Legislative Council,

Thursday, 14th November, 1940.

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

BILL—CIVIL DEFENCE (EMERGENCY POWERS).

Read a third time and *passed.*

BILL—BUSH FIRES ACT AMENDMENT.

Further Recommittal.

On motion by Hon. A. Thomson, Bill again recommitted for the further consideration of Clause 13.

In Committee.

Hon. J. Cornell in the Chair; the Honorary Minister in charge of the Bill.

Clause 13—Amendment of Section 17:

Hon. A. THOMSON: I move an amendment—

That in lines 9, 10 and 11 of new Subsection 9 the words "and a certificate signed by the Minister shall be conclusive evidence of such amount" be struck out.

I draw the attention of members to the fact that the new section deals with powers proposed to be conferred upon the Conservator of Forests under which he may compel occupiers of land to plough or clear fire breaks. Quite possibly, local authorities may consider it unnecessary for the work to be done and consequently may not give notice to the owner. The Minister, however, can direct the work to be done. A certificate signed by the Minister would be conclusive evidence that the amount was due. There would be no appeal and court proceedings would be unnecessary. The Minister would simply certify that the amount was correct, and the court would have to give a decision against the defendant.

Hon. L. Craig: A local authority would have recourse against an owner.

Hon. A. THOMSON: The work might have cost four or five times as much as it was worth and, in addition, might have been deemed by the local authority to be unnecessary. No department should have the right to proceed with work at the expense of a local authority or an owner without there being a right of appeal to the court.

Hon. L. Craig: How would the cost be assessed?

Hon. A. THOMSON: On evidence placed before the court.

Hon. L. Craig: That would only be in the event of the local authority not considering the work necessary.

Hon. A. THOMSON: But the Forests Department might override the local authority, and when the cost had been certified by the Minister, the amount would have to be paid.

Hon. J. J. Holmes: You think the court should fix the amount?

Hon. A. THOMSON: Yes, the court, not the Minister.

The HONORARY MINISTER: The Crown Law Department advises that the effect of the words is that in any proceedings the Minister would not be required personally to appear in court to give evidence. The words would not prevent the magistrate from reducing the amount and would not interfere with the jurisdiction of the court.

Hon. L. Craig: That is not the real interpretation.

The HONORARY MINISTER: It is. But for the inclusion of those words, the Minister would have to appear in court, and to insist upon that would be ridiculous.

Hon. H. S. W PARKER: The words are necessary. If a local body did not do the work and the Government carried it out, the cost would be assessed by the Minister. Presumably the Government would charge only the actual cost, but if the Government assessed the cost at £10 and the local authority thought £5 sufficient, the cost of litigation over the difference would be far greater to the ratepayers than if the £10 was paid.

In the long run the ratepayers would be better off by having the amount definitely fixed by the Minister.

Hon. A. THOMSON: If the words are retained, the local authority or the owner would conclude that it would be useless to fight the Government.

Hon. J. J. Holmes: The cost might be assessed at £100 instead of £10.

Hon. A. THOMSON: Quite so. Regardless of whether the charge is just or equitable——

The Honorary Minister: The magistrate will decide that.

Hon. A. THOMSON: But the Minister's certificate will be conclusive evidence of the cost. I am considering the local authority and the individual who will be called upon to meet what might be a very heavy charge. What hope would an individual have in an action against a Government department? Suppose the department asks a man to do something which he considers unnecessary expense, by way of protecting a plantation. The department already has power to put fire breaks through his property. The man might consider that the department should also put in breaks to protect his property. He has no power to compel the department to do that. The department, however, has the converse power. There is no limit to the expenditure which may be entailed. We are getting too much of this protection for the Government. The Government wins every every time.

Hon. H. Tuckey: Both parties should provide breaks.

Hon. A. THOMSON: Yes. For the Government it is a case of "heads I win, tails you lose."

The HONORARY MINISTER: If Mr. Thomson carries his amendment, he will not achieve his desire. Mr. Parker exaggerated the position. If the certificate is not supplied, the Minister himself must attend to give evidence.

Hon. H. S. W. Parker: That is not so. His officers would give the evidence.

The HONORARY MINISTER: Carelessness regarding fire breaks might cause losses of hundreds of thousands of pounds. If a man refuses to make a needed fire break, someone else must make it.

The CHAIRMAN: Has not the Minister to state what the amount is before he can sue?

