At the present time there is a very big drain on the State's funds in providing berths at Bunbury, Esperance, and Geraldton, and it is considered appropriate to allow the harbour boards to take advantage of semi-governmental borrowing facilities in this State. The provisions are identical with those which were incorporated in the Fremantle Harbour Trust Act Amendment Act in 1960.

Debate adjourned, on motion by Mr. Tonkin (Deputy Leader of the Opposition).

ALBANY HARBOUR BOARD ACT AMENDMENT BILL

Second Reading

MR. WILD (Dale—Minister for Works) [5.55 p.m.]: I move—

That the Bill be now read a second time.

As I said when I introduced the previous Bill, this one appertains to the Albany Harbour Board, and exactly the same conditions apply. With your approval, Mr. Speaker, I will take the notes as having been read in this instance.

Debate adjourned, on motion by Mr. Hall.

BILLS (5): MESSAGES

Appropriation

Messages from the Lieutenant-Governor and Administrator received and read recommending appropriation for the purposes of the following Bills:—

1. Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Bill.
2. Offenders Probation and Parole Bill.
3. Noxious Weeds Act Amendment Bill.
4. Bunbury Harbour Board Act Amendment Bill.
5. Albany Harbour Board Act Amendment Bill.

House adjourned at 5.58 p.m.

Legislative Council

Tuesday, the 10th September, 1963

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

QUESTIONS ON NOTICE

1. *This question was withdrawn.*

HALE SCHOOL LAND SUBDIVISION

Tabling of File

2. The Hon. F. J. S. WISE asked the Minister for Town Planning:

Will he lay on the Table of the House all papers relating to the subdivision of Hale School authorities' land in the Wembley Downs area?

The Hon. L. A. LOGAN replied:

Yes, for one week.

The papers were tabled.

SUPREME COURT RULES

Disallowance of Amendments: Motion

THE HON. H. K. WATSON (Metropolitan) [4.44 p.m.]: I move—

That the rule No. 29A inserted in order LXV of the Rules of the Supreme Court and the amendments to appendix N of the Rules of the Supreme Court as published in the *Government Gazette* of the 7th February, 1963, and laid upon the Table of the House on the 6th August, 1963, be and are hereby disallowed.

The new Supreme Court rules which my motion invites the House to disallow cover two points. They provide, firstly, that any legal practitioner who is employed by a firm on a salary basis shall not be allowed a counsel fee; secondly, that where two counsel appear in a case and they happen to be partners, only one counsel fee shall be allowed.

The Supreme Court Act empowers the justices of the Supreme Court to make rules "for regulating any matters relating

to the costs of proceedings." These rules purport to have been made in the exercise of that power. But I gather the real purpose behind the rules is, perhaps, to channel briefs to barristers who comprise the bar which has recently been established within the legal profession of Perth.

The rules, as they have been explained to me by numerous members of the legal profession in this city, appear to be open to legitimate criticism on three grounds. Firstly, they upset the normal legal and lawful practice which has existed in this State for the past 60 years. Secondly, they appear to have the effect of changing or stultifying the Statute law and of depriving legal practitioners of some of the rights which Parliament conferred upon them by the Legal Practitioners Act, 1893-1960. Thirdly—and I say this with great respect —they appear to do those things in a manner which usurps the legislative supremacy of Parliament.

By way of background information, I may explain that in this State from the inception of the Legal Practitioners Act in 1893 until very recently—and with the notable exception of the late Sir Norbert Keenan, K.C.—all practitioners practised both as barristers and solicitors; and generally in partnership. And today they still do, with the exception of the five or six members of the newly-established bar.

The establishment of a separate bar is no doubt a very laudable object and well worthy of support. It is, however, suggested with great respect that it is no function of the judges of the Supreme Court to use a method such as this to encourage a separate bar. Moreover, the members of the bar, by their very skill and reputation, can be relied upon not to languish through lack of engagement.

The Legal Practitioners Act of Western Australia sets forth what persons may be admitted as practitioners and provides that practitioners, when admitted, shall sign the roll of practitioners. The Act is quite different from that which operates in New South Wales. Under our legislation a person simply signs the roll of practitioners and he is then admitted as a practitioner. The position is quite different in New South Wales.

In that State the Legal Practitioners Act, 1898-1954, can be found in volume 6 of the reprinted Statutes of New South Wales. Part of that Act deals with barristers, part deals with solicitors, and part deals with conveyancers. In New South Wales the Act provides for three rolls. A person does not sign the roll as a practitioner; he signs it either as a barrister, as a solicitor, or as a conveyancer; and, having signed the roll for a particular category, he practises in that category and in no other category.

