Legislative Council

Tuesday, the 12th September, 1961

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

BILLS (2)—THIRD READING

1. Coal Miners' Welfare Act Amendment Bill.

   Bill read a third time, on motion by The Hon. A. F. Griffith (Minister for Mines), and transmitted to the Assembly.

2. Motor Vehicle (Third Party Insurance) Act Amendment Bill.

   Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), and transmitted to the Assembly.

DIVIDING FENCES BILL

Second Reading

Debate resumed from the 30th August.

THE HON. N. E. BAXTER (Central) [4.38 p.m.]: I have had a look at the Bill since the House last met, and I find that a few clauses need some slight amendment. I would like to deal first with the definition of "sufficient fence." Often arguments arise when claims are made in regard to the liability of neighbours for the payment for portion of a dividing fence, and the people concerned find themselves in all sorts of trouble. They then go to solicitors and are sometimes advised wrongly and sometimes rightly, as the case may be, but mostly wrongly; and then before very long they find themselves engaged in expensive litigation; and the litigation, in some instances, may be over an amount of £50, perhaps.

The existing Cattle Trespass, Fencing, and Impounding Act does not really include a provision by which a person can—unless he goes to a lot of trouble—claim for half the value of a fence he had erected, when it is used by a neighbour. In this Bill a "sufficient fence" is defined as—

> Any fence prescribed by a by-law under paragraph (e) of section two hundred and ten of the Local Government Act, 1960.

Those words appear in paragraph (a) of the definition. I am not very happy with this definition because under the Local Government Act the local authority frames a by-law and declares what shall be a sufficient fence in its particular shire council or town district. I have made a check of quite a few and, to my knowledge, only one local authority has proclaimed a by-law on what is a dividing fence in its particular district; namely, the Gosnells Shire Council. I understand that in its by-law it has defined a sufficient fence as being a 6 ft. picket fence. In my opinion that is an instance of where a local authority has framed a by-law without a great deal of consideration, because in that district there are farming properties, and I could not imagine anybody putting up a 6 ft. picket fence around a farming property.

Therefore, to simplify this definition I think that an amendment to the Local Government Act would be more appropriate as it would make it mandatory for local authorities to frame by-laws to define what is a dividing fence or sufficient fence in their particular shire councils or town districts. If this were done and the neighbour of any farmer were in doubt as to what was a sufficient dividing fence, he could go to his local authority and ascertain the true position.

In paragraph (b) of the definition "sufficient fence" the following appears:—

> any fence of the description and quality agreed upon by the parties concerned.

Those words are all right, but underneath paragraph (b) the following words appear:—

> where no such by-law or agreement is made, means—
>
> (c) any substantial fence that is ordinarily capable of resisting the trespass of cattle and sheep.

To me, those words are rather puzzling, because I could not imagine a fence being described as being "ordinarily capable." It does not seem to be the right use of the English language to refer to a fence as being ordinarily capable. I have certainly not seen an ordinarily capable fence around my property.

The old definition of a sufficient fence in the Act was one that was deemed to be reasonable and able to resist trespass, but the words ordinarily capable seem far from being correct in my opinion and I cannot understand why the draftsman has used them. In fact, I do not think the

definition would be needed in the Bill if the Minister were to agree to cover the matter with an amendment to the Local Government Act. Paragraph (d) of the same definition reads as follows:—

> any fence determined to be a sufficient fence by a court of petty sessions pursuant to this Act.

I do not think anybody should be forced into the position of having to attend a court of petty sessions to ascertain what is a sufficient fence. I use this argument again to support my contention that the definition of a fence could be covered in the one set-up; that is, if a by-law were made and declared by a local authority, it would overcome many difficulties associated with this problem.

I trust the Minister will give this definition due consideration and I hope he will realise that the simpler method would be to amend the Local Government Act and so clean the matter up properly. I have already discussed clause 11 (4) (a) with the Minister because I think this is another clause that should be given close consideration. Subclause (4) of clause 11 reads as follows:—

> If the owner to whom the copy of the order is given considers the order inequitable, the court of petty sessions that made the order may, on the complaint of that owner made within one month after the giving to him of the copy of the order—
>
> (a) relieve the complainant from the whole or any portion of the sum claimed as the value of the fence.

This refers to an order given by a court in the case where a person applying to the court cannot locate the absentee owner and is granted by the court authority to erect a fence either on the surveyed line or on a line agreed to by the court; and should the absentee owner reappear the original applicant who erected the fence gives to that absentee owner a copy of the order. Then, within one month, the absentee owner who has made his reappearance may make an application to the court and, under subclause (4) (a) of this Bill, the court could relieve the complainant of the whole or any portion of the sum claimed as being the value of the fence.