The HONORARY MINISTER: That is another point. The Forests Department officers will adduce proof of the cost involved, and the Minister will certify accordingly. If the man disputes the cost, the court will decide.

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

Ayes	10
Noes	10
A tie	0

AYES.

Hon. C. F. Baxter	Hon. H. L. Roche
Hon. L. B. Bolton	Hon. A. Thomson
Hon. Sir Hal Colebatch	Hon. H. Tuckey
Hon. J. J. Holmes	Hon. F. R. Welsh
Hon. W. J. Mann	Hon. V. Hamersley
	(Teller.)

NOES.

Hon. L. Craig	Hon. J. Nicholson
Hon. E. H. Gray	Hon. H. S. W. Parker
Hon. W. H. Kitson	Hon. H. Seddon
Hon. J. M. Macfarlane	Hon. C. B. Williams
Hon. G. W. Miles	Hon. G. Fraser
	(Teller.)

The CHAIRMAN: The voting being equal, the question passes in the negative.

Clause put and passed.

Bill, as previously amended, again reported, without further amendment.

BILLS (4)—FIRST READING.

1, Financial Emergency Act Amendment.

2, Mortgagees' Rights Restriction Act Continuance.

3, Industries Assistance Act Continuance.

4, Reserves.

Received from the Assembly.

BILL—SALE OF LAND (VENDORS' OBLIGATIONS).

Further Recommittal.

On motion by Hon. H. Tuckey, Bill further recommitted for the further consideration of Clause 6.

In Committee.

Hon. J. Cornell in the Chair; Hon. G. Fraser in charge of the Bill.

Clause 6—Offences:

Hon. H. TUCKEY: I move an amendment—

That the following further proviso be added to the clause:—Provided further that no such proceedings may be brought after the expiry

of one month from the date when a transfer of the land in respect of which the offence has been committed executed by the vendor in favour of the purchaser, or by the direction of the purchaser endorsed on the transfer, has been registered at the Titles Office.

When a transfer is registered, there is time for the purchaser to find out whether there is any encumbrance on the land, and if he desires to take action, he has a month in which to do so. It is better to deal with the matter in the way I suggest than to have it hanging over the head of the vendor for 12 years.

Hon. G. FRASER: Strangely enough, the clause which provides the term of 12 years also fixes a time limit of six months. That has been overlooked by the hon. member. In 999 cases out of thousand, when a person receives the title deeds, he knows whether or not there is a mortgage on the land, because the deeds would be endorsed. That would be proof that at the time of receiving the title he would know the position.

Hon. H. Tuckey: Is not a month sufficient time in which action shall be taken?

Hon. G. FRASER: Really the amendment is not vital. The Bill already provides a period of six months. On the title being lodged and registered, the purchaser would know what the position was. There would only be a few weeks between the period set out in the Bill and what the amendment proposes. It is hardly worth while to alter the Bill.

Hon. H. TUCKEY: There is nothing in the Bill to say that the purchaser will notice what is in the title. I do not see why there should be any objection to the amendment. It seems wrong that there should be a possibility of the purchaser, because of some personal grievance, raking up the matter years afterwards.

Hon. G. FRASER: If there is any encumbrance on the land, the purchaser will know of it when he gets the title, because, as I have already said, the fact will be endorsed on the title.

Hon. H. Tuckey: Not always.

Hon. G. FRASER: If it is not on the title deed, he will not know at all.

Hon. H. Tuckey: Is not a month sufficient time?

Hon. G. FRASER: The amendment is unnecessary but I do not mind whether the Committee carries it or not.

Hon. J. NICHOLSON: Perhaps Mr. Fraser has not a full appreciation of the words contained in the amendment. Even although the matter has been finalised, it would be competent for the purchaser to allege that certain facts had not come to his knowledge, that they had not been disclosed to him, as is provided for in the Bill.

Hon. J. J. Holmes: Will this overcome the difficulty?

Hon. J. NICHOLSON: The amendment will meet the difficulty to a certain extent. I think, however, that one month is too long and I suggest that Mr. Tuckey should make the period one week. Once the transaction was completed, it would be competent for the purchaser to take action. The amendment should set out that provided the transaction was duly completed, and the title delivered, and accepted by the purchaser, no proceedings could be taken after one week.

Hon. J. J. HOLMES: I take it that the position is that if there is a dispute the whole matter must be settled within a month when all the evidence is fresh in people's minds. One month is a fair period and I support the amendment.

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

Bill again reported with a further amendment.

BILL—REGISTRATION OF FIRMS ACT AMENDMENT.

