Question (Mr. Holmes's motion) put and passed.

ADJOURNMENT.

The House adjourned at 11·32 o'clock, until the next day.

Legislative Council,

Thursday, 24th September, 1903.

THE PRESIDENT took the Chair at 4·30 o'clock, p.m.

PRAYERS.

PAPER PRESENTED.

By the COLONIAL SECRETARY: Regulations (amended) under Conciliation and Arbitration Act.

Ordered, to lie on the table.

OBITUARY—HON. B. C. WOOD.

THE PRESIDENT: I have received the following message from Mrs. B. C. Wood:—

Will you convey to the members of the Legislative Council my sincere thanks for their kind sympathy in our recent sad bereavement as expressed in your letter.

RETURN—FREMANTLE HARBOUR, MR. LESLIE'S REPORT.

On motion by the Hon. C. SOMMERS, ordered "That the report of Mr. W. Leslie on the Fremantle Harbour Trust, together with all plans and papers dealing with the method of handling goods and cargo referred to in said report, be laid on the table of the House."

TRANS-AUSTRALIAN RAILWAY ENABLING BILL.

Read a third time, and *passed*.

ADMINISTRATION (PROBATE) BILL.

IN COMMITTEE.

Resumed from 22nd September.

Clause 14—Interest of husbands and wives in estates of the other of them:

HON. F. M. STONE moved that the following be inserted as Subclause (*a*): "When there is no issue surviving, to the whole." In a case where there was no issue the husband would, by this amendment, succeed to the whole of the wife's property, or the wife be entitled to the whole of the husband's property, in the event of the decease of the other of them, and there would be no necessity for the Crown stepping in. As the clause stood without amendment the husband or wife would only be entitled to £500 of the estate, and to only one-half of the balance. Should there be no relations the Crown would get the other half of the balance, or, should there be kin, it might go to distant relations.

THE COLONIAL SECRETARY: The clause had been postponed to allow him to consult the Crown Solicitor. He found the effect of the proposed amendment would be that parents or brothers and sisters and other collateral relations of the person dying intestate would be absolutely precluded from having any share in any estate over £500; but that would not be right.

HON. F. M. STONE: His amendment proposed to strike out the £500, and give husband or wife the whole of the estate.

THE COLONIAL SECRETARY: It was exactly that point one could not agree with. The rights of parents and brothers and sisters should be held intact. The Crown Solicitor knew no law existing anywhere by which these people were debarred from benefiting from an intestate estate of their relatives. It would not be wise under the circumstances to pass the amendment. The wife had been placed by the Bill in a better position than she was before, and parents, brothers, and sisters, and next of kin following them were enabled to benefit from an intestate estate. That was only fair. He was not prepared to

take away this right, especially from parents and brothers and sisters.

HON. F. M. STONE: The present law was that the husband was entitled to the whole of the wife's property, and it was proposed to amend that by allowing the husband to take only the first £500 and half of the balance. His amendment certainly went farther, and put the wife on the same footing as the husband. That was that if either of them died, the other was entitled to the whole. There might be a few cases where parents of a husband or wife might be living, but in many cases the money went away to a distant relation—a cousin or sometimes a brother, of the wife or husband, who had been separated from that relative for years and years, whereas the husband and wife had been in this State for years, and had together accumulated the money. They were the two who had worked for this money, and under this Bill it was proposed to take away from the wife or from the husband that half share and give it to those distant relations outside the State altogether.

THE COLONIAL SECRETARY: They might not be outside the State.

HON. F. M. STONE: That meant that money or estate which had been accumulated by those two would go outside the State altogether—perhaps to England, or America, or somewhere else. If what he (Hon. F. M. Stone) proposed were passed, it would still be competent for the husband or wife to make a will, if he or she desired to do so. If the clause as it stood were passed, many husbands would be very chary about placing property in the names of their wives, because if the wives happened to die before themselves, those husbands would lose the half share. He could point out scores of cases where money had gone to distant relations.

THE COLONIAL SECRETARY: One wished the hon. member would not always insist on putting absolutely the most extreme case possible. The hon. member had dealt with these sisters and brothers as always being in extremely remote and distant places. That was not altogether fair. It was quite possible that a man might die intestate; perhaps he might be a wealthy man; perhaps he might be accidently killed, and not have had time to make a will. This man might have sisters and brothers, and even parents living, if not in poverty, dependent upon him. He was putting a supposititous case, but it was a case which had quite as much right to be considered as that put by the hon. member. Were we then to debar those persons from benefiting by the property which their near relative had amassed? It would be manifestly unfair. Farthermore, there was the precedent he had already quoted. He was informed by the Crown Solicitor, and he did not see any reason to doubt the source of that gentleman's information, that there was no law in any country where this hardship was inflicted upon collateral relations of deceased persons dying intestate. The Committee should support the clause as it stood.

