Legislative Council.

Thursday, 28th November, 1912.

The PRESIDENT took the Chair at 3.0 p.m., and read prayers.

PAPERS PRESENTED.

By the Colonial Secretary: 1, By-laws under the Metropolitan Water Supply, Sewerage, and Drainage Act. 2, By-law No. 65 under the Government Railways Act.

QUESTION—SAVINGS BANK, STATE AND COMMONWEALTH.

Hon. M. L. MOSS (without notice) asked the Colonial Secretary: Is it the intention of the Government to take immediate steps to remove the Savings Bank business now transacted for it by the Commonwealth Government to some State department? I asked the question on the 30th November, 1911, and the Colonial Secretary replied, "The question is under consideration." Can the Colonial Secretary tell me now whether the question has yet been considered and with what result?

The COLONIAL SECRETARY: Negotiations to the present stage have been vigorously carried on and it is expected that finality will be reached within a week or two.

Hon. M. L. MOSS: I think the Minister must have his tongue in his cheek when he says that.

QUESTION—NORSEMAN-ESPERANCE LANDS.

Hon. J. W. KIRWAN (without notice) asked the Colonial Secretary: Will he lay on the Table the reports that have been received from expert officers regarding the quality of the land and also the water supply in the Norseman-Esperance district?

The COLONIAL SECRETARY: I shall have much pleasure in placing the papers on the Table on Tuesday.

QUESTION—STATE STEAMSHIP "WESTERN AUSTRALIA."

Hon. J. D. CONNOLLY asked the Colonial Secretary: What is the date on which the Government s.s. "Western Australia" sailed from England, and what was the date of her arrival at Fremantle?

The COLONIAL SECRETARY replied: Sailed from Cardiff on 20th September: arrived at Fremantle on 3rd November.

RETURN—STATE MEAT SALES.

Hon. Sir E. H. WITTENOOM (North) moved—

That a return be laid on the Table setting out a profit and loss account showing the profit of £500 on the operations of the Government on the sale of cattle on the hoof, and subsequently at a meat stall up to the 5th October, as stated by the Hon. the Premier in his Financial Statement.

He said: It is very satisfactory to us all to know that a profit has been made on this transaction, although it was one of those unauthorised expenditures that, perhaps, should not have taken place without the consent of Parliament. However, Governments are there to exercise their discretion in any direction; and as the Government thought fit to go in for this enterprise, it is satisfactory to know that it is a remunerative one; but at the same time it would be very interesting to find out how the account has been made up. I have no doubt it has been made up quite correctly, but I have been asked a great many questions outside as to the basis on which this profit has been arrived at. Therefore, I hope the House will support me in asking that this return be laid on the Table and that the Government will take steps to have it brought down.

Hon. H. P. COLEBATCH (East): I second the motion.

Question put and passed.

PAPERS—DINNINUP SCHOOL.

On motion by Hon. R. D. McKENZIE (North-East) ordered: That all papers in connection with the proposed removal of the Dinninup school buildings be laid on the Table.

BILL—MUNICIPAL CORPORATIONS ACT AMENDMENT.

Read a third time and returned to the Legislative Assembly with an amendment.

BILL—INDUSTRIAL ARBITRATION.

Message as to Conference.

Order of the Day read for the consideration in Committee of the following Message:—

> The Legislative Assembly acquaints the Legislative Council that there is a difficulty in the way of the consideration by the Legislative Assembly of Message No. 38 from the Legislative Council, in which a request is pressed. The Legislative Assembly requests a Conference with the Legislative Council or further consideration of the Message transmitted to the Legislative Assembly with a view to removing the difficulty in the way of the Legislative Assembly considering the said Message. Should the Conference be agreed to by the Legislative Council, the Legislative Assembly will be represented at such Conference by three members.

Hon. W. KINGSMILL (Metropolitan): Mr. President, before you leave the Chair, I should like to take this opportunity of asking your ruling as to whether this Message is in order and can be considered in Committee. I do so for the guidance of myself when presently, as Chairman of Committees, if you rule the Message is in order, I go into the Chair, and not only for that but in order that we may be sure that the rights and privileges of this House are being adequately maintained and adequately recognised by another place. I do not wish to unnecessarily labour the point of order upon which I wish you to rule, but I simply wish to make a brief explanation of the point. The Message to which this Message No. 54 is an alleged answer was a Message with regard to certain amendments on the Arbitration Bill, all of which the Legislative Assembly had refused to make as requested by this Chamber.

Hon. J. E. Dodd (Honorary Minister): "All of which"?

Hon. W. KINGSMILL: The Legislative Assembly refused to make all that we considered.

Hon. M. L. Moss: They agreed to the cutting out of the grading clauses.

Hon. W. KINGSMILL: We considered only the amendments which the Legislative Assembly refused to make; that is all; and the result of our deliberations was contained in a Message pointing out that we agreed to press certain amendments, not to press others, to agree to certain of their modifications and not to agree to others. The Message now received from the Assembly runs in a form which threatens to become stereotyped in this class of Bill—

> The Legislative Assembly acquaints the Legislative Council that there is a difficulty in the way of the consideration by the Legislative Assembly of Message No. 38 from the Council in which a request is pressed.

Then it goes on—

> The Legislative Assembly requests a conference with the Legislative Council or further consideration of the Message transmitted to the Legislative Assembly with a view to removing the difficulty in the way of the Legislative Assembly considering the said Message.

Now, the point of order which I make, and which I wish to have your ruling on, is whether we are justified in considering a request for a conference, not on the Arbitration Bill with which these proceedings deal, but on a matter of either constitutional law or interpretation of the Standing Orders. I think everyone in the House is desirous of a conference on this measure and expected that the Legislative Assembly would have asked for one, as

they certainly might have done without any loss of dignity and without any loss of status, not on the Standing Orders, not on constitutional law, but on the Arbitration Bill. But what do we find? We find that apparently the Arbitration Bill is the last thing of all and that, because apparently their Standing Orders have not been brought up to date in the same manner as ours—that is the sole reason for the difficulty existing—a conference is to be called, not to consider the Arbitration Bill, but to consider the state of their Standing Orders. I wish to know if in your opinion the Message is in order.

The PRESIDENT: In my opinion we must assume that a conference on the Arbitration Bill is intended from the mention of a conference. Were consideration of the Standing Orders in question that could be obtained by a meeting of the Joint Standing Orders Committee.

In Committee.

Hon. W. Kingsmill in the Chair.

The COLONIAL SECRETARY moved—

That a Message be sent to the Legislative Assembly acquainting them that assuming Message No. 54 is to be read as a request from the Legislative Assembly for a conference on the Industrial Arbitration Bill, the Legislative Council are willing to agree to such conference and that the Hon. J. E. Dodd, the Hon. M. L. Moss, and the Hon. Sir E. H. Wittenoom be appointed managers for the Council and that the President's room be appointed the place, and that 5 p.m., on Tuesday, 3rd December, be the time to receive the managers of the Assembly.

Hon. J. E. DODD seconded the motion.

