

**Legislative Council,***Wednesday, 15th October, 1919.*

	PAGE.
<b>Bills:</b> Kalgoorlie Friendly Societies Investment validation, 3s. ....	865
Divorce Act Amendment, Coin., Recon. ....	865
Droving Act Amendment, Com. ....	868
Anzac Day, 2s., Com. ....	869
Dog Act Amendment, 2s., Com. ....	870

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

**BILL—KALGOORLIE FRIENDLY SOCIETIES INVESTMENT VALIDATION.**

Read a third time and passed.

**BILL—DIVORCE ACT AMENDMENT.**

In Committee.

Resumed from October 9.

Hon. J. F. Allen in the Chair; Hon. J. Nicholson in charge of the Bill.

Clause 10—Ante-nuptial incontinence a ground for dissolution of marriage:

The CHAIRMAN: An amendment had been moved by Mr. Holmes that after "that" in line 3 of Subclause 1 the words "her or" be inserted.

Amendment put and passed.

Hon. J. J. HOLMES: I move a further amendment—

That in line 5 of Subclause 1, after the word "thereof" the following be added—"in the case of a wife on the ground that prior to the celebration of the marriage the husband has been guilty of incontinence whereby at time of such marriage a woman other than the wife of such marriage is pregnant to such husband, and in the case of a husband."

Amendment put and passed.

Subclause (2) was consequently amended by inserting after the word "herself" in line 19 the words "or himself."

New clause:

Hon. J. DUFFELL: I move—

That the following be added to stand as Clause 11:—"Where a husband and wife have been living separate and apart, either by mutual consent or under any agreement, or deed, or under order of any competent court for a consecutive period of three years or upwards, either party may present a petition for dissolution of the marriage, and the court may decree dissolution thereof if satisfied that either of the parties refuses to cohabit with the other."

In moving this new clause, I am guided by the fact that there are, unfortunately, people who are living apart from each other on the grounds set forth in this new clause. My main object is to avoid the extreme measures that are likely to occur in certain instances where a man and wife have been living apart for three years, and where there is no reasonable chance of their ever coming together again. I realise that the green-eyed monster is still present, and unless machinery is provided whereby that married couple can have their marriage legally dissolved, I contend that it is certain, sooner or later, to lead to crime. The machinery does not at present exist, but it would be put into operation under my proposal, if either of the parties applied to a judge of the Supreme Court to invoke the aid of the court to dissolve the marriage tie. This could be done at very little expense and with very little trouble. In the beginning of the career of this Bill, the religious side of the matter was dominant but the civil element has now been imported into it. I may say that this provision has the backing of the National Council of Women and is supported by the various women's societies of the State.

Hon. H. CARSON: If a dissolution of marriage was to take place under this proposed new clause, would the agreement between the two parties hold good?

Hon. J. NICHOLSON: No. If the marriage tie was dissolved the deed of separation would cease to operate, because the parties would cease to be man and wife. If a dissolution were pronounced, the court would take into consideration the clause in that deed providing, say, for the maintenance of the wife. Under the principal Act the court has power to fix the maintenance to be paid to a wife, even after a dissolution. If a decree be pronounced under the Divorce Act of 1911, or under this Bill when it becomes law, the court may exercise all the power it has under the principal Act or the amending Acts.

Hon. J. J. HOLMES: If the new clause is adopted divorce will be made easy. All the husband and wife will have to do will be to live apart for three years and then approach the court for a dissolution.

Member: America up to date.

Hon. J. J. HOLMES: It is almost as bad as that. In America, I understand one can take a train to the divorce court and return by the next train with another wife. We do not want to go so far as that. The proposed new clause goes altogether too far.

Hon. J. CORNELL: I cannot support the new clause. The husband or wife cannot get a divorce on the ground of desertion until the desertion has extended over five years.

Hon. J. DUFFELL: If, after three years of separation, there is no reasonable chance of bringing the parties together again, that should be sufficient ground for divorce. Otherwise, there is a danger of crime resulting. The National Council of Women support the proposed new clause and their ap-

proval shows that they consider the women will be protected, as far as is possible, under this measure.

