this type of proceeding is commenced or can be commenced. Without giving away the whole ship to the creditor, I am out to ensure that the matter is referred to a judicial tribunal, which will decide just how far it will go and what it will do in the event of certain circumstances arising, but at the same time I am out to give that tribunal a reasonable measure of discretion so that it may make an order which, in the confines of the measure, is just and equitable. I do not propose to elaborate further on this measure. I submit it to the mercy of the House, and I have much pleasure in moving—

That the Bill be now read a second time.

On motion by the Minister for Lands, debate adjourned.

## BILLS (4)—RETURNED.

1, Dried Fruits Act Amendment.
2, Local Authorities (Reserve Funds) Act Amendment.
3, Northam Cemeteries.
4, Life Assurance Companies Act Amendment.

Without amendment.

## BILL—LAND ALIENATION RESTRICTION.

*Second Reading.*

**MR. WATTS** (Katanning) [5.28] in moving the second reading, said: Here, as the Minister for Justice said on one occasion, is another little Bill, but one which has a big principle involved in it. I do not for one moment suggest that it goes all the way that some people think it ought to go, or, indeed, that it goes as far as I wish myself. But it does involve a principle which I wish to submit to this House in order that members may give it careful consideration and decide whether or no the measure in its present form, or in some amended form, should be accepted. I shall not be averse to members passing the second reading and then, if they care to do so, submitting amendments to define more closely the intentions of the Bill, or, if practicable, to enlarging its scope, because I do not argue that it is the alpha and omega on the question of the restriction, alienation or transfer of certain lands. It is, however, aimed at one aspect of soldier settlement; it is aimed at preventing the disposal of land, that is, Crown land, or land in the possession of the Commissioners of the Agricultural Bank, to persons other than members of the Forces.

It requires the Minister for Lands, as the Minister in charge of these two departments of State, to give his consent before rural lands can be disposed of to persons who are not members of the Forces. Members may be in some difficulty as to the interpretation to be placed upon the words "Member of the Forces." I have taken the definition practically verbatim from the Commonwealth Moratorium Regulations under the National Security Act. In other words, I have not attempted to define any sections of those who have been enlisted in the Armed Forces of the Crown as being the ones who shall obtain the benefits of this measure. I have not said that they shall have served so many years or so many months, nor have I imposed any other restriction. I have provided that a member of the Forces means a person who is or has been a member of the naval, military or air forces of His Majesty the King during any period in which His Majesty is or has been engaged in war. Therefore it would include not only those who have been members of the Forces in the war now raging, but also those who have been members of the Forces of His Majesty in the 1914-18 war, or any other in the time of living persons. But, as I have said, the House is competent, if it wishes to limit or restrict the definition so as to make this Bill if it becomes an Act provide only for restricted classes of members of the Forces, to do so.

The measure also covers dependants of members of the Forces, and a dependant under the Bill is a person who is wholly or partly dependent for his support upon the pay of, or upon a pension payable in consequence of the incapacity or death of a person who has been a member of the Forces. The Bill provides that no Crown lands, other than town or suburban lands, shall be sold

or leased to any person other than a member of the Forces or a dependant of a member without the consent of the Minister. In addition it provides that the Commissioners of the Agricultural Bank shall not, in exercise of any right, power or remedy as mortgagees of land, sell or lease any land, other than town or suburban land, to any person other than a member of the Forces or a dependant without the consent of the Minister.

The Minister for Lands: The second principle is already adopted.

Mr. WATTS: In the Land Act?

The Minister for Lands: The principle outlined in the first paragraph.

Mr. WATTS: I was given to understand that some action had been taken in the matter and I have here a letter, dated the 22nd November, 1943, from the Minister, but I must admit that it does not tell me that, as I would like it to. About that time I had been in communication with the Minister as the result of correspondence I had received from a number of quarters. I think I made special reference to a letter I had received from the Kent District Road Board, Nyabing, which is dated the 18th October, 1943. I might read this letter to the House as indicating that the local authorities, and this one in particular, had some concern in regard to this matter. The letter states—

> At our recent meeting, a discussion took place relative to the selling of Agricultural Bank properties. It is the feeling of my Board that all Agricultural Bank properties should not be sold at the present time, we being of the opinion that all the farms at present vacant should be held only on a lease, until the end of the present hostilities. In all districts, good properties are being sold at reasonable prices and I feel sure that a certain amount of land settlement will take place when the service men return home. It is unwise in our opinion to allow the best land to be snapped up, usually by land hungry men. Where vacant farms can be leased it will cause no hardship or loss of income to the Agricultural Bank and, by only leasing the farms, will provide an improved or partly improved property for some returned service man.
>
> I will be grateful if you will approach the Hon. Minister for Lands and place the views of my Board before him. We will be pleased also if you have any comments to make on the matter.

I communicated with the Minister by letter on the 21st October and enclosed a copy of that letter. I said—

> I enclose a copy of a letter which I have received from the Secretary of the Kent Road Board regarding post-war settlement on the land and abandoned Agricultural Bank farms. I feel that the proposal mentioned by the board deserves favourable consideration. While admitting that some of the abandoned farms would be best left abandoned, there are a number which under favourable conditions of settlement and because they exist in reasonable proximity to transport and provincial towns, should be preserved for the purpose mentioned. I should be glad, therefore, to have your views on the matter.

On the 22nd November, 1943, I received from the Minister the following reply:—

> With reference to your letter of the 21st October with which you forwarded copy of a letter received from the secretary of the Kent District Road Board, I note that the Road Board is of opinion that no Agricultural Bank reverted holding should be sold until after the war.
>
> While I agree that care in sales should be exercised so that speculation in properties is prevented as far as possible, I do not think it advisable to refuse every offer to purchase on the ground that the property concerned may later be required by a returned service man.
>
> A fact that is frequently overlooked is that there are many men outside the ranks of service personnel who, for reasons beyond their control, are unable to join the various active fighting units, but who have contributed very considerably to the success of our arms by their efforts on the home front. As the representative of a farming community you must be in a position to verify this and will agree, I am sure, that these men should not be penalised by hard and fast rules.
>
> Before any decision is made regarding an offer to purchase, a search is made of the land already owned by the applicant. If the Commissioners consider he owns sufficient land or is unworthy of consideration for other reasons, his offer is refused.
>
> It may interest you to know that, at the same time, the Lands Department is giving consideration to withdrawing from selection considerable areas of Crown land suited to post-war settlement.
>
> Yours faithfully,
>
> F. J. S. WISE,
> Minister for Lands and Agriculture.

That is why I said that I understood the matter had received consideration, but I certainly did not know that any definite action had been taken in that last mentioned regard. But the question of speculation arises in the Minister's letter, and the Bill provides that the Minister shall not grant his consent if he is of opinion that the land is being held for speculative purposes. In various country newspapers there has, at ofttimes over the last 15 months, appeared considerable controversy as to the disposal of Agricultural Bank lands to buyers for speculative pur-

poses. It may be that the people who took up those lands did so in a perfectly bona fide manner. It may be that they did not, but the fact remains that in some newspapers brought to my notice quite caustic correspondence has been published alleging that the purpose for which these properties were taken up was purely speculative, and occasionally there is some unpleasantness between one family and another. It seems to me that one purpose that may be achieved by this Bill is to put a period to arguments of that character because it can be assumed that any Minister in charge of this Bill, if it becomes an Act, would through his officers take every means of ascertaining the bona fides or lack of them of applicants for properties.

There is also another aspect mentioned by the Minister in his letter, namely, the question of persons who are not members of the Forces because they have been manpowered for some essential services. There are, of course, arguments for and against that question, and I will leave members to determine in their own mind whether those arguments are strongest for or against the inclusion of these people. If the argument for inclusion of them is not as strong as that for their exclusion then the Minister, if this Bill becomes an Act, will have the matter in his own hands because he will be able to say if exceptional circumstances warrant his consent being granted by the exercise of his discretion in such a case. I have received also many other communications of one kind and another all subscribing to or asking for the adoption of the principle contained in this Bill. I have not by any means gone all the way that has been requested by a number of these people. As I said, and I repeat now, I wish the House to understand fully in respect of this particular Bill that I have brought it forward because I desired to submit the principle contained in it to the Legislature of this State to ascertain to what extent it is prepared to restrict the sale of suitable land, whether Crown land or land in the hands of the Agricultural Bank, so that it may be available for soldier settlement.

The Minister for Lands: Do you think that it might be that the bulk of the more desirable land is not in the hands of the Crown at all?

Mr. WATTS: Up to a point, that is right.

Mr. Leslie: Why not restrict that too?

The Minister for Lands: I am not answering that question.

Mr. WATTS: There are tremendous difficulties in the way of tackling that problem. I say quite frankly that I would like to include everything, and that is why I have been so careful to say that I submit this Bill to the House for consideration as to principle. If ways and means can be found to limit or restrict the alienation of other types of land it will be the duty of every member of the House to give those proposals the most careful consideration. I am going to be quite frank and say that, without as I see it causing consternation and chaos in regard to all the land privately owned, it is beyond me to find a way to implement those proposals. That is why I was particularly careful to say at the beginning of my remarks that I was submitting this Bill on the question of principle for the consideration of the House in the belief that some approach to this matter has to be made, whether it is along these lines or along some broader and better lines.

The last two things I wish to say in regard to this matter are these: It is quite obvious that there will be a reasonable amount of soldier land settlement after the cessation of hostilities. As a matter of fact there ought to be some of it now. The authorities who must accept the responsibility for repatriation matters have shown dilatoriness. I refer to the authorities at Canberra. But that subject is already under discussion by another motion before the House and, except to say that I concur in the view that unnecessary delays have occurred, I do not propose to say more about it. The quicker that steps are taken to repatriate those who have been back from active service for a considerable time and who are anxious to go on the land—and I know quite a number of them—the better it will be for everyone concerned. The last point I have to make is this: I have provided that the Act shall continue in force until the end of 1946 and no longer, namely two years and three months. By that time no doubt in the present state of the war we shall have passed the termination of hostilities. In those circumstances it may not be necessary to continue the Act in operation. On the other hand, it may be necessary to do so, and it will be quite simple if the Bill becomes an Act—as we do with a great number of other Acts—to bring

forward a measure to continue the Act for such time as the House thinks necessary for the carrying out of whatever proposals are in the Act, if this Bill finally becomes one. I move—

That the Bill be now read a second time.