Hon. M. L. MOSS: It would be better if some other member than himself were appointed to represent the Council on this conference. He acted last session very unsuccessfully as a manager on behalf of the Council and if the Honorary Minister were accompanied, he was going to say by two others than Sir Edward Wittenoom and himself, but he would speak only for himself, he thought it would be much better. With regard to the measure in respect of which a point of order had been raised by the Chairman and a ruling given by the President, the President said, in effect, that a conference had been asked for and practically the conference would be granted. He was not going to dispute that ruling, but the ordinary method of asking for a conference had certainly not been adopted in this case. The principle so far as the Legislative Council was concerned with regard to a Bill of this kind was most important. Under Section 46 of the Constitution Act Amendment Act, 1899, it was provided—

> In the case of a proposed Bill, which, according to law, must have originated in the Legislative Assembly, the Legislative Council may at any stage return it to the Legislative Assembly with a message requesting the omission or amendment of any items or provisions therein; and the Legislative Assembly may, if it thinks fit, make such omissions or amendments, or any of them, with or without modifications.

That section had been frequently quoted in this Chamber and it was a provision which did not find a place in the constitution of the Legislative Councils of a number of the other Australian States. The provision was very similar in character to the provision which enabled the Australian Senate to deal with so-called money Bills, and under it we had made a number of standing orders commencing at Standing Order 238 and ending at 245. These standing orders followed precisely the language of the standing orders of the Federal Senate which entitled us to do the various things which were indicated there. This Bill was a money Bill for the reason only that it appropriated an amount from Consolidated Revenue to provide the permanent salary for the two lay members of the court, and while he thought it was highly inexpedient to put such a provision in a machinery measure, still it was within the province of the Legislative Assembly to include that amount and the Bill was introduced in the usual way by Message from the Governor. If therefore there was any doubt about our being entitled to exercise all these rights laid down in the Standing

Orders, simply because there was an appropriation of some part of the revenue, the only thing the Legislative Council could do under the circumstances was either to swallow the Bill when it came from the Legislative Assembly and act as a mere registering machine, or drop the Bill entirely. There should be no doubt, so far as any hon. member who was a believer in the existence of the Legislative Council was concerned, that the Legislative Council should do everything necessary to uphold and maintain its privileges. It might be that some hon. member in another place might think that the Legislative Council should not exist, and that the Legislative Council should not have the right to press requests and ask for modifications, but while Section 46 of the Constitution Act of 1899 remained upon the statute-book, this House should take every available opportunity to maintain the rights and privileges it possessed under that section. He agreed, however, that the reply which had been moved by the Minister was the proper way to get over the difficulty. We were thus to a certain extent paving the way for the conference by sending a reply to the message. If the Council consisted of a number of unreasonable men and wanted to put obstacles in the way, the opportunity would have been afforded them when the message came from another place. We were standing on no ceremony, but we were showing not only to another place, but to the country, that there was a sincere desire on the part of the Legislative Council to deal fairly, honestly, and above aboard with this important question. He was quite prepared to support the motion, but he was going to ask that the Council should substitute another name for his. He moved an amendment—

That the name "M. L. Moss" be struck out and "H. P. Colebatch" be inserted in lieu.

Hon. Sir E. H. WITTENOOM: Without the slightest desire in any way to disparage the ability of Mr. Colebatch to represent the Chamber on the conference, he hoped Mr. Moss would be induced to withdraw the amendment. Mr. Moss had a thorough and familiar knowledge with the Bill and he had taken what many considered to be a very reasonable attitude; consequently his absence from the conference would be, it might almost be said, a national loss. We knew that Mr. Moss was always fair-minded, although he might have strong views, but he had a great idea of fair play and with his knowledge of the whole Bill and with his vast experience, it would be a pity indeed if he was not included as one of the members of the conference.

Hon. A. SANDERSON: The inclusion of Mr. Moss's name met with his strong approval. Mr. Moss had taken a most prominent part right through the discussion on this Bill, and when he urged that hon. member to permit his name to remain as one of the members of the conference, there was no disparagement of Mr. Colebatch. Mr. Colebatch, like himself, was one of the junior members who had recently been elected, and although it was realised that it might be inconvenient for Mr. Moss to sit on this conference to assist the Council and the country in threshing out the matter, it was to be hoped that gentleman would consent to act. Members would then be assured that the matter would be thoroughly dealt with from the point of view of the Council.

Hon. J. D. CONNOLLY: What Mr. Moss had said met with his support, and he even would go further and suggest that neither Sir Edward Wittenoom nor Mr. Moss should act as managers on this occasion.

Hon. Sir E. H. Wittenoom: I am quite agreeable to remain off it.

Hon. J. D. CONNOLLY: Probably there were no more competent men who might be chosen to act with the Honorary Minister on the conference than the hon. members named. They knew more about the Bill perhaps than anyone else, but that was not the point. The point was that last year we had a conference and the same three gentlemen constituted the managers of the Legislative Council and no decision was arrived at. There was now practically the same Bill again and if the same names were permitted to remain it might be that the same gentlemen had already formed their opinions and that

the result would be similar to that of last year. The suggestion that Mr. Colebatch should act on the conference was an excellent one. He was not in the House last year and therefore had nothing to do with the Bill of last session. He (Mr. Connolly) admitted that we could not find two gentlemen more competent to act on the conference than Mr. Moss and Sir Edward Wittenoom, but it was for the reason he had suggested that he thought they should not act. He also suggested that an hon. member, for instance, Mr. Cullen, who had not taken a prominent part in the debate, should act with Mr. Colebatch.

Hon. J. E. DODD: It was hoped that Mr. Moss would decide to represent the Council at the conference. Although the hon. member had opposed the Bill even more keenly than any other hon. member, he (the Honorary Minister) would welcome that gentleman's presence on the conference. In fact there was no one he would prefer to see on the conference on a Bill of this kind than Mr. Moss.

Hon. J. D. CONNOLLY: After the statement of the Honorary Minister Mr. Moss might withdraw his amendment. His (Mr. Connolly's) objections no longer stood.

Hon. M. L. MOSS asked leave to withdraw his amendment.

Amendment by leave withdrawn.

Question put and passed.

Resolution reported, and the report adopted.

BILL—GOVERNMENT TRAMWAYS.

Second Reading—Bill not in order.

Order of the Day read for the resumption, from the 21st November, of the adjourned debate on the second reading.

Hon. M. L. MOSS (West): I rise to a point of order in regard to the Bill. Subclause 3 of Clause 19 purports to amend Section 68 of the Government Railways Act 1904. It is, therefore, a provision foreign to the Title of the Bill, and I think you will agree that it is a direct contravention of Standing Order 173. I ask for your ruling, therefore, as to whether the Bill is in order.

The PRESIDENT: I would like hon. members to turn up their Standing Order 173.

The Colonial Secretary: Am I privileged to state my case?

The PRESIDENT: I have been asked for a ruling; if you disagree with my ruling you can put it to the House. In my opinion any hon. member is entitled at any time before the second reading of a Bill to call attention to what he may consider imperfections in the Title as not concerning the scope and purposes of the Bill. I understand the specific point to which he refers is this: the Bill is "A Bill for an Act for the Construction, Maintenance, and working of Government Tramways." Subclause 3 of Clause 19 reads as follows—

> Section 68 of the Government Railways Act, 1904, is amended by adding a paragraph as follows:—The power to suspend, dismiss, fine, or reduce to a lower class or grade, any officer or servant of the department delegated to the Commissioner, may be sub-delegated by him to the head of any sub-department of the Department of Government Railways.