Hon. A. SANDERSON: This is probably the most serious legislation which could be brought before us. I strongly protest against the new clause as it will break up the whole system of our marriage laws. I suppose this is to usher in the new era we are told is to come. The Government must accept a certain measure of responsibility in this matter and should either actively support or oppose such a Bill. The proposed new clause goes to the very foundation of society as it exists to-day, and I am disappointed that the Government do not take a strong line of action and say they will not tolerate such a proposal. In Victoria it was made a Government measure, but unfortunately I am unable to obtain a copy of the Victorian "Hansard" to get the full explanation of the position. The leader of the House has recently returned from a visit to the Eastern States and I hope he will put to his colleagues that it is not in accordance with sound constitutional government to allow this measure, equal in importance to a financial measure—

Hon. Sir E. H. Wittenoom: Mr. Duffell says it is supported by the Women's Council.

Hon. A. SANDERSON: It is difficult to credit that statement; there must be some misunderstanding.

Hon. J. Duffell: I assure you there is not. I have a letter to that effect.

Hon. A. SANDERSON: It is difficult to credit it. But even if that were the case, it would not make the slightest difference to my attitude. To accept the new clause would reflect very little credit on us, but the responsibility of the government of the country is in the hands of Ministers of the Crown. Extraordinary restrictions have very properly been placed on the financial aspect of our public affairs, and yet the Government take very little interest in the question of divorce, which goes to the very foundation of society. The leader of the House has explained his attitude as a member of the Committee, but the matter is one which should be brought before his colleagues when considering these questions of public policy.

Hon. J. CORNELL: I move—

That the amendment be amended by striking out "three" and inserting the word "five" in lieu.

This will bring the proposed new clause into line with the Act relative to desertion. The two cases, after all, are largely parallel. The proposed new clause states that the judge "may" not "shall" grant divorce, so that the judge would still have to consider cases on their merits. We should discard the goody-goody sentiment and look at things as we know them to be; not as we should like them to be.

Hon. J. DUFFELL: The National Council of Women have signified in the Press their full approval of the proposed new clause, and a letter is held by Mr. Nicholson to the same effect.

Hon. H. STEWART: I support the amendment. I do not approve of the inclusion of cases of separation by mutual consent, agreement, or deed.

The CHAIRMAN: The hon. member must discuss the amendment to the proposed new clause.

Hon. H. STEWART: The approval of the National Council of Women is not sufficient to induce me to accept the proposed new clause even with the five years' limit. The women of the State have not been able to consider this matter. The National Council of Women alone have considered it and half the married women of this State are not associated with women's organisations.

Hon. J. W. HICKEY: I welcome Mr. Duffell's suggestion that Mr. Nicholson should read the letter from the National Council of Women, though personally I should not be influenced by it one atom. It is well to have the opinions of such associations. I am opposed to the new clause, even subject to Mr. Cornell's amendment, because the tendency of the clause would be to sap the foundations of society. The divorce laws are already sufficiently elastic. Under the new clause a mere domestic growl would be a sufficient ground for divorce. In fact, the carrying of the new clause would defeat the object of the Bill. I would be interested to learn how many people attend the meetings of the National Council of Women. If the women of this State understood the new clause, they would ask for its rejection.

Hon. J. J. HOLMES: The substitution of five years for three years would not improve the new clause. My amendment merely aimed at putting both parties on the same level. What troubles me is that under the new clause divorce will be made too easy and simple altogether. I agree with Mr. Sanderson's view.

Hon. J. NICHOLSON: There appears to be a misapprehension in the minds of hon. members regarding the effect of the new clause. Their idea seems to be that if this new clause is carried divorce is going to be secured very easily. I do not think the effect will be to make divorce any easier than it is now. But the new clause will provide a ground of divorce which at present does not exist, and which is very much needed. We very frequently see in the newspapers reports of cases in which wives apply to the police court for a separation order with custody of children. Such an order would be granted under the Summary Jurisdiction Act, which contains a section known as the non-cohabitation section, under which, if a woman asks for it, she may be granted dispensation from cohabiting with her husband. In the case *Harriman v. Harriman*, in 1898, it was held that where a non-cohabitation clause was in-

serted in a separation order, and where the husband, having been ordered to pay a certain amount per week by way of maintenance, failed to pay that amount, then, notwithstanding that failure, there was no desertion in the eyes of the law and the woman could not proceed for divorce on the ground of desertion. One feels it is monstrous that such a condition of affairs should exist.