After issuing an order that the original applicant should erect a fence, I do not think the court should have the right, at some later stage, to relieve the applicant of the whole of the sum claimed. After all is said and done, the fence was erected on the order of the court. I think the Minister would be agreeable to amending this clause to make it read that the applicant should be entitled to only a portion of the sum claimed as being the value of the fence. To be relieved of some of the cost would be just and equitable, but to be relieved of the total cost would not, in my opinion, be British justice.

The rest of the Bill seems to be fairly sound. I believe it will improve the old Act; and, in conjunction with the Local Government Act, it should make for a good set-up in regard to the matter of fences and cattle trespass.

THE HON. A. L. LOTON (South) [4.47 p.m.] When I first read the Bill I discovered several points with which I was dissatisfied; but after making a further study of it, discussing it with several members, and comparing it with the Victorian legislation which was introduced only in 1958, I have found that the measure is practically a copy of the Victorian Act. There is, however, one major difference between the two. The Victorian Act defines eleven sufficient fences whereas this Bill merely provides that the court shall define what is a sufficient fence. I think it will be of interest to members if I read what the Victorian Fences Act, 1958, provides. Section 4 (b) reads as follows:—

> A substantial paling or picket fence at least three feet six inches in height with no greater distance between the palings or pickets than four inches.

Then, paragraph (j) of that same section reads—

> A ditch not less than two feet six inches in width and two feet in depth with a bank and wires not less than three feet six inches in height the wires to be tightly strained with not more than eight inches between the wires and seven inches between the bottom wire and the bank and the standards or binding wires to be not more than eleven feet apart.

From only those two definitions of a fence, one can see how complicated it is to provide in a Bill the definition of a standard type fence, especially in view of the many types that we have today. Some of the new types of fences that are being introduced today include the wire-mesh fence, the ring-lock fence, the barbed-wire fence and the dropper fence. There are, of course, brick fences built as a complete wall and there are also those that are built with spaces in between the bricks. Those are only some of the types of dividing fences that are used; and, in my opinion, it would be far better, as Mr. Baxter has suggested, if the Local Government Act were amended to make the local authority responsible for deciding what shall be an efficient fence in its particular district.

Going a little further back in my study of this subject, I find that the New South Wales Act was originally proclaimed in 1903, and was re-enacted in 1951; and the Victorian Act is modelled along the lines of the New South Wales Act.

At first glance I did not favour several points in the Bill. One is the provision which enables a person to apply to the court for an order to erect a fence on the boundary of his property, after he has

served notice of his intention on his neighbour to do so. Under the Bill the neighbour is given the right to apply to the same court for a variation of such an order at a later period. In dealing with this Bill we have to bear in mind that not all neighbours are co-operative; for that reason we can do nothing else but agree to the Bill as it is except for minor amendments. Another provision which I did not favour relates to the repair of fences. This is clause 21 which states—

> Every person engaged in constructing or repairing a fence under this Act and his agents and servants may, at all reasonable times during the construction or repairing, enter upon the lands adjoining the fence and do upon those lands such acts, matters and things as are necessary or reasonably required to carry into effect the construction or repairing of the fence.

At first glance this provision seems to be very wide, but as common law is to prevail in respect of this matter, and covers any acts outside the repair or construction of fences, what looks to be a harsh provision merely seeks to give a person the right, when erecting or repairing a fence, to enter upon the adjoining land. This provision will help to overcome difficulties which arise when neighbours are not co-operative. I support the amendment which has been proposed by Mr. Baxter. For those reasons I support the second reading of the Bill.

THE HON. J. G. HISLOP (Metropolitan) [4.52 p.m.]: I only want to discuss one small feature in the Bill; and that relates to the authority of shire councils. I take it that in the Local Government Act, authority is given to shire councils to provide that front fences need not be erected. Open frontages are a feature which should be commended in these modern times. While in the older suburbs front fences were built up to the footpath, in many of the new suburbs there is no front fence, and the frontage of the house runs right up to the road edge. In many suburbs the portion of land between the road edge and the front fence of the house is often covered with patches of wild oats.

I have mentioned once or twice, when referring to the question of dividing fences, that in several parts of the world, a company selling land for building purposes assumes responsibility for caring for the land between the road edge and the frontage of the property. Such companies impose a small charge for the service. The result is that the suburbs are beautified.