It will be seen that this subclause is a specific amendment to Section 68 of the Government Railways Act 1904, and I am clearly of opinion that the subclause is foreign to the Title, as it specifically alters Section 68 of the Government Railways Act, 1904, not only as regards tramways, which are placed under the Commissioner of Railways by the Bill, but also goes far beyond, because it affects the Commissioner's position with regard to officers and servants of the whole of the Department of Government Railways. The Bill directly violates Standing Order 173 of the Legislative Council, which is as follows:—

> The Title of a Bill shall coincide with the order of leave, and no clause shall be inserted in any such Bill foreign to its Title.

And it is in violation of Standing Order No. 260 of the Legislative Assembly. Under these circumstances the Bill is certainly out of order. If it had originated in this House the proper course would be

to discharge the order for the second reading, but inasmuch as it originated in the Legislative Assembly and leave was obtained there to introduce it, I think the more courteous procedure would be for this House to send a Message to the Legislative Assembly drawing its attention to the matter, and for the House to adjourn the further consideration of the Bill until such time as a Message from the Assembly in reply is received.

The COLONIAL SECRETARY (Hon. J. M. Drew): I beg to move—

That a Message be sent to the Legislative Assembly in accordance with your ruling.

Motion passed, and a Message accordingly transmitted to the Legislative Assembly.

BILL—WORKERS' COMPENSATION.

In Committee.

Resumed from the previous day; Hon. W. Kingsmill in the Chair, Hon. J. E. Dodd (Honorary Minister) in charge of the Bill.

Clause 5—agreed to.

Clause 6—Liability of employers to workers for injuries:

Hon. M. L. MOSS: If hon. members would turn to the synopsis of the Bill on the first page it would be seen that the clauses were there numbered and that against Clause 6 was the note "minimum period of disablement." Apparently when the Bill was first drafted and the synopsis made the clause had contained a provision for a minimum period of disablement. At some stage or other, whether in another place or after the first draft had been prepared, the provision apparently had been eliminated from the Bill. It was his desire to reinstate the provision. He moved an amendment—

That the following be added to stand as paragraph (a):—"The employer shall not be liable under this Act in respect of any injury which does not disable the worker for a period of at least one week from earning full wages at the work at which he was employed."

In the existing Act no compensation was payable at all until the worker had been disabled for two weeks, and even if the disablement extended beyond that period no compensation was payable for those first two weeks. In the English Act there appeared a subsection precisely the same as the amendment. He had drawn attention to this omission from the Bill on the second reading. Under the Bill as it stood a worker who claimed to have sustained an injury which might last for one or two days would be paid compensation from the jump. This offered splendid opportunities to malingerers. Such a man might be three or four days off work, and there was no possible means of ascertaining whether or not he was behaving honestly. The amendment was of paramount importance; it was only what was in the Imperial Act, and even if it should be inserted here the Bill would still constitute a great advance in liberality on the Act of 1902.

Hon. D. G. GAWLER: Having intended to move an amendment of a similar nature he would support that moved by Mr. Moss. The purpose of the amendment was to prevent malingering. Clause 11 of the report of the select committee appointed by the Legislative Assembly to consider the Bill of 1910 read as follows—

> With reference to paragraph (a) of Clause 8 of the Bill, the committee are of opinion that to abolish the whole of the two weeks during which compensation is not payable under the present Act would lead to malingering, and the committee recommend that where the incapacity resulting from the injury continues for a period of two weeks or upwards the compensation should be payable from the date of the accident.

In New South Wales the injury had to last for two weeks before compensation could be claimed, and no compensation was payable until after the second week. In South Australia it must last a week and if less than two weeks no compensation was payable for the first week. In New Zealand if it lasted for less than one week there was no compensation, and for less than 14 days no compensation for the first week. In Queensland under a recent amendment compensation was allowed after three days. In Tasmania

the time was one week and if less than two weeks no compensation was allowed for the first. Therefore, with the exception of Queensland, no compensation was payable for the first week. Evidence was given before the select committee by two insurance men, Mr. Sullivan and Mr. Murray. Mr. Sullivan said that if the worker had to receive compensation from the date of an accident instead of after the first fortnight it would have a very serious effect on the rates. If instead of after the first fortnight they had to be paid for the first three or four days or week it would mean an increased premium of 50 per cent. in all trades. Mr. Murray gave evidence to the same effect and stated among other things that it would put up rates all round. As the Bill laid an undeserved burden on the employers that fact should be considered when dealing with the clause. The amendment would have his support.

Hon. J. E. DODD: Neither of the two members had given any reason why the alteration should be made, other than that it was not in existence in the other States.

Hon. D. G. Gawler: It will raise the rates.

Hon. J. E. DODD: It had been said when there was a matter affecting the Government view of the Bill that we should not be bound by what the other States or the United Kingdom did. On the other hand members were continually stating that a certain thing did not apply elsewhere. Surely if the argument cut one way it must cut the other. Was there not a time coming when we must make an advance in some respect. Was this State always to be behind and to wait until another State took this step?

Hon. D. G. Gawler: Is this an advance.

Hon. J. E. DODD: Undoubtedly. Other States had made alterations. One State provided that the worker should be off for a fortnight, another for a week, and another for three days. It was time one of the States made an advance on that. Surely Western Australia might make an innovation at some time. Members should not place too much reliance on the evidence taken by the select committee. The statement that the premiums would be raised was foolish and ridiculous. It would not increase the premiums by one per cent. The insurance companies knew that possibly more might be taken from them, but they knew perfectly well that the rates would not be increased in any respect whatsoever. Probably no member of the House had had a larger experience than he, and he could say there were few small accidents that kept a man home from work for a less period than one week, compared with the accidents which kept a man home longer. He did not think there would be any appreciable difference in the rates the employers would have to pay. The select committee were appointed during the life of the last Parliament by the Government which went out of office.

Hon. D. G. Gawler: There were two Labour members on it and they both agreed with the report.

Hon. J. E. DODD: Yes, and the witnesses who were prepared to give evidence were very much curtailed.

Hon. D. G. Gawler: The Labour members on the committee agreed to the report.

Hon. J. E. DODD: Yes, in order to try to get something through that session. Although he had been pressed to give evidence before the select committee his evidence was not required, and he was not the only one who had been placed in that position. Probably no one on the Labour side had had more experience of compensation than himself. The clause would confer a benefit on a number of workers who might meet with an accident which disabled them for a week.

Hon. Sir E. H. WITTENOOM: There was an amendment on the Notice Paper in his name, but it dealt with the schedule. It differed in principle from Mr. Moss's in that it provided that if the incapacity lasted for less than a fortnight it should not be paid for at all, but if it lasted for more than a fortnight compensation should be paid from the date of the injury.

Hon. J. Cornell: Mr. Moss's amendment to the schedule provides for that.

Hon. Sir E. H. WITTENOOM: Then he had nothing further to add.

Hon. M. L. MOSS: The Minister had dealt solely with the question of insurance rates. If a greater obligation was put on the insurance companies the rates must go up. The Minister had not dealt with the reason why in all this kind of legislation a period was provided to intervene between the alleged accident and the commencement of the liability.