Hon. Sir E. H. Wittenoom: Could the husband apply for a divorce?

Hon. J. NICHOLSON: No. The insertion of the non-cohabitation clause renders the order practically equal to a judicial separation, and where a judicial separation exists there can be no desertion in the eyes of the law. One of the objects of this clause would be to remove that stumbling-block, and thus relief would be provided in cases of the most distressing character. The English Royal Commission on divorce law came to the following conclusion:—

Our conclusion is that the remedy of judicial separation is an unnatural and unsatisfactory remedy, leading to evil consequences, and that it is inadequate where married life has become practically impossible.

The majority of the Commissioners held the view that these judicial separations, granted as a rule by the police courts, were altogether a wrong method of procedure and should be abolished. That is what is being aimed at in England at the present time. If parties have finally determined never to cohabit again, why should they be kept locked in an embrace which has been described by Mr. Justice Bargrave Deane as a sort of living death?

The CHAIRMAN: Will the hon. member show how he connects those remarks with the amendment on the new clause?

Hon. J. NICHOLSON: There is a good deal to be said for the amendment on the new clause. This Chamber, by a vote taken a few days ago, expressed its opinion that the period of desertion should not be reduced, as was suggested, from five years to three; and there would be an anomaly created if we had a period of three years in this new clause. Therefore I am inclined to think that the mover of the new clause should accept the amendment.

Amendment on the new clause put and passed.

Hon. J. J. HOLMES: In spite of Mr. Nicholson's heroic statements, if this new clause passes all a husband would have to do would be to convince the court that he will not cohabit with his wife any longer, whereupon the marriage will be dissolved and the husband will have no further responsibility as regards his wife and children. That was what Mr. Nicholson told Mr. Carson.

Hon. J. NICHOLSON: I hope Mr. Carson did not understand me to say what Mr. Holmes understood me to say, that the husband's obligations ceased upon divorce. What I did say was that if a deed

of separation was in existence at the time when the decree of dissolution of marriage was pronounced, that deed would automatically go by the board and cease to exist by virtue of the decree of dissolution of marriage. The marriage has ceased to exist by the decree of the court, therefore, any decree of separation also ceases to exist. But that does not free the husband from his obligations to his wife or children. The court has the fullest power to order maintenance, and the husband is bound to comply with that order.

Hon. J. CUNNINGHAM: A few months ago it was reported throughout the Press that the bolsheviks in Russia had practically nationalised women. Judging by the remarks of some hon. members, I am inclined to think there is a movement in that direction in this Chamber. Until recently the charge was laid at the door of the Labour party, that Labour was out to smash the marriage tie; to-day it seems to me that is the object rather of certain members of this Chamber. I admit I do not altogether understand the clause. It provides certain things where a husband and wife have been living separate and apart. Does that mean occupying different rooms under the same roof, or does it mean occupying different beds in the same room? Mr. Holmes pointed out that the clause affords an opportunity for any man or woman to come along and say it is his or her intention not to cohabit with the other party. Judging by the hon. member's remarks, in conjunction with the clause, it seems that cohabitation can take place up to within a few hours of the petition for divorce. I am going to vote against the clause, and I hope hon. members will get this bolshevik propaganda out of their minds. It might be well enough for Russia, but we are living in Australia.

Hon. H. STEWART: I move an amendment—

That all words after "apart" in line 2, down to "under" in line 3, be struck out.

The CHAIRMAN: Under Standing Order 130 no amendment can be proposed to any part of a question after a later part has been amended. We have already amended the clause at a later part. The hon. member's amendment is not in order.

Hon. H. STEWART: I will ask that the clause be re-committed.

The CHAIRMAN: The hon. member will give notice of that.

New clause as amended put and a division taken with the following result:—

Ayes	..	..	8
Noes	..	..	11

Majority against .. 3

AYES.