Most property owners in the Floreat Park district regard it as their right and privilege to look after the land between their front boundary and the road edge, and they keep this land in good order. In other districts the residents sometimes keep such strips of land in good order, whilst others do not. Suburbs where owners consider the local authorities to be responsible for the care of the strip of land in question are invariably untidy in appearance.

The Minister should consider further what can be done to overcome this difficulty. I presume that in many suburbs the strip of land in front of properties is left unattended because the trend is for roads to be widened, and any such strip might be utilised for widening roadways to take the increased traffic. I suggest the Minister should consider the party who should be responsible for keeping the strip of land between a building block and the road edge in good order.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [4.56 p.m.]: I thank members for the contributions they have made to the debate. This measure is somewhat like the Dog Act, which always creates some discussion in this House. There is great difficulty in arriving at unanimity in respect of such measures.

As the previous legislation under which we operated was very unsatisfactory, I endeavoured on this occasion to bring before Parliament a law which would be workable. I am thankful for the suggestions which have been made during the discussion on this Bill, and which could improve the provisions if they were agreed to.

One or two matters were referred to by Mr. Wise. One question he raised related to a lengthy boundary between adjoining properties. Such a position can be overcome by including the words "if need be" in the Bill, because there might not be any need for the construction of a long boundary fence or for the adjoining owner to bear a proportion of the cost. The other point raised by the honourable member regarding the repair of fences can be overcome by a small amendment to the Bill.

The amendments proposed by Mr. Baxter and Mr. Loton were considered by me. The two honourable members approached me and discussed the position, and we were able to iron out some of the fears which they expressed, but which have now been dispelled.

The main contention appears to be the giving of authority to local governing bodies to make by-laws in respect of dividing fences. Under the Local Government Act, the only by-law which local authorities are compelled to pass is that relating to the uniform building by-laws. Before the Local Government Act can be amended to provide that local authorities shall pass a by-law to prescribe a sufficient fence, I shall have to refer the matter to all local authorities in this State. If that were done, I am not too sure that we would be in any better position than we are in today. Mr. Baxter and Mr. Loton have argued against themselves on this question, because Mr. Baxter mentioned that the Gosnells Shire

Council was the only local authority which had passed a by-law prescribing a sufficient fence; and he said it was not a satisfactory by-law. Unless we can define a sufficient fence in a form which is acceptable to the 145 local authorities in this State, we cannot make a uniform by-law in regard to it.

Reference was made by Mr. Loton to the Victorian Act. He stated that that Act prescribed eleven different types of fences. Which is the one that we should regard as being sufficient for the Gosnells Shire Council, and which one for Perth, or Bunbury, or Wyndham? That is where the difficulty arises—in finding an acceptable definition of a sufficient fence. I realise that such a by-law does not have to contain a uniform definition and that each local authority can bring in its own definition of a sufficient fence. The Gosnells Shire Council has prescribed that a 6 ft. picket fence shall be a sufficient fence.

The Hon. A. L. Loton: Each shire council can define half a dozen types of fences as being a sufficient fence.

The Hon. L. A. LOGAN: They can; I will admit that. But if that is done, the particular area to which it will be applicable will have to be defined. For instance, a 6 ft. picket fence on Jolimont Avenue might be the right type of fence there; but it might not be a sufficient fence on one of the other avenues or crescents. That is one of the reasons we kept away from this particular aspect and gave some alternative—not that we do not want local authorities to make by-laws if they so desire. We have given them the opportunity to do so; but we have also given the court the power to stipulate what is a sufficient fence where there is no by-law applicable.

I appreciate the fact that this is an arguable point. However, whether the problem will be overcome by providing that the local authority must make a by-law describing what is a sufficient fence, I do not know. I think members will appreciate that one of the reasons why, in the past, by-laws have not been made to cover what is a sufficient fence, is because the authorities did not know how to make them to overcome all the problems. Quite a few have tried to work out the problem, but when they got down to taking the responsibilities, as Mr. Loton said, they shelved the matter because it was difficult.

However, it is a question to which I will give some further thought; and, if necessary, I can make it mandatory in this legislation for the local authority to make a by-law to cover sufficient fences where the Minister so directs. It may be better to do it through this legislation than through the Local Government Act.

The Hon. N. E. Baxter: Would you direct them all, or only a few?

The Hon. L. A. LOGAN: I should say that if the Minister administers his portfolio correctly and there is trouble in an area because of this definition, it should be the Minister's prerogative to tell the local authority to make a by-law.

The Hon. N. E. Baxter: That would take quite some time.