Hon. J. E. Dodd: What is the reason?

Hon. M. L. MOSS: To provide a reasonable time to ascertain that an accident had occurred. The fact that a man was malingering or shamming an accident could not be detected at once and the amendment had been drafted to meet such a case. This provision he believed was included in the Canadian examples quoted by the Minister on the previous day. He had an amendment to the first schedule to provide that if the incapacity lasted for less than two weeks no compensation should be payable in respect of the first week, but if it lasted for more than two weeks compensation would be paid from the date of the accident. That was much more liberal than at present because under the existing Act the worker received nothing for the first two weeks. If the claim was a fair one it was proper to pay compensation from the date of the accident. The amendment would be a check upon any workers who were dishonourably inclined.

Hon. J. E. DODD: Did the hon. member's amendment provide for compensation from the date of the accident?

Hon. M. L. Moss: Yes, an amendment to the schedule.

The CHAIRMAN: Members were not in order in anticipating a debate on another amendment except in order to elucidate the amendment under discussion.

Hon. J. E. DODD: There was nothing in the amendment under discussion which would make compensation payable from the date of the accident, if the employee was off for more than a week.

Hon. M. L. MOSS: In order to elucidate the amendment under discussion he would point out that he had an amendment to the schedule. If that was carried and incapacity lasted for more than two weeks, compensation would be payable from the time the accident occurred.

Hon. J. E. DODD: The amendment under discussion would place no check upon malingering and the proposed amendment to the schedule would encourage malingering. The justice of the clause should be sufficient to commend it to the support of members.

Hon. J. CORNELL: Under the amendment if a man was incapacitated for eight days he would draw one day's compensation.

Hon. M. L. Moss: That is right, and if he is off for 15 days he will get 15 days' compensation.

Hon. J. CORNELL: That was a great advance on the present Act because under that a man had to be off for a fortnight before he received anything. Mr. Moss said an interval of a week between the accident and the commencement of the liability was necessary to prevent malingering. The amendment, however, would cause more malingering than if compensation was made in every instance to date from the time of the accident. If a man was off 13 days he only got six days' compensation, but by staying off one other day he would get 14 days' compensation. Would that not be an inducement to malingering. A workman only received half wages, and if a man was shamming that he was injured he would have to get a medical certificate so as to enable him to get half wages.

Amendment put and passed.

Hon. Sir E. H. WITTENOOM moved a further amendment—

That in line 2 of paragraph (b) of Subclause 2 the word "and" be struck out and "negligent of" inserted in lieu.

It was an unimportant amendment.

Hon. J. E. DODD: It was to be hoped this amendment would not be carried for it struck at the very root of the Bill. If the amendment was carried we might as well throw the Bill aside. The whole system of workers' compensation was built on the principle that negligence should not be a bar to obtaining compensation.

Hon. M. L. MOSS: The amendment should not be supported. All the Workers' Compensation Acts had the serious and wilful misconduct provision in them. He would vote against the amendment, but not for the clause as it stood.

Hon. A. SANDERSON: It was to be hoped Sir Edward Wittenoom would withdraw the amendment.

Hon. Sir E. H. Wittenoom: I shall not.

Hon. A. SANDERSON: Then it was to be hoped it would be defeated.

Hon. Sir E. H. Wittenoom: I shall not be disgraced.

Hon. A. SANDERSON: This was one of the points he had been able to look up. The amendment would cut at the root of compensation to workers.

Hon. C. A. PIESSE: The amendment should be carried. He could not see why a man should be compensated for his own negligence.

Hon. M. L. Moss: That had been the law here for ten years.

Hon. Sir E. H. Wittenoom: We should alter bad law.

Hon. H. P. COLEBATCH: Serious and wilful misconduct should be a bar to obtaining compensation, but he was not prepared to go beyond that. Negligence might be purely an error of judgment.

Hon. Sir E. H. WITTENOOM: It would be difficult for serious and wilful misconduct to be proved. If this had been the law for ten years then precedent should not be followed too closely. At least the word "or" should be struck out.

Hon. J. CORNELL: The amendment, he felt confident, would not be carried. Ignorance might mean negligence.

Amendment put and negatived.

Hon. M. L. MOSS moved a further amendment—

That in lines four and five of paragraph (b) of Subclause 2 the words "unless the injury results in death or serious or permanent disablement" be struck out.

If a worker was guilty of serious and wilful misconduct and the accident was attributable to that there would be no compensation. A man might be drunk and cause an accident.

Hon. J. E. DODD: The case of drunkenness could be easily got over if necessary by inserting a provision that if any person was injured through negligence caused by drunkenness no compensation should be paid. It was hard to imagine anyone meeting with an accident by reason of serious and wilful misconduct, but cases had occurred. One happened at Phillips River, where a man rode on a truck contrary to the regulations, but if anything it was in the interests of the employer. The trucks were being filled and sent down the hill to the smelter, and in order to expedite his work the man rode on the truck when the regulations forbade him doing so. The man was killed.

Hon. M. L. Moss: That man was warned against riding on the trucks on several occasions.

Hon. J. E. DODD: The court awarded the widow compensation, but the Full Court upset the decision. It would be hard on a widow and family being deprived of receiving compensation. He did not think that some of the amendments were of sufficient importance to justify the Committee in carrying them. He hoped the references in the various other Acts would be adhered to, especially the Act in the United Kingdom and those other Acts which had been modelled on that one.

Hon. D. G. GAWLER: It was a principle in English law that a man should not be able to take legal advantage of his own wrong, and that principle should apply in connection with this Bill. The only argument against the principle was on humanitarian grounds. In every other State with one exception the principle of compensation was the same, namely, that no compensation was allowed in cases of serious and wilful misconduct. In New South Wales the words were "serious or wilful misconduct," and that was going further than was proposed in this State. In Tasmania the wording was "serious or wilful misconduct or a breach of the rules." The last amendment of the Act in New Zealand would not deprive a man of compensation in the case of death, but in the case of injury he would

still be debarred from getting compensation if he had been guilty of serious and wilful misconduct. That was the only State in which the law was more lenient to the worker than the Bill before the Committee. All other Acts said that if the worker was guilty of serious or wilful misconduct or of serious and wilful misconduct he should not be entitled to compensation. The select committee which sat on this question reported that there was no justification for the payment of compensation to a worker or his dependants where the injury to such worker was attributable to his serious or wilful misconduct. The report of the select committee supported the amendment.

Hon. A. SANDERSON: The Minister would receive his support, but if he was defeated he had only himself to blame. If the Minister had taken the precaution to have some assistance as his colleague had done the other day in dealing with a highly technical measure, he could have convinced the Committee that his statement was correct. This question of workers' compensation had been dealt with in numerous cases in England and the Eastern States, and the Minister could not expect to get very much from the Committee judging by previous divisions unless he proved his case right up to the hilt, as he could do if he had his authorities with him. He believed the Minister was right, although he was not in a position to satisfy the Committee.