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

Ayes	...	...	9
Noes	...	...	7
Majority for	...	...	2

AYES.	NOES.
Hon. W. T. Loton	Hon. J. D. Connolly
Hon. W. Maley	Hon. J. W. Hackett
Hon. B. C. O'Brien	Hon. S. J. Haynes
Hon. C. A. Piesse	Hon. A. G. Jenkins
Hon. G. Randell	Hon. W. Kingsmill
Hon. C. Sommers	Hon. J. A. Thomson
Hon. F. M. Stone	Hon. R. Laurie (*Teller*).
Hon. J. W. Wright	
Hon. Z. Lane (*Teller*).	

Amendment thus passed.

HON. F. M. STONE moved as a farther amendment that the words "and also to one-half share of the residue where there is no issue surviving," in line 3 of Subclause (*b*), be struck out. If the amendment were passed, where the property was worth over £500 the husband or wife would first get £500, and the balance would be divided thus:—One-third to the husband or wife, and two-thirds among the children.

THE COLONIAL SECRETARY: The amendment would inextricably mix up the claause.

Amendment passed.

HON. F. M. STONE: Subclause 2 should stand. The case had happened of a husband and wife dying within a few hours of each other, and therefore the subclause was necessary. He moved that Subclause 3 be struck out. In the first place there was no provision made here as to how the value should be arrived at, and in the second place if this clause were left it would, it seemed to him, be

construed this way: that supposing the husband were left and there were, say, five children, the husband would be entitled to one-third of the property, and the five children to two-thirds of it. In the case where there was land, the children might say to the parent, "The land is worth £1,000. You are entitled to a third of it. Take your share or £300." There was no provision by which the matter could be referred to arbitration if disputed. It seemed to be left entirely in the hands of the other persons entitled to the property. They could say to the husband or wife, "We value it at so much, and you take your third of it."

HON. A. G. JENKINS: By Subclause 1 the whole of the estate was to be given to the surviving parent; but by Subclause 2 they got first of all £500 and a share of the balance. It was absurd to have these distinctions.

HON. F. M. STONE: One case dealt with a parent having no issue, and the other case dealt with issue. He was quite prepared to leave the whole estate to be divided, one-third to the husband or wife and two-thirds to the children.

HON. A. G. JENKINS: It was no use carrying out in one instance the principle of giving the husband or wife the lot, and in another of giving either of them £500 and a share of the balance.

HON. G. RANDELL: The inclusion of the word "such" before issue, when no issue had been referred to in the clause, seemed to be superfluous.

HON. F. M. STONE: That word could be struck out. It only needed a verbal alteration to the clause. The principle involved in the clause provided that in an estate of £1,000 with one child the husband or wife would get about £800 and the child about £200.

Amendment (to strike out subclause) put, and a division taken with the following result:—

Ayes	...	...	9
Noes	...	...	6
Majority for	...	...	3

AYES.	NOES.
Hon. W. T. Loton	Hon. J. D. Connolly
Hon. W. Maley	Hon. S. J. Haynes
Hon. B. C. O'Brien	Hon. A. G. Jenkins
Hon. C. A. Piesse	Hon. W. Kingsmill
Hon. G. Randell	Hon. R. Laurie
Hon. Sir George Shenton	Hon. J. A. Thomson (*Teller*).
Hon. C. Sommers	
Hon. F. M. Stone	
Hon. J. W. Wright (*Teller*).	

Subclause struck out, and the clause as amended agreed to.

Clause 50 — Power of executor or administrator as to debts:

HON. F. M. STONE moved that the words "require proof of any debt or claim or" be prefixed to Subclause (*a.*). Under the amendment an administrator or executor could demand a declaration or affidavit from a person putting in a claim against the estate.

THE COLONIAL SECRETARY: If the hon. member would add the words "of statutory declaration," the amendment could be accepted.

HON. F. M. STONE: That could be done.

HON. A. G. JENKINS: There was no occasion for the amendment. The clause provided that debts or claims should be paid on any evidence that was sufficient. Why should the executor be forced to accept evidence in a certain way? An administrator would naturally not pay unless he had sufficient proof; probably he would require proof by statutory declaration.

HON. S. J. HAYNES: The section could be preferred without alteration. Should the amendment be carried it might occasion considerable cost to an estate. In most cases an administrator might require statutory declarations, but he should not be compelled to require them.