On motion by the Minister for Lands, debate adjourned.

## BILL—CRIMINAL CODE AMENDMENT.

*Second Reading.*

**MR. McDONALD** (West Perth) [5.45] in moving the second reading said: The object of this Bill is to make specific provision in the Criminal Code for cases where death is occasioned by the reckless or dangerous driving of a motor vehicle. Obviously it is a provision which will mainly at the present time be related to the driving of motor vehicles. There is no specific provision in our Criminal Code, where death or bodily harm is occasioned by the reckless or dangerous driving of a motor vehicle. Our Code was drawn up before motor vehicles became very much in use on our roads. Where death is occasioned by the reckless driving of a motor vehicle the Crown at present proceeds to charge the offender, the driver, with manslaughter. Now, manslaughter is the unlawful killing of a person, and it is a crime which can, of course, be applicable to any kind of unlawful killing.

The crime is a serious one and is punishable by imprisonment for life. It has been found in certain cases that where the death has been due to the reckless or dangerous driving of a motor vehicle juries have been hesitant about convicting the accused, because they felt the crime of manslaughter was a very serious one and that there was a possibility that the offender might be sentenced to anything up to imprisonment for life. The object of this Bill is to provide for the offence of dangerously and recklessly driving a motor vehicle occasioning the death of a person, and involving the punishment of imprisonment with hard labour for a period not exceeding five years. Last year the Minister for Justice introduced a Bill with a similar object in view. It was proposed in that measure that the offence should be in the this form—

Any person who has in his charge or under his control any vehicle and fails to use reasonable care and take reasonable precautions in the use and management of such vehicle by reason whereof the death of another person is caused, is guilty of a crime and is liable to imprisonment with hard labour for five years.

Some discussion took place in this House on that Bill. It was felt that it might be rather too severe to impose a liability for imprisonment, especially up to five years, where the omission was to use reasonable care or take reasonable precautions. The Bill accordingly was not proceeded with, and I have now brought down this measure in a different form, particularly at the instance of the Justices Association of Western Australia which has interested itself in this matter and felt that it would greatly aid the administration of our law if a specific offence were put into the Code to meet the case of dangerously or recklessly driving a motor vehicle, thereby enabling the prosecution to take advantage of that section rather than bring the offenders under the general section of manslaughter.

Mr. Marshall: Why do you not fix the penalty in this Bill?

Mr. McDONALD: The maximum penalty in the case of crimes is always fixed in the Act of Parliament concerned. In the Criminal Code where the offence is provided the penalty, imprisonment or fine or the maximum imprisonment or fine, is always set out.

Mr. Needham: And it is left to the court to give less.

Mr. McDONALD: The court will not award the maximum fine or imprisonment unless the circumstances are such that it is felt the case is a bad one. At present the Traffic Act, Section 30, contains this provision—

If any person drives a motor vehicle on a road recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road and to the amount of traffic which actually is at the time, or which might reasonably be expected to be on the road, that person shall be guilty of an offence under this Act.

The penalty under the Traffic Act for reckless, negligent, or dangerous driving is £20 maximum for the first offence, and £50 or three months imprisonment as a maximum for a second or subsequent offence. Although nobody at all may be injured, and no property may be damaged, if a man drives recklessly or dangerously along the street without doing anyone injury, he can

still become liable under the Traffic Act. There are other cases where a man driving a car injures someone else and may even cause the death of someone else by his dangerous or reckless driving. This Bill proposes to insert in the Code a section to meet such a case of death and it provides—

> Any person who drives a vehicle recklessly or negligently or at a speed or in a manner which is dangerous to the public whereby death is caused to another person is guilty of a crime and liable to imprisonment with hard labour for five years.

The Bill also provides that although this new specific provision is created, it will not relieve a person who is guilty of the graver offence of manslaughter. The measure sets out that if a man is charged with manslaughter through recklessly or dangerously driving a motor vehicle, the jury, if it thinks fit, instead of convicting him of manslaughter, may convict him of the lesser offence which is proposed to be inserted in the Code by this Bill. If, therefore, a man is charged with manslaughter and the jury thinks the case is not one which involves the serious crime of manslaughter, instead of the man being acquitted, as he is today, the jury will be entitled to find that he is guilty of the lesser offence of dangerous and reckless driving which is now proposed to be inserted in the Code. Since the Bill of last year was brought before the House by the Minister for Justice a provision has been made in somewhat similar terms by the Queensland Parliament. That provision is contained in an Act to amend the Criminal Code of Queensland and was passed in the seventh year of King George VI, No. 14, and was assented to in April of last year. The section of the Queensland Act reads—

> If any person drives a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable—
>
> (a) On summary conviction to a penalty not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a penalty not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such penalty and imprisonment.
>
> (b) On conviction on indictment——

if the accused is brought before a higher court—

> ——to a penalty not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both penalty and imprisonment.

Mr. Marshall: It is a wonder they do not give him a free pardon over there.

Mr. McDONALD: At the time the Minister brought down his Bill I do not think he knew, and I did not know that Queensland had made such a provision.

The Minister for Justice: I do not think anyone here knew at that time.

Mr. McDONALD: Although I looked through the Acts of the various States and of other countries I missed the Queensland provision, and did not know of it until I had drawn up the Bill now before the House. My attention was called to the Queensland measure by the Crown Solicitor, and I find that the Bill which I have drawn up is in fact very similar in terms to the Queensland Act; that is to say, they both create the offence of reckless or dangerous driving but in Queensland the offence is committed although nobody is either killed or even hurt. That penalty of two years' imprisonment can be imposed although nobody is injured; but in the measure now before the House the offence arises only if somebody has been killed, and as we are dealing in this Bill with very serious circumstances, the maximum penalty is five years instead of the two years in the Queensland Act. So that in this Bill, with one exception which I shall point out later, we have substantially adopted the exact wording which is to be found in the Queensland measure of last year. In England they have a provision on which they act under a very old Act, passed long before motorcars were thought of, and called The Offences Against the Person Act, 1861. It contains this provision—

> Whosoever, having charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanour.

A misdemeanour is an offence between a simple summary offence and a crime, and usually punishable up to three years. That provision of the English Act is, of course, couched in language more applicable to the old horse-and-buggy days; but it is apparently thought sufficient in England to

carry on to meet existing conditions, and has been held to cover an offence with the use of a bicycle. So England has a provision to meet this case.

In Queensland we find that the Parliament has provided a measure to meet the offence of reckless driving; and I submit that it would be a convenient provision to insert in our Criminal Code. It would mean that charges could be made where death has been caused by reckless or dangerous driving of a motorcar, where the penalty would be more in line with the gravity of the offence, and where the Crown in a proper case would have a better chance of securing a conviction and the jury would not be possibly led away, as juries naturally are sometimes, by a feeling that in a case of manslaughter the crime is so serious that the jury would prefer to take an over-lenient view of the facts rather than convict. In addition the Bill contains an amendment which I have carried forward from the Bill introduced by the Minister last year. It is not concerned with reckless or dangeous driving. It is an amendment of Section 662 of the Criminal Code, which in effect provides—

Having regard to the antecedents, character, age, health or mental condition of a person convicted of an indictable offence, and the nature of the offence or any special circumstances of the case, the judge may direct that the person be detained during the Governor's pleasure in a reformatory prison.

But our Criminal Code, as it now stands, only allows that to be done in the case of a person of apparently the age of 18 years or upwards; and if a person is under the age of 18 years and convicted of an indictable offence, the court has no power to direct that the person be detained in a reformatory prison. The object of the Bill is to amend Section 662 by striking out the words "apparently of the age of 18 years or upwards." So the amendment would leave the court free to order a person to be detained in a reformatory prison even although under the age of 18 years. The second alteration of our criminal law appears to be one which commends itself. The only other remark I wish to make regarding the Bill in relation to reckless or dangerous driving is that in the Bill the offence is drafted in these terms—

Any person who drives a vehicle recklessly or negligently or at a speed or in a manner which is dangerous to the public.

I propose to suggest to the House, when in Committee, that the words "or negligently" might be omitted. The offence would then be reckless driving or dangerous driving. That would eliminate questions for the judge and jury as to the degree of negligence which should be involved to justify a conviction. The terms "reckless" and "dangerous" are positive and fairly convenient terms, and I think would be well understood by juries in considering a case under this section. The word "negligent," being a negative term, is one which sometimes occasions difficulties not only in criminal cases but in civil cases as well.

The Minister for Works: I think you would be wise to leave that term in.

Mr. McDONALD: In Queensland, I notice "negligently" was not put in, but the offence was confined to reckless or dangerous driving. As by this Bill it is proposed to meet a graver offence than that in the Queensland Act, namely the case where death is occasioned by the driving and where the penalty is five years with hard labour, I am disposed to think that we would meet the case and at the same time make sure that we would not do any injustice if we made the offence one in which there should be reckless driving or dangerous driving.

The Minister for Works: The omission would leave a loophole in the majority of cases.

Mr. McDONALD: That is a matter for the Committee to decide. I quite appreciate what is conveyed by the interjection of the Minister for Works. In fact, I put in the words "or negligently" myself in the first place, because I thought they might avoid loopholes as the Minister suggests; but on further consideration I rather felt that it might possibly involve cases where the degree of negligence was not sufficient to justify a serious charge, under the Code, of an offence involving five years' imprisonment. As this is new legislation, or at least an attempt to formulate a description of an offence for the first time, I felt that perhaps it would be wiser not to go too far in putting the measure for the first time on the statute-book. That is the object of the Bill, to meet the case which is less than manslaughter but which does require, in the public interest, that the offender should face a serious charge where he has killed some-

body by reckless or dangerous driving. I accordingly move—

That the Bill be now read a second time.

On motion by the Minister for Justice, debate adjourned.