Hon. C. A. PIESSE: The Honorary Minister had said that it would be hard on the widow and children of a man who was killed through his own wilful misconduct to be without any means of support. Those who were trying to get this Bill through had in their mind's eye the big mining companies, manufacturing companies, and companies of a like nature, but what about the widow and children of the small farmer who had the misfortune to have an employee seriously injured or killed? A liability of £400 in many cases would ruin the farmer. If we were to have this system of compensation as proposed by the Bill, let it apply only to the big companies which had the men directly under their control, and had no soul to be damned or body to be kicked. He hoped the amendment would be carried.

Hon. J. CORNELL: The clause would not in any way affect the people referred to by Mr. Piesse. If the Bill was carried the farmer would have to insure his workmen, or if he did not the same liability would apply to him as if the worker was killed without serious and wilful misconduct. Serious and wilful misconduct would only be proved where there were regulations governing the working conditions. The Bill did not contemplate that if a man committed suicide his dependants were to receive compensation. Where there were regulations, as in the mining industry, in shops and factories, and in hazardous occupations, and a man broke the regulations and was seriously injured or killed, he would be in the eyes of the law guilty of serious and wilful misconduct.

Hon. M. L. Moss: No, he would not.

Hon. J. CORNELL: If a man was working underground and the regulations said he should not ride in the cage with a truck or tools, and he disregarded the regulations and was injured, he surely would be held guilty of serious or wilful misconduct, and therefore debarred from claiming compensation. Compensation was only asked for cases of total disablement or where death occurred.

Hon. H. P. Colebatch: No; not total disablement, but serious and permanent disablement.

Hon. J. CORNELL: Well, these words meant that a man was seriously or permanently disabled if he was injured so as not to be able to work again.

Hon. H. P. Colebatch: No the loss of an eye would be a permanent and serious disablement.

Hon. J. CORNELL: He took the Bill to refer to disablement which was such that a man could not work any more.

Hon. M. L. Moss: That would be total disablement.

Hon. J. CORNELL: That was what the Bill contemplated. He had worked underground in a mine and had been instructed to disobey the regulations under the Machinery Act. If he had not disobeyed the regulations, the manager would have employed somebody who would dis-

obey them, and if he was injured in doing that work, and it was found that he had disobeyed the regulations, the mere fact that he had acted on the instructions of the foreman would not establish his claim to compensation. There were cases of men being injured when doing things they were instructed to do and their dependants should not be deprived of compensation. The clause would not mean the payment of increased premiums.

Hon. C. A. PIESSE: The hon. member was assuming that the worker would be insured, but the worker might be employed by a small man who would take the risk, and thus there might be just as much distress to the employer as to the employee's dependants in the case of death through wilful misconduct. If a proposal was brought forward preventing any man taking work until he was assured that the employer had insured him against death it would not be so bad. Some sort of compulsion would be necessary to be fair to both parties.

Hon. H. P. COLEBATCH: Mr. Cornell was in error in saying this applied to total disablement only, because the loss of a toe or an eye which would not lead to total disablement would result in serious and permanent disablement. So practically the employer would be liable for any injury.

Hon. J. E. DODD: The proposal of Mr. Piesse was unworkable and foreign to the purpose of the measure. Mr. Gawler could not have a copy of the latest New Zealand Act, or he would not have made the mistake that the provision there was not similar to the provision in the Bill. In England and in New Zealand, and to an extent in the Transvaal and Cape Colony, the provision was that serious and wilful misconduct had not deprived the worker of getting compensation in the case of serious or permanent disablement. During the last 10 years when the Act was in operation there had only been three cases tried in which there was serious and wilful misconduct.

Hon. D. G. Gawler: What about the small employer who cannot insure?

Hon. J. E. DODD: Every employer would insure, and in the case of the small employer, where the risks were light, the premium would be very light. We should follow in the wake of the latest Acts in this respect.

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

Ayes	13
Noes	9
Majority for	4

AYES.

Hon. H. P. Colebatch	Hon. E. McLarty
Hon. J. D. Connolly	Hon. M. L. Moss
Hon. J. F. Cullen	Hon. W. Patrick
Hon. D. G. Gawler	Hon. C. Sommers
Hon. V. Hamersley	Hon. T. H. Wilding
Hon. R. J. Lynn	Hon. C. A. Piesse
Hon. C. McKenzie	*(Teller).*

NOES.

Hon. R. G. Ardagh	Hon. J. W. Kirwan
Hon. J. Cornell	Hon. B. C. O'Brien
Hon. J. E. Dodd	Hon. A. Sanderson
Hon. J. M. Drew	Hon. F. Davis
Hon. Sir J. W. Hackett	*(Teller).*

Amendment thus passed.

Hon. M. L. MOSS moved a further amendment—

That Subclause 5 be struck out and the following inserted in lieu:—"If, within the time limited hereinafter by this Act an action is brought to recover compensation, independently of this Act, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the court in which the action is tried shall assess such compensation, and shall deduct therefrom all the costs which have been caused by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly."

The proposal really was to substitute Section 9 of the principal Act for Subclause 5. The Bill provided that a worker could proceed at common law or under the Employers' Liability Act, and if he failed in those proceedings the court had discretion to deduct the costs of those proceedings out of any compensation to which he was entitled under the Workers' Compensation Act. Section 10 of the Act provided that in similar circumstances it was compulsory on the court to

deduct the costs of the unsuccessful litigation from the compensation payable under the Workers' Compensation Act. It was a grossly unfair proposal to give the worker the liberty to sue the employer for greater compensation under the common law or Employers' Liability Act and not put a penalty on him if, after electing to adopt this course, his action failed, when he could, without any litigation at all, be awarded compensation under the Workers' Compensation Act. If a worker failed in his case under the Employers' Liability Act or at common law it was right that he should pay for the expense to which he put his employer should his action fail.

Hon. J. E. DODD: No great exception could be taken to the amendment the hon. member had moved. There was, however, this point; the Bill provided that the court "may" deduct costs from such compensation given in the cases quoted by the hon. member, and the present Act provided that the court "shall." There might be extenuating circumstances which would lead the court not to make an order for costs against the plaintiff in an action of this kind. It would be better to let the court have permissive power.

Hon. D. G. GAWLER: Mr. Moss's clause was preferable to the clause in the Bill for several reasons. Later he (Mr. Gawler) had intended to propose to make it mandatory. Apart from that the present clause provided that the assessing of compensation was only to be at the option of the plaintiff. The clause which Mr. Moss proposed provided that it should be at the option of either party, and it also provided that it "shall" be done. That was an improvement.

Hon. J. CORNELL: Mr. Moss might strike out of line 8 of Subclause 5 the words "If the plaintiff so chooses." These words ought to be excised for the sake of consistency. By the word "shall" being there under all circumstances the court would have to proceed to assess the compensation, but there might be another side to the picture, and as the Honorary Minister stated, there might be extenuating circumstances whereby the court would not do it. If the amendment was carried the court would have to do it.

Hon. M. L. MOSS: It would interest Mr. Cornell to know what had taken place under the present Act. He (Mr. Moss) had been repeatedly retained in cases where there never was a scrap of negligence raised against the master, but action had been taken with the object of getting a jury from whom they ran the risk of getting a bigger verdict. He had been the means of defeating this kind of thing, which could not be called anything else but a false claim. If the Committee now struck out the mandatory provisions there would be ten times as many of these actions. Assuming that compensation was to be fixed at £600, that would be a very much larger amount than under the Employers' Liability Act, and it would be doing the workers' dependants a good turn to say that they should not fritter away money in costs.