Hon. J. Cornell  
Hon. J. A. Greig  
Hon. C. McKenzie  
Hon. H. Millington  
Hon. J. Nicholson

Hon. A. J. H. Saw  
Hon. Sir E. H. Wittenoom  
Hon. J. Duffell  
(Teller.)

## NOMS.

Hon. H. Carson	Hon. J. J. Holmes
Hon. E. M. Clarke	Hon. G. W. Miles
Hon. H. P. Colebatch	Hon. A. H. Panton
Hon. J. Cunningham	Hon. H. Stewart
Hon. V. Hamersley	Hon. J. Mills
Hon. J. W. Hickey	(Teller.)

New clause thus negatived.

New clause.

Hon. J. NICHOLSON: I move—

That the following be added to stand as Clause 11:—"The powers conferred by the principal Act and the Acts amending the same shall apply to any decree pronounced under the said Acts as amended by the Divorce Amendment Act, 1911, and this Act."

This is to remove all doubts as to whether the court can carry out the powers given under the principal Act, providing alimony for the wife, custody of the children, etc.

New clause put and passed.

Title—agreed to.

(The President resumed the Chair.)

Bill reported with amendments.

Recommittal.

On motion by Hon. H. Stewart, Bill recommitted for the purpose of further considering Clause 7.

Hon. J. F. Allen in the Chair; Hon. J. Nicholson in charge of the Bill.

Clause 7—Amendment of Section 23 of principal Act:

Hon. H. STEWART: I move an amendment—

That the following be added to the clause:—"And is further amended by adding after the word 'institution,' in third line of Subsection (d) of Section 2 of the Divorce Amendment Act, 1911, the words 'in Western Australia'; and also by inserting after the date '1903,' in fifth line of said subsection, the following words:—'or has been confined in any asylum or institution in any place outside of the State of Western Australia in accordance with the laws of such place relating to lunatics or insane persons.'"

The hon. member who is in charge of the Bill has no objection to the amendment and he has been good enough to state that it will have the effect of improving the clause.

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

Bill again reported with a further amendment.

# BILL—DROVING ACT AMENDMENT.

In Committee.

Hon. J. F. Allen in the Chair; the Colonial Secretary in charge of the Bill.

Clause 2—Amendment of Section 3:

Hon. J. A. GREIG: I move an amendment—

That in line 2 the word "twenty" be struck out for the purpose of inserting another word.

The original Act was drawn up to deal with pastoral properties. If the clause is carried as it is, reducing the distance to 20 miles, it seems to me the farmers travelling their stock to market that distance will be compelled to go through all the unnecessary formula in connection with having to send notice on 24 hours ahead.

Hon. Sir E. H. WITTENOOM: It is my intention to move an amendment on the amendment. The distance is a very important matter because unless stock are travelling beyond a certain distance, they do not come under the definition of travelling stock and therefore are not subject to the provisions of the Act. It is, consequently, important to arrive at a distance which will be satisfactory to the various parts of the State. It is necessary to say a few words as to the conditions which exist in the different parts of the State. Take a line beyond Geraldton, going eastward to north: there, nearly all the pastoral leases comprise large areas, and to make the travelling distance 10 or 20 miles will entail a lot of unnecessary work. It was proposed that the distance should be 40 miles before stock became travelling stock, and before they would come under the Act. Going further south to places like Greenough Flats, we find that even 20 miles is too far, because the holdings along the tracks and roads might be only one mile wide, and those who were travelling stock would have to give notice directly they came within 10 miles of a homestead. A drover would therefore be continually sending out notices. I would suggest that the distance in the present Act be retained for the northern parts of the State and that the distance of 10 miles be inserted for the southern parts of the State.

Hon. J. A. Greig: No, give us 50 miles for the South and you can have what you like for the North.

Hon. Sir E. H. WITTENOOM: Does not the hon. member want a shorter distance?

Hon. J. A. Greig: We want a longer distance.

The CHAIRMAN: The only question before the Committee is that the word "twenty" be struck out for the purpose of inserting another word.

Amendment put and passed.