Recommittal.

On motion by Hon. J. Nicholson, Bill recommitted for the further consideration of Clause 2.

In Committee.

Hon. J. Cornell in the Chair; the Honorary Minister in charge of the Bill.

Clause 2—Prohibition against use of certain firm names and of certain words in firm names:

Hon. J. NICHOLSON: In paragraph (b) of Subsection 1 proposed new Section 4A, dealt with in this clause, the use of certain words in the names of firms is prohibited. To those prohibited words I propose that the words "trust" and "trustee" be added. If these words are not included, any person

or persons will be able to make use of them thus leading people to believe that the firm using the name is specially authorised to carry on trustee business and that it has therefore complied with the obligations imposed on trustee companies, namely, to lodge some thousands of pounds by way of deposit with the Government, the deposit serving to establish the bona fides of the firm. Not one of our trustee companies can carry on its business unless that deposit is made.

Hon. J. J. Holmes: And they can call up only two-fifths of their capital.

Hon. J. NICHOLSON: Yes, for the very vital reason that if anything goes wrong with such a company the various estates it controls have the advantage of the protection afforded by the deposit lodged with the Government plus the uncalled capital and the assets of the company. I move an amendment—

That after the word "co-operative" in line 5 of paragraph (b) of proposed new subsection 4A (1) the words "or the word 'trust' or 'trustee'" be inserted.

The HONORARY MINISTER: I have no objection to the amendment.

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

Bill again reported with a further amendment.

BILL—OPTOMETRISTS.

In Committee.

Resumed from the previous day. Hon. J. Cornell in the Chair; the Chief Secretary in charge of the Bill.

The CHAIRMAN: Progress was reported on Clause 34 to which the following amendment appears on the notice paper under the name of Mr. Parker: —

That the following paragraph be added:—

(d) every person who for a period of at least three years prior to the thirtieth day of June, One thousand nine hundred and forty, has been either alone or in co-partnership in the business of opticians or optometrists an employer of a person possessing the qualifications which would entitle such person to be registered as an optometrist.

Hon. H. S. W. PARKER: I do not intend to press the amendment.

The CHAIRMAN: I will put it to the Committee.

Amendment put and negatived.

Clause put and passed.

Clause 41—Provisions relating to practice of optometry by firms and companies:

Hon. H. S. W. PARKER: I move an amendment—

That all the words after the word "statement" in line 3 of paragraph (b) (iii) of Subclause (1) down to and including the word "corporation" in line 7 be struck out and the words "that the practice is carried on under the personal supervision of a registered optometrist" inserted in lieu.

I have had an opportunity to discuss this matter with the Chief Secretary and with Mr. Bolton, who secured the adjournment, and I understand there is no objection to the amendment.

Hon. L. B. BOLTON: I support the amendment and express my appreciation of the Chief Secretary's action in postponing consideration of the clause. The parties have since conferred on the matter and an agreement has been reached.

The CHIEF SECRETARY: I have no objection to the amendment.

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

Bill again reported with a further amendment.

BILL—FISHERIES ACT AMENDMENT.

Second Reading.

Debate resumed from the previous day.

HON. W. J. MANN (South-West) [5.31]: The Chief Secretary was quite correct when he said that the amendments to the Act as set out in this Bill are long overdue. For 37 years I have lived at the seaside, and during that period have seen the supply of fish coming from the waters in that part of the State gradually diminish. The position as it remained for many years was nothing less than ludicrous. A fisheries inspector was stationed at Mandurah and another at Bunbury. Those two men were expected to police the waters from Fremantle almost to Albany. The inspector at Mandurah had a flat-bottomed boat that needed a five h.p. engine to move.

Hon. J. Nicholson: Did he go to Albany in that?