Hon. J. E. DODD: If something of this kind could be introduced into some legislation or other it would be one of the best things that could take place, but whether it would be right to have it in the Workers' Compensation Bill he was not prepared to say. That was for the legal advisers of the Government to determine. He knew of two cases in one of which a man was killed, and the union advised the widow to proceed no further than under the Workers' Compensation Act. Unfortunately she was advised by a lawyer and she took it to a court under common law and lost every penny. In another case at Kalgoorlie, in which two men were killed, precisely the same thing occurred.

Hon. A. SANDERSON: Would the Minister inform the House what the English procedure was? He was under the impression that he had seen in the *Law Times* or some other legal paper that the procedure assisted the worker a great deal more in England than was the case out here in regard to these actions. If that impression was correct the Minister might be prepared to put a clause in the Bill on somewhat similar lines.

Hon. J. E. Dodd: I cannot tell the hon. member whether that is so.

Hon. D. G. Gawler: In the English Act it is optional.

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

Clause 7—Time for taking proceedings:

Hon. D. G. GAWLER: At the request of Sir Edward Wittenoom, he moved an amendment—

That in line four of paragraph (b) of the proviso, after the word "mistake," the word "reasonable" be inserted.

This clause dealt with the notice of accident being given and claims made. The first paragraph of the proviso referred to defects or inaccuracies in such notices not being a bar to the maintenance of the proceedings, and paragraph (b) set out that the failure to make a claim within the specified time should not be a bar to the maintenance of such proceedings if it was found that the failure was occasioned by a mistake or absence from the State. Sir Edward Wittenoom thought that the absence from the State should be qualified. An action might not be brought for a considerable time, and at the end of that time the man or the dependants might make a claim, and in answer to the objection that the claim had not been made within six months they could explain their reasonable absence from the State. Some time limit should certainly be provided, for a person should not be allowed to turn up at any time he might please and put in a claim against the employer.

Hon. M. L. MOSS: If the hon. member would withdraw the amendment, it might be possible to insert a better one in the proper place.

Amendment by leave withdrawn.

Hon. M. L. MOSS: Possibly a better way of amending the clause would be to add at the end of paragraph (b) the following words—"If the dependant should be resident in Western Australia at the time of such death, and if the dependant be not so resident, then within twelve months afterwards." However, to get the thing into proper form the Minister should agree to postpone the clause.

Hon. J. E. DODD: We were only seeking to hedge around the clause with a number of unnecessary difficulties. It was provided that it should not be any bar to proceedings if the delay was caused by mistake, by accident, or by absence. The court would have to decide what was a reasonable cause for the delay.

Hon. M. L. Moss: No, not in the case of absence.

Hon. J. E. DODD: Suppose a man had sustained an injury to his head. There was such a case on record. An injured man had returned to work after a fortnight, had worked part of a day, and then walked into the bush and got lost for a fortnight or three weeks, probably through loss of memory. Eventually he had been found and brought down to the Hospital for the Insane, where he died within six months. It was found impossible to get any compensation for that man's widow, because the injured man could not give any account of his accident and, in addition to that, he had gone back to work for half a day.

Hon. M. L. Moss: But the law must fix some limitation on the time for bringing actions.

Hon. J. E. DODD: The provision in the Bill was precisely the same as that in the English Act, from which it had been copied, word for word.

Hon. D. G. GAWLER: The case mentioned by the Minister was provided for in the words "or other reasonable cause." Loss of memory would certainly be covered by those words. Even in the case of a man going away for special treatment a time limit should be in operation, for we should conserve the interests of the employers as well as those of the workers. According to the clause a man could go away for six years; indeed it was not certain that the clause would not override the Statute of Limitations, in which case a man might go away for twenty years and then come back and enter a claim for compensation. There must be some limit imposed upon these claims. The clause ought to be postponed until the other clauses had been dealt with.

Hon. A. SANDERSON: The fact that the provision was a literal copy of that in the English Act was sufficient reason for its being left in its present form. It might appear to be hard on the employers, but the question had been discussed in every European country, and those countries had arrived at the conclusion, from

the public point of view, that in respect to industrial accidents, as distinct from diseases, a very considerable burden should be placed on the employers, who would have to meet it by insurance.

Hon. D. G. Gawler: But the workers contribute to that.

Hon. A. SANDERSON: In Germany they did, but not in England. He would be prepared to be very liberal in respect to accident, but in respect to disease he would rub the whole thing out. It was to be hoped that a provision which had passed the House of Lords would not be rejected by the Legislative Council of Western Australia.

Hon. J. E. DODD: It was hardly worth while delaying the matter any further. Surely the instances he had quoted were sufficient to show that under the amendment grave injustice might arise

Clause put and passed.

Clause 8—agreed to.

Clause 9, Principal and contractor and sub-contractor deemed employers:

Hon. D. G. GAWLER: At the request of Sir E. H. Wittenoom, he moved an amendment—

That the following be added to Subclause 1:—"but the immediate employer shall be primarily liable, and failing his or their ability to satisfy the compensation due, the principal shall become liable for the unsatisfied balance."

This would considerably alter the meaning of the clause. The object of the amendment was merely to make the immediate employer primarily liable, and if there was any balance which the worker could not recover from the immediate employer the worker would be entitled to recover it from the principal. The principle underlying it was that the liability should rest upon the immediate employer.

Hon. J. E. DODD: An unprincipled employer might put up a man of straw to relieve himself of any liability, and the unfortunate employee, after having sought redress from the immediate employer, would possibly have to fight his way right up to the principal. That would be decidedly unfair. Employees as a rule had no money to take up a case in the first place.

Hon. A. Sanderson: Do not the unions take up these cases?

Hon. J. E. DODD: In some instances there were no unions, but why should a union be put to the expense? Surely the principal who let work to a contractor or sub-contractor would see that he was safe guarded.

Hon. D. G. Gawler: The employee is bound to get it out of one of them. He has a good many strings to his bow.

Hon. J. E. DODD: The point was that the worker should receive his compensation.

Hon. A. Sanderson: Is that in the English Act?

Hon. J. E. DODD: Almost precisely the same provision appeared in the English Act, and the New Zealand Act was similar in principle.

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

Ayes	..	..	10
Noes	..	..	9
Majority for	..	..	1

AYES.

Hon. H. P. Colebatch	Hon. C. McKenzie
Hon. J. F. Cullen	Hon. E. McLarty
Hon. D. G. Gawler	Hon. C. Sommers
Hon. V. Hamersley	Hon. T. H. Wilding
Hon. A. G. Jenkins	Hon. R. J. Lynn (*Teller*).

NOES.

Hon. R. G. Ardagh	Hon. Sir J. W. Hackett
Hon. J. D. Connolly	Hon. M. L. Moss
Hon. F. Davis	Hon. B. C. O'Brien
Hon. J. E. Dodd	Hon. J. Cornell (*Teller*).
Hon. J. M. Drew	

Amendment thus passed.