The Hon. L. A. LOGAN: It should not necessarily be so. We have to remember that we do not want people to go to court; we want them to agree amongst themselves. I hope there will be very few cases of disagreement. However, I know it is an arguable point; and if this House is of the opinion that I should do it through the Local Government Act, I will carry out the instructions of the House. However, I raise the issues so that we might debate them to ascertain the right way to go about it.

I think the matter of absentee owners has some merit. In the first place, the resident owner, who cannot find the absentee owner, makes an application to the court, which decides what type of fence is to be built and where. Then if the absentee owner, when he comes back, objects to the fence, he can apply to the court for an alteration of the order. It might seem rather strange; but if it is studied a little further, it will be appreciated that the resident owner could go to the court, knowing that the other owner was absent, and submit a false story. On this submission, the magistrate would make an order which would not be right. That is one of the reasons this provision has been included. If the absentee owner comes back and finds that the resident owner has submitted a wrong case, he can apply to the magistrate who can alter the previous order. I feel it is fair enough to leave it to the magistrate.

The Hon. N. E. Baxter: It would not be just to allow the whole cost.

The Hon. L. A. LOGAN: I think wholly; because, remember: if Mr. Baxter is the resident owner and I am the absentee owner and he goes to the magistrate with a false story on the strength of which the magistrate makes an order, why should I not, as absentee owner, when I come back, apply to the magistrate to have the order altered? After all, Mr. Baxter has had the order made on false premises and he should be penalised.

The PRESIDENT (The Hon. L. C. Diver): Will the Minister please address the Chair instead of speaking across the Chamber?

The Hon. L. A. LOGAN: I am sorry. I am only trying to answer the questions to the satisfaction of those who asked them.

The Hon. F. R. H. Lavery: There is no mention of fences in the building by-laws.

The Hon. L. A. LOGAN: I know; and I do not think we want dividing fences provided for there.

Dr. Hislop raised the matter of verges on roadsides. Of course, this does not come within the scope of this legislation, which is merely in regard to dividing fences on common boundaries or what are decided on as common boundaries if the surveyed ones are not known. If someone could be made responsible for these verges, this city would be a much prettier place. The other day I went to the trouble of extending my water service to the edge of the road. Most of those in my area have the same set-up, and it was for this reason that I extended mine. At the moment, local authorities have the right to make by-laws dealing with verges, giving people who own the land behind them the opportunity to take care of them and register them. If the case reported in the paper the other day had been handled correctly, the decision would have been different. I am referring to the verge which was being used as a trotting course.

The Hon. F. J. S. Wise: On what point did he lose that case?

The Hon. L. A. LOGAN: If I remember rightly, the local authority should have made the charge and not the individual. When it was realised what should have been done, it was too late. However, there is a regulation in the by-law dealing with that aspect.

I appreciate that most of these problems can be dealt with during the Committee stage. The Minister for Lands has suggested that I provide a better definition of the boundary line, and this suggestion has some merit. I think it may be better if today we complete the second reading stage and leave the Committee stage until tomorrow, by which time I will endeavour to place the necessary amendments on the notice paper in order that all members might consider them; and any other members desiring to make amendments will also have the same opportunity.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clause 1: Short title commencement and arrangement—

The Hon. N. E. BAXTER: If the Minister looks at section 210 of the Local Government Act, he will find that it refers in subsection (e) to the Cattle Trespass, Fencing and Impounding Act, 1882, which will be repealed by this legislation. I would just like to raise that point so that the Minister might study it before we proceed with the Committee stage.

The Hon. L. A. LOGAN: I realise that the Local Government Act refers to the old Cattle Trespass, Fencing and Impounding Act, but we cannot alter that until the Local Government Act is amended in Parliament.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Interpretation—

The Hon. N. E. BAXTER: I am still not satisfied with the Minister's attitude to the definition of what is a sufficient fence. Arguments will arise and it will be necessary for people to go to court. There is no reason why, through the Local Government Department in conjunction with local authorities, a set of by-laws covering every local authority could not be drawn up. It is better to have every local authority included, even though it might take some time to do.

If this were done, the by-laws so drawn up must be laid on the Table of the House, and members in both Houses would then have the opportunity to study them and move to have them amended or disallowed as the case may be. I can only visualise a piece-meal set-up arising out of the suggestion of the Minister.

I would like to refer the Minister to the definition of a sufficient fence contained in section 30 of the Cattle Trespass, Fencing and Impounding Act. I feel that is a much better definition than the one contained in this Bill, and I would therefore like him to consider it.