Hon. W. J. MANN: The man at Bunbury had, as his means of locomotion, a bicycle. Members can imagine the state of affairs that existed along the coast under those conditions. By the old road it would take the inspector two hours to reach Busselton. Long before he got there a message would be sent from Bunbury to someone in Busselton intimating that the inspector had gone along the road, and by the time the official arrived at his destination there was no poaching and nothing illegal was in evidence. Everything would be cleared up and the poachers would be missing. That state of affairs has been improved upon a little during the last year or two. It is impossible for the Fisheries Department even now properly to police the waters. Some fishermen have to my knowledge all down the years played the game. They have been scrupulously fair in the use of their nets and have kept the law in every possible way. These are generally resident men. Others, frequently foreigners, knowing when fish were likely to be plentiful at certain seasons of the year, made raids boldly, and quite openly, and cleaned up all the fish with nets that provided no opportunity for the small fry to escape. I have seen some wicked things going on. I have even seen nets bring in tons of fish, three parts of which were undersized, and were thrown out on the beach and left to rot. The irony of the thing has been that very rarely are such people caught. On these occasions fishermen brought in their nets very early in the morning, selected the fish they wanted, and an hour or so afterwards they were gone. There was no chance of apprehending them for there was no one in the vicinity to prove who the delinquents were. There have been a few cases, mostly in connection with the estuaries, where the lawbreakers have been apprehended, but in such instances it has always seemed to me that the justices or magistrates have failed to realise the gravity of the situation and have imposed a comparatively light fine. So light have the fines been that the delinquents paid up, went away smiling, and waited their opportunity to make another raid. As a result of these occurrences we frequently hear that such-and-such a place has been fished out. The correct expression to use is that they have been netted out. Some years ago the Busselton Municipality, with a view to preserving angling for visitors, induced the Government to close the waters a mile on either side of the jetty. The local fishermen understood the position and kept outside the area, but some men, of the type I have mentioned, disregarded the regulations, with the result that that seaside resort suffered in its reputation as a place where folk could enjoy the sport of fishing. Even a worse state of affairs existed with some of the estuaries. People have come long distances in large boats, entered the estuaries, and managed to conceal themselves until the time was ripe for them to run their nets and clean up the fish therein. This Bill is a belated attempt to remedy that state of affairs. For that reason it must have general acceptance. In discussing the industry of fishing as a means of livelihood and the sport of fishing, two factors have to be considered. I have a letter from a Busselton man who has been fishing for about 40 years, and has always played the game. He states—

> We have great confidence in our Chief Inspector of Fisheries. We feel sure that Mr. Fraser will give us a fair go.

I understand that this is indicative of the feeling in that particular part of the State. Other people are interested in angling, and it may be said that their mouthpiece is one or other of the fish and game societies. At several points in the South-West such societies have been formed, have taken up the question of the preservation of fishing, amongst other things, and are doing their best to help the department. I have here a letter, copies of which other members have received. It states—

> With reference to the Fisheries Bill now before your House, I trust that you will be prepared to support the passing of this as it stands. I feel sure that it will prove itself to be legislation for the ultimate benefit of the majority.

I have thus given both sides of the picture. These societies have made suggestions for the closure of some of the estuaries. Whilst I have confidence in the Inspector of Fisheries, I am unable to understand his recent action in regard to the Bunbury estuary. In the past fishing was permitted there on three days a week with a 2¼ inch net. That period was recently extended to five days, and the size of the net increased to 2½ inches. I understand the idea is to bring the nets into conformity with the size used

in other places. Until I hear the explanation of the inspector, I do not propose to criticise his action any further. The action taken seems, however, rather unusual, particularly when it has been said that fishing for sport in the Bunbury estuary has been gradually deteriorating for some time past. One angle of fishing is closely allied to tourist activities. One fish and game society recently circularised a large number of local governing bodies and other associations in the hinterland concerning this Bill. I understand that in every instance a reply was received to the effect that the body approached was anxious that something should be done to preserve the interests of fishing in the waters along the South-West coast. During each year hundreds of men with their families arrive at the coast from as far back as the eastern wheatbelt. They travel mostly by car and remain on the coast for a holiday extending over two or three weeks. Nearly all those people are fond of fishing, but they find that the supply of fish appears to be diminishing steadily. The contention is generally raised that if the fish were given a fair chance to multiply, or even if the law as it stands were observed, the position would be a great deal better.

As to the estuaries, I understand negotiations have taken place between the Brunswick branch of the Fish and Game Society and the Minister in control of the Fisheries Department based on the suggestion that if a trial were made of closing three estuaries for a period of, say, three years, the fish could multiply and be found once more in their old-time numbers. I understand that the Minister—I have a large file comprising correspondence on this subject—agreed to make the experiment and suggested that three suitable estuaries might be named. I have been told that those mentioned to him were Oyster Harbour, Nornalup and Augusta. I cannot speak regarding Oyster Harbour which, being near Albany, is outside my province, but I have knowledge of Nornalup and, more particularly, of Augusta. I have received a letter on the subject from one of the prominent men at Augusta. He is particularly interested in fishing and he informs me that the people of that locality have no objection whatever to the closure of the estuary there against net-fishing for a period. Augusta has suffered severely, piscatorially speaking, and is one of the most popular fishing grounds in the State. While we may not be able to provide in the Bill for the closure of the estuaries I have mentioned, I hope that the Minister concerned will by means of regulations, embark upon this experiment. I feel sure it will prove worth while. The fishermen themselves think it will prove advantageous, and if effect is given to the penalties provided in the amending Bill, I am convinced that those who have been law-breakers in the past will think twice before they indulge in that practice again. I shall support the Bill because, as I said at the outset, I know how necessary it is. If its provisions are applied by the Chief Inspector and, I hope, his officers, we may be able to advance the rehabilitation of the fishing industry on the western side of the continent.