## MOTION—COMMONWEALTH AND STATE RELATIONSHIPS.

*As to All-Party Australia-wide Conference.*

Debate resumed from the 6th September on the following motion by Mr. Watts:

That in consequence of the facts—

(1) That no action has yet been taken pursuant to the resolution of this House passed on the 29th September, 1943, asking for reform in the financial relations between the Commonwealth and the States; and

(2) That the present form of Section 92 of the Australian Constitution raises the gravest doubts as to the vaild effectuation of post-war schemes of organised marketing of export primary products which, under majority grower control, are desirable, and as no effort has been made to overcome the limitations imposed by this section since the rejected amendment in the year 1937,

this House is of the opinion that it is desirable that an all-party Australia-wide conference equally representative of all States, should discuss these matters in the light of the most expert advice with a view to suggesting solutions of these two problems.

That this resolution be conveyed to the Prime Minister by the Premier on behalf of the Government of this State.

**HON. W. D. JOHNSON** (Guildford-Midland) [6.13]: The question of the Leader of the Opposition covers two distinct and separate subjects. There are two questions included in the motion. One is a direct connection with the Financial Agreement covering the financial relationship of the Commonwealth and the State as fixed by undertakings between the Parliaments and subsequently endorsed by referendum, in 1928. Since that time the operation, as the result of the adoption of the Financial Agreement, has been tightened somewhat; and although, therefore, a certain amount of latitude existed in the initial stages and the application of the agreement was not as rigidly enforced as it is today, eventually it was found by the administration that certain understandings and regulations and rules had to be arrived at by the Loan Council to ensure that the State and the Commonwealth worked on a basis that would bring the best results to the Commonwealth and at the same time ensure that the Commonwealth would be in full possession of all the operations and expenditures of the State. That, of course, has been reflected quite prominently during the past week or so. The Premier, when he returned from the last meeting of the Loan Council where this relationship was discussed, outlined that the terms and provisions as covered by the agreement had not actually been observed in a very vital item of expediture; and that was in connection with the provision of a sinking fund to cover the State deficit.

*Sitting suspended from 6.15 to 7.30 p.m.*

Hon. W. D. JOHNSON: I was pointing out that the Commonwealth may not rigidly enforce the powers under the Financial Agreement of 1938, and I was giving as an illustration that the 4 per cent. sinking fund which was part and parcel of the Loan Council understanding had not been rigidly enforced, with the result that it has been now taken up seriously, and, as the Premier pointed out, is subject to a different approach, while at the same time precautions are being taken under a new arrangement to liquidate the deficiencies covered by Treasury bills. The second matter of this motion is purely a post-portem on the recent Referendum. It affects the question of the post-war marketing of primary production. I quite appreciate that the motion is an astute political move and, were I in Opposition, this is the kind of thing that would interest me. It is the province of the Opposition to get as much kudos as it can while sitting in Opposition, and to cover up, if possible, any mistakes it might make by being involved in a discussion or an organisation of nation-wide scope that would lead it into doing things that might be not altogether popular within its own State and particularly amongst the adherents to whom it looks for support.

Mr. Seward: I hope you know what you are talking about.

Hon. W. D. JOHNSON: The hon. member said he does not know what I am speaking about.

Mr. Thorn: No; that you do not!

Hon. W. D. JOHNSON: The second part of the motion is, in my opinion—and I read public opinion fairly accurately—the result

of anxieties expressed by primary producers as to the future marketing of their products.

Mr. Thorn: You always read public opinion with one eye open.

Hon. W. D. JOHNSON: I am not doing that on this occasion. I have both eyes open, and I repeat that the second part of the motion is designed to allay, if possible, the anxieties of primary producers in regard to the post-war marketing of their products as a result of the "No" vote carried at the recent Referendum.

Mr. Seward: That is not true.

Hon. W. D. JOHNSON: The member for Pingelly may not appreciate it in that way, but I am confident that the Leader of the Opposition did so appreciate it, and he instituted this discussion for the purpose of explaining to the primary producers of this State that there was some other kind of approach, and he knew that the discussion in Parliament would give him and his party an opportunity to allay the anxiety that undoubtedly prevails throughout the agricultural districts in this State as to what is going to happen in regard to their wool —and more particularly their wheat—and their dried fruits and other products that lend themselves to an Australia-wide organised marketing system as distinct from the competitive systems of the States. The Referendum was on that question, and of course it was defeated.

Mr. Perkins: Had it been carried, it would not have righted the position.

Hon. W. D. JOHNSON: I will deal with that before I sit down and I hope the hon. member will not mislead me with interjections because I do not want to speak at length tonight. But I do not need much encouragement! I do not want to deal with organised marketing at the moment but with the first part of the motion. I simply desire to make it quite clear that one part of the motion deals with financial relationships between the Commonwealth and the States as affected by the Financial Agreement of 1928 and the other with the marketing of primary products. The motion to me is a desire to reform the present unsatisfactory position. In this the Leader of the Opposition and I are at one. He admits that there is something wrong, that something needs remedying, that a better understanding should prevail, and he moves in a certain direction. I agree with him to that extent, but we disagree in regard to the remedy and also as to the proper approach on a big problem of this kind.

I want to try, as I have tried on other occasions, to get this Parliament to realise that it must re-organise because of the circumstances forced upon us by the people's vote at the Referendum in 1928 that transferred the control of finance from this Parliament to the Loan Council. There is no doubt that from time to time the Loan Council has found it necessary to tighten up its administration. In the early stages it left a lot of latitude to the States and was not rigid in enforcing living up to the obligations as understood by the States from year to year. As time went on, the Loan Council had to make rules and called upon the States to organise the financial relationship on such a basis that the Commonwealth at the end of the year would have some guarantee that understandings arrived at and agreed upon at the beginning of a year would be fulfilled. We know that the States were not in the early stages able to live up to their obligations. I do not say that they do so altogether today, but in the early stages they certainly did not succeed in living up to their obligations because they agreed to certain financial results from their administration of the year's operations, but at the end of the year the deficiencies were greater than was anticipated, and in some instances deficiencies occurred where they had not been contemplated. The States were called upon to re-organise. That was forced on them by the agreement between the Loan Council and the States. Just as the Loan Council tightened up, so did this Parliament become weakened. The Loan Council made it impossible for this Parliament to continue as it had continued previous to 1928. I will admit that it did continue for a period after 1928, but the result of the administration after the first few years of Loan Council experience proved to the Federal side of the contract that alterations would have to be made.

The Premier: What is the difference between the Loan Council and the States? You are treating them as two different bodies.

Hon. W. D. JOHNSON: When referring to the States, I am speaking of State Parliaments. There are two parties to the contract—the Federal and the State.

The Premier: On the Loan Council there are six representatives of the States and two of the Commonwealth.

Hon. W. D. JOHNSON: That is true. When the Commonwealth found that the States were not fulfilling or living up to the undertakings entered into at the beginning of the financial year, as was reflected by the deficiencies that occurred at the end of the financial year, it made a rule in regard to the pooling of all State incomes and the paying into one account of all State incomes. To that again would be added one-twelfth of the loan funds made available for the year. One monthly quota or portion of that would be paid in to the same account. So we had a monthly review instead of an annual review. As soon as that was done—and it was sound and justified, and demonstrated administrative capacity and determination—it weakened this Parliament to such an extent that we lost control of the finances of this State. This Parliament does not function as the controller of the State's finances.

The Premier: Who does?

Hon. W. D. JOHNSON: Cabinet! It cannot be otherwise. Let me give one or two illustrations. Last year provision was made on the Loan Estimates in connection with the establishment of a power scheme at Collie. I do not say that the scheme was encouraged by grants but the fact remains that the scheme received encouragement to the extent that it was given a line on the Loan Estimates. There was no mention of any description of a power scheme at South Fremantle. It was not referred to during the Budget debate, but at a given period Cabinet—in the interests of the State, no doubt—found it necessary to declare that a power scheme would be established at Fremantle. It has been stated in the Press—as a Parliament we do not know of it yet—that a sum of £25,000 is involved or possibly more. Then again the Premier went to Geraldton on one occasion, and I noticed in the paper that he stated he was going to provide a boat-slip at that port. I have no objection to the provision of a boat-slip.

The Premier: There was a boat-slip there when you were a Minister. You helped to put it there!

Hon. W. D. JOHNSON: Exactly, but that is not the point I am making.

The Premier: But I make that point.

Hon. W. D. JOHNSON: The point I am making is that this Parliament was told about the Collie power scheme, and then the Government, without coming back to Parliament, declared for the Fremantle power scheme. Parliament had no voice in it and was not consulted. With regard to the boat-slip at Geraldton, the Premier, I understand from the report in the Press, stated that £16,000 would be spent on the work. I have no objection to that, but I again make my point that Parliament was not consulted about it. The expenditure involved was not mentioned to, or contemplated by, Parliament, but Cabinet decided to carry out the work.

Mr. Seward: But the formation of the Loan Council has nothing to do with this.

Hon. W. D. JOHNSON: If the hon. member cannot see that——

Mr. Seward: It is a domestic matter.

Hon. W. D. JOHNSON: Of course, but I am describing the effect the administration of the Loan Council has had on this Parliament.

Mr. Thorn: And we are trying to understand you!

Hon. W. D. JOHNSON: I can only supply the matter and pray that the hon. member will be able to digest it! I could give other illustrations, but I do not wish to speak at length, and therefore shall content myself with the two I have outlined. Since Parliament met last session those two works, which were never mentioned to or discussed by this House, have been put in hand and therefore the State is committed to the expenditure. Again I say I am not opposed to the undertakings, but I am opposed to Parliament being ignored regarding the expenditure of public funds. Further I say that the position cannot be otherwise in view of the enforced relationship, under the administration of the Loan Council, of this State with the Commonwealth with regard to the expenditure of all moneys. In other words, Parliament now cannot be consulted regarding the wisdom of proposed expenditure, but is required merely to endorse expenditure decided upon by Cabinet. We have to appreciate the altered conditions. At one time, before 1928, this Parliament had full control of the public purse and no expenditure could be incurred without its approval. Cabinet could not come to a decision regarding expenditure other than from the Treasurer's Advance. During all

the years I have been a member of this House provision has been made for the Treasurer's Advance which enabled the Government to use funds to meet special circumstances that might arise. The principle was recognised that the fund had to be carefully handled and each year Parliament was particularly careful to ascertain how the money had been spent; if any weakness was noted in that regard, it was pointed out so that it would not be repeated.