The Hon. L. A. LOGAN: During the debate on the second reading, I stated that before the Local Government Act can be altered, it will be necessary for me to consult the local authorities concerned; because I do not feel that we should, by an Act of Parliament, instruct these local authorities what to do when they are almost autonomous bodies. I think we should confer with them before we do anything. At the moment I do not know whether the Local Government Act will be amended this session; but to overcome some of the problems mentioned by Mr. Baxter, towards the end of the Bill I propose to move that the following be inserted:—

> The council of a municipality constituted under the provisions of the Local Government Act, 1960, shall, when required by the Minister for Local Government, make, for the purpose of interpreting "sufficient fence" in section 4 of this Act, a by-law under paragraph (e) of section 210 of the Local Government Act, 1960.

Until such time as the Local Government Act is amended, that would ensure that the Minister could at any time make it mandatory for a local authority to make a by-law describing what is a sufficient fence in its area.

As regards the points raised by Mr. Baxter, as I am not a draftsman I cannot say why the wording was altered; but to enable me to get a reasonable explanation for the alteration, I shall ask that progress be reported.

Progress

Progress reported and leave given to sit again, on motion by The Hon. L. A. Logan.

GOLD BUYERS ACT AMENDMENT BILL

Second Reading

Debate resumed from the 29th August.

THE HON. E. M. HEENAN (North-East) [5.18 p.m.]: Members will note that this is a very short Bill dealing solely with a small amendment to section 36 of the principal Act. The proposed amendment, as pointed out by the Minister, has been brought about by the fact that recently a prosecution, which was taken at Kalgoorlie against an alleged offender under the provisions of section 36, revealed a technical weakness in the section in so far as a reference to the words "gold matter" was not included in the section. Therefore it is proposed to make this small amendment in order to render the section watertight, and to ensure that in future no-one will escape a conviction on this technicality. Members may feel that the short Bill has some merit, and that it should be passed. Be that as it may, it gives all members of this House an opportunity to have a look at the principal Act which was assented to on the 21st December, 1921.

In his introductory remarks the Minister stated that the measure now before us was brought before the House as being one, to quote his own words, "of major importance to the gold detection staff of the Police Force." The Minister went on to explain that the present Act was introduced about 40 years ago to tighten up the existing provisions in order to prevent abuses in the goldmining industry then present. He went on to say that the Act contains an omission or flaw inasmuch as it fails to make mention of gold matter in section 36. He went on to tell us about the recent case at Kalgoorlie which revealed this weakness; and then the Minister implied that if this Bill is passed section 36 will be tightened up in such a way that no-one similarly charged will be able to escape as did the man who was recently prosecuted.

The Hon. A. F. Griffith: Parliament thought it did that in 1948, but it was found that that was not so.

The Hon. E. M. HEENAN: The Minister also told us that this weakness was known to the authorities, but nothing was done about it; in the hope, presumably that no-one would exploit it or get to know of it. The position as far as the gold detection staff is concerned, however, is not altogether so difficult or hopeless as it might appear; because we had it from the Minister that even if we do not tighten up section 36 the police can still prosecute under a section of the Police Act.

The Hon. G. Bennetts: Section 69 is it not?

The Hon. E. M. HEENAN: However, apparently that is not quite satisfactory to the Police Department, because the penalties under the Police Act are vastly more moderate than those provided under the Gold Buyers Act. The Police want to amend the Gold Buyers Act so that the severe penalties contained in that Act can be used. So, as I said at the opening of my remarks, this short and comparatively innocuous measure gives us an opportunity to have a look at the principal Act; and it has many remarkable features which it might be worth while to recount to members because the Act is unique in many ways.

For instance, section 36, with which we are dealing, provides that any person who has gold or gold matter in his possession or control may be required by any member of the Police Force to satisfy him that such person came lawfully by the same or that the same was obtained from the claim, place, or works mentioned in the entry signed by him; and if he does not so satisfy such member of the Police Force, proceedings for an offence under the Act may be taken against him. That is a very far-reaching power to grant to members of the Police Force. Presumably 40 years ago there were goings-on in the goldmining industry which must have been serious enough to persuade Parliament to pass such an enactment, because it goes beyond one of the fundamental principles of British law and transgresses it. If a person is found with gold in his possession or control —and this is a very wide expression—a member of the Police Force can call on him to satisfy the police that he came by it lawfully.

The Hon. A. F. Griffith: I suggest that is the case with all charges of unlawful possession; even in the case of a bag of sugar, for example.