That is the position in New South Wales; and if our Legal Practitioners Act contained similar provisions to the law in New South Wales, I would not be moving this motion this afternoon. However, as I have explained, the position here is entirely different. Our Act is in no way concerned whether a practitioner is practising on his own account, or in partnership, or as an employee of a legal firm. Section 4 of our Legal Practitioners Act makes this very clear by defining a practitioner as—

> a person admitted and entitled to practise as a barrister, solicitor, attorney and proctor of the Supreme Court of Western Australia, or in any one or more of these capacities.

If members look at the definition section of the New South Wales Act they will find that it defines solicitors; it defines barristers; and it defines conveyancers. Not one of those three definitions is to be found in our Legal Practitioners Act; one simply finds the overall description of "practitioner." Therefore, when these rules which are the subject of my motion say that any legal practitioner who is employed by a legal firm on a salary basis shall not be allowed a counsel fee, the rules are, in effect, overriding the provisions and the clear intention of the Legal Practitioners Act.

I should now like to give an illustration or two of the result of rule No. 29A. It has been suggested to me that the rule prejudices young practitioners seeking experience in the courts. It is usual for younger members to work for a firm on a salary basis for at least the first few years. As things are now, they are unlikely to be sent into court by their principals, and this must react to their disadvantage. Under rule 29A such a fledgling could not be tried out in the Supreme Court, and if he cannot be tried out, how can his ability be judged?

It will be readily realised that it does not follow that a paid clerk of a practitioner is necessarily a junior practitioner. Until recently there was the instance of a very senior practitioner, personally known to quite a few members of this House, who was for many years a senior partner of one of our leading legal firms, accepting employment with the successors to his firm; and he had been the founder of the original firm. He had retired from that firm on being elected to the Commonwealth Parliament and, on his defeat many years later, had accepted such employment in his latter years; and, although in those latter years he was an employee of others, he was an experienced practitioner.

There was another instance of a very senior practitioner who had for many years been an esteemed partner of a large Perth firm, accepting employment with a country practitioner. In the future there will no doubt be other such

instances, and there probably have been others in the past which cannot be recalled.

Another illustration which has been given to me is that of a country practitioner who decides for personal reasons to come to the city to live. Should he decide not to enter into partnership, but want to remain on a salary, the question is asked: Who wants him under rule 29A? Because he is not much use if he cannot earn a counsel fee.

Under rule 29A it would appear that the judges are by indirection attempting to tell practitioners how to run their offices. Rule 29A, which is the rule which provides that a firm shall not charge a counsel fee in respect of an employee, appears to me—and I say this with respect—to lose any semblance of logic or consistency when compared with the provisions of section 62A of the Legal Practitioners Act. Section 62A was inserted in the Legal Practitioners Act as late as 1960 and it provides, firstly, that—

> Every practitioner employed by the Crown in a salaried capacity shall, while acting in his official capacity as a practitioner so employed, be deemed to be a certified practitioner.

Then the section goes on to say in substance that in all actions in which the person I have just mentioned acts in his official capacity as a counsel for the Crown, or any Crown instrumentality, the party for whom the practitioner so acts is entitled to and may recover counsel fees to the same extent as if the practitioner so employed were a certified practitioner in private practice engaged by that party.

So members can see that on the one hand a salaried person in a Government department, be it the Crown Law or anywhere else, is entitled to appear in court and claim a counsel fee, and to have that counsel fee recovered by his client from an unsuccessful party; yet it is suggested, or it is enforced by the rule I am now discussing, that a firm of solicitors cannot operate in a like manner; and if an employee of such a firm is acting as counsel it is not entitled to recover counsel fees.

Likewise, when these rules say that where two counsel appear in a case and they happen to be partners, only one counsel fee shall be allowed, the rules are, in effect, overriding the provisions of the clear intention of the Legal Practitioners Act.

Again, it may be said, with respect, that this is an interference by the court in telling firms of barristers and solicitors how to organise their office arrangements. Moreover, the rule as it is worded will not necessarily produce one extra brief for the members of the new bar who are operating solely as barristers. But it does appear to create certain peculiarities which are worth mentioning. If a case warrants the appearance of two counsel and they happen to be partners no second counsel fee will be allowed, but if they both happen to be members of two different firms of barristers and solicitors then two fees are allowable.