The Premier: Cannot that be done now?

Hon. W. D. JOHNSON: No, of course it cannot be done. Before 1928, Parliament had to approve of all expenditure.

The Premier: And does it now.

Hon. W. D. JOHNSON: For the last nine years Parliament has not been consulted with regard to expenditure.

The Premier: That is nonsense.

Hon. W. D. JOHNSON: I could provide the House with more illustrations. As a matter of fact, I commend to members a perusal of the Public Accounts. Let them, as honest, straightforward representatives of the people, go through that document and they will appreciate how little they know about public expenditure or how the money is distributed today in Western Australia. I am not blaming Cabinet for doing anything that was unavoidable; it has been forced upon Cabinet and upon this Parliament as a result of the administration of the Loan Council.

Mr. North: You opposed the formation of the Loan Council.

Hon. W. D. JOHNSON: Yes.

Mr. North: Just as we did.

Hon. W. D. JOHNSON: Then again let us consider the revenue side. We are not as scrupulous now as we once were regarding the raising of revenue. On a previous Estimates discussion I spoke of improvisation where the Government had to screw and scrape and scratch to get revenue. That is due to the fact that we are not organised as a Parliament to get the best results from the revenue-earning capacity of the State, and we do not get the protection of the members of Parliament in regard to the expenditure of the income of the State. For instance, take the illustration that I am always ashamed of—I know that some members disagree with my view, but that does not affect me—namely, that the charities of this State have to be maintained through a lottery.

Mr. Smith: That is not the worst feature.

Hon. W. D. JOHNSON: That is so, but it is significant that that means of raising money followed closely after the passing of the Financial Agreement of 1928. During the general discussion on the Budget one will have more scope to deal with these matters than on this motion, but members can follow up that point, and I could instance many illustrations of money being raised by methods that do not appeal to me. I am ashamed that we have to do the things we do in order to try to make ends meet in this State under the altered conditions imposed by the Financial Agreement of 1928. Take the starting price question! Let us look at the attempts made by Parliament to try to suppress it.

Mr. SPEAKER: I think the hon. member is getting away from the motion now.

Hon. W. D. JOHNSON: I shall give an illustration and you, Sir, will see that I am not. I am dealing with the financial position of this Parliament.

Mr. SPEAKER: I rule that the hon. member is getting away from the motion when dealing with the S.P. question. There is nothing in the motion about it.

Hon. W. D. JOHNSON: I wish to give an illustration.

Mr. SPEAKER: I rule that the hon. member is out of order.

Hon. W. D. JOHNSON: Very well. I accept your ruling, Sir, because I do not want an argument. If members will analyse the Public Accounts they will see what I proposed to explain to them, which evidently I am not permitted to do, the exact effect on the revenue of this State of the operations of the Financial Agreement of 1928 which constitutes the relationship of Commonwealth and State. I do not know where the limit is in regard to giving illustrations to demonstrate the soundness of my contention. The Leader of the Opposition realises—he must see the position as I do—that there is something wrong, and he wants to remedy the wrong by approaching the Federal authority. The right approach is, first, to put it right here. When our own house is in order we can with confidence go outside this Chamber and demonstrate that we do recognise the limitation of scope

as far as this Parliament is concerned because of the agreement. Having readjusted our affairs so as to prove that we realise the limitation of our powers we can attack outside of this Parliament those who are the other parties to the agreement.

Mr. Seward: How are we to put it right here?

Hon. W. D JOHNSON: My idea—and I intend to move an amendment at the end of my speech—is to appoint a committee to investigate the position in Western Australia before going to anybody else in connection with the relationship of this particular Parliament and the Commonwealth. At the end of my address I want to ask this Parliament to appoint a readjustment committee to readjust our financial organisation within Parliament so as to maintain some semblance of control. If, however, the re-organisation or readjustment committee finds it impossible and impracticable to make alterations, now that the Financial Agreement is so rigidly enforced, it could declare that this House should try to make economies and alterations such as would appeal to the general public as showing that we are responsible representatives who appreciate that our powers of control and our usefulness as members of Parliament are no longer comparable with what existed before 1928 and that because of restrictions and limitations imposed upon us by that agreement certain things should be done.

Parliament should elect, a committee for the purpose of closely examining what should be done. We do not want to go outside of this Parliament. We can get representatives capable of doing this job, and obtain outside assistance in the way of evidence from departmental officers to see how Parliament can be placed in a position other than where members are told that they are no longer required, or that if they are required exactly how they can be used. I am getting tired of being in this Chamber appreciating the limitations that I am subjected to as a representative of the people. On the subject of marketing I want to say briefly that I am of opinion that Section 92 was taken into consideration by the Commonwealth Government and by the Commonwealth Attorney General when the 14 questions were being discussed and framed. The questions were so framed, in my opinion, as to demonstrate to the High Court, if a "Yes" vote had been carried, that it was the desire of the people of Australia to liberalise the administration of Section 92 so that things that were being done, although declared unconstitutional, could be continued. For instance, the James case disclosed that the States and the Commonwealth were operating on a basis that conflicted with Section 92, and that declaration was made not by our High Court but by the Privy Council. But we are still doing it. There has been little or no alteration in the administration of the exchange of dried fruits between Western Australia and the Eastern States.

Mr. Leslie: That is only because no-one is prepared to challenge it.

Hon. W. D. JOHNSON: The fact remains that if anyone challenges it he has first to go to our own High Court which has already declared itself.

Mr. Thorn: It is all being carried on by agreement.

Hon. W. D. JOHNSON: Exactly so, but it demonstrates that if it can be done with dried fruits it can also be done with wool.

Mr. Leslie: They may not come to an agreement.

Hon. W. D. JOHNSON: We have an agreement today. It is being done under war conditions.

Mr Leslie: Not necessarily.

Hon. W. D. JOHNSON: Today the farmers agree to put their wool into the pool. I admit that the position is forced upon them, but they voluntarily agree that it is the best system of marketing The farmer has agreed to centralised control of the marketing of wool. This centralised control negotiates between the Governments of Australia and of Great Britain. The practice the world over even before the outbreak of the war was trending towards negotiations between Government and Government rather than between merchant and merchant. For years the merchants did all the negotiating between the producers and their markets oversea, but this has gradually changed and Government boards have come into existence in order to do the work more effectively and economically by the limitation of competition between State and State. Therefore we have been educated to that standard and it is desired that this education should be continued.

The same thing applies to wheat. Every member is aware of that. It has been done in regard to dairy produce. The trouble is that the High Court has not been encouraged to maintain its attitude that this was a constitutional method of protecting the best interests of our producers, and consequently the producers are full of anxiety and fear that the organisation regarding wool, wheat, dried fruit, etc., will be challenged. He would be blind and deaf that could not appreciate the anxiety prevailing throughout the length and breadth of the State. Every member of Parliament is button-holed to give his opinion as to what will be the outcome after peace is declared. Now that we have lost the Referendum what are we going to do with our products? Are we going to have inter-State competition, inter-State disorganisation and the exploitation of the people, or are we going to protect our interests in a commonsense, economical way by getting together, not as producers of a State, but as producers of Australia, making common cause for a common end in order to get for our products the best market rate with the least possible rake-off between producers and consumers? I regret that we are not in that position. I still hope that some means will be devised whereby the Commonwealth Government will be able to overcome the difficulty brought about by the negative vote.

Mr. Perkins: That is what the motion is designed to do.

Hon. W. D. JOHNSON: No, those who supported the "Noes" at the Referendum try to make out that Section 92 is an absolute restriction on the centralised marketing of primary products. The High Court declared that it did not restrict a combination of States engaging in centralised marketing. In the James case it was so held; it was the Privy Council that upset the decision. If we could do it then, we can do it again. The Leader of the Opposition appreciates that the people have declared against it and that chaos will reign as a result of the vote. I am not prepared to support a motion that, at this stage, is going to review the adverse vote given a few weeks ago. The time to review it is not opportune. This is purely an astute political move——

Mr. Thorn: You ought to be a judge of that.

Hon. W. D. JOHNSON: —to endeavour to allay the anxiety that prevails. I believe that the best minds in the Commonwealth are giving consideration to this problem with a view to overcoming the impasse that will be created as soon as the National Security Regulations cease to have effect.

Hon. N. Keenan: When?

Hon. W. D. JOHNSON: I do not know.

Hon. N. Keenan: Not immediately.

Hon. W. D. JOHNSON: The hon. member has assisted me. It cannot be done immediately. It could only be done as regards National Security (Control) Regulations when those regulations cease to exist. As long as they exist we can go on. As to how long they will exist, the hon. member who interjected knows perhaps as much as I know, and perhaps knows nothing. We cannot tell how long the regulations will last. What I want to know is why the Leader of the Opposition is trying to anticipate the cessation of National Security (Control) Regulations, and what will happen afterwards; and the Leader of the Opposition is trying to say that what he wants by his motion is to protect us against Section 92. Nothing of the sort! What he wants to do is to try to cover up the blunder that was made as regards the "No" vote being recorded against organised marketing as we know it in this State. I believe, as I have already outlined, that the first move which needs to be made in regard to the financial relationship between Commonwealth and State should be made here. The matter needs to be closely examined. After we have a re-adjustment committee's report, we then shall be in a position to approach the question, and as a result of such a committee's recommendations and this Parliament's decision we shall be able, if it is so decreed, to go to the Commonwealth Parliament and do what the mover would like to do in this State. But the time is not opportune. There is no need for the first suggestion until we demonstrate that we are prepared to put our house in order before we start talking about other people's obligations and responsibilities under the contract of the Financial Agreement of 1928. I move an amendment—

That all the words after the word "taken" in part (1) be struck out, with a view to inserting other words.