Hon. M. L. MOSS moved a further amendment—

That the following proviso be added at the end of the clause:—"Provided that where the contract relates to threshing, ploughing, or other agricultural or pastoral work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any worker employed by him on such work."

This was in the English Act.

Hon. J. E. DODD: There was not so much objection to this amendment as to the one which had just been carried. At a later stage he hoped that the clause would be recommitted in order that another expression might be obtained. It was remarkable that the English Act should be followed in one respect and not in another. The Bill had been amended to make it easier for a principal to dodge his responsibility, a provision which was foreign to both the English and New Zealand Acts. There was no reason why the contractor who took on agricultural or pastoral work should not be responsible for compensation any more than a contractor in any other line of business.

Hon. A. SANDERSON: There had not been time to go through the Bill and compare it with the different Acts and the different decisions on those Acts. The amendments were of the greatest importance to the employers, the employees and the general community, and he was pleased that the Minister had a fall at the last fence. He would not support the Minister blindly, even when the English Act was quoted. The Government had not given time this session to master all the Bills, and if this measure alone had been passed very good work would have been done. He had not appreciated the point involved in the last amendment, and had consequently left the Chamber. He appealed to the Minister to report progress and deal with the measure in a week or a fortnight's time.

Amendment put and passed.

Hon. C. A. PIESSE moved a further amendment—

That the following additional proviso be added:—"Provided also where the contract relates to clearing, fencing, or other agricultural or pastoral work, the contractor alone shall be liable under this Act to pay compensation to any worker employed by him on such work."

The conditions were similar to those embodied in the proviso just agreed to. A contract was let the other day for £200 worth of clearing. The contractor said he could do it himself. It was possible that after taking the work he would find it necessary to employ other men to assist him, and it was unfair if an employer in such a case was made liable for compensation in the event of any accident to such workmen. He knew of a case in which two men took a contract for fencing and put on eight other men. It would be unfair to bring the employer in under those circumstances.

Hon. J. E. DODD: The amendment would make the contractor, in all matters relating to agricultural and pastoral work liable for compensation. Seeing that the previous amendment had been carried he could not see why any exception should be taken to this.

Amendment put and passed.

Hon. M. L. MOSS moved a further amendment—

That the following be added to stand as Subclause 7:—"This section shall not apply in any case where the accident occurred elsewhere than on or in or about premises on which the principal has undertaken to execute the work, or which are otherwise under his control or management."

This was an extension of the proviso which had been carried. It was a precise copy of the provision in the English Act. His idea had been to make the clause an exact copy of the English Act, so that we would then have the benefit of the decisions which had been given on that Act.

Hon. J. E. DODD: There could not be much objection to the amendment.

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

Clause 10—Provision as to cases of bankruptcy of employer:

Hon. M. L. MOSS: This was a clause that gave priority to the employee in case of bankruptcy. Under the English Act the amount was limited to £100, and he wished to adopt the English provision in this respect. It was not fair that a workman should be paid in full while everybody else had to come in afterwards. If there was no insurance the workman would get priority to the extent of £100, and rank with the other creditors as regarded the balance. He moved an amendment—

That in Subclause 3 after "amount" the words "not exceeding in any individual case £100" be inserted.

Hon. J. E. DODD: If the English Act limited the amount to £100 we should have a higher limit here.

Hon. M. L. Moss: What did the hon. member suggest, £150?

Hon. J. E. DODD: Yes.

Hon. M. L. MOSS: There would be no objection to making the amount £150 and he would alter his amendment accordingly.

Amendment, as altered, put and passed.

Hon. D. G. GAWLER moved a further amendment—

That the following be added to stand as Subclause 5:—"The provision of this clause with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid."

He was following the general idea of making this Bill conform to the English Act. This proviso was word for word similar to the English provision. Only where insurance had not been effected by the employer did the priority apply. In New Zealand the amount was a charge against the insurance money. In New South Wales it was a charge on the insurance money only. In South Australia there was priority up to £100; in Queensland it was a first charge only on the insurance money. There could be no objection in making this conform to the English Act.

Hon. J. E. DODD: One could not see any great objection to the amendment. It was not likely to prove harsh at any time against the employee. If it did it was only in very exceptional circumstances. He had no desire to press the clause as it stood.

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

Progress reported.

BILL—MONEY LENDERS.

Second Reading.

Debate resumed from the 14th November.

Hon. A. G. JENKINS (Metropolitan): I would like to make one or two small observations in regard to this Bill and to give a few instances in which the measure will stand amending. Although I think the idea of the Bill is an excellent one, it seems to me it is not going to protect the people so much as it is going to throw all the business of money lending into the hands of a few money lenders in Perth. The Bill says that any person who lends money at a rate exceeding 10 per cent. per annum, must register as a money lender, and we know that at the present time a person can lend out a considerable sum of money at 10 per cent. and perhaps get a penal rate besides. The Victorian Act stipulates 12½ per cent. and that is a State which is much more settled and where the security is a good deal better than it is in this State. What we want in order to prevent money being lent at usurious rates is to allow the court to reopen a transaction. If the Bill was confined to that it would meet the case. Mr. Moss last session introduced a Bill more on the lines of the English Act, but this measure seems to have been copied mainly from the Victorian one. I think that in the definition of "money-lender" in Clause 2 the word "or who lends money at a rate of interest exceeding £10 per centum per annum" should be deleted altogether, so that we should compel the registration of persons who carried on business as money lenders. Those of us who have overdrafts at the present time know that the rate of interest has gone up one per cent. recently, and possibly may be put up another half per cent. or one per cent. if the present tightness of money continues. That means that instead of money being obtainable at 5½ per cent. as formerly, it is practically impossible to obtain it at 7 per cent. in Perth. I do not suppose there is a bank in the State which would open an overdraft at 7 per cent., no matter how good was the security offered. Money is likely to be even tighter, and yet the Bill would make a person who lends money at more than 10 per cent. register as a money lender.

As I have said, it is possible for persons to lend money to-day at 10 per cent. and get a penal rate in addition, and I do not think the framer of the Bill intended that a person who has small transactions like that should be pledged to register as a money lender. If that is so it simply means that all these small borrowers will be forced to go to the money lenders who lend money at usurious rates, because the man who does an odd transaction or two of the kind I have indicated is not going to register as a money lender. I notice in Clause 11 that the fee for securing, negotiating, or guaranteeing a loan is limited with expenses to 2 per cent. In Victoria it is 5 per cent. Two per cent. is much too small, because there are many transactions in which the negotiations could not be carried out for such a fee. Very often considerable expense has to be entailed in valuations or in journeys to inspect the securities, and I think the hon. member in charge of the Bill might agree to bring this clause into line with the Victorian Act. Unfortunately this Bill makes no distinction between the secured and unsecured loan. What might be an unreasonable rate of interest to charge in the case of a secured loan might be a very reasonable rate of interest in the case of an unsecured loan. It is difficult to make hard and fast rules as to what money is worth to the lender or to the person who borrows. Therefore, I think it would be better to follow the English Act and give the court power to open a transaction and decide whether the rates are usurious or not, and if they are to set the transaction aside. One clause I take strong exception to is Clause 7 which provides penalties for false statements and representations. Although that clause is in the Victorian Act, I think its inclusion in this Bill will certainly leave the way open for great injustice to happen. The clause says that any money lender or manager, agent or clerk who makes a false misrepresentation is liable to imprisonment for a term not exceeding two years, or to a fine not exceeding £500, or to both. What happens? I go to a money lender and want to borrow money, and when the loan is due for repayment I do not want to pay. I say to the money lender that he or his clerk made a false statement to me and that I will lay an information against him. I put him to the expense of defending a case in the police court, with the chance of sending him to gaol, simply because I do not want to pay the money I owe him. That clause must be amended, otherwise any person who lends money would not be safe.