In my estimation, fish is altogether too costly. It may be that we who live in close proximity to the sea have been fortunately circumstanced in that we have been able to purchase our supplies from fishermen at most reasonable figures. Consequently our consumption of fish has been much higher than it could possibly be if we were living in the city. All the energies of those associated with the Fisheries Department should be vigorously directed to an endeavour to improve the catch of fish in order that the price of that commodity may be reduced to a reasonable level. There is no question about the value of the fish to be obtained in Western Australian waters. As far as I am able to judge, we have very good quality types that are worth preserving. I trust that the Bill will be agreed to in its entirety and that the Minister will honour his promise to make an experiment with some of the estuaries. Those mentioned will, I think, be found eminently suitable for the purpose. If the Minister will do that we shall, in the course of three or four years, secure some valuable data that will help to improve the position.

On motion by Hon. L. Craig, debate adjourned.

BILL—CITY OF PERTH (RATING APPEALS).

Assembly's Message.

Message from the Assembly received and read notifying that it had agreed to amendments Nos. 1 and 2 made by the Council, but had disagreed to Nos. 3 and 4.

BILL—LEGITIMATION ACT AMENDMENT.

Second Reading.

THE HONORARY MINISTER (Hon. E. H. Gray—West) [6.5] in moving the second reading said: By this Bill it is proposed to amend the Legitimation Act of 1909-26, which makes provision for the legitimation of children born before marriage by the subsequent marriage of their parents. Section 6 of the principal Act provides that any man who claims to be the father of any illegitimate child, whose mother he has married since the birth of such child, and who makes to a Registrar a statutory declaration to the effect that he is the father and has married the mother, may have the child registered as the lawful issue of such father and mother, and the Registrar shall make a note in the entry to the effect that registration has been made under the authority of the Act. This section was amended in 1926 by making provision for the legitimation of a child on application by the mother, in the event of the father dying without taking the necessary action himself. In such a case the mother is required to prove to the satisfaction of a Judge in Chambers that a marriage had taken place between the father and herself, and that the former had, in his lifetime, acknowledged himself as the father of the child. Upon the Judge giving the necessary order—which must be produced to the Registrar—the registration of the child will be effected.

Difficulty exists, however, regarding the registration of a child by the mother in the event of the father becoming insane. At present, as I have pointed out, action can only be taken by the father when living, and by the mother in the event of the father's death. If the father becomes insane, he is incompetent to take the necessary action for legitimation, and, under the existing legislation, the mother cannot make the necessary application. In such a case, therefore, the Bill seeks to enable the mother to apply to a Judge in Chambers for an order just as if the husband were dead. It will be necessary for her to prove that the father had acknowledged his responsibility, and, in the event of the Judge giving the desired order, such order would have to be produced to the Registrar so that registration could be effected.

The Government considers that the proposal embodied in the Bill is a step in the right direction. It can be said that the necessity to take advantage of the amendment may seldom arise, but the fact that it can arise and that the provision is in the best interests of all parties, and of the child in particular, constitute an argument with which I feel sure all members will agree. I commend the Bill to the House and move—

That the Bill be now read a second time.

On motion by Hon. J. Nicholson, debate adjourned.

House adjourned at 5.58 p.m.

Legislative Assembly.

Thursday, 14th November, 1940.

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

QUESTION—PASTORALISTS AND AGRICULTURISTS.

Debt Adjustment Legislation.

Mr. WATTS asked the Minister for Lands: 1, Is it the intention of the Government to bring down legislation this session to implement inter alia the debt adjustment recommendations of the Royal Commissioner on the Pastoral Industry? 2, If so, is it also intended to incorporate in such legislation provisions of a similar nature applicable to the debts of those engaged in the agricultural industry?