The Hon. E. M. HEENAN: Not exactly. The policeman, of course, might be a reasonable, or an unreasonable individual; but on his say-so the person found with the gold is brought before a magistrate and charged with an offence. There again he must satisfy the magistrate. In other words he has to prove a negative, which is an extremely difficult thing to do. He has to prove his innocence. That is one remarkable feature about this legislation.

The second feature which I consider remarkable, and to which I would like to draw the attention of members, is the penalties provided. For a breach of section 36 a man can be fined up to £300, or be committed to imprisonment with or without hard labour for a term of not more than two years; or to both such penalty and imprisonment. That covers a man who, for instance, has no previous conviction and who may be found in possession of gold worth very little in value.

So the unique aspects of the Act are emphasised in the matter of penalties. I consider it is a very far-reaching penalty; particularly when the man must prove his innocence, and is not given the benefit of any doubt. Another remarkable aspect is that these cases are dealt with summarily before a magistrate—a single magistrate. The person concerned has no right of trial by jury.

The Hon. A. F. Griffith: Does not the man become committed for trial?

The Hon. E. M. HEENAN: No; not under the Gold Buyers Act. He invariably gets sentenced to gaol under the charge of having gold in his possession.

The Hon. A. F. Griffith: Is he not then heard by a criminal court?

The Hon. E. M. HEENAN: I must not digress from my train of thought. The position is as I have explained it. I must say that in recent years—at any rate during the regime of Inspector McLernon, the Act was policed, I am sure, with honesty; but there undoubtedly have been cases in the past where men have been framed, and where rackets have been carried on with all the unfortunate aspects that are generally tied up with these things. I think the days have gone when gold was easy to steal; and when free gold was easy to take out of the mines. It is very doubtful to me whether we are justified in retaining on our statute book this Act which goes such a long way towards transgressing some of the fundamental principles of the law which we hold so dear.

In view of the fact that if this short Bill is defeated the police can still proceed to charge offenders under the provisions of the Police Act, I am going to oppose it. I do not think any harm will eventuate. Because many of the provisions of the Act are distasteful to me and because I think the time has arrived when they should be revised, I feel I cannot be a party to supporting the passing of the measure now before us.

THE HON. G. BENNETTS (South-East) [5.39 p.m.]: I am of the same opinion as Mr. Heenan. Some years ago I tried to move an amendment to the Gold Buyers Act relative to the onus of proof on the individual. That amendment was defeated. At the present moment the onus is placed on the individual to prove his innocence; and that is against the principles of British justice.

There is no doubt that at the moment we have a very efficient gold stealing detection staff. But things, of course, could change; and if somebody else were appointed who happened to be unfair in his dealings, it could be very easy for him to frame anybody he disliked. This has been pointed out by Mr. Heenan, and I do not think there can be any doubt about the possibility of its happening.

It is quite possible that certain material could be placed in a person's car—not necessarily by the official concerned—with a view to harming a particular person. In my opinion the fines and penalties under the Police Act are quite sufficient; and if the proposed penalties are incorporated into the Gold Buyers Act, they would be made five or six times as severe, which, to my way of thinking, would be unfair. There is ample provision for people to be dealt with under the Gold Buyers Act at the moment; and I would not like any further penal provisions incorporated into that legislation. As I have said, gold matter could be placed in a person's car and he would have to prove his innocence. That, to my way of thinking, is against all the principles of British justice; and I oppose the Bill.

THE HON. J. D. TEAHAN (North-East) [5.42 p.m.]: I intend to oppose this Bill, mainly for the same reasons that have already been outlined by previous speakers. At the moment personal possession of gold-bearing material can be dealt with very severely. As has been stated several times already, this is one of the few cases where the onus of proof is placed on the individual; it is left to him to prove his innocence.

The amendment wishes to add the words "gold matter." According to the Minister's definition the other day, this could include copper plates, slags, battery refuse, concentrates, precipitates, sands, slimes, etc. This means that if a person is in possession of any of the above-named materials he can be charged. It is possible that he might have sands or slime quite innocently on his premises; but he could still be charged. I think the provisions of the Act are quite wide enough, and severe enough, without adding anything to them. In order to register my dislike for the existing Act, I intend to vote against the amendment contained in the Bill.

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [5.44 p.m.]: I must say I am more than a little surprised to find some of the Kalgoorlie members opposing a Bill of this nature. I can understand, of course, that these members would want to have a close look at the matter because it affects very much the circumstances of certain people in the areas which they represent.

But does the point of view put forward by Mr. Heenan bear close examination? The Gold Buyers Act was first introduced into this House approximately 40 years ago; and later, when some amendments were proposed—I had it the other day, and I was trying to find it again—Mr. Bennetts said he thought the Act was watertight. That caused me to interject when Mr. Heenan was speaking and say that there was a time when we though it was watertight.