Amendment negatived and the clause passed.

Postponed Clause 52—Court may appoint district agents:

HON. F. M. STONE moved that the clause be struck out. In the first place he did not think it was necessary, and in the second place he was of opinion that it would lead to a lot of litigation, and a lot of delay and trouble would be incurred by reason of it. The delay in sending papers down to the Supreme Court here was very little indeed, but if we had papers made up by these local agents, and they were sent down, it was pretty certain that through mistakes they would be going backwards and forwards. Even if one pencilled documents giving directions how to sign, how to make affidavits, sometimes the papers went backwards and forwards three or four times before one could get them correctly signed. In some cases people

would not sign even where they were told to, but they signed all over the place. Just fancy a will being put before a local Court clerk. What did local Court clerks know about the rules and regulations of the Probate Court? One would send the papers to the Court; the Court would send them back again requiring so and so; the papers would be sent down wrong again, and all that expense and trouble would be incurred. In England there were District Court registrars; but a District Court registrar was a duly qualified person, a man well up in the law of probate and administration; and the system prevented an accumulation of work in the office of the principal registrar. Here, however, the average number in a year was about 320 probates and administrations throughout the State. In his opinion that was very little indeed for any accumulation of work on the principal registrar, and there was no difficulty whatever in getting matters through the principal registrar here in the Supreme Court in Perth. What was proposed would only lead to confusion and more costs.

THE COLONIAL SECRETARY: It was to be hoped that members would not support the amendment, which, in his opinion, would put a great injustice upon country districts in this State. Furthermore, what was proposed was the law not only in England—where perhaps the arguments the hon. member had used about district Courts might have some weight—but it was the law also in Victoria and New South Wales. He was not going to say that the Government officials in the country districts of Western Australia were afflicted with any greater lack of intellect than those in places where the law worked satisfactorily.

HON. F. M. STONE: Who were appointed in Victoria?

THE COLONIAL SECRETARY: This clause provided that the Supreme Court could appoint certain persons, and he took it that the Court was in a proper position to arrive at an estimate of a man's abilities or disabilities. The clause was purely permissive. In order to meet the wishes of the hon. member he was prepared to make the estates to which this would apply even smaller than at present proposed, by striking out "five hundred" in the next clause with a view of inserting "three hundred," which was the original intention of the Government. It would be a great injustice upon all the country parts of Western Australia to force persons practically to come to Perth to obtain probate.

HON. S. J. HAYNES: This clause in a State like Western Australia was unnecessary, and he was sure that if it were passed the public would pay the piper. Apparently there was a determination on the part of the Government to over-legislate for the people. There was a lot of machinery here which was really not requisite. It had been suggested by the Colonial Secretary that there was a desire to bring people up to Perth. The present law, however, did not bring people up to Perth, and in fact they never came.

THE COLONIAL SECRETARY: They either had to come to Perth or employ someone here.

HON. S. J. HAYNES: There was no extra expense. The papers were simply prepared and sent to the Supreme Court and probate granted. He knew that in three States, including this, the Supreme Courts were exceedingly careful in looking at wills and seeing that everything was in order. It required special skill to do so. If district agents like these were to be appointed in Western Australia to deal with estates even up to £300, it would lead to a large amount of litigation, and the public would not be so well served as at present. He hoped the clause would not be supported. It was not as though we had large centres where we could afford to pay skilled men who could deal with these cases in a proper manner.—[MEMBER: Kalgoorlie.] —He admitted Kalgoorlie was a large centre. That was one instance. There was really no necessity at all for this clause. Personally he hoped that, in the interests of the public, clauses of this nature would not be passed at the present time.

HON. F. M. STONE: It was said that cases came to Perth, but it was not so. Take Kalgoorlie. A person there could go to a solicitor, the documents were drawn up, sworn to, and sent down to Perth, and in three days one got them back again. Clauses 52 and 53, 53

especially, provided that the papers should be made out before a district agent, and then in the case of every estate under £500 a district agent had a right to grant probate. Under Clause 83 any person might lodge a *caveat* with the Master. Supposing one lodged his *caveat* in Perth, a man might go to the district agent, who knew nothing about it, obtain probate of the will, and get the money. How was a district agent at Derby, Roebourne, or Wyndham to know that a *caveat* had been lodged? The agent granted probate straight away, and the man got hold of the money and property, and afterwards it was found that there was a *caveat*. He knew the difficulty there was with reference to *caveats* when we had the Mining Act before us. We found then, when it was proposed to have district registries, how difficult it was. *Caveats* could be lodged in Perth and telegrams had to pass between the places. There was a whole lot of expensive machinery incurred in consequence. In those days it was done to assist the goldfields, and it was found absolutely necessary to do it. But there was no necessity for it in this case. There was no immediate hurry for getting this probate. One could have all the papers he wanted as probate would not be granted for eight days to start with.