If this amendment is carried, the words that I shall move to insert will be—

to re-organise the financial administration of the State to fit in with the restricted scope imposed on this Parliament by the Financial Agreement of 1928, this House favours the creation of a financial re-adjustment committee with authority to recommend administrative reform necessary to restore to this Parliament the control of all financial matters particularly covering expenditure; or, alternatively, to declare that complete control by the State Parliament is no longer practicable and suggest means by which the economic waste of having a Parliament without financial control can be speedily overcome.

Amendment put and negatived.

Question put and passed; the motion agreed to.

## BILL—EVIDENCE ACT AMENDMENT.

*Second Reading.*

*Debate resumed from the 6th September.*

**THE MINISTER FOR JUSTICE** [8.16]: This short Bill has been introduced by the member for Nedlands. The hon. member correctly pointed out the legal position and the necessity for some amendment in Section 101 of the Evidence Act, 1906. The position is that it seems very difficult to get a conviction in these cases. The guilty person is usually highly astute and thus avoids conviction and punishment. The cases I refer to, and to which the member for Nedlands referred, are exposure before and indecent assault on children of tender years. It is almost impossible to get corroborative evidence in those cases, but it is essential to have that corroboration before an accused person can be convicted. Yet, on the other hand, to give absolute discretion without corroboration to a justice or a magistrate is to incur a very grave responsibility. Although recent experience has shown the need for some midway means of dealing with such culprits, on the other hand I recognise, and I think the House will agree, that it is highly important that an innocent person should not be punished. The punishment not only falls on the person convicted, but affixes a stigma on his family and other relations. There are, of course, children very prone to yield to imagination and also prone to accept any advice given by elders. Such children might be influenced in some way not always to speak the truth.

We have to bear in mind that by the Bill we propose to give some discretion as regards uncorroborated evidence—that should be given only to a judge of the Supreme Court—to special magistrates. Now, special magistrates are apt to be obsessed with the work they have to do, and in the instance now under review their work is to secure protection of young children. We realise that there is some need to relax the rigidity of the Evidence Act of 1906, but I do not know how we are to overcome the difficulty I have indicated. There would be a substantial risk of conviction of innocent persons, and therefore I am reluctant to recommend the measure to members. It is, I understand, an old principle of British law and justice that it is better for a hundred guilty persons to go free than that one innocent person should be punished for something that he or she has not done. I realise the difficulty, and I also realise the need for doing something to cope with the cases to which the Bill refers. I have some statistics showing how serious the position is. In 1943 there were 18 reports of wilful exposure and 10 convictions. For the first eight months of 1944 there were 12 cases of wilful exposure and only six convictions. In 1943 there were 36 cases of assaults on children and 22 convictions; in 1944, there were 24 reports and 17 convictions. In 1943 there were 13 cases of indecent dealing and 12 convictions; in 1944, 10 reports and four convictions.

Mr. Watts: How many charges were not brought because of insufficient evidence to warrant a conviction?

The MINISTER FOR JUSTICE: I have not got those statistics.

Hon. N. Keenan: Can you state whether the word "conviction" means that the accused pleaded guilty?

The MINISTER FOR JUSTICE: No.

Hon. N. Keenan: That makes all the difference!

The MINISTER FOR JUSTICE: The total reports for 1943 were 68 and the convictions 45; consequently, in 23 cases convictions were not recorded. The total reports for the first eight months of 1944 were 36, and the convictions recorded were 27. I quite realise the necessity for some amendment of the present Act. I have considered the amendment which has been placed on the notice paper by the Leader of the Oppo-

sition and it probably will, to a certain extent, meet what is required. On the other hand, I also realise that if a judge is empowered to convict on uncorroborated evidence it will be most difficult to secure the convictions which the hon. member thinks should be obtained. The measure does not give to justices or to a magistrate, unless authorised by a judge, power to convict any person on the uncorroborated evidence of a child of tender years. I feel something should be done, but I do not want an innocent person convicted. There might be some uncorroborated evidence tendered that might cause an innocent person to suffer punishment; not only would he be punished, but all his relatives would suffer also.

I cannot accept the measure as it stands and it will therefore remain with the House to decide whether it shall pass or not. As I said, I feel something must be done to protect these young girls under the age of 14. There has been too much of this kind of thing going on and we find that the offenders are very astute. They are careful not to commit the offence in the presence of any witness. Many of them are not brought before the court because there is insufficient evidence to secure their conviction. It is beyond me to suggest any real remedy. I am fearful of placing too much control even in the hands of a judge of the Supreme Court. When all is said and done, judges, although very careful, are only human and there is the possibility that some mistake may be made. As I said, a principle of British law is that it is better for 100 guilty persons to go free than that one innocent person should be punished for something of which he is guiltless. I cannot commend the Bill to the House.

**MR. WATTS** (Katanning): I appreciate the difficulties that have been mentioned by the Minister for Justice in regard to the passage of any such measure as this; but, nevertheless, I am going to vote for the second reading because I believe the aim of the member for Nedlands is one that must by some means or other be achieved. I do not agree with the method by which he proposes to obtain his desires. I certainly do not approve of the decision to admit the testimony, uncorroborated, of a child being given to a magistrate, least of all to a special magistrate, who in many cases has not had the training in law such as has been given to stipendiary magistrates and, of course, to a far greater degree to judges of the Supreme Court. I would not like to see magistrates, without any restriction imposed on them, able to admit evidence on the lines suggested in the Bill. But I disagree with the Minister for Justice that it would be better, as I understood him to say, to leave the position as it stands than to adopt either the suggestion of the member for Nedlands or an amendment such as that appearing on the notice paper. To leave the position as it stands would simply be offering an invitation to criminals of the type under consideration to extend their activities on every occasion suitable to them, and such an occasion would be one where no other person except the innocent child who is being attacked was present, because in that case there would be no one recognised by the law to testify to the crime. If we allow that state of affairs to continue without making some attempt in a reasonable and careful manner to remedy it, we shall have the circumstances mentioned by the member for Nedlands multiplied.

The Minister for Justice: There were 23 convictions in 1943.

Mr. WATTS: I submit to the Minister that the imposing list of convictions he submitted to the House would, upon examination, not be nearly so imposing. What is the attitude of a Crown Law officer who is asked to consider the commencement of proceedings in a court? Does he not, first of all, before he takes proceedings, ascertain whether there is sufficient evidence, or likely to be sufficient evidence, to warrant a conviction? He turns to the Evidence Act and finds that the evidence of the child cannot be taken unless it is corroborated in a material particular. He then says, "There is no corroboration, so what is the use of bringing the charge?" The instances given by the Minister in which convictions were obtained were, of course, those cases in which there was corroboration. Those are the very cases with which this Bill does not intend to deal. It is intended to deal with those cases where there is no corroboration. Therefore, the imposing figures as to the convictions secured do not look nearly so imposing.

The Minister for Works: The figures are of reported cases, not charges.

Mr. WATTS: I heard the Minister mention reported cases and convictions. As I

said, it seems to me that in many cases no action at all will be taken unless there is some corroboration. The member for Nedlands asked in how many of the cases quoted by the Minister the offenders pleaded guilty. The Minister was not able to tell us. I do not suppose there are very many of them.

The Minister for Justice: These are cases that were reported to the police. There were 68 reported and 45 convictions.

Mr. WATTS: In one year?

The Minister for Justice: Yes, in 1943.

Mr. WATTS: If there were as many as that in 12 months it is about time we made the law more stringent! I was under the impression that things were not nearly as bad as that. I am surprised at the information supplied by the Minister.

The Premier: Judging by the newspaper reports the cases would be considered rare.

Mr. WATTS: That would seem to be so. I propose to support the second reading of the Bill in order to try to have it amended to a form in which I could feel satisfied it provided that discretion would rest in a judge of the Supreme Court. I think that among our judicial authorities a judge of the Supreme Court is the only one in whom the right to accept uncorroborated testimony should rest. I would not be prepared to subscribe to that but for the exceptional difficulties existing in regard to this measure that have been so clearly related by the sponsor of the Bill. While in general it is very desirable that we should allow guilty men to be unconvicted rather than that innocent persons should be convicted, at the same time the continuance of the present state of affairs will result in an unduly high number of guilty persons being unconvicted and that, I think, we should try to put a stop to by some reasonable means.

**MR. MARSHALL** (Murchison): I frankly confess that though this appears to be a small Bill it has given me a great deal of concern. I have tried to consider as fairly as I possibly could what I should do in such circumstances as this. When I look at the Bill it appears to me as though it would be more suitable if it received application to electorates such as my own although I admire and give weight to the value of the proposed amendment. But that is not agitating my mind so much as the question of the attitude one is to take up on occasions such as this. I agree with the Minister that it would be better that 12 guilty men should escape punishment than that one innocent person should be unjustly punished. But we are told by criminologists that criminals adhere to certain practices and customs from which they seldom or never depart when committing their crimes. I put it to the Chamber in this way: Assuming we defeat the Bill for the purpose of ensuring that not one innocent man is unjustly punished, the cunning criminal who practises misdemeanours and crimes of this kind would readily appreciate the fact that, provided he was more than careful when exposing his person before a child and before a child only, he would never be punished. We know there is none more cunning than the criminal, who often outwits those who study his practises and endeavour to detect his crimes. It is a battle of wits between the sleuths and those hounded for crimes of this sort. If, therefore, the Bill does not find favour with the majority of members we can expect a big extension of this practice.

The Premier: This may advertise the matter a bit, that is all.

Mr. MARSHALL: It may not do anything more than show clearly to those who commit these offences that, provided they are remarkably careful and guarded in their actions and commit the offence where no adults are in the vicinity, they will be able to do so with impunity because no conviction can ever be recorded against them if there is no corroboration of the child's evidence by an adult. This particular crime is committed by a type of individual whose mentality is not understandable by us. He practises it invariably upon an innocent little mortal. Evidently he derives some satisfaction from so doing but what it is we cannot say. Nor do we understand it; but he does and he invariably chooses a child of particularly tender years. The course of justice is not altogether in conformity with the expressions of the Minister. I am given to understand by lawyers—in fact by the member for Nedlands, who is a K.C., and has had quite a lot of practice in the courts of Western Australia and probably of other countries—that those who sit in jurisdiction upon cases such as the ones we are now considering first

make every endeavour to assure themselves that the child giving evidence is able to understand the value of an oath. I am further led to believe that there is no age limit.