None of these factors takes into account necessarily whether the counsel concerned is experienced or inexperienced. Those angles do not come into the question. The allowance of the fees is merely determined by the status so far as partnership or otherwise is concerned, and this I suggest is not sound.

Let me explain it this way: It is not uncommon for a junior member of a firm to handle the case right up to the day of the trial, but at the trial for a senior member of the firm to lead that junior in the presentation of the case to the court. The senior man could well be a Queen's Counsel, and it is requisite that he should have a junior with him.

Another point to bear in mind is that the costs are very often awarded by the court to the successful party against the unsuccessful party, and it seems to me that it is wrong that the unsuccessful party should be relieved of some liability merely because of certain internal circumstances in the firm which acted for the successful party.

It is the successful party who is entitled to costs. The counsel or solicitor is not entitled to recover costs from the other party —he can recover only from his own client. Several firms of solicitors are concerned about these amendments to the Supreme Court rules.

From the file which the Minister for Justice was good enough to make available for my perusal, I notice that the Law Society is opposed to these amendments of the Supreme Court rules, and has informed the learned Chief Justice accordingly. There may be those who feel that the principle behind the alteration sought by these rules is sound and desirable notwithstanding what I have said. Be that as it may; but if it is so desired, then let Parliament amend the law; let Parliament revise the Legal Practitioners Act in whatever manner, if any, may be desired.

I am concerned—as all of us should be concerned—about the supremacy of Parliament. Parliament creates or alters the law and the courts apply it. In connection with this particular angle of the question, the position seems to be aptly summed up in one of the works of Professor Paton in these words—

> It is for the Legislature to change the law, to decide awkward questions of policy and to live amidst the dust of politics; whereas the court, untouched by strife, is to apply the law with Olympian calm.

The courts have their function; and Parliament has its function. For those reasons I move the disallowance of these particular rules.

Debate adjourned, on motion by The Hon. A. F. Griffith (Minister for Justice).

BILLS (2): INTRODUCTION AND FIRST READING

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

Bills introduced, on motions by The Hon. E. M. Heenan, and read a first time.

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

CONSTITUTION ACTS AMENDMENT BILL

Second Reading

Debate resumed, from the 29th August, on the following motion by The Hon. R. F. Hutchison:—

That the Bill be now read a second time.

President's Ruling

The PRESIDENT (The Hon. L. C. Diver): When this question was last before the House I was asked to give a ruling as to whether the amending Bill is in order. I give my deferred ruling as follows:—

The Minister for Justice has asked whether this Bill is in order on the ground that it may appropriate revenue and would therefore conflict with section 46 (1) of the Constitution Acts Amendment Act.

Before giving this ruling I would like to point out that the Minister, when asking for a ruling, referred to a Bill before the House in 1959. The Minister was under the impression that I gave a ruling on that occasion. However, due to the date of the previous ruling, members will appreciate that it was given by my predecessor in office.

Certain tests may be applied to determine whether a proposal imposes a charge upon the public revenue. Those which apply in this case are firstly whether any expenditure which the provisions of the Bill may bring about are new and distinct; and secondly whether such expenditure is effectively imposed.

I have given these points careful consideration and in my opinion additional expenditure which could arise if the Bill became law is already covered by existing appropriations and, therefore, would not constitute a new and distinct charge.

On the second point, after a careful scrutiny of the implications of the proposed amendment, I am unable to determine to what extent additional expenditure, if any, would be incurred and I believe, therefore, that it is not effectively imposed.

For these reasons I rule the Bill to be in order, and I should add that in the past many Bills of a similar nature have been introduced into both Houses without a recommendation from the Governor for financial appropriation.

Bills which will cause the expenditure of public funds are regularly introduced into this House. For purposes of illustration I will mention two of these, the Reprinting of Acts Authorisation Act Amendment Bill and the Amendments Incorporation Act Amendment Bill introduced by the Minister for Justice in 1962. Additional expenditure caused by the passing of these Bills came within the framework of existing appropriations in a similar manner to any expenditure caused by the Bill now before the House.

Dissent from President's Ruling

The Hon. A. F. GRIFFITH: I move—

That the House dissent from the President's ruling.

The PRESIDENT (The Hon. L. C. Diver): Under Standing Order No. 405, the debate will have to be adjourned until the next sitting of the House.

Debate (on dissent) adjourned, on motion by The Hon. L. A. Logan (Minister for Local Government).