What does this Bill do? It merely seeks to clarify a situation for which Parliament thought it had provided some years before. Mr. Heenan said that a person could be brought before a magistrate merely at the will of some policeman. That is perfectly true; but let us get the Police Force in its right perspective and recognise that in the majority of cases its members are reputable citizens who have been trained to do a job; and they carry out their duties in a manner that befits them.

The Hon. E. M. Heenan: You do not have to make judges of them.

The Hon. A. F. GRIFFITH: We are not making judges of them, any more than they have been under the Gold Buyers Act for forty years or more.

The Hon. E. M. Heenan: That is so.

The Hon. A. F. GRIFFITH: This condition has been in the Gold Buyers Act; there is a condition in the Police Act in regard to the stealing of gold; and there is a condition in the Criminal Code in regard to the stealing of gold.

The Hon. J. D. Teahan: It is the onus of proof that I do not like.

The Hon. A. F. GRIFFITH: The honourable member should stick to that point and not say that the passing of this Bill will make the position worse. It is not going to alter the situation as it exists in the statute at the present time. It is only going to make the position a little clearer, because of the case I quoted where a man in Kalgoorlie was able to get out of an offence. Now Mr. Teahan says that a man could innocently have some gold-bearing matter—some slimes—in his possession and be charged.

The Hon. J. D. Teahan: It is possible.

The Hon. A. F. GRIFFITH: Yes, it is possible; and not only in the case of gold stealing. It is also possible in other ways. How often has the honourable member known of charges that have been made by one person against another, and those charges were not true?

The Hon. J. D. Teahan: I am talking about slimes. They look innocent to me. but a policeman could think they contained gold.

The Hon. A. F. GRIFFITH: I do not deny that, but the point is this: when such a person is charged, he is usually charged by the gold detection staff because, from past experience, they have reason to believe perhaps, he may be guilty of an offence of that nature. I do not think anybody who is innocent, or anybody who conducts himself within the meaning and scope of the law has any more to fear from this amendment than he has had in the past under the Gold Buyers Act, which was introduced in 1921.

Stealing gold is a very serious matter, and it is extremely difficult to detect. For the past 40 years the onus of proof has been on the person concerned, as it is very difficult for the police to find out where gold originated from. The members from the goldfields will, I am sure, know better than I do that the man who sets out to steal gold usually does so very deliberately and in such manner that he hopes the theft will not be discovered. He resorts to all sorts of practices to ensure that his theft will not be discovered by the police. But if he is found in possession of gold—bearing in mind that a person licensed to deal in gold is the only person who should have gold in his possession—he is asked his name and where he got the gold; and the policeman, if he thinks the explanation is not satisfactory, can charge the man with being in the unlawful possession of gold. He can also ask the man to give an account of himself before a police magistrate.

My knowledge of the law is remote in comparison with Mr. Heenan's, as he is a practising solicitor; but I would suggest to the honourable member that the same thing could apply to a man who walked down the street with a rug under his arm. If that man were a bit of a hoboe and known to the police, a policeman could go along and say, "Where did you get that rug from?" If the man could not give a satisfactory explanation, he would be charged with stealing it provided the policeman thought there were reasonable grounds for such a charge. Is that the case, Mr. Heenan?

The Hon. E. M. Heenan: More or less.

The Hon. A. F. GRIFFITH: It is my crude layman's way of expressing it. That rug, whether old or new, belongs to somebody; and the gold belongs to somebody. Gold is of much more value than a rug; and the man who sets out to steal gold hopes to do it in such a manner that his theft will not be discovered. Therefore, I think it is incumbent upon us to give the police all the opportunities we can to keep gold stealing down; although I admit there has not been very much in this State for a considerable period of time.

It is no good Mr. Bennetts saying—and in 1948 he said that he thought the Act was watertight—that because someone has a set on somebody else, that person can plant something in the other person's car and as a result have him unjustifiably charged with a theft. That can be done with anything at all; and there is no doubt, I suppose, that rackets—if I may

use that term—have been worked and people have been charged with doing things of which they were not guilty.

The practice of British justice over the years has been somewhat imperfect, but I do not know anything that is better than it. We have not been able to arrive at anything better than the British justice we have known over the centuries; and there is nothing untoward about this Bill. It purely tidies up a legal state of affairs which the police discovered in a recent case. It was brought about because the words "gold matter" were not in the Act. Because of this, a man found that he was able to get out of a charge.