Provided a child of tender years, after examination by an adjudicator upon a case of this kind, indicates clearly to the magistrate or the judge or the justice of the peace that it understands the value of an oath, its evidence may be taken without corroboration. So in this particular measure, all we actually deal with is the child concerning whose understanding of the value of the oath there is some doubt. True, as the Minister pointed out, there are some bright little children who could be prompted to give evidence against an innocent person. But I respectfully suggest that the instances where prompting takes place would be very few and far between. But we have another safeguard that influences me somewhat favourably towards the proposals contained in the measure, namely, that from experience rarely, if ever, could an innocent child stand up to the strict cross-examination as conducted in a court of law without failing to give evidence of the fact that its testimony was prompted, or that it was telling falsehoods. A child would naturally show it. If a child did stand up to that strict cross-examination it would be one of the rarest instances in the annals of justice. We know that adults can scarcely stand up to cross-examination, even though they are conscientiously telling the truth. Lawyers trick them and beguile them into stating things on which the lawyers put a different construction. We have a safeguard there.

I am doubtful whether any child of such tender years as those we are discussing could stand up to cross-examination unless it was telling the positive truth. But viewing everything contained in the Bill and giving close consideration to a prospective amendment, I feel that we have another safeguard if we suport the amendment. So I am inclined to do that, but I will say quite readily that failing the amendment I shall certainly vote for the Bill, because I accept it as being absolutely necessary to protect the morals and the welfare of our innocent children; our little girls in particular. I do not like to see an innocent person punished, but neither can I tolerate the indignities forced upon little female children by these criminals. So I am prepared even to risk the possibility of an innocent person being convicted, having regard to the safeguards I have already outlined, in order that I might not encourage this form of misdemeanour being aggravated or even continued. God knows, there is sufficient immorality about this country now without starting our little innocent children off in that direction! I fear the results of the actions of these despicable individuals, if they are tempted to commit the same crime without the possibility of a conviction.

I point out to the member for Nedlands that neither his Bill, nor the amendment, will get over the difficulty outside of the metropolitan area. We have no Supreme Court judges. It is true that on the various circuits a magistrate can be appointed a commissioner under the Supreme Court Act, but in such a case we have the invidious position of the judge, that is the commissioner, inviting, or ordering himself, after examining the child, to make a conviction. That is the position under the proposed amendment. In other words, he would report to himself. We are, therefore, in a very unfortunate position so far as the more remote and isolated portions of the State are concerned. We shall get no advantage that I can see at the moment. I have been trying to evolve an amendment whereby all the State would be protected by virtue either of the Bill, the amendment, or both, with the combination, possibly, of another amendment, but at the moment I cannot fathom it out. However, I put it to the legal men, the Leader of the Opposition and the member for Nedlands, that we have had several of these cases—many of them as a matter of fact—in certain towns well isolated from the City of Perth.

We can expect no benefit from this measure even with the amendment. I would like the member for Nedlands or, perhaps, someone who has not yet spoken, to say if there is any indication that we can go further with this measure so as to make it applicable to the whole State. I would then be more enthusiastic about it but, as a legislator and a member of this august Chamber, even minus those amendments necessary to cover the more remote parts of the State I am still inclined to vote in the direction of protecting the innocent

little girls and boys of the city rather than to attempt to defeat the Bill.

Mr. J. HEGNEY: I move—

That the debate be adjourned.

Motion put and negatived.

**MR. J. HEGNEY** (Swan): I propose to support this measure, although I would like to have an opportunity of reading what the Minister for Justice had to say. It is very difficult at times to hear what he has to say in regard to the legal aspect because of the conversations that are continually taking place. There is no doubt that the member for Nedlands is to be commended for submitting a measure of this kind to Parliament. The Assembly should give consideration to an important question such as this which is affecting the public mind. The Minister said it was better that a number of guilty men should go free than that one innocent man should be convicted. However, in this measure before us all the safeguards that are necessary are included. Both a magistrate and a judge, I have no doubt, would make absolutely certain before recording a conviction on the uncorroborated testimony of a child.

I have had experience of two cases. My girl of 8½ years was travelling in a bus towards Inglewood, and an act of exposure was committed in the back of the bus. When the girl reached home—her mother was out at the time—she reported the matter to me. She said there was a woman in the bus at the time, but that she and others did not see what occurred. I rang the bus company to ascertain whether the driver had seen what happened and the reply was that he had not. I asked whether he had noticed a man get off at a certain stopping place and the reply was that he had not taken any particular notice. I discussed the matter with representatives of the C.I.D. and it was arranged that one afternoon they, with the child, would keep watch. We sat in a car some distance from where the bus stopped. The child was sitting in the bus with the driver. Five other buses stopped there during the period and the child picked out a man who, she said, was the offender, riding in a passing bus. He was a married man with young girls of his own. He was taken to the detective office and questioned. He was not known to the police as one who had been guilty of any crime. He would neither affirm nor deny that he had committed the offence, but he did say, "If I did such a thing, I must have been drunk." The detectives were reluctant to lay a charge having regard to the age of the child, and we were reluctant to have the child give evidence on the ground that such an experience is apt to linger in the mind of a child.

At about the same time my son, who was then under nine years of age, reported an incident that happened in a railway carriage about 18 months previously. The boy was attending school at Claremont and boarded a train there with another boy from the same school. A railway employee entered the same compartment; the boy said he had red braid on his coat. The other boy alighted at Shenton Park and this man exposed himself in the presence of the boy. He left the train at the next stop, and the boy said nothing of the occurrence at the time, but when the other case occurred he described the incident and the man and mentioned the station where he was collecting tickets. Children would not invent stories like that. One difficulty would be that many parents would be reluctant to let their children, particularly girls, go into a court to give evidence, because such experiences would linger in their minds.

The member for Murchison remarked that there is enough immorality in the world and that children of tender years will soon enough meet with these things without having adults committing such offences in their presence. The member for Nedlands should be commended for introducing the Bill. Offences of this sort are fairly common and to my knowledge married men are most often the guilty parties. Older girls attending school have made complaints along the same lines. It is difficult to understand the mentality of a man who would commit such an offence in front of a child of tender years. If we cannot frame an amendment to provide better safeguards I shall support the Bill, because the judge or magistrate would exercise the greatest care in administering justice, and no injustice would be likely to be done to any person charged under this provision. The innocent minds of the young should be protected. Too many people get away after committing these offences, and it is our duty to tighten up the law.

**HON. W. D. JOHNSON** (Guildford-Midland): I shall vote for the second reading of the Bill, because I believe the time

has passed when those responsible for the supervision of these matters should be given greater powers and greater help in the difficult work in which they are engaged. We all know that crimes of this sort are increasing. In my opinion there has been an increase within the war period. This might be associated with the disorganisation of the public mind or it might not, but we are all concerned about the increase of such acts and the difficulty of getting convictions. The mere fact of the Minister having quoted cases is not convincing, because further details would have to be made available before one could analyse and estimate their actual worth. The point I wish to emphasise is that the member for Nedlands has rightly brought this matter before Parliament. In view of the state of the public mind, I would not like Parliament to oppose the second reading of a reform Bill of this nature. We can amend it in Committee, but to declare against such a reform would convey a wrong impression outside the Chamber. I commend the hon. member for having introduced the Bill. It might need close scrutiny in Committee. I think there is merit in the amendment suggested by the Leader of the Opposition although it, too, needs review. The principle of the Bill, however, is one that should be accepted in view of the necessity for strengthening the hands of those whose duty it is to protect the young lives of this State.

**MR. SMITH** (Brown Hill-Ivanhoe): I am opposed to the second reading of the Bill. I do not know what public opinion is on this subject, but I should think that public opinion would be in support of the contention that no person ought to be convicted on unreliable testimony. I do not know, and fail to see, how this measure will help any judge or magistrate or justice of the peace to come to a decision with respect to testimony which is obviously unreliable. If it is maintained that there should be an alteration of the Evidence Act as regards the testimony of children who are not old enough to understand the nature of an oath in connection with these cases, why should the alteration not be extended to other cases? Why should it be confined to those particular cases of wilful exposure or criminal assault? I see no justification for any differentiation with respect to the basis upon which evidence should be accepted. In introducing the measure the member for Nedlands spoke about children 13 and 14 and 16 years of age who did not understand the nature of an oath and consequently could not give on oath evidence which, were it given on oath, would be accepted, and could be analysed and a conviction obtained if such analysis satisfied the judge or magistrate or justice.

But I take it that the member for Murchison was correct in stating that this applied only to the uncorroborated evidence of a child of tender years without its understanding the nature of an oath. As the result of some early religious training I am of the opinion that one philosophical belief contends that a child comes to the age of reason when seven years old. As I recollect the religious instruction given to me, I was taught that one should be able to know the nature of an oath at the age of seven years. I would have liked an opportunity to read up the debate on the Evidence Act as originally introduced, because there must have been some reasons given for inserting this particular provision in the Act, and I would like to know those reasons. Before supporting the measure I would also like to have some experience of court work, or to have such knowledge conveyed to me by others who have had such experience. I would like to know what the experience in courts is with regard to children, and at what age. For instance, I would like to know the age of the youngest child that the member for Nedlands can remember giving evidence on oath in court. Some children are extremely imaginative, and that is what we have to safeguard ourselves against. Anyhow, although I realise the difficulty in connection with the subject, I do not consider that we are justified, or that anyone is justified, in saying that an opportunity should be given to any person to convict people on unreliable testimony.