BILLS OF SALE ACT AMENDMENT BILL

Second Reading

Order of the day read for the resumption of the debate, from the 3rd September, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

Question put and passed.

Bill read a second time.

DOG ACT AMENDMENT BILL

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 3rd September, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. J. G. HISLOP (Metropolitan) [5.21 p.m.]: I asked for the adjournment of this measure because it has always struck me that four is a very small number for a quorum, but on making inquiries I have ascertained that the attention paid to the work of this board and the attendance of members reveal such considerable interest that there is never any risk involved in this small number making a decision on the future life of a practitioner. I therefore support the measure.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

COMPANIES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 29th August, on the following motion by The Hon. H. K. Watson:—

That the Bill be now read a second time.

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [5.25 p.m.]: I must say at the outset that I find this Bill, at the present time anyway, unacceptable; and there are very cogent reasons for this.

Mr. Watson first mentioned the matter of the introduction of this measure to me a short time ago, and I asked him to indicate to me in writing its purpose. I informed him that I would endeavour to have the matter put before the Standing Committee of State and Federal Attorneys-General, because it may be a matter which would affect the uniformity of legislation so far as the Companies Act was concerned. The honourable member faithfully did that, but I regret to say that there was insufficient time for me to have his proposal placed on the agenda for the meeting of the standing committee which took place in Adelaide on the 18th July.

However, since that date I have circulated the proposals put forward by Mr. Watson in this measure to the various Attorneys-General in the other States; and I must say that it was really quite a surprise to me when I heard the honourable member give notice of his Bill. Nevertheless, I can appreciate his anxiety to introduce the measure, and I repeat that I am sorry I was not able to have the matter considered by the last meeting of the standing committee which took place on the date I have indicated.

The comments I have received from my ministerial colleagues in other places are varied in their approach. Some comments suggest that Mr. Watson's Bill contains the germ of an idea; some that the objective of the Bill deserves some consideration; and some that the means proposed seem quite unacceptable and should require much further thought. Therefore members can see that at this particular point of time I am in somewhat of a quandary because there has been no opportunity for the Attorneys-General to consider the proposal put forward in the Bill. The matter, therefore, needs to be approached with reasonable caution until the precise nature of its impact can be accurately gauged.

Another comment was that the proposal itself is too drastic and would lead to considerable hardship and injustice unless some essential exceptions were written into it. Yet another comment was that the proposal needs further and very careful consideration and some modification before being implemented by legislation.

So much for the comments I have received from other Ministers. Briefly, my particular reasons for not supporting the Bill are these: In the first place it would simply mean that Western Australia would be taking unilateral action by amending its Companies Act and endangering the whole fabric of uniformity. The Companies Act, as members know, has been introduced in each State basically along the same lines.

Again, the proposal embodied in the Bill needs further development if justice is to be done to all the creditors of insolvent companies. The scheme will later receive detailed consideration by the committee of officers which is presently dealing with the uniform company law scheme, and it will come within the purview of the Ministers at the meeting of the standing committee which is due to take place in the first week in December. The Bill patently needs radical amendment, which I cannot now forecast, before it is likely to be accepted by the Parliaments of all States.

The Hon. H. K. Watson: Even though it was in operation in this State for ten years?

The Hon. A. F. GRIFFITH: That was a point of argument put forward by the honourable member when he made his second reading speech. What I was going to say is this: I do not feel happy about asking the House to defeat the honourable member's Bill at the second reading; but really I have no alternative, because it will be acting in a unilateral manner, and once Western Australia, or any one State,

acts in this manner, then uniformity might as well be thrown to the winds; uniformity will be gone completely.

I am not going to say that the suggestions or the propositions contained in the Bill may not ultimately be accepted, but as sure as I go to another meeting of Ministers and say that I supported a Bill which was unilateral so far as Western Australia is concerned, then I run the risk of breaking down the basis of uniformity which the States have been able to achieve in the Companies Act. It is now operating in a uniform way.

You will appreciate, Mr. President, that the meetings of State and Federal Attorneys-General are attended by Ministers who are politically minded, but I have not known a situation to arise at one of these meetings where politics has played a significant part. Rather, the Ministers get together and try to bring to the Parliaments of their particular States legislation which will be of benefit to the people as a whole. I think it will be agreed that the work done by the officers and Ministers of the various Governments has led to the point where the uniform Companies Act of Australia is something that we can be proud of.