Hon. J. A. GREIG: I move an amendment—

That the word "thirty" be inserted.

Hon. Sir E. H. WITTENOOM: I would like to move an amendment that the word "forty" be substituted.

The MINISTER FOR EDUCATION: If the word "forty" is inserted it will be equivalent to striking out the clause. That

is the distance in the existing Act and the clause before hon. members proposes to reduce the distance from 40 to 20 miles.

Hon. Sir E. H. WITTENOOM: Then I will propose to move that the clause be struck out.

The CHAIRMAN: The hon. member can vote against the clause.

The MINISTER FOR EDUCATION: I have been informed that certain amendments desired by the Pastoralists' Association, who are naturally interested in the matter, have been discussed with the Crown Law Department. Perhaps Sir Edward Wittenoom can state whether that is a fact.

Hon. Sir E. H. WITTENOOM: I do not know whether the amendments were discussed with the Crown Law Department, but I know that leaving the distance as it is in the existing Act will suit the Pastoralists' Association.

Hon. H. STEWART: Unless the definition of "stock" is altered, the Bill will be detrimental to the agricultural interests of the State. The Act as it stands should not have been put on our Statute-book. If it were put into operation it would cause a considerable amount of trouble.

The MINISTER FOR EDUCATION: In view of what Sir Edward Wittenoom has said I would prefer not to proceed with the Bill this afternoon. The Crown Law authorities have not given me any information with regard to the proposed amendments, and I prefer that progress be reported at this stage.

(The President resumed the Chair.)

Progress reported.

## BILL—ANZAC DAY.

### Second Reading.

The MINISTER FOR EDUCATION (Hon. H. P. Colebatch—East) [5.47] in moving the second reading said: This is a very short Bill, and I am sure it needs few words from me to commend it to the favourable consideration of hon. members. As the House is aware, under the present circumstances there is no power in the Government to proclaim Anzac day as a public holiday. A request was made to the Government early in the year that Anzac day should be made a public holiday, and no doubt had we done what we could have done, namely, made it a bank holiday and a public service holiday, the great majority of the traders would have fallen into line and observed it as a holiday. It would have been competent, however, for those who did not desire to do so to continue their business to the detriment of those who desired to observe the wish of the Government, as expressed in the declaration of Anzac day as a bank holiday and a public service holiday. It is intended in the amending Shop and Factories Bill, which will be submitted shortly to make provision by which public holidays shall be declared, but that

Shop and Factories Bill is a very big measure and a very contentious one, involving the interests of many sections of the community. It is not intended or desired by the Government that it should be passed without mature consideration. If the matter were left to be dealt with in a Bill of that kind, which deals more comprehensively with public holidays, it is doubtful if, when the time came round for the celebration of Anzac day next year as a public holiday, we should not be in the same position as we have been this year. The Government, therefore, have introduced a Bill dealing with the one subject, the declaration of Anzac day as a public holiday. The only two questions which could possibly arise in anyone's mind in connection with the Bill are these: Firstly, is it desirable that any particular day should be set apart as a public holiday in commemoration of the part Australia played in the great war and, secondly, if that question be answered in the affirmative, which day should it be? I think that on the first question there must be unanimity of opinion, and that all will agree that it will be well for the future, for our children and for the development of a healthy Australian sentiment, that some day should be set apart for a public holiday in commemoration of Australia's part in the war. That being so and that being admitted, what day, shall we select? It was suggested very early in the war that Anzac day should be made a public holiday throughout Australia, but no steps were taken for the reason—probably a good one—that it was premature to come to a decision at that stage as to which day should be regarded as Australia's day in connection with the war. It was thought, perhaps, that other things might happen which would make it preferable to choose some other day. The war is over, and the choice can now be made with a full knowledge of everything that has happened. I believe that in another place, although the Bill received general support, the suggestion was thrown out that Armistice day would be a more suitable day for a public holiday. I find myself unable to agree with that suggestion, because Armistice day is the day in which the whole of the Allied armies have an equal interest. It could not be regarded as a peculiarly Australian day. Anzac day, however, could I think be regarded particularly as an Australian day. I am not suggesting that our Australian soldiers in other fields of the conflict, and at later periods of the war did not carry out their duties with a heroism equal to that of the soldiers who fought at Gallipoli. I know that much larger numbers of Australian soldiers took part in subsequent phases of the war, but Anzac day may be described as the baptism of fire so far as the Australian troops were concerned. There can be no question that the manner in which the Australian and New Zealand troops acquitted themselves on this occasion brought Australia, as a nation, into prominence in the minds of the people of the world such as it had never before received. For that reason,