As Mr. Heenan said, the matter can be dealt with under the *Police Act*, but the penalties in that Act are not as severe as those in the Gold Buyers Act. The Bill is merely to tidy up something which was missed when the Act was previously amended. At the time, we—whoever comes under the scope of the word "we"—did not do it as correctly as we thought we were doing it. At that time, Mr. Bennetts said the Act was watertight. Well it was not. I am sure that in years to come we will find ourselves in the position where we will have to introduce legislation to tidy up some of the things which the legislators of the day let go through. I do not see any reason why any member should oppose a small Bill of this nature

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

Ayes—15.

Hon. C. R. Abbey	Hon. G. C. MacKinnon
Hon. N. E. Baxter	Hon. R. C. Mattiske
Hon. J. Cunningham	Hon. J. Murray
Hon. A. F. Griffith	Hon. S. T. J. Thompson
Hon. J. G. Hislop	Hon. J. M. Thomson
Hon. A. R. Jones	Hon. H. K. Watson
Hon. L. A. Logan	Hon. F. D. Willmott
Hon. A. L. Loton	*(Teller.)*

Noes—11.

Hon. G. Bennetts	Hon. H. C. Strickland
Hon. J. J. Garrigan	Hon. J. D. Teahan
Hon. W. R. Hall	Hon. R. Thompson
Hon. E. M. Heenan	Hon. F. J. S. Wise
Hon. R. F. Hutchison	Hon. W. F. Willesee
Hon. F. R. H. Lavery	*(Teller.)*

Pair.

Aye.	No.
Hon. C. H. Simpson	Hon. E. M. Davies

Majority for—4.

Question thus passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. A. F. Griffith (Minister for Mines) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 36 amended—

The Hon. A. F. GRIFFITH: Surely, there must be some misunderstanding about the intention of this Bill. If members would be good enough to refer to section 36 of the Act, they will find that the section is in two parts. In the first part it refers to the words, "gold or gold matter"; and we find these phrases, "Any person who offers gold or gold matter for sale"; "by whom the gold or gold matter was bought," and so on. The second part of the section states, "The said gold if proved to be or to have been in the possession of the defendant"; and this second part does not include the words, "or the said gold matter."

The Hon. H. K. Watson: It is almost a typographical error.

The Hon. A. F. GRIFFITH: That is all it is: it is almost a typographical error; yet we would be led to believe that I am asking the House to agree to something dreadful. I assure members that is not the case. All that members have to do is to read the section for themselves. As a result of this amending Bill, the second part of section 36 of the Act will read, "the said gold or the said gold matter if proved to be or to have been in the possession of the defendant," and so on.

The Hon. E. M. HEENAN: I thought I had gone to some pains, in my second reading speech, to emphasise a few of the unusual features of the legislation with which we are now dealing. I repeat that my considered view is that the Act has served its purpose, and the time has now arrived when serious consideration should be given to making some radical revisions of the extreme provisions contained in the Act—provisions which run contrary to generally accepted principles of justice.

I feel we have the opportunity of registering a protest against certain features of the Act which are due for reform. I am speaking for myself, of course. The Minister has told the House that the Act, as it now stands, does not mean that offenders are going to go free. The police have an alternative method of prosecuting; and, to my way of thinking, they should proceed along those lines. Their objective can be achieved in this way.

The Hon. A. F. GRIFFITH: The Bill does not seek to open up the whole of the Gold Buyers Act, but to rectify one small error that, apparently, was not noticed before. However, if the honourable member wishes to introduce some general amendments to the Gold Buyers Act they will, of course, receive the consideration of this Chamber. But that is an entirely different matter. This Bill is purely to tidy up section 36—to do no more and no less.

The Hon. J. M. A. CUNNINGHAM: It appears to me that this slight amendment should be considered in the form of a consequential follow-up of a previous section of the Act.

The Hon. A. F. Griffith: It might have been at the time; but we can hardly do that 13 years later.

The Hon. J. M. A. CUNNINGHAM: I consider it most important that all laws should be concise and clear. That is not

the case in this instance. I do not think that any law should be too technical to understand; or such that it could be construed to permit the guilty to escape or the innocent to suffer. I think this amendment will rectify the position.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Sitting suspended from 6.8 to 7.30 p.m.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines): I move—

That the House at its rising adjourn until Thursday, the 14th September.

Question put and passed.

House adjourned at 7.32 p.m.

Legislative Assembly

Tuesday, the 12th September, 1961

CONTENTS

The SPEAKER (Mr. Hearman) took the Chair at 4.30 p.m., and read prayers.