I readily agree, of course—and I have said this before—that amendments will be necessary. As a matter of fact, it was stated in the Lieutenant-Governor's Speech that an amendment to the Companies Act would be brought down during this session. Before we take any action of this nature; before we write into our legislation the conditions that are envisaged in the small Bill introduced by Mr. Watson, without realising or without being able to understand exactly what the complexity or result of such amendments would be, they should be further considered, and I am not agreeable to supporting the second reading of the Bill. I cannot do more than that.

I repeat, I am not anxious to see this Bill treated in such a way that consideration may not be given to it. I am quite prepared, if the House would like it that way—or if the honourable member would like it that way—to allow debate to go on so that members can express their views in order that those views can be examined when the Ministers consider the proposition, as they will, when it appears on the agenda of the Ministers' meeting. But at this particular time I cannot give support to the Bill.

THE HON. N. E. BAXTER (Central) [5.34 p.m.]: I listened with interest to the second reading speech made by Mr. Watson and I thoroughly agree with the principle outlined by him. I think it is a principle we cannot very well deviate from. When a company sets up a subsidiary and can withdraw the capital it has put into that subsidiary before creditors are paid, it is a rather disgraceful state of affairs.

In spite of the fact that the Minister has stressed the need for uniformity in the Companies Act throughout Australia, I do not think that is any reason for us to overlook the principle of this amending Bill. If we are not going to debate the principle of our legislation we might as well give this Parliament away.

The Hon. H. K. Watson: We might as well meet once a year and adopt everything that has been decided.

The Hon. N. E. BAXTER: Yes, that is so—adopt everything that is uniform throughout Australia. I cannot see any reason why this amendment cannot be accepted; and when the Minister confers with the Attorneys-General and Ministers for Justice from the other States, the amendment could be put to them for consideration. That meeting will not take place until next year, and in the meantime we would have protection in this State.

The Hon. A. F. Griffith: In the meantime, the only State with this law operating would be Western Australia.

The N. E. BAXTER: I do not see a lot of harm in that; no harm at all. Is it going to upset the other States because we have a provision in our Bill which gives protection to creditors who, within their rights, should be paid before the parent company? I think we would be failing down on our job if we let that situation go on, and I trust the House will agree to this amendment moved by Mr. Watson.

The Hon. A. F. Griffith: Would you explain to me what clause 2 means?

The Hon. N. E. BAXTER: I will explain in very clear terms. Clause 2 means that a company can set up a subsidiary, and if that subsidiary fails then the parent company can withdraw the capital invested in the subsidiary prior to the claims of any other creditors. I think that is clear enough.

The Hon. A. F. Griffith: Do you think it will cover companies from today or from yesterday?

The Hon. N. E. BAXTER: It will cover them from the time this Bill is assented to, and will cover all future operations. I hope the House will agree to this amendment in spite of what the Minister has had to say.

THE HON. W. F. WILLESEE (North) [5.38 p.m.]: I do not see eye to eye with the Minister on this issue, and I support the proposals put forward by Mr. Watson. This particular piece of legislation was assented to in this House in 1952, and it remained in the Companies Act for ten years. Apparently it was overlooked in the drafting of the new Companies Act. If a

piece of legislation has been good, I think we should reintroduce it at the first opportunity in any manner that we can, whether by private legislation or by Government legislation. If, subsequently, the Attorneys-General from the other States think it is good legislation, then it can be added to their Statute books too. If it is on our Statute book for two or three months before the other States, surely no harm is done; only benefits can accrue.

I am not one who is at all happy to see finance being taken from the public by company directors with flamboyant advertising, and the companies going out of business within a few days, leaving the poor unfortunate investors who have put their money into the enterprises lamenting. Surely, if it is good enough to put some stability into big business; if it is good enough for a creditor to say, "I am prepared to give this company credit," then it is good enough to say that the parent company should have enough confidence in the subsidiary to let it stand on its own feet, or alternatively not to take any advantage in regard to giving credit to it. I think it is reasonable to assume that a person who extends credit to a company is almost a provider of capital and should never be disadvantaged. A person who advances credit puts forward a certain amount of new capital in the first instance.

If we carry on as we have been doing in Australia during the last two years—and there have been some very glaring instances—we will destroy the principle of credit. We will want a complete guarantee before anything is done on a basis of 30, 60, or 90 days, and I think that any arresting action that can be taken to stabilise public confidence in company administration is well worthy of support.

Debate adjourned, on motion by The Hon. R. C. Mattiske.

House adjourned at 5.42 p.m.

Legislative Assembly

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