HON. G. RANDELL: In no case was probate granted unless the Master certified.

HON. F. M. STONE: In cases of over £500 the papers could be made up by the district agent and forwarded to the Master, but where the estate was under £500 one could go to the district agent himself and get probate. A *caveat* might be lodged in Perth, but meantime the person trying to be a rogue might get hold of the property in the district in which the deceased died. There would need to be a registrar in all districts with whom *caveats* could be lodged and, though they had to be sent to Perth, if probate was applied for in Perth, one would have to see that no *caveat* was lodged with the district registrar, and so there would be a whole lot of trouble. It certainly was not possible to lodge *caveats* under the Bill, yet the framer of the Bill allowed the agent to issue probate.

HON. S. J. HAYNES: What seemed to impress members was that in a sparsely-populated State it was convenient for a person to go to an agent and get probate. That might be so, but it would not be cheaper. At present papers in connection with probate applications were made up by skilled persons, but by the Bill the public would have to lay similar papers before the district agent, and the agent, though the Bill said he could grant probate after getting the papers, would have to transmit them to Perth. The Master would then check them and send them back again. There would be considerable delay, and the cost would be increased.

THE COLONIAL SECRETARY: One was sorry to see there were so many opponents to anything tending towards decentralisation, and so many members persisting in the point that there would be ignorance on the part of agents. In the matter of a *caveat* no hardship was inflicted on an estate if the Master notified the district agent when it was lodged.

HON. F. M. STONE: There was nothing to compel him to do that.

THE COLONIAL SECRETARY: His own common-sense would compel him to do it. Acts to some extent depended upon their administration. Some members seemed to think that the persons administering acts lacked common-sense altogether.

HON. S. J. HAYNES: What boon was conferred on the public?

THE COLONIAL SECRETARY: At present the public in different parts of the State had to employ people in Perth to see about getting probate for them. By the Bill this need not be done. He had been informed that a large number of small estates were swallowed up in the expense of obtaining probate. For that reason the clause had been provided. It could not result in harm and must result in good. Seeing that he was willing to reduce the amount to £300, the clause should not be struck out.

HON. F. M. STONE: If it was necessary in the Goldfields Act to deal with *caveats* so as to prevent trouble, surely it was necessary in this Bill. Was the Master to telegraph to Roebourne every time a *caveat* was lodged? There was nothing in the Bill to compel him or to inform him to do so. The Bill should provide that *caveats* lodged should be at

once forwarded to the Master, or forwarded by the Master to the agent. It was necessary to do this by the regulations under the Goldfields Act, and he believed it was provided in the Act itself. There was no provision in this Bill compelling the district agent to ascertain whether a *caveat* had been lodged in Perth, and there was no provision compelling the Master to send information to the agent. It simply gave the agent power to grant *caveats*.

THE COLONIAL SECRETARY: There were several other omissions in the Bill. For instance it did not provide for the time the Master should be in his office, but power was given to make regulations prescribing the duties of all persons employed in the administration of the Act. Such an obvious point as that raised by Mr. Stone would not be overlooked in framing regulations. Every power would be given to the Master to see that no calamity of the kind predicted occurred. It was not necessary in the least degree to specifically mention in the Act a point so obvious.

HON. F. M. STONE: It was well known in law that regulations could only carry out an Act and could only follow the provisions of the Act. There was no provision in the Bill for making regulations for *caveats*. The Bill only provided that one could lodge a *caveat* at the Supreme Court.

THE COLONIAL SECRETARY: That was certainly the case.

HON. G. RANDELL: The object of the clause was to simplify matters, and afford facilities in outlying districts, which was very desirable. The only argument against the clause was that of ignorance of agents, but the Government, if they could not find a suitable man in a district, would make no appointment. The clause certainly deserved a trial, and it was in the interests of the people outside the centre of population.

Clause put and passed.

Clause 53—Where estate below £500 the Master or district agent may act:

HON. F. M. STONE: One could not see why the Master should not have power to act in estates up to £500, but, if the agent were to have the power, the amount should be reduced to £300.

THE COLONIAL SECRETARY: Members had passed the last clause on condition that a reduction should be made from £500 to £300. He moved that the word "five" be struck out and "three" inserted in lieu.

Amendment passed.