since it is desirable that a day should be set apart to celebrate Australia's part in the great war, it should be the day on which our soldiers, after a wonderful preparation that reflected the highest credit upon the men and officers, first took their place in the fighting line, and proved themselves not merely the equals of any other soldiers in the world but capable of achieving what in the minds of many people was the impossible. I think that the proclamation of Anzac day as a public holiday will be generally approved throughout the State. I am confident, too, that the other States will follow our example, so that throughout Australia generally this day for all time will be observed as a public holiday in recognition of the performances of our troops.

Hon. A. J. H. Saw: I should like to hear from the Minister what will happen when the 25th day of April falls on a Sunday.

The MINISTER FOR EDUCATION: Under the Public Holidays Act it will be observed on the Monday. I move—

That the Bill be now read a second time.

Question put and passed.

Bill read a second time.

In Committee.

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

#### BILL—DOG ACT AMENDMENT.

Second Reading.

Order of the Day read for the resumption, from 7th October, of the debate on the second reading.

Question put and passed.

Bill read a second time.

In Committee.

Hon. J. F. Allen in the Chair; the Minister for Education in charge of the Bill.

Clause 1—agreed to.

Clause 2—Amendment of Section 3:

Hon. J. DUFFELL: When I spoke to the president of the Kennel Club, he informed me that he knew nothing about the Bill, and expressed the hope that consideration would be deferred until the members of that body are able to state their objections. It was evident, when the Honorary Minister moved the second reading, that he did not understand the Bill. His reply to my interjection proved that. I suggest that progress be reported until this day week, as I shall have important amendments to bring forward.

The MINISTER FOR EDUCATION: I understand the hon. member is speaking on behalf of a society interested in the matter and, as there is no wish on the part of the

Government to deprive them of an opportunity to state their objections, I agree to report progress.

[The President resumed the Chair.]

Progress reported.

House adjourned at 6.4 p.m.

## Legislative Assembly,

Wednesday, 15th October, 1919.

	PAGE.
Questions: Lakeside Private Railway ...	870
Children's hospital board ...	870
Select Committee, Hospital for Insane, extension of time ...	871
Leave of absence ...	871
Papers: Firewood companies, concession and agreement ...	878
Motions: Meat exporters and producers conference ...	871
Wheat production, price guarantee ...	870
Agent General's Office, Secretary and Emigration Officer ...	887
Agricultural Bank and Industries Assistance Board ...	888
Bills: Sale of chaff in bags, regulation, 1R. ...	871
Marriage Act Amendment, 2R. ...	876
Kalgoorlie Friendly Societies Investment Validation, retd. ...	898
Constitution Act Amendment, 2R. ...	898
Municipal Corporations Act Amendment, 2R. ...	893
Prices Regulation, report ...	897
Pearling Act Amendment, report ...	897
General Loan and Inscribed Stock Act Amendment, Council's amendment ...	897
State Children Act Amendment, Council's modifications ...	898
Justices Act Amendment, Council's amendment ...	899

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

#### QUESTION—LAKESIDE PRIVATE RAILWAY.

Mr. MUNSIE asked the Minister for Railways: What charge, if any, was made by the Government to the Lakeside Firewood Company for the use of Government wagons running on the company's line, prior to the present agreement being arrived at?

The MINISTER FOR RAILWAYS replied: Charges in accordance with page 80 of the Merchandise and Live Stock Rate Book were levied. These provide for any distance up to 25 miles 3d. per ton, and increased charges for longer distances.

#### QUESTION—CHILDREN'S HOSPITAL BOARD.

Mr. ANGELO asked the Colonial Secretary: As women are represented on the boards of management of the Perth Public