Hon. R. G. Ardagh: The penalty is necessary.

Hon. A. G. JENKINS: Yes, but make it a fine; do not put a man in gaol for two years for making a false statement. When a man goes to borrow or lend money he generally takes precautions to see that the security given or taken is all right, and I cannot see any reason for a clause like this. If it does remain in the Bill it should certainly be altered. With regard to valuation fees, I see that if a lender does his own valuing he cannot charge at all, but if he employs another person to make the valuation, then he can charge. I see what the idea is—that a man should not be able to charge 10 per cent. interest and 20 guineas as a valuation fee. But the clause is not quite clear as at present worded? If a man has to lend money on a farming property which is a risky security, why should he not make his own valuation instead of employing some other person and paying him a large fee for doing it? I have just mentioned two or three things to which attention should be devoted in Committee. I quite agree with the principle of the Bill. There should be an Act controlling the charging of usurious interest, but I personally prefer the English Act.

Hon. D. G. GAWLER (Metropolitan-Suburban): I desire to support the second reading. There are many cases that come under the notice of hon. members in which undoubtedly men who have been forced to obtain loans have been harshly and unconscionably treated, and it is for the benefit of the persons concerned and for the community generally that the transactions should be inquired into. At the same time, assistance is often given by

money lenders which is greatly required and means a great advantage to the borrower. In many cases also, money is advanced without security at all, and in those instances I do not think that 10 per cent. is too great a rate of interest to charge.

Hon. F. Davis: What rate of interest do you suggest?

Hon. D. G. GAWLER: I would follow the Victorian Act and charge 12 per cent. I have compared some of these clauses with the sections in the English and Victorian Acts and there are some discrepancies that require a certain amount of explanation. I see that amongst those excepted from the definition of "money-lender" in Clause 3, paragraph (d), mentions—

> Any person or body corporate bona fide carrying on the business of banking, or insurance, or bona fide carrying on any business not having for its primary object the lending of money, in the course of which, and for the purposes thereof, he or it lends money at a rate of interest not exceeding ten per centum per annum.

The words "at a rate of interest not exceeding ten per centum per annum" I do not find in the English Act. The clause means that if such a person or banks lends money at ten per cent. or over he becomes a money lender. Then in Clause 4 there is a difference between the Bill and the Victorian Act, where "and" is inserted between "harsh" and "unconscionable," instead of "or" as in the Victorian Act. This clause is intended to allow transactions to be inquired into where the charges are excessive, and the transaction is harsh and unconscionable. The word "or" being used in the Victorian Act makes a big difference, and I prefer the wording of this Bill. In Subclause 2 it will be seen that proceedings may be taken for the recovery of money lent by a money lender, or the assignee or transferee or holder of a debt or security, and the original transaction between the moneylender and the client can be reopened and the creditor made to repay the money. That would mean that if a security was transferred to a third person the client could go to the court and the innocent person to whom the security had been transferred be made to pay back the money. I see that in Subsection 6 this is to a certain extent guarded against. It says—

> Nothing in the foregoing provisions of this section shall affect the rights of any bona fide assignee or holder for value without notice.

That may or may not go as far as I say it should go, but the words of the Victorian Act are—

> Nothing in the foregoing provisions in this section shall affect the rights of any bona fide assignee or holder who is not himself a money lender for value without notice, except in respect of a loan by a money lender.

The words "who is not himself a money lender" and also the words "in respect of a loan by a money lender" are omitted from our Bill, and this seems to me significant. I cannot understand why they are left out. Another clause I want to refer to is Clause 5, Subclause 4. At the first sight I did not see the necessity for it. The marginal note says, "Convictions for ojences not to make contract void or voidable." Until I consulted the authorities I did not see its necessity, but I find there is a recent decision under the English law, which has rendered it necessary to amend the English law to the same effect as is set out in this subclause. Mr. Jenkins has referred to Clause 7, and he very properly pointed out that considerable hardship might be done to a money lender under that provision. There again there are significant omissions from both the English and the Victorian Acts. In both these Acts the word "material" is inserted before "facts," and the representation is made to deal with material facts, which of course makes a great difference; and then in the English law the word "fraudulently" appears before "induces"; it has to be a fraudulent inducement. These are significant omissions, and it would be advisable to amend the Bill in this direction in Committee. These are only a few of the matters that have struck me in going through the Bill. With the exception of these points, I

cordially support the introduction of the measure.

Question put and passed.

Bill read a second time.

BILL—INDUSTRIAL ARBITRATION.

Message as to Conference Managers.

Message from the Legislative Assembly received, acquainting the Council that the Assembly had agreed to the time and place for a free conference mentioned in the Council's Message, and that the Assembly had appointed three managers to represent the Assembly at the said conference.

House adjourned at 6·5 p.m.

Legislative Assembly,

Thursday, 28th November, 1912.

The SPEAKER took the Chair at 3.30 p.m., and read prayers.

PAPERS PRESENTED.

By the Minister for Works: By-laws under the Metropolitan Water Supply, Sewerage, and Drainage Act.

By the Minister for Mines: By-law No. 65 under the Government Railways Act.

QUESTION — PUBLIC SERVICE, TEMPORARY HANDS.

Mr. GILL asked the Premier: 1, Is it a fact, as is rumoured throughout the Public Service, that the Government intend reducing the wages of the temporary hands from 11s. to 10s. per day? 2, Is there any truth in the rumour that the Government intend making a large reduction in the number of temporary hands before the Christmas holidays?

The PREMIER replied: 1, The employment of all temporary hands in the Government Service is entrusted to the Public Service Commissioner, who states that the salary fixed is in all cases determined by the value of the work to be performed. In some cases a reduction has been found necessary in order to arrive at uniformity. 2, So far as the Government are concerned there is no truth in the rumour.

QUESTION—RAILWAY GAS SUPPLY AT ALBANY.

Mr. PRICE asked the Minister for Railways: 1, Does any contract exist between the Commissioner of Railways and the Colonial Gas Association, Albany, for the supply of gas to the railway offices and jetties at Albany? 2, If so, what are the conditions and term of such contract or agreement?

The MINISTER FOR RAILWAYS replied: 1, No. 2, Answered by No. 1. It may be added that the price paid is 10s. per 1,000 feet, with a discount of 10 per cent. on consumptions of 10,000 per month; 15 per cent. on consumptions of 15,000 per month; 20 per cent. on consumptions of 20,000 per month.

RETURN — LOCAL OPTION POLL RESULTS.

On motion by Mr. B. J. STUBBS (for Mr. Dwyer) ordered, "That a return be placed on the Table of the House showing in detail the results at each polling booth throughout the State of the last local option poll."