HON. F. M. STONE: Power was given to the agents to make up papers and send them to the Master, who would see that they were in correct form; but the clause went farther and said that, outside 30 miles from Perth, not only could the agent make up the papers but that he could issue probate. The clause said: "In all cases where a person dies leaving property not exceeding five hundred pounds in value application for probate or administration may be made direct to the Master; or if the fixed abode of the deceased at the time of his death has been more than thirty miles from Perth, then to the district agent." That was giving power to a district agent, who might be a clerk of a local Court, to grant what a Judge had to grant at the present time, and there was no more important branch of the profession than that of wills. A Judge was most particular in dealing with wills. It was proposed by this clause with reference to estates under £500 to take away from a Judge that power which he referred to, and put it into the hands of this agent because the person who died happened to reside 30 miles away from Perth. It would be a most dangerous power, and would lead to no end of litigation, and to persons who ought to derive benefit from those estates obtaining no benefit whatever. He prophesied that if this clause were passed many cases would arise where probate would be granted to persons who were not entitled to it, and where probate would be granted where it should never be granted at all. It took a student some considerable time with experience in a solicitor's office to know the intricacies of probate law and will law, and one had to keep himself continually read up.

HON. G. RANDELL: A district agent was not permitted to issue probate.

HON. F. M. STONE: Yes. [MEMBER: What about Clause 55?] As he read the proposal, in all cases over £500 a district agent could make up these papers and forward them to the Master, but in cases under £500 the Master could receive an application for probate and

grant probate. Then if a person died beyond 30 miles from Perth the district agent could receive applications for probate; that was granting probate.

THE COLONIAL SECRETARY: The papers had to go to the Master.

HON. F. M. STONE: In cases over £500 the whole of the documents had to be sent to Perth, and if in cases under £500 the papers had to be sent, what did we want the difference between the two for?

HON. W. MALEY: Applications might be referred back by Clause 56.

HON. F. M. STONE: If a district agent had power to receive applications for probate, he had power to grant probate.

THE COLONIAL SECRETARY: There was absolutely nothing in this clause which gave a district agent power to grant probate. These district agents were appointed for the convenience of the public. They were appointed in order that they might act as honorary advisers of the public in those places, that they might take such documents and adopt such steps as were necessary for the granting of probate by the Master after examination in cases under £500, or, rather, £300, as the amount in the clause was altered, and by a Judge, he understood, in cases over that sum. That was in order to save the public in the outlying districts of Western Australia the trouble and expense they were at present put to. In Subclause 2 of Clause 55 it was explicitly mentioned that the Master should grant probate and should forward to the district agent what was practically a communication showing he had granted it, for him to hand it to the legatees in the district where he was acting. This was thoroughly safeguarded. Probate could not be granted unless it was proved to the satisfaction of the Master that the proper necessary steps had been taken.

HON. C. SOMMERS: The word "application," in his opinion, did not really mean that the agent would have the right to grant probate. When he left Victoria these district agents had been appointed in order that poor people in outlying districts should have the aid of such agents in making out their papers, and then forwarding them to the Master, who was the sole and final arbiter as to whether the papers were sufficiently in order. And nothing could be done without the Master's consent. As far as he could see, we were safeguarded in this Bill.

HON. G. RANDELL: If the words in the last two lines of Clause 53 were the only ones referring to this question he would be quite willing at once to admit the argument of Mr. Stone, but when we found that those words were entirely controlled by Clause 54, the hon. member's argument was not worth considering. It appeared to him very clear that all a district agent could do were those things set forth in Clauses 54 and 55—to receive fees, affidavits, documents, and so on; and then to transmit them to the Master, who would go thoroughly into the question, and in cases under £300 the Master would issue probate under the seal of the Court. He thought the hon. member had misread the purport of these clauses as a whole.

Amendment negatived and the clause as amended agreed to.

Postponed Clause 111—Duty to be deducted from beneficial interests under will or settlement or deed of gift:

THE COLONIAL SECRETARY: It had been urged that the phraseology of this clause was not usual. The clause, however, was taken *verbatim* from the Duties on Deceased Persons Estates Act, 1895. The same language was used in the Victorian Administration and Probate Act, 1890, Section 103. Also in the New South Wales Act, 1898, the same phraseology was used. From this he thought it might be argued that the phraseology was fairly usual, and therefore he did not think that any alteration in the phraseology was necessary.

Clause passed.

Bill reported with amendments.

Leave given to sit again on receipt of message from the Legislative Assembly.

Bill returned to the Legislative Assembly with suggested amendments.

ADJOURNMENT.

The House adjourned at two minutes past 6 o'clock, until the next Tuesday.