**HON. N. KEENAN** (Nedlands—in reply): I intend to say only a very few words in reply. In fact, had it not been for the intervention in the debate of the member for Brown Hill-Ivanhoe, I would not have asked the House to hear me at all. There is undoubtedly a risk in adopting this legislation. The only question is whether it is better to leave a free field for this disgusting crime or to take the risk. If we are going to take the risk, it is only

right to adopt such precautions as would minimise the risk. I have no doubt of what I have been told by the police, and also from what I know of my own commonsense, that unless the law is altered in the direction in which the Bill seeks to alter it, there is a free field for that type of crime. And the prevalence of it is not at all to be judged by the court cases, for there are a great many such cases, I am told by the police, which are not brought to Court.

When the police go and see the parents, they ask at once under what conditions it happened, and the reply is that it possibly happened only in the presence of the child.

Of course, the police cannot go any further with the case unless they can bounce the person accused into pleading guilty. In many cases the criminal does confess that he was the party, and gives the excuse that he was very drunk and did not know what he was doing. But that only happens with a few of these criminals; the great majority of them know that if they keep their mouths shut they are absolutely safe. Unless such legislation as this Bill is passed the cases will go on increasing, and in a much worse ratio. So I say again that the House has to decide whether we will take the risk under the precautions of the Bill or whether we shall leave a free field to these criminals.

Question put and passed.

Bill read a second time.

*In Committee.*

Mr. Marshall in the Chair, Hon. N. Keenan in charge of the Bill.

Clause 1—agreed to.

Clause 2—Amendment of Section 101:

Mr. WATTS: I move an amendment—

That the proposed proviso be struck out with a view to inserting another proviso.

The present proviso is the real amendment proposed by the Bill. The offences to which my proviso refers are set out in paragraph 11 of Section 66 of the Police Act and in Sections 183, 184, 187, 188, 189, 203, 315 and 328 of the Criminal Code, and the Committee will see that these cover the ground which it was intended should be covered by the member for Nedlands, to whom I am indebted for having been good enough to discuss the matter with me before I ventured to put my amendment on the notice paper. Should any further explanation be required, I shall try to give it when the question comes up.

Hon. N. KEENAN: I regret I cannot accept the amendment. My reason is that I cannot see that a judge is any better equipped to decide the question of whether a child is capable or not than is an ordinary trained magistrate. If it were a matter of law, undoubtedly a Supreme Court judge is infinitely better equipped to determine it, but this is not a matter of law.

The Premier: It is a matter of credibility of witnesses. The judge would be better than the magistrate.

Hon. N. KEENAN: Does the Premier think a judge is better equipped?

The Premier: Yes.

Hon. N. KEENAN: How often does a judge have to deal with the credibility of a witness? The magistrate does so every day.

The Premier: No, in half the cases tried by a magistrate there are hardly any witnesses at all.

Hon. N. KEENAN: Before a police magistrate?

The Premier: Yes.

Hon. N. KEENAN: Does the Premier mean in cases where a plea of guilty is entered?

The Premier: I mean cases in which just a charge is made.

Hon. N. KEENAN: I presume the Premier means where there is no dispute about the matter?

The Premier: Yes.

Hon. N. KEENAN: Of course, there would be no question of evidence when a plea of guilty was entered. A judge would only have to deal with credibility of witnesses in nisi prius and on the occasions when he takes Criminal Court sittings.

The Premier: A judge would go more deeply into the matter than would a magistrate. Judges often recommend that witnesses be prosecuted for perjury. Magistrates very seldom do that.

Hon. N. KEENAN: I do not always approve of everything that judges do. I am satisfied that a magistrate would be far more likely to say whether a person is telling the truth or is not telling the truth than a Supreme Court judge would be.

The Premier: The crimes dealt with by the lower court are not so serious as those dealt with by the Supreme Court.

Hon. N. KEENAN: All these cases up to the present are, and I daresay in the

future will be, summary jurisdiction cases. Can the Minister inform me whether there have yet been any cases by indictment?

The Minister for Justice: There has been an odd one.

Hon. N. KEENAN: I am not in touch with these cases, so I cannot say. I know, however, that all the cases mentioned by the Minister were summary jurisdiction cases heard by a magistrate. The amendment now before the Committee no doubt has some considerable merit and I am obliged to the Leader of the Opposition for the manner in which he put his case. It seems to me, however, that it is preferable to allow a magistrate to deal with this class of witness and I therefore oppose the amendment.

Hon. W. D. JOHNSON: I feel inclined to agree with the views expressed by the member for Nedlands. We can only understand the amendment by considering the proviso to be inserted in lieu, and we must realise that that proviso will create difficulties. I am beginning to wonder whether I am ever in order, but I suggest to the Leader of the Opposition that if he inserts the proviso which he proposes difficulty will be experienced in a hearing when a judge of the Supreme Court is called in. You, Mr. Chairman, have already pointed out the difficulty of the measure extending into the remoter parts of the State. I believe that the Bill as printed would be more suitable in that regard than the amendment. Assuming that we accepted the amendment as framed, if a case happened in some remote part the child and its representative would have to come down to the judge for an interview and then return to the magistrate. That would be a task for the child and an expense to others. The preamble to the main part of the amendment is already covered by the broader view taken in the drafting of the measure by the member for Nedlands. I do not think any injustice will be done as suggested by the member for Brown Hill-Ivanhoe whose argument I could not follow. The Bill as drafted will be effective to the extent that it will give greater encouragement and assistance to those who have to detect crimes of this kind and will not do injustice to those arrested as a result of police investigations. I oppose the amendment.

Mr. McDONALD: I am impressed with the difficulty of meeting a very serious situation and at the same time preventing the conviction or even the prosecution of an innocent man. The Leader of the Opposition is to be thanked for having suggested an alternative amendment, but paragraph 2 of the amendment, referred to by the member for Guildford-Midland, seems to me to raise even more difficulty than the Bill itself. Apart from the difficulty mentioned by the member for Guildford-Midland concerning the bringing of a child to Perth from a remote part of the State, what does the amendment mean? Presumably the child is to be brought to the judge's room accompanied only by a guardian or parent.

Hon. W. D. Johnson: Or a legal adviser.

Mr. McDONALD: Yes, possibly, though that is doubtful because, if one legal adviser went, the legal adviser for the defence would want to be present. When the child is brought before him, the judge knows nothing at all about the case beyond what is contained in the charge. He will not hear the evidence of the other witness or of witnesses for the defence, and in such circumstances will have to set out to discover whether the child is reliable or not.

Mr. Watts: Are there likely to be any other material witnesses in cases of this kind?

Mr. McDONALD: The Leader of the Opposition has corrected me. There would not be any other witnesses for the prosecution, but there would be evidence for the defence and it seems to me that the credibility of the child could best be tested by the magistrate who hears the whole case and who hears the child's evidence against the background of the circumstances and the evidence for the defence. Having in his mind all the factors in the case and all the testimony he comes to a conclusion as to what credence he can give to the child's evidence. I admit there may be a question as to how far a magistrate would be obliged to determine the credibility of the child's evidence before hearing evidence for the defence. That may be a requirement before he calls upon the defence to answer the case for the prosecution, but it does appear to me that a judge would be in a somewhat difficult position in interviewing a child and finding out by some sort of questioning how far it is truthful and it does not seem that he would be

really in such a good position as would be the magistrate himself.

Mr. WATTS: The point made by the member for West Perth is that the judge would be in a worse position than the magistrate. I think the hon. member rather overlooked the fact that the magistrate would not require to hear the evidence of the defence unless he had come to the conclusion that there was a case for the defendant to answer and, as far as I can see, he would never be able to come to that conclusion until the question of the credibility of the child or the acceptability of the evidence had been tested. So at the time when the application of this Act, if it became one, was under consideration, neither the magistrate nor the judge would have to concern himself with what evidence the defence was going to give. The only question that would have to be considered at that particular time would be whether the child's testimony should be accepted or not. It is clear that there could be no other evidence for the prosecution which the judge would be called upon to consider because the only other material evidence worth calling would be evidence in corroboration and if there is evidence in corroboration, this Bill, when it becomes an Act, will not apply.

The member for Nedlands, in opposing the amendment, said he thought a magistrate was just as competent to deal with this matter as any judge of the Supreme Court. That may be the case in some rare instances. A number of magistrates in this State do not comply with the requirements laid down by the member for Nedlands. First of all, there are the magistrates who are in the nature of Government Residents. Many of them are medical practitioners with little if any knowledge of the law and without the daily practice, if there be daily practice, to which the member for Nedlands referred. Then we have special magistrates who do not come under these headings. So we may submit a large percentage of these cases in various parts of the State to persons not qualified either by training, experience or practice, to arrive at conclusions as to credibility of testimony, or many other legal questions, if we do not accept some such proposal as is contained in the amendment.

We do know that judges of the Supreme Court, if not regularly engaged in assessing the credibility of witnesses in criminal cases, are at least constantly engaged in assessing the credibility of testimony in civil cases. They are in constant practice and are men who, as a general rule, are particularly careful in their methods of dealing with testimony and its acceptance. They are men—and I use the word without the least derogatory intention—who are essentially shrewd in their handling of witnesses and the evidence given by them. I am sorry to add that I have seen instances where I could not say as much for magistrates, who did not possess either the judicial temperament or the qualifications or training for the duties they have to undertake. There may be cases where difficulty will be experienced in getting an order of a judge of the Supreme Court, but it will be the duty of the prosecution, which in most cases will be the police or the Crown Law Department, to take every means proper and to pay the necessary expenses of seeing that the law is complied with and a conviction obtained. We do not hesitate to bring a criminal 200 or 300 miles to the Criminal Court to be dealt with.

I would be agreeable to amending this proposal to enable country districts to receive better consideration than is suggested here. But if we are going to have a judge of the Supreme Court, then either the judge must be taken to the criminal or the criminal sent to him. I do not mind which the Crown Law authorities decide to do. Uncorroborated testimony of this kind must be submitted to the highest judicial authority in the State in order to ensure, as far as possible, that no innocent person is convicted and, at the same time, that each guilty person, although he may have used means to evade his punishment, will be convicted, and that is why I have brought forward the amendment.

The MINISTER FOR JUSTICE: We should be very cautious in this matter. I have listened to my three friends opposite and I feel, as far as the magistrates are concerned, that the stipendiary magistrates would be most reliable. They would recognise the credibility of evidence submitted by a child of tender years. But I am afraid that perhaps our special magistrate has an obsession in the direction of looking after little girls, and he would probably allow the imagination of those small persons to influence his views so that we might have unjust convictions recorded.

Hon. N. Keenan: Strike out the special magistrate if you like.

The MINISTER FOR JUSTICE: I do not want to strike out any magistrate. We should take the precaution of having a Supreme Court judge, who is a highly responsible man. A magistrate would not be willing to take the responsibility of accepting the uncorroborated evidence of such young children. The Supreme Court judges are highly trained and highly responsible, and live in an atmosphere of security. This amendment will ensure legal protection for any innocent person. I agree with what the Leader of the Opposition has said and, to an extent, with the remarks of the members for Nedlands and West Perth. I am anxious to deal with these terrible people who commit these awful crimes. We want to protect our youth, but we have to be careful. We must not leave any loopholes whereby wrong can be done not only to one man but to the whole of his family as well. I can go no further than to accept the amendment of the Leader of the Opposition, which is one of caution. The other day when we wanted to give the judges more discretionary power than they possess, the member for Nedlands said, "No." Here we must be even more careful. It would be terrible if anyone were unjustly convicted under this measure. I support the amendment which, to a certain extent, protects both the young children, and also innocent persons.

Mr. CROSS: I move—

That progress be reported.

Motion put and negatived.

Mr. CROSS: In view of the many warnings that we ought to exercise care, more consideration should be given to this matter. A child of eight would be capable of understanding the nature of an oath, whereas there are cases on record of children of three or four having made mistakes, proof of which has been forthcoming later. I know of a case which was framed by a woman through a "Shirley Temple." The case was dealt with by a special magistrate and the man served some months in prison, but afterwards the mother confessed to a neighbour what she had done and was hunted out of Victoria Park. This might happen to any man. A child up to five years of age is very impressionable and might easily make a mistake. I shall oppose not only the amendment but also the Bill. I wish to protect children as much as does any member, but in doing so we should not set aside a basic principle of British justice that a defendant must be proved guilty before being convicted. I would not vote for a Bill which might lead to one innocent man being imprisoned.

Hon. N. KEENAN: I ask members, who is in a better position to decide the credibility of an infant which, in law, covers everyone up to the age of 21, a magistrate who sits every day in court and exercises his judgment every day, or a judge who does not have to exercise his judgment nearly so often? I should say that a teacher would unquestionably be the person likely to be most accurate in his judgment of a child, but of course we cannot bring teachers into this matter. Next in order I would place the magistrate and then the judge.

The Minister for Justice: The amendment is only a secondary precaution.

Hon. N. KEENAN: It would not be a precaution if, as I believe, a judge is not as good a person to determine the credibility of a child as is a magistrate. We are talking of police magistrates, trained men, not justices of the peace. The amendment would not be workable. Imagine a case being reported to the police and the only evidence being that of a child. The police might come to the conclusion that the child was telling the truth. Then they would have to get the parents to agree to the child's being taken before a judge. A judge would have to be available and he would not always be available. Then the child would have to be taken into the Supreme Court and questioned by the judge and if he came to the conclusion that the child understood the truth and would tell the truth, only then could the offender be taken before a magistrate. That would not be workable in the country districts, and even in the city it would be almost impossible to give effect to it. I ask members to exercise commonsense and support the clause, which is a workable provision. If the Minister wishes to confine these cases to hearing by police or stipendiary magistrates, I have no objection.

Amendment put and a division taken with the following result:—

| | |
|---|---|
| Ayes .. .. .. .. | 20 |
| Noes .. .. .. .. | 15 |
| Majority for .. .. | 5 |

AYES.

| | |
|---|---|
| Mr. Berry | Mr. Nulsen |
| Mr. Coverley | Mr. Perkins |
| Mr. Cross | Mr. Seward |
| Mr. Hawke | Mr. Thorn |
| Mr. Hill | Mr. Triat |
| Mr. Hoar | Mr. Watts |
| Mr. Holman | Mr. Willcock |
| Mr. Kelly | Mr. Wise |
| Mr. Leahy | Mr. Withers |
| Mr. Leslie | Mr. Doney |
| | (*Teller.*) |

NOES.

| | |
|---|---|
| Mrs. Cardell-Oliver | Mr. Millington |
| Mr. Fox | Mr. Needham |
| Mr. Graham | Mr. North |
| Mr. J. Hegney | Mr. Smith |
| Mr. Johnson | Mr. Willmott |
| Mr. Keenan | Mr. Wilson |
| Mr. McDonald | Mr. W. Hegney |
| Mr. McLarty | (*Teller.*) |

Amendment thus passed.

Mr. WATTS: I move an amendment—

That the following proviso be inserted in lieu of the proviso struck out:—

Provided that upon the hearing of a charge against a person of an offence under—

(a) paragraph (11) of Section sixty-six of the Police Act, 1892; or

(b) any of the Sections one hundred and eighty-three, one hundred and eighty-four, one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine, two hundred and three, three hundred and fifteen, and three hundred and twenty-eight of the Criminal Code—

alleged to have been committed in the presence of or against a child of tender years, the testimony of a child who gives evidence under the provisions of this Section may be held to be sufficient to warrant a conviction without any other evidence in corroboration having been called in support of such testimony in either of the following cases, that is to say—

(i) When the hearing of such charge is before a judge of the Supreme Court sitting with or without a jury, and the judge considers that the testimony of the child is sufficient for the purpose of a conviction without corroboration as aforesaid; or

(ii) When the hearing of such charge is before justices or a magistrate, and a judge of the Supreme Court, on the ex parte application of the party who calls the child as a witness and after himself questioning the child, by order empowers the justices or the magistrate aforesaid to accept the evidence of the child without corroboration, and the justices or the magistrates act accordingly.

Hon. W. D. JOHNSON: I move—

That progress be reported.

The CHAIRMAN: The hon. member cannot move to report progress as 15 minutes have not elapsed between his motion and the last division.

Motion ruled out.

Mr. SMITH: I would like some explanation of the last paragraph of the amendment. What is to be the procedure? Is the hearing of the case in the first place to start before justices or a magistrate? Then, apparently, on the ex parte application of the party who calls the child as a witness a Supreme Court judge is to be brought into the business, and is to decide whether the justices or the magistrate should accept or reject the evidence which the judge himself may have approved or disapproved. The judge, having made an examination of the child and obtained such evidence from the child as he can, may then by order empower the justices or the magistrate to accept the evidence of the child; and apparently the justices or the magistrate, even after the judge has so ordered, can reject the evidence. Why all this unwieldy procedure? Why take the case to the justices or the magistrate in the first instance? Why not let the judge deal with the case and dispose of it instead of referring it to the justices or the magistrate?

Mr. WATTS: The member for Brown Hill-Ivanhoe has explained the matter very nicely. Quite clearly it does not require any further explanation from me. But the hon. member's great difficulty seems to arise from the words "on the ex parte application of the party who calls the child as a witness." Thus the hon. member will understand that the child has to appear before justices or a magistrate, and that subsequently the order of a judge is sought. The order is to be obtained before court proceedings commence.

Hon. N. KEENAN: In order to clear up the matter, referred to by the member for Brown Hill-Ivanhoe and the Leader of the Opposition, I propose with your leave, Mr. Chairman, to move to strike out the word "calls" in line 4 of the paragraph and then to move for the insertion of the words "intends to call." Am I correct in so moving at this stage?

The CHAIRMAN: Yes.

Hon. N. KEENAN: I move—

That the amendment be amended by striking out in line 4 of paragraph (ii) the word "calls" with a view to inserting other words.

The PREMIER: With all due respect to whoever drafted this proposed proviso, in my opinion it is most difficult to understand. It would be better to report progress, so that the Committee may have a chance of ascertaining exactly what is meant. In the meantime something more satisfactory might be evolved.

Progress reported.

*House adjourned at 10.5 p.m.*

# Legislative Assembly.

*Thursday, 21st September, 1944.*



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

## QUESTIONS (8).

### VETERINARY PRACTITIONERS.

*As to Shortage.*

Mr. WILLMOTT asked the Minister for Agriculture:

(1) In view of the serious shortage of veterinary practitioners in the dairying districts of the State, are any arrangements being made to overcome this difficulty?

(2) Can the services of veterinary practitioners be supplemented by a more extended system of lectures and demonstrations in the districts concerned?

The MINISTER replied:

(1) and (2) The Department of Agriculture is endeavouring to fill staff vacancies for veterinary officers, and if successful may be able to extend demonstration work, but will not undertake work normally carried out by private practitioners. The present depleted staff cannot undertake any further duties.

### METROPOLITAN MILK ACT.

*As to Producers' Representative on Board.*

Mr. McLARTY asked the Minister for Agriculture:

(1) Has he noted that 108 producers licensed under the Metropolitan Milk Act for No. 1 zone, are entitled to elect one member of the board, whereas 262 licensed producers in No. 2 zone have only the same representation on the board?

(2) Will he give consideration to an alteration of the zone areas in order to secure approximately equal numbers of licensed producers in each zone?

The MINISTER replied:

(1) Yes.

(2) Yes, if such alterations are found to be warranted after representations have been made by the producers concerned.

### NATIVE SETTLEMENTS.

*As to Allegations of Unsatisfactory Conditions.*

Mr. DONEY asked the Minister for the North-West:

(1) Has his attention been drawn to recent Press reports dealing with charges by the Anglican Synod and other bodies in respect of what is alleged to be such a breakdown of efficient control at certain named native settlements in this State where conditions are spoken of as appalling and as resembling a brothel?

(2) Having regard to the disquieting nature of these charges will he inform the House either—

(a) that the charges are untrue; or

(b) that they are true; or

(c) that he has insufficient information at present, but will order—or has already ordered—the necessary investigation to be made with a view to a report to Parliament upon the position?

(3) If the charges, in his opinion, are untrue will he supply supporting evidence?

(4) If true, what corrective